

**WSR 16-01-160**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed December 22, 2015, 8:57 a.m., effective December 22, 2015, 8:57 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is amending WAC 388-107-0001, 388-107-0020, 388-107-0080, 388-107-0100, 388-107-0110, 388-107-0120, 388-107-0130, 388-107-0140, 388-107-0150, 388-107-0160, 388-107-0180, 388-107-0190, 388-107-0200, 388-107-0210, 388-107-0240, 388-107-0280, 388-107-0370, 388-107-0390, 388-107-0400, 388-107-0410, 388-107-0420, 388-107-0430, 388-107-0560, 388-107-0770, 388-107-0810, 388-107-0830, 388-107-0890, 388-107-0940, 388-107-0960, 388-107-1000, and 388-107-1190 in order to address Center for Medicare/Medicaid Services (CMS) home and community-based services (HCBS) and stakeholder concerns with implementation of the requirements stated therein.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-107-0930; amending WAC 388-107-0001, 388-107-0020, 388-107-0080, 388-107-0100, 388-107-0110, 388-107-0120, 388-107-0130, 388-107-0140, 388-107-0150, 388-107-0160, 388-107-0180, 388-107-0190, 388-107-0200, 388-107-0210, 388-107-0240, 388-107-0280, 388-107-0370, 388-107-0390, 388-107-0400, 388-107-0410, 388-107-0420, 388-107-0430, 388-107-0560, 388-107-0770, 388-107-0810, 388-107-0830, 388-107-0890, 388-107-0940, 388-107-0960, 388-107-1000, and 388-107-1190.

Statutory Authority for Adoption: RCW 70.97.230.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: After receiving input from stakeholders, DSHS's residential care services has revised chapter 388-107 WAC to operationalize the enhanced services facilities (ESF) program.

**Immediate Adoption is Necessary for Public Safety and General Welfare.** The Washington state operating budget directs the department to implement chapter 70.97 RCW, which requires the establishment of ESF. ESFs are intended to relieve pressure on institutional mental health settings such as Eastern and Western State Hospitals. If certain patients are relocated to ESFs, more beds will be available to those who need an institutional level of mental health care.

Due to shortage of beds at evaluation and treatment centers and Western and Eastern State Hospitals, some patients have been kept in nonpsychiatric acute care hospital settings such as emergency rooms and medical surgical units. In the case known as *In re: the Detention of D.W., et al. v. Department of Social and Health Service*, the Washington state supreme court found these placements, known as "psychiatric boarding," to be unconstitutional. In order to comply with

*D.W.*, DSHS needs to immediately develop alternatives to institutional mental health settings in order to reduce the need for psychiatric boarding. Therefore, adoption of these rules, which will allow ESFs to become licensed and begin operating, is an urgent and time-sensitive matter of public safety and general welfare.

**Immediate Adoption is Necessary to Receive Federal Funds.** In order to qualify for federal matching funds, the ESF program must conform to federal CMS HCBS requirements. These federal requirements became effective after the initial ESF rules were adopted. In order to ensure that payments for ESF services will qualify for federal funding under the HCBS requirements, the proposed rule amendments need to be adopted immediately.

Initial public notice (CR-101) was filed under WSR 15-10-041.

Efforts to adopt the permanent rule will continue by responding to stakeholder comments after the public hearing and comment deadline. Public hearing is scheduled for January 26, 2016, and final rule filing (CR-103) is anticipated to be completed so that permanent rules will be in effect in February 2016.

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 31, Repealed 1.

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 31, Repealed 1.

Date Adopted: December 16, 2015.

Katherine I. Vasquez  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0001 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

**"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 except as described in section 388-107-0420;

(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.

**"Administrative hearing"** is a formal hearing proceeding before a state administrative law judge that gives:

(1) A licensee an opportunity to be heard in disputes about licensing actions, including the imposition of remedies, taken by the department; or

(2) An individual an opportunity to appeal a finding of abandonment, abuse, neglect, financial exploitation of a resident, or misappropriation of a resident's funds.

**"Administrator"** means an enhanced services facility administrator who must be in active administrative charge of the enhanced services facility as required in this chapter. Unless exempt under RCW 18.88B.041, the administrator must complete long-term care worker training and home care aide certification.

**"Advance directive,"** as used in this chapter, means any document indicating a resident's choice with regard to a specific service, treatment, medication or medical procedure option that may be implemented in the future such as power of attorney health care directive, limited or restricted treatment cardiopulmonary resuscitation (CPR), do not resuscitate (DNR), and organ tissue donation.

**"Aggressive behavior"** means actions by the individual that constitute a threat to the individual's health and safety or the health and safety of others in the environment.

**"Antipsychotic medications"** means that class of medications primarily used to treat serious manifestations of mental illness associated with thought disorders, which includes but is not limited to atypical antipsychotic medications.

**"Applicant"** means the individual or entity, as defined in this section, that has submitted, or is in the process of submitting, an application for an enhanced services facility license.

**"Capacity"** means the maximum amount an enhanced services facility can serve is sixteen residents.

**"Caregiver"** means the same as "long-term care worker" as defined in RCW 74.39A.009, as follows: "Long-term care workers" include all persons who provide paid, hands-on personal care services for the elderly or persons with disabilities, including but not limited to individual providers of home care services, direct care workers employed by home care agencies, providers of home care agencies to persons with developmental disabilities under Title 71A RCW, all direct care workers in state-licensed enhanced services facilities, assisted living facilities, and adult family homes, respite care providers, direct care workers employed by community residential service businesses, and any other direct care worker providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

**"Challenging behavior"** means a persistent pattern of behaviors that inhibit the individual's functioning in public places, in the facility and integration within the community, or uncontrolled symptoms of a physical or mental condition. These behaviors may have been present for long periods of time or have manifested as an acute onset.

**"Chemical dependency"** means alcoholism, medication addiction, or dependence on alcohol and one or more other psychoactive chemicals, as the context requires and as those terms are defined in chapter 70.96A RCW.

**"Chemical dependency professional"** means a person certified as a chemical dependency professional by the department of health under chapter 18.205 RCW.

**"Deficiency"** is an enhanced services facility's failed practice, action, or inaction that violates any or all of the requirements of chapters 70.97 RCW or the requirements of this chapter.

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

**"Direct supervision"** means oversight by a person on behalf of the enhanced services facility who has met training requirements, demonstrated competency in core areas, or has been fully exempted from the training requirements, is on the premises, and is quickly and easily available to the caregiver.

**"Enhanced services facility"** means a facility that provides treatment and services to persons for whom acute inpatient treatment is not medically necessary and who have been determined by the department to be inappropriate for placement in other licensed facilities due to the complex needs that result in behavioral and security issues. For the purposes of this chapter, an enhanced services facility is not an evaluation and treatment facility certified under chapter 71.05 RCW.

**"Facility"** means an enhanced services facility.

**"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).

**"Holding technique"** means using the least amount of force necessary to manually hold all or part of a person's body in a way that restricts the person's free movement; also includes any approved controlling maneuvers identified in the ~~((individual treatment))~~ person-centered service plan. Examples include holds taught in approved training for deescalation techniques and control of self-harm or aggressive behavior. This definition does not apply to briefly holding, without force, a person in order to calm the person, or holding a person's hand to escort the person safely from one area to another.

**"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.

**"Inspection"** means the process by which department staff evaluates the enhanced services facility licensee's compliance with applicable statutes and regulations.

**"License suspension"** is an action taken by the department to temporarily revoke an enhanced services facility license in accordance with RCW 70.97.120 and this chapter.

**"Licensee"** means the individual or entity, as defined in this chapter, to whom the department issues the enhanced services facility license.

**"Licensed physician"** means a person licensed to practice medicine or osteopathic medicine and surgery in the state of Washington.

**"Likelihood of serious harm"** means a substantial risk that:

(1) Physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself;

(2) Physical harm will be inflicted by an individual upon another, as evidenced by behavior that has caused such harm or that places another person or persons in reasonable fear of sustaining such harm; or

(3) Physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others.

**"Long-term care worker"** as defined in RCW 74.39A.009, has the same meaning as the term "caregiver."

**"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, Assisted living facility; 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; chapter 70.97 RCW, Enhanced services facility or any other facility licensed by the department.

**"Medically fragile"** means a chronic and complex physical condition which results in prolonged dependency on specialized medical care that requires frequent daily skilled nursing interventions. If these medically necessary interventions are interrupted or denied, the resident may experience irreversible damage or death. Examples of specialized medical care and treatment for medically fragile residents include but are not limited to: IV therapies requiring monitoring of vital signs and dose titration dependent on lab values; wound care requiring external vacuum or other mechanical devices for debridement; complicated wound care requiring other specialized or extensive interventions and treatment; ventilator or other respiratory device dependence and monitoring; dependence on licensed staff for complex respiratory support; and peritoneal or hemodialysis (on-site).

**"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 service"** means any service provided either directly or indirectly by an enhanced services facility related to medication administration medication assistance, or resident self-administration of medication.

**"Mental disorder"** means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

**"Mental health professional"** means a psychiatrist, psychologist, psychiatric nurse, licensed mental health counselor, licensed mental health counselor-associate, licensed marriage and family therapist, licensed marriage and family therapist-associate, licensed independent clinical social worker, licensed independent clinical social worker-associate, licensed advanced social worker, or licensed advanced social worker-associate and such other mental health professionals as may be defined by rules adopted by the secretary under the authority of chapter 71.05 RCW.

**"Misappropriation of resident property"** means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money.

**"Neglect"** means:

(1) A pattern of conduct or inaction by a person or entity with a duty of care that fails 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 by a person or entity with a duty of care 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.

**"Permanent restraining order"** means a restraining order or order of protection issued either following a hearing, or by stipulation of the parties. A "permanent" order may be in force for a specific time period (e.g. 5 years), after which it expires.

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

**"Professional person"** means a mental health professional and also means a physician, registered nurse, and such others as may be defined in rules adopted by the secretary pursuant to the provisions of this chapter.

**"Psychopharmacologic medications"** means the class of prescription medications, which includes but is not limited to antipsychotics, anti-anxiety medications, and antidepressants, capable of affecting the mind, emotions, and behavior.

**"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 enhanced services facility must:

(a) Not impose an admission criterion that excludes individuals unless the criterion is necessary for the provision of enhanced services facility 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 enhanced services facility; 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.

**"Registration records"** include all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify individuals who are receiving or who at any time have received services for mental illness.

**"Resident"** means a person admitted to an enhanced services facility.

**"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, enhanced services facility, 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 enhanced services facility and to receive information from the enhanced services facility if there is no legal repre-

sentative. The resident's representative may not be affiliated with the licensee, enhanced services facility, 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).

**"Secretary"** means the secretary of the department or the secretary's designee.

**"Significant change"** means:

(1) A deterioration in a resident's physical, mental, or psychosocial condition that has caused or is likely to cause clinical complications or life-threatening conditions; or

(2) An improvement in the resident's physical, mental, or psychosocial condition that may make the resident eligible for discharge or for treatment in a less intensive or less secure setting.

**"Significant medication error"** includes any failure to administer or receive a medication according to an authorized health care provider's order, or according to the manufacturer's directions for nonprescription medications, that results in an error involving the wrong medication, wrong dose, wrong patient, wrong time, wrong rate, wrong preparation, or wrong route of administration.

**"Social worker"** means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010.

**"Staff" or "staff person"** means any person who:

(1) Is employed or used by an enhanced services facility, directly or by contract, to provide care and services to any resident.

(2) Staff must meet all of the requirements of chapter 388-112 WAC.

**"Stop placement" or "stop placement order"** is an action taken by the department prohibiting enhanced services facility admissions, readmissions, and transfers of patients into the enhanced services facility from the outside.

**"Temporary restraining order"** means restraining order or order of protection that expired without a hearing, was terminated following an initial hearing, or was terminated by stipulation of the parties in lieu of an initial hearing.

**"Treatment"** means the broad range of emergency, detoxification, residential, inpatient, and outpatient services and care, including diagnostic evaluation, mental health or chemical dependency education and counseling, medical, physical therapy, restorative nursing, psychiatric, psychological, and social service care, vocational rehabilitation, and career counseling.

**"Violation"** ~~((is an enhanced services facility failed practice, action or inaction that violates any or all of the following:~~

~~(1) Requirements of chapters 18.51 or 74.42 RCW, or the requirements of this chapter; and~~

~~(2) In the case of a medicare and medicaid contractor, participation requirements under Title XVIII and XIX of the Social Security Act and federal medicare and medicaid regulations))~~ means the same as **"deficiency"** as defined in this section.

**"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;
- (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 enhanced services facility; 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) Who self-directs his or her own care and receives services from a personal aide under chapter 74.39 RCW.
- (8) 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.

**AMENDATORY SECTION** (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0020 Department authority.** (1) Chapter 70.97 RCW authorizes the department to develop rules to implement the chapter, and to license enhanced services facilities. At a minimum the rules are to be written to promote safe treatment and necessary care of individuals residing in each facility, to provide for safe and clean conditions and to establish licensee qualifications, licensing and enforcement standards, and license fees sufficient to cover the cost of licensing and enforcement.

(2) The department, in its sole discretion and after taking into consideration the circumstances of a particular facility such as size or location, may approve alternate staffing, administration, physical plant, or other arrangements that have been proposed in writing by an ESF applicant or licensee. An ESF's failure to comply with a department-approved alternate plan is a violation of this chapter and may result in enforcement actions under WAC 388-107-1430.

**AMENDATORY SECTION** (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0080 Ongoing comprehensive assessments.** The enhanced services facility must:

- (1) Complete a comprehensive assessment, addressing the elements set forth in WAC 388-107-0070, upon a significant change in the resident's condition or at least every 180 days if there is no significant change in condition;
- (2) Complete an assessment specifically focused on a resident's identified strengths, preferences, limitations and related issues:
  - (a) Consistent with the resident's change of condition as specified in WAC 388-107-0060;
  - (b) When the resident's ~~((individual treatment))~~ person-centered service plan no longer addresses the resident's current needs and preferences;

(c) When the resident has an injury requiring the intervention of a practitioner.

(3) Review each resident's needs to evaluate discharge or transfer options when the resident:

(a) No longer needs the level of behavioral support provided by the facility; or

(b) Expresses the desire to move to a different type of community based setting.

(4) Ensure that the person-centered service planning team discusses all available placement options.

(5) Ensure the staff person performing the ongoing assessments is a qualified ~~((to perform them))~~ assessor.

**AMENDATORY SECTION** (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0100 ~~((Enhanced services facility))~~ Person-centered service planning team.** The facility ~~((will identify a team for each resident. The team will))~~ must develop and maintain a person-centered service planning team for each resident. The team must:

(1) Include the resident, the resident's representative when applicable, individuals chosen ~~((and any support persons identified))~~ by the resident, ~~((as well as))~~ a mental health professional, nursing staff, the medicaid client's department case manager, and other persons ~~((identified by the facility))~~ as needed;

(2) Provide the necessary information and support to ensure that the resident has an opportunity to identify team members, make informed choices and decisions regarding care and treatment, and direct the person-centered service planning process to the maximum extent possible;

(3) Ensure a coordinated approach to the development, implementation and evaluation of the ~~((individual treatment))~~ comprehensive person-centered service plan for the resident; and

~~((3))~~ (4) Meet at least monthly and more often as needed, at times and locations convenient to the resident, to review and modify the ~~((individual treatment))~~ comprehensive person-centered service plan as needed.

**AMENDATORY SECTION** (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0110 Initial ~~((individual treatment))~~ person-centered service plan.** The ~~((enhanced services facility))~~ resident's person-centered service planning team must develop the initial ~~((individual treatment))~~ person-centered service plan prior to admission to the ESF, using information from the resident, the resident's representative if the resident has one, the comprehensive assessment reporting evaluation (CARE) assessment for medicaid clients, and the preadmission assessment, prior to admitting the resident to the facility. The ~~((enhanced services facility))~~ person-centered service planning team must ensure that each resident has an initial ~~((individual treatment))~~ person-centered service plan that includes:

(1) The resident's immediate specific ~~((problems and))~~ support needs (physical, mental and behavioral) identified in the preassessment;

(2) Direction to staff and caregivers relating to the resident's immediate needs, capabilities, and preferences;

(3) The means ~~((for))~~ by which the resident chooses not to accept or refuses care or services;

(4) The resident's informed consent to the person-centered service plan;

(5) What the facility will do to ensure the resident's health and safety related to the refusal of any care or service;

~~((5))~~ (6) Resident defined goals and preferences;

~~((6))~~ (7) How the facility will provide behavioral support to prevent a crisis and maintain placement in the facility while respecting the resident's rights; ~~(and~~

~~(7))~~ (8) While in the community, what the facility will do to ensure resident and community safety; and

~~((8) Identifying))~~ (9) Identification of factors that ~~(with)~~ prevent the resident from accessing less restrictive community based services and ~~(developing))~~ development of a plan ~~(regarding))~~ that describes when and how the resident may be able to transfer or transition from the enhanced services facility to a more independent living situation in the community.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0120 Initial comprehensive ~~((individual treatment))~~ person-centered service plan.** (1) The ~~((enhanced services facility))~~ person-centered service planning team must integrate the information obtained in the resident's preadmission assessment, medicaid client's CARE assessment information from the department's case manager, initial comprehensive assessment and initial ~~((individual treatment))~~ person-centered service plan to develop a written comprehensive ~~((individual treatment))~~ person-centered service plan.

(2) The enhanced services facility must:

(a) Complete the initial comprehensive person-centered service plan within fourteen days of the resident's move-in date.

(b) Provide the initial comprehensive person-centered service plan to the resident in a clear and understandable format that is accessible to residents, including those with disabilities and persons who have limited English proficiency.

(c) Ensure that the resident, or the resident's representative, when applicable, consents to the initial person-centered service plan in writing and that the plan is signed by all individuals on the person-centered service planning team.

(d) Distribute a copy of the initial comprehensive person-centered service plan to the resident and all others responsible for the implementation of the plan.

(3) The ~~((enhanced services facility))~~ person-centered service planning team must ensure each resident's initial comprehensive ~~((individual treatment))~~ person-centered service plan includes:

~~((1))~~ (a) A list of the care and services to be provided;

~~((2))~~ (b) Identification of who will provide the care and services;

~~((3))~~ (c) When and how the care and services will be provided;

(d) A method for the resident to request updates to the plan as needed;

(e) A list of services that the resident chooses to self-direct;

~~((4))~~ (f) How medications will be managed, including how the resident will receive medications when the resident is not in the facility;

~~((5))~~ (g) The resident's daily activities preferences, spiritual and/or cultural preferences, interests, strengths and needs and how the facility will meet those within the behavioral challenges of the resident;

~~((6))~~ (h) Other preferences and choices about issues important to the resident, including, but not limited to:

~~((a))~~ (i) The setting in which the resident resides;

(ii) Food;

~~((b))~~ (iii) Daily routine;

~~((c))~~ (iv) Grooming; and

~~((d))~~ (v) How the enhanced services facility will accommodate the preferences and choices.

(i) Identification of any communication barriers the resident may have and how the home will use behaviors and non-verbal gestures to communicate with the resident;

~~((7))~~ (j) A behavioral support plan to prevent crisis and maintain placement in the facility by:

~~((a))~~ (i) A crisis prevention and response protocol that outlines specific indicators which may signal a potential crisis for the resident;

~~((b))~~ (ii) Specific interventions and pre-crisis prevention strategies for each of the resident's indicators of a potential crisis;

~~((c))~~ (iii) A crisis prevention and response protocol that outlines steps to be taken if the prevention or intervention strategies are unsuccessful in diverting the crisis including the community crisis responder's coordination plan; and

~~((d) A plan on))~~ (iv) A description of how to respond to a resident's refusal of care or treatment, including when the resident's physician or practitioner should be notified of the refusal.

~~((8) Identification of any communication barriers the resident may have and how the home will use behaviors and nonverbal gestures to communicate with the resident;))~~

~~((9))~~ (k) A hospice care plan if the resident is receiving ~~((services for))~~ hospice care ~~((delivered by))~~ services from a licensed hospice agency.

~~((10))~~ (l) Advance directives, if the resident chooses, that are validly executed pursuant to chapters 70.122 and 71.32 RCW, as applicable;

~~((11))~~ (m) A plan ~~((regarding how the facility will work))~~ for working with the department of corrections (DOC) if the resident is under the supervision of DOC, collaborating to maximize treatment outcomes and reduce the likelihood of reoffense.

~~((12))~~ (n) A plan which maximizes the opportunities for independence, maintaining health and safety, recovery, employment, the resident's participation in treatment decisions, collaboration with peer-supported services, and care and treatment provided in the least restrictive manner appropriate to the resident and to any relevant court orders with which the resident must comply.

(o) Strategies for solving conflict or disagreement within the process of the development of the initial comprehensive individual treatment plan, including clear conflict-of-interest guidelines for all planning participants.

~~((13))~~ (p) A discharge plan that addresses factors and barriers that prevent a resident from being placed in a less restrictive community placement and assist the resident in the transition. This plan will include an assessment of all current medications and the resident's ability to self-medicate in a more independent living situation.

~~((14) The enhanced services facility must complete the comprehensive individual treatment plan within fourteen days of the resident's move-in date.)~~

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

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0130 Ongoing comprehensive ((~~individual treatment~~)) person-centered service plan.** (1) The ~~((enhanced services facility))~~ person-centered service planning team will review and update each resident's comprehensive ~~((individual treatment))~~ person-centered service plan, as follows:

(a) Within a reasonable time consistent with the needs of the resident following any significant change in the resident's physical, mental, emotional or behavioral functioning; ~~((and))~~

(b) Upon request by the resident;

(c) Whenever the comprehensive ~~((individual treatment))~~ person-centered service plan no longer adequately addresses the resident's current assessed needs and preferences; ~~((and))~~

~~((e))~~ (d) Following every full comprehensive assessment and medicaid client's full CARE assessment; and

(e) At least once every one hundred and eighty days.

(2) ~~((The process of developing and updating the comprehensive individual treatment plan will include the following:))~~

(a) The resident;

(b) The resident's representative to the extent he or she is willing and capable, if the resident has one;

(c) Other individuals the resident wants included;

(d) The medicaid client's department case manager; and

(e) Staff designated by the enhanced services facility.

~~((3))~~ The ~~((enhanced services facility))~~ person-centered service planning team ~~((with))~~ must ensure:

(a) Individuals participating in developing the resident's comprehensive ~~((individual treatment))~~ person-centered service plan:

(i) Discuss the resident's assessed needs, capabilities, and preferences; ~~((and))~~

(ii) Negotiate~~((, if possible and feasible,))~~ an agreed-upon comprehensive ~~((individual treatment))~~ person-centered service plan ~~((which would))~~ that will support the resident; and

(ii) Prevent the provision of unnecessary or inappropriate services and supports.

(b) The agreed plan for services is documented in the resident's record.

~~((b) Staff persons document in the resident's record the agreed upon plan for services.))~~

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

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0140 Implementation of the ((~~individual treatment~~)) person-centered service plan.** (1) The ~~((enhanced services facility))~~ person-centered service planning team must provide the care and services as agreed upon or outlined in the initial and comprehensive ~~((individualized treatment))~~ person-centered service plan to each resident unless a deviation from the plan is mutually agreed upon between the ~~((enhanced services facility))~~ person-centered service planning team, the medicaid client's department case manager, and the resident and/or the resident's representative at the time the care or services are scheduled.

(2) The details of any deviation from the plan must be clearly documented in the resident record.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0150 Comprehensive ((~~individual treatment~~)) person-centered service plan sent to the state.** When a resident's services are paid for by the department, the enhanced services facility must give the department case manager a copy of the comprehensive ~~((individual treatment))~~ person-centered service plan each time it is completed or updated and after it has been signed and dated. The department's case manager will:

(1) Review the ~~((individual treatment))~~ person-centered service plan;

(2) Sign, date, and return the ~~((individual treatment))~~ person-centered service plan to the facility;

(3) Document the review in the resident record, indicating it was signed and approved; and

(4) Schedule a department reassessment.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0160 Behavioral support plan.** The ~~((enhanced services facility))~~ person-centered service planning team will ensure that each resident's ~~((individual treatment))~~ person-centered service plan has interventions for behavioral support that are used first when a resident's behavior is escalating at home or in the community, including but not limited to the following:

(1) Strengths the individual ~~((holds))~~ has that support strategies for prevention and intervention.

(2) Specific indicators which may signal a potential crisis for the individual or that left unaddressed in the past has led to a behavioral crisis. Examples include but are not lim-

ited to typical challenging behaviors the individual displays when escalating, actions the resident may typically take before a behavioral outburst, or words or phrases the individual has been known to express during a time of escalation.

(3) Specific interventions and pre-crisis prevention strategies for each of the indicators identified above.

(4) Steps to be taken by each of the facility (~~team members~~) staff if the prevention or intervention strategies are unsuccessful in diverting the individual from a behavior or action that leads to crisis.

(5) A description of the types of holding techniques that are safe and effective for the individual.

~~((5))~~ (6) A plan to ensure coordination with community crisis responders in regard to each resident's ~~((treatment))~~ person-centered service plan as part of a regular, routine protocol for crisis prevention and intervention.

~~((6))~~ (7) A resident may not be secluded or isolated as part of the behavior support plan.

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

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0180 Self-determination and participation.** Except when the health or safety of the individual or other residents or members of the community would be endangered and consistent with the ~~((individual treatment))~~ person-centered service plan, each resident has the right to:

(1) Choose activities, schedules, and health care consistent with his or her interests, assessments, and ~~((individual treatment))~~ person-centered service plan;

(2) Interact with members of the community both inside and outside the enhanced services facility;

(3) Make choices about aspects of his or her life in the facility that are significant to the resident; and

(4) Participate in social, religious, and community activities that do not interfere with the rights of other residents in the enhanced services facility.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0190 Rights of residents.** (1) Each resident of an enhanced services facility is entitled to all the rights set forth in this chapter, and chapters 71.05 and 70.96A RCW, and must retain all rights not denied him or her under these chapters.

(2) The enhanced services facility will only consider a resident's competence as determined or withdrawn under the provisions of chapters 10.77 or 11.88 RCW.

(3) The facility must give each resident, at the time of his or her ~~((treatment))~~ person-centered service planning meeting, a written statement setting forth the substance of this section.

(4) Every resident of an enhanced services facility has the right to ~~((adequate))~~ appropriate care and individualized

treatment, interventions, and support that will not harm the resident.

(5) The provisions of this chapter must not be construed to deny to any resident treatment by spiritual means through prayer in accordance with the tenets and practices of a church or religious denomination.

(6) Each resident of an enhanced services facility must have, in addition to other rights not specifically withheld by law, the rights enumerated in subsections (6)(a) through ((m)) (o) ((below)) in this section, unless exercise of these rights creates a danger to the resident or to others. The facility must prominently post a list of these rights in a place accessible to residents and must make this list available to residents without need of request. The resident has the right:

(a) To wear his or her own clothes and to keep and use his or her own personal possessions, except when deprivation of same is essential to protect the safety of the resident or other persons;

(b) To have access to fluids and snacks of choice at any time;

(c) To ~~((keep and be allowed to spend a reasonable sum of his or her own money for canteen expenses and small purchases))~~ control his or her personal finances;

(d) To have access to individual locked storage space for his or her private use;

(e) To have visitors at ~~((reasonable))~~ convenient to the resident and in accordance with the person-centered service plan;

(f) To have ~~((reasonable))~~ twenty-four hour access to a telephone, both to make and receive confidential calls ~~((consistent with an effective treatment program))~~;

(g) To have ready access to letter-writing materials, including stamps, and to send and receive uncensored correspondence through the mails;

(h) To discuss and actively participate in ~~((treatment))~~ the development of person-centered service plans and decisions with professional persons;

(i) To a clean, comfortable, ~~((and))~~ home ((like)) environment;

(j) To furnish and decorate the sleeping room in accordance with the person-centered service plan.

~~((k))~~ (k) Not to have psychosurgery performed on him or her under any circumstances;

~~((l))~~ (l) To refuse antipsychotic medication consistent with RCW 70.97.050;

~~((k))~~ (m) To dispose of property and sign contracts unless the resident has been adjudicated ~~((as))~~ as incompetent in a court proceeding directed to that particular issue; and

~~((H))~~ (n) To complain about rights violations or conditions and request the assistance of ~~((a mental health))~~ an ombuds or representative of Disability Rights Washington ((protection and advocacy)). The facility may not prohibit or interfere with a resident's decision to consult with an advocate of his or her choice.

~~((m))~~ (o) To receive a minimum of thirty days' written notice if there are any changes to the scope of services identified in the ~~((individual treatment))~~ person-centered service plan.

(7) Any modification of the resident rights requirements outlined in 42 C.F.R. § 441.301 (c)(4)(vi)(A) through (D)

must be supported by a specific assessed need and justified in the person-centered service plan. When making said modifications, the person-centered service planning team must document:

- (a) The specific individualized assessed need;
- (b) The positive interventions and supports used prior to any modification;
- (c) Less intrusive methods of meeting the needs that have been tried but did not work;
- (d) A clear description of the condition that is directly related to the specific assessed need;
- (e) Regular collection and review of data to measure the ongoing effectiveness of the modification;
- (f) Established time limits for periodic reviews to determine if the modification is still necessary or can be terminated;
- (g) Informed consent of the resident and/or resident's representative;
- (h) An assurance that interventions and supports will cause no harm to the resident.

~~((7))~~ (8) Nothing contained in this chapter ~~((must))~~ may prohibit a resident and/or resident's representative from petitioning by writ of habeas corpus for release.

~~((8))~~ (9) Nothing in this section permits any person to knowingly violate a no-contact order or a condition of an active judgment and sentence or active supervision by the department of corrections.

~~((9))~~ (10) A resident has a right to refuse placement in an enhanced services facility. No person ~~((must))~~ may be denied other department services solely on the grounds that he or she has made such a refusal.

~~((10))~~ (11) A resident has a right to appeal the decision of the department that he or she is eligible for placement at an enhanced services facility, and must be given notice of the right to appeal in a format that is accessible to the resident with instructions regarding what to do if the resident wants to appeal.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0200 Quality of care.** (1) Consistent with resident rights, the enhanced services facility must provide each resident with the necessary care and services to attain or maintain the highest practicable physical, mental and psychosocial well-being, self-care and independence in accordance with his or her comprehensive assessment and ~~((individual treatment))~~ person-centered service plan.

(2) Based on the comprehensive assessment of a resident, the enhanced services facility must ensure that:

- (a) A resident's abilities in activities of daily living do not decline unless circumstances of the resident's clinical condition demonstrate that the decline was unavoidable. This includes the resident's ability to:
  - (i) Bathe, dress, and groom;
  - (ii) Transfer and ambulate;
  - (iii) Toilet;
  - (iv) Eat; and
  - (v) Use speech, language, or other functional communication systems.

(b) A resident is given the appropriate treatment and services to maintain or improve the resident's abilities in activities of daily living specified in subsection (2)(a) of this section; and

(c) A resident who is unable to carry out activities of daily living receives the necessary services to maintain good nutrition, grooming, and personal and oral hygiene.

(3) The enhanced services facility must ensure that the appropriate care and services are provided to the resident in a minimum of the following areas, as applicable in accordance with the resident's individualized assessments and ~~((individual treatment))~~ person-centered service plan:

- (a) Mental health treatment;
- (b) Chemical dependency treatment;
- (c) Vision and hearing;
- (d) Skin;
- (e) Continence;
- (f) Range of motion;
- (g) Mental and psychosocial functioning and adjustment;
- (h) Nutrition;
- (i) Hydration;
- (j) Special needs, including but not limited to:
  - (i) Injections;
  - (ii) Parenteral and enteral fluids;
  - (iii) Colostomy, urostomy, or ileostomy care;
  - (iv) Tracheostomy care and/or tracheal suctioning;
  - (v) Respiratory care;
  - (vi) Dental care;
  - (vii) Foot care; and
  - (viii) Prostheses.
- (k) Medications, including freedom from:
  - (i) Unnecessary medications; and
  - (ii) Significant medication errors; and
- (l) Independent living skills.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0210 Care and services.** The enhanced services facility must develop and implement a program to meet the needs of each resident and to ensure each resident receives:

(1) The care and services identified in the ~~((individualized treatment))~~ person-centered service plan.

(2) The necessary care and services to help the resident reach the highest level of physical, mental, and psychosocial well-being consistent with resident choice, current functional status and potential for improvement or decline.

(3) The care and services in a manner and in an environment that:

- (a) Actively supports, maintains or improves each resident's quality of life;
- (b) Actively supports the safety of each resident; and
- (c) Reasonably accommodates each resident's individual needs and preferences except when the accommodation endangers the health or safety of the individual, another resident, or a member of the community; and((-))

(4) Services by the appropriate professionals based upon the resident's assessment and ~~((individualized treatment))~~ person-centered service plan.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0240 Staffing (~~(ratios)~~) levels.** (1) The enhanced services facility must ensure that:

(a) Sufficient numbers of appropriately qualified and trained staff are available to provide necessary care and services consistent with residents' (~~(negotiated service agreements)~~) person-centered service plan safely under routine conditions, as well as during fire, emergency, and disaster situations; and

(b) At least two staff are awake and on duty in the facility at all times if there are any residents in the facility.

(2) A (~~(licensed)~~) registered nurse must be (~~(on duty in the facility at all times.)~~) available to meet the needs of the residents as follows:

(a) On duty in the facility at least twenty hours per week; and

(b) Available on call, when not present, to respond within thirty minutes by phone or in person.

~~((a))~~ (3) A (~~(registered)~~) licensed nurse must be on duty in the facility (~~(at least eight hours per day; and)~~) whenever a registered nurse is not on site.

~~((b))~~ A registered nurse must be on call during any shift ~~that a licensed practical nurse is on duty in the facility.)~~

~~((3))~~ (4) A mental health professional must be (~~(on-site)~~) available to meet the needs of the residents as follows:

(a) On site in the facility at least (~~(sixteen)~~) eight hours per day; and

(b) Available on call, when not present to respond within thirty minutes by phone or in person.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0280 Transfer and discharge.** (1) (~~(Upon completion of the annual reassessment and/or significant change assessment by both case management and enhanced services facility staff, the enhanced services team will review each resident for possible discharge. The team will determine if the resident:~~

(a) ~~No longer needs the level of behavioral support provided by the enhanced services facility;~~

(b) ~~Behaviors are now mitigated by changed medical or personal care needs;~~

(c) ~~Expresses the desire to move to a different type of community based setting and has demonstrated the ability or capacity to be successful; or~~

(d) ~~Is a good candidate for relocation and recommends other community based programs to the resident.~~

(2)) The enhanced services facility, with input from the person-centered service planning team, will meet with case management staff to identify residents (~~(with potential for discharge or)~~) who want to discharge from this residential setting or who could transfer to a less restrictive (~~(program, and will participate in)~~) residential setting. Once these residents are identified, discharge planning meetings will be held for each resident who (~~(meets the above criteria for potential discharge)~~) is planning to be discharged or transferred from the facility.

~~((3)) The enhanced services facility must provide a thirty day notice before discharging a resident unless the situation is emergent and the case manager is involved in the decision.)~~

(2) The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility, unless:

(a) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(b) The safety of the individuals in the facility is endangered;

(c) The health of individuals in the facility would otherwise be endangered;

(d) The resident has failed to make the required payment for his or her stay; or

(e) The facility ceases to operate.

(3) Before transferring or discharging a resident, the facility must:

(a) First attempt through reasonable accommodation to avoid transfer or discharge, unless agreed to by the resident;

(b) Notify the resident or resident's representative and make a reasonable effort to notify, if known, an interested family member, of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand;

(c) Record the reasons in the resident's record; and

(d) Include in the notice the items described in subsection (6) of this section.

(4) Except when specified in subsection (5), the notice of transfer or discharge required under subsection (3) of this section, the facility must give the resident at least thirty days' notice before the resident is transferred or discharged.

(5) Discharge notice may be made as soon as practicable before transfer or discharge when:

(a) The safety of individuals in the facility would be endangered;

(b) The health of individuals in the facility would be endangered;

(c) An immediate transfer or discharge is required by the resident's urgent medical needs; or

(d) The resident has not resided in the facility for thirty days.

(6) The written notice specified in subsection (3) of this section must include the following:

(a) The reason for transfer or discharge;

(b) The effective date of transfer or discharge;

(c) The location to which the resident is transferred or discharged;

(d) The name, address, and telephone number of the state long-term care ombuds;

(e) For residents with development disabilities and/or mental illness, the mailing address and telephone number of Disability Rights Washington, the protection and advocacy system for individuals with developmental disabilities.

(7) The facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(8) A resident discharged in violation of this section has the right to be readmitted immediately upon the first availability of appropriate space in the facility.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0370 Treatment services.** The enhanced services facility must:

(1) Provide for diagnostic and therapeutic services prescribed by the attending clinical staff that meet all of the resident needs identified in the ~~((individual treatment))~~ person-centered service plan, to include mental health and chemical dependency treatment;

(2) Ensure that each resident's ~~((individual treatment))~~ person-centered service plan has interventions for behavioral support in accordance with WAC 388-107-0160;

(3) Ensure that all services are provided by specific program professionals, such as mental health professionals and chemical dependency professionals.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0390 Use of routine psychopharmacologic medications.** When the resident is using a ~~((psycho-pharmacological))~~ psychopharmacologic medication on a routine basis, the facility must ensure that ~~((the))~~:

(1) Medication is prescribed by a physician or health care professional with prescriptive authority;

(2) Resident's ~~((individual treatment))~~ person-centered service plan includes strategies and modifications of the environment and staff behavior to address the symptoms for which the medication is prescribed;

(3) Changes in medication only occur when the prescriber decides it is medically necessary;

(4) The resident's record includes documentation about the specific symptom or behavior that caused the physician to order the medication and what the resident needs to be able to do or stop doing in order to discontinue the medication~~(((-))~~;

(5) Documentation includes that the resident, guardian or legal representative, if any, was informed of the need for the psychopharmacologic medication~~(((-))~~; and

(6) Antipsychotic medications are administered in a manner consistent with RCW 70.97.040 and 70.97.050.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0400 Use of as needed psychopharmacologic medications.** If the physician has ordered an as-needed psychopharmacologic medication for a resident, the facility must ensure that ~~((the))~~:

(1) ~~((Order))~~ The order details the circumstances under which the medication may be used and the medication is given only as specifically ordered;

(2) Resident's ~~((individual treatment))~~ person-centered service plan includes behavioral intervention strategies and modifications of the environment and staff behavior to address the symptoms for which the medication is prescribed;

~~((Documentation))~~ There is documentation in the resident record ~~((is done on))~~ about the specific symptom or behavior that caused the need for the medication and ~~((what))~~ the results of the medication use ~~((is))~~; ~~((and))~~

(4) Documentation includes that the resident, guardian or legal representative, if any, was informed of the need for the medication~~(((-))~~;

(5) The resident, guardian, or legal representative has given informed consent for the medication; and

(6) Antipsychotic medications are administered in a manner consistent with RCW 70.97.040 and 70.97.050.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0410 Management of escalating behaviors.** (1) An enhanced services facility must have a specific procedure for deescalating, preventing and redirecting aggressive and challenging behavior. This protocol must always be the first approach and strategy in resolving behavioral issues. The protocol must include:

(a) Training on prevention of escalation of behavior before it reaches the stage of physical assault;

(b) Techniques for staff to use in response to challenging client behaviors;

(c) Evaluation of the safety of the physical environment;

(d) Issues of respect and dignity of the resident; and

(e) Use of the least restrictive physical and behavioral interventions depending upon the situation;

(2) If the facility uses holding techniques ~~((as a last resort))~~ to physically restrain residents in emergency situations and as part of behavioral intervention protocols, the facility must:

(a) Ensure that all staff authorized to use holding techniques receive department-approved training on specific techniques prior to using them;

(b) Describe the types of holding techniques that are safe and effective for the individual in the resident's person-centered service plan;

~~((c))~~ (c) Use other established resident-specific behavioral interventions first to attempt to deescalate the situation;

~~((b))~~ (d) Limit the holding technique to specific emergency situations where behavioral interventions have not been successful in deescalating a situation and the resident is at imminent risk of harm to self or others due to aggressive behavior;

~~((e))~~ (e) Limit the time used to only until the arrival of emergency personnel and/or the emergency ceases;

~~((d))~~ (f) Release residents from the holding technique as soon as possible;

~~((e))~~ (g) Instruct observers on how to ~~((support))~~ recognize signs of:

(i) Distress by the client; and

(ii) Fatigue by the staff.

~~((f))~~ (h) Document:

(i) The reason for use of the holding technique;

(ii) Other behavioral interventions attempted prior to the use of the holding technique;

(iii) The duration of the use of the holding technique;

~~((and))~~

- (iv) Assessment by a qualified assessor; and
- (v) The condition of the resident at the time of release from the holding technique.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0420 Physical restraints for medical purposes only.** (1) For the purposes of this section, "physical restraint" 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, required to treat the resident's medical symptoms. The enhanced services facility must ensure:

(2) Each resident has the right to be free from physical and chemical restraints used for discipline, behavioral intervention, or staff convenience;

(3) That physical restraints are used only during infrequent and episodic occurrences for the protection of the individual during delivery of medical care or treatment.

(4) That before using the physical restraint, the least restrictive alternatives have been tried and documented, and such restraint is deemed required to temporarily protect the resident from harming themselves or others during the medical care or treatment;

(5) That before physical restraints are used, the resident or resident representative has been assessed as needing the restraint to treat the emergent medical symptoms or provide the medical care, and to prevent the resident from self-harm; and

(a) The resident has given informed consent for the use of physical restraints for medical purposes.

(b) The ~~((treatment))~~ person-centered service team has been consulted and evaluated the resistance to medical care; and

~~((b))~~ (c) ~~The ((documentation has been updated to include))~~ use of positive interventions and supports ((used)) has been documented.

(6) That if physical restraints are used, the restraints are episodic and infrequently applied and immediately supervised on-site by a:

- (a) Licensed registered nurse;
- (b) Licensed practical nurse; or
- (c) Licensed physician; and

(d) For the purposes of this subsection, immediately supervised means that the licensed person is in the facility, quickly and easily available;

(7) When any physical restraint is used ~~((per (3) above))~~ in accordance with this section:

(a) A staff person ~~((is))~~ must be in the presence of the resident at all times when the restraint is in use;

(i) The staff person must be either a licensed or registered nurse, a mental health professional, a certified nursing assistant, or a certified home care aid.

(b) A physician's order ~~((is))~~ must be obtained within one hour;

(c) The order must include~~((s))~~ treatments to assist in resolving the emergency situation and eliminating the need for the restraint;

(d) Behavioral consultation ~~((is))~~ must be obtained within two hours;

(e) Resident ~~((is))~~ must be released immediately upon the cessation of the behavior that preceded the need for restraint.

(f) The restraint ~~((is))~~ must be removed immediately at the conclusion of the medical emergency, treatment or procedure;

(g) The enhanced services facility must immediately self-report~~((s within twenty-four hours the use of the physical restraint for medical purposes to the complaint resolution unit; and))~~ the use of the physical restraint for medical purposes to the complaint resolution unit (CRU). For the purposes of this regulation "immediately" means there should be no delay between staff awareness of the occurrence and reporting to the CRU unless the situation is unstable in which case reporting should occur as soon as the safety of all residents is assured.

(h) The use of the physical restraint ~~((is))~~ must be documented. Documentation must:

(i) ~~((On))~~ Describe the specific medical issue that caused the need for restraint and what the resident needs to do or stop doing in order to discontinue the use of the restraint; and

(ii) ~~((That))~~ Demonstrate that the resident, guardian or legal representative, if any, was informed of the need for restraint;

(i) The ~~((treatment))~~ person-centered service planning team will consult within ~~((twenty-four))~~ seventy-two hours to determine less intrusive methods to meet the resident's needs for future care.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0430 Food services.** The enhanced services facility must provide or contract out food services for residents. If the facility chooses to contract out the food service, the contracted services must meet all of the applicable food codes and requirements.

(1) The enhanced services facility must:

- (a) Provide a minimum of three meals a day;
- (b) Provide snacks;

(i) Between meals and in the evening at regular intervals; and

(ii) With no more than fourteen hours between the evening meal and breakfast, unless the enhanced services facility provides a nutritious snack after the evening meal and before breakfast.

(c) Provide access to fluids and snacks at all times;

(d) Provide sufficient time and staff support for residents to consume meals;

(e) Ensure all menus:

(i) Are written at least one week in advance and delivered to residents' rooms or posted where residents can see them, except as specified in (h) of this subsection;

(ii) Indicate the date, day of week, month and year;

(iii) Include all food and snacks served that contribute to nutritional requirements;

(iv) Are kept at least six months;

(v) Provide a variety of foods;

(vi) Provide foods at safe and appropriate temperatures; and

(vii) Are not repeated for at least three weeks, except that breakfast menus in enhanced services facilities that provide a variety of daily choices of hot and cold foods are not required to have a minimum three-week cycle.

(f) Prepare food on-site, or provide food through a contract with a food service establishment located in the vicinity that meets the requirements of chapter 246-215 WAC regarding food service;

(g) Serve nourishing, palatable and attractively presented meals adjusted for:

(i) Age, gender and activities, unless medically contraindicated; and

(ii) Individual preferences to the extent reasonably possible.

(h) Substitute foods of equal nutrient value, when changes in the current day's menu are necessary, and record changes on the original menu;

(i) Make available and give residents alternate choices in entrees for midday and evening meals that are of comparable quality and nutritional value. The enhanced services facility is not required to post alternate choices in entrees on the menu one week in advance, but must record on the menus the alternate choices in entrees that are served;

(j) Develop, make known to residents, and implement a process for residents to express their views and comment on the food services; and

(k) Maintain a dining area or areas approved by the department with a seating capacity for seventy-five percent or more of the residents per meal setting, or ten square feet times the licensed resident bed capacity, whichever is greater.

(2) The enhanced services facility must plan in writing, prepare on-site or provide through a contract with a food service establishment located in the vicinity that meets the requirements of chapter 246-215 WAC, and serve to each resident as ordered:

(a) Prescribed general low sodium, general diabetic, and mechanical soft food diets according to a diet manual. The enhanced services facility must ensure the diet manual is:

(i) Available to and used by staff persons responsible for food preparation;

(ii) Approved by a dietitian; and

(iii) Reviewed and updated as necessary or at least every five years.

(b) Prescribed nutrient concentrates and supplements when prescribed in writing by a health care practitioner.

(3) The enhanced services facility may provide to a resident at his or her request and as agreed upon in the resident's comprehensive ~~((individual treatment))~~ person-centered service plan, nonprescribed:

(a) Modified or therapeutic diets; and

(b) Nutritional concentrates or supplements.

(4) The enhanced services facility must have a means for those residents whose ~~((individual treatment))~~ person-centered service plan indicates they have the ability to make or select their own snacks and beverages an opportunity to do so without having to ask a staff member for assistance.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0560 Resident records—Clinical records.** (1) The enhanced services facility must:

(a) Maintain clinical records on each resident in accordance with accepted professional standards and practices that are:

(i) Complete;

(ii) Accurately documented;

(iii) Readily accessible; and

(iv) Systematically organized.

(b) Safeguard clinical record information against alteration, loss, destruction, and unauthorized use; and

(c) Keep confidential all information contained in the resident's records, regardless of the form or storage method of the records, except when release is required by:

(i) Transfer to another health care institution;

(ii) Law; or

(iii) The resident.

(2) The enhanced services facility must ensure the clinical record of each resident includes at least the following:

(a) Resident identification and sociological data, including the name and address of the individual or individuals the resident designates as significant;

(b) Medical information;

(c) Physician's orders;

(d) Assessments;

(e) ~~((Individual treatment))~~ Person-centered service plans;

(f) Services provided;

(g) Progress notes;

(h) Medications administered;

(i) Consents, authorizations, releases;

(j) Allergic responses;

(k) Laboratory, X ray, and other findings; and

(l) Other records as appropriate.

(3) Maintain resident records and preserve their confidentiality in accordance with applicable state and federal statutes and rules, including chapters 70.02 and 70.96A RCW.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0770 Environment of care.** The facility must ensure that:

(1) The facility is designed to provide ~~((the level of))~~ safety and security appropriate for the specific type of service or program provided as well as the age level, acuity, and risk of the residents served (e.g., geriatric, acute psychiatric, or forensic).

(2) ~~((Facility spaces accessible to residents must be designed to minimize locations where residents are out of the line of sight of staff.~~

~~((3))~~ All rooms with lockable doors, including but not limited to resident sleeping rooms and bathrooms, have a readily accessible means of rapid access for ~~((all))~~ appropriate staff.

(3) The facility must be physically accessible to all residents.

~~((4) Perimeter security addresses egress prevention, prevention of contraband smuggling, visitor access control, and exit process and procedures.~~

~~(5) Openings in the perimeter security system (e.g., windows, doors, and gates) are controlled by locks (manual, electric, or magnetic) when required by the functional program.)~~

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0810 Resident room.** The facility must ensure that each resident sleeping room:

- (1) Meets the following standards:
  - (a) Maximum capacity of one resident.
  - (b) May be locked by the resident:
    - (i) Unless otherwise indicated by an identified need in the ~~((individual treatment))~~ person-centered service plan; and
    - (ii) ~~((AH))~~ Appropriate staff have a readily accessible means of unlocking the room when the door is locked.
  - (c) Minimum clear floor area of ~~((400))~~ eighty square feet and meets the needs of the resident.
  - (d) Has one or more outside windows that:
    - (i) If used for ventilation, are easily opened;
    - (ii) Have ~~((break-away))~~ adjustable shades, blinds, or equivalent installed for visual privacy and are designed to meet the safety needs of the resident; and
- (2) Is adjacent to bathing and toilet facilities;
- (3) Is designed to offer visual privacy from casual observation by other residents and visitors. The design for privacy must not restrict resident access to the entrance, handwashing station, or toilet.
- (4) Is accessible, clean, and well-maintained with sufficient space, light, and comfortable furnishings for sleeping and personal activities including, but not limited to:
  - (a) A minimum of a three-foot clear access aisle from the entry door, along at least one side of the bed, and in front of all storage equipment;
  - (b) Enough room for medical equipment and for a resident to move about freely with mobility aides, such as wheelchairs, if applicable as assessed by resident need; and
  - (c) Direct access to a hallway, living room, lounge, the outside, or other common use area without going through a laundry or utility area, a bath or toilet room, or another resident's bedroom.
- (5) Is equipped with:
  - (a) One or more waste containers;
  - (b) Furniture appropriate for the age and physical condition of each resident, including but not necessarily limited to:
    - (i) A chair, which may be used in either the bedroom or a group room interchangeably;
    - (ii) A bed of appropriate length and size that is thirty-six or more inches wide with a mattress that fits the bed frame, is in good condition, and is at least four inches thick unless otherwise requested or necessary for resident health or safety; and
    - (iii) A lockable storage space accessible to each resident for storage of small personal items, upon request.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0830 Resident bathing facilities.** The facility must provide access to a bathtub or shower for every resident. The facility will ensure that bathing facilities are designed and located for resident convenience and privacy. The facility must ensure:

- (1) At least one bathing unit for every four residents, or fraction thereof, who are located in a resident room without an adjoining bathroom;
- (2) Access to at least one bathing device for immersion;
- (3) Access to at least one roll-in shower or equivalent on each resident care unit:
  - (a) Designed and equipped for unobstructed ease of shower chair entry and use;
  - (b) With a spray attachment equipped with a backflow prevention device;
  - (c) ~~((One))~~ With one-half inch or less threshold that may be a collapsible rubber water barrier; and
  - (d) ~~((A))~~ With a minimum nominal (rough-framed) size of thirty-six inches by forty-eight.
- (4) Resident bathing equipment is smooth, cleanable, and able to be disinfected after each use.
- (5) In each bathing unit containing more than one bathing facility:
  - (a) Each bathtub, shower, or equivalent, is located in a separate room or compartment with three solid walls;
  - (b) The entry wall may be a ~~((break-away))~~ "shower" type curtain or equivalent that is designed to meet the safety needs of the resident;
  - (c) The area for each bathtub and shower is sufficient to accommodate a shower chair, an attendant, and provide visual privacy for bathing, drying, and dressing;
  - (d) All shower and tub surfaces are slip-resistant; and
  - (e) All bathing areas are constructed of materials that are impervious to water and cleanable.
- (6) Common bathing facilities must comply with the state building code requirements for accessible bathing facilities.
- (7) Grab bar(s) must be installed to prevent fall and injury in bathing facilities in nonaccessible resident rooms.
- (8) Grab bar(s) in accessible bathing rooms must be installed according to the state building code requirements for accessible bathing rooms.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0890 Outdoor recreation space and walkways.** (1) A facility must provide a safe, protected outdoor area for resident use.

- (2) The facility must ensure the outdoor area:
  - (a) Has areas protected from direct sunshine and rain throughout the day;
  - (b) Is easily accessible ~~((from the floor or story))~~ to the resident ~~((resides on))~~ and has walking surfaces which are firm, stable, and free from cracks and abrupt changes with a maximum of one inch between the sidewalk and adjoining landscape areas;

(c) Has sufficient space and outdoor furniture provided with flexibility in arrangement of the furniture to accommodate residents who use wheelchairs and mobility aids;

(d) Contains nonpoisonous shrubs, natural foliage, and trees;

(e) Is surrounded by walls or fences at least seventy-two inches high; and

(f) If used as a resident courtyard, the outdoor area must not be used for public or service deliveries.

**AMENDATORY SECTION** (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0940 Resident safety ((and suicide prevention)).** The enhanced services facility must be designed to prevent injury and ((suicide prevention, with special design considerations to details, finishes, and equipment. The facility must ensure:)) promote resident safety.

(1) ((Ceilings)) The facility must ensure that:

(a) ((In resident bathrooms are secured to prevent resident access. Ceiling systems of a nonsecured (nonclipped down) lay-in ceiling tile design are not permitted.

(b) In resident bedrooms and bathrooms, are designed to eliminate tie-off point(s) or at nine feet in height to prevent resident access.

(2) ~~Doors and door hardware:~~

(a)) Doorways are at least 36" wide;

(b) Door swings for private resident bathrooms or shower areas swing out to allow for staff emergency access(-);

(i) Door closers will not be used unless required by the building code. If required on the resident room door, the closer will be mounted on the public side of the door rather than the private resident's side of the door(-);

((3) ~~Door hinges:~~

(a) ~~Are designed to minimize points for hanging (i.e., cut hinge type); and~~

(b) ~~Are consistent with the level of care for the resident.~~

(4) ~~Door lever handles are specifically designed antiligature hardware.~~

(5) ~~All hardware has tamper-resistant fasteners:))~~

((6) ~~Windows:~~

(a) ~~Located in areas accessible to residents are designed to limit the opportunities for breakage;~~

~~All glazing, both interior and exterior, and glass mirrors are fabricated with laminated safety glass or equal;~~

(c) ~~Use of tempered glass for interior windows is permitted.~~

(d) ~~Break away window coverings for visual privacy; and~~

(e) ~~The anchorage of windows and window assemblies, including frames, is designed to resist impact loads applied from the inside and must be tested in accordance with American National Standards Institute (ANSI) Z97.1. Where operable windows are used, the hinges and locking devices must also be tested;~~

(7) ~~Bathroom hardware and accessories.~~

(a)) (b) Special design considerations for resident safety and injury ((and suicide)) prevention ((must be)) are given to

shower, bath, toilet, and sink hardware and accessories, including grab bars and toilet paper holders((-); and

((b)) (c) Grab bars(-

(i) ~~Where grab bars are provided in resident rooms, resident toilet rooms, resident bathing rooms or other nonpublic space, the space between the bar and the wall must be filled to prevent the grab bar from becoming a ligature point.~~

(8) ~~An overall design for antiligature including, but not limited to, grab bars, towel hooks, levers, handles, sprinkler heads, and other protrusions.~~

(9) ~~Towel bars and shower curtain rods are not permitted.~~

(10) ~~In unsupervised resident areas, sprinkler heads must be recessed or of a design to minimize resident access.~~

(11) ~~In resident bathrooms, lighting fixtures, sprinkler heads, electrical outlets, and other fixtures must be the tamper-resistant type.)), where provided, must be securely fastened to withstand a minimum three hundred pound force.~~

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

## NEW SECTION

**WAC 388-107-0945 Resident suicide and self-harm prevention.** When an enhanced services facility's functional program states that it plans to admit a resident, or the licensee or applicant identifies a current resident who is at risk of suicide and/or self-harm, the licensee or applicant must submit a risk assessment to the department of health construction review services, identifying the risks in the physical environment. The licensee or applicant must ensure that the facility is equipped with all or part of the following, as determined by the department of health's review of the risk assessment:

(1) Ceilings:

(a) In resident bathrooms are secured to prevent resident access. Ceiling systems of a non-secured (non-clipped down) lay-in ceiling tile design are not permitted.

(b) In resident bedrooms and bathrooms are designed to eliminate tie-off point(s) or are at least nine feet in height.

(2) Doors and door hardware:

(a) Door swings for private resident bathrooms or shower areas swing out to allow for staff emergency access.

(b) Door closers will not be used unless required by the building code. If required on the resident room door, the closer will be mounted on the public side of the door rather than the private resident's side of the door.

(c) Door hinges are designed to minimize points for hanging (e.g. cut hinge type) and are consistent with the level of care for the resident.

(d) Door lever handles are specifically designed anti-ligature hardware.

(e) All hardware has tamper-resistant fasteners.

(3) Windows:

(a) Windows located in areas accessible to residents are designed to limit the opportunities for breakage.

(b) All glazing, both interior and exterior, and glass mirrors are fabricated with laminated safety glass or equivalent.

(c) Use of tempered glass for interior windows is permitted.

(d) Break-away window coverings are used for visual privacy.

(4) Bathroom hardware and accessories:

(a) Special design considerations for injury and suicide prevention must be given to shower, bath, toilet, and sink hardware and accessories, including grab bars and toilet paper holders.

(b) Towel bars and shower curtain rods are not permitted.

(5) Grab bars:

(a) Where grab bars are provided in resident rooms, resident toilet rooms, resident bathing rooms or other nonpublic space, the space between the bar and the wall must be filled to prevent the grab bar from becoming a ligature point.

(6) Anti-ligature design:

(a) The facility must include an overall design for anti-ligature including, but not limited to, grab bars, towel hooks, levers, handles, sprinkler heads, and other protrusions.

(b) In unsupervised resident areas, sprinkler heads must be recessed or of a design to minimize resident access.

(c) In resident bathrooms, lighting fixtures, sprinkler heads, electrical outlets, and other fixtures must be the tamper-resistant type.

(d) Call system shall not use cords.

(e) All hardware fixtures that are fastened with exposed fasteners shall use tamper resistant screws.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0960 Plumbing—Water supply.** The facility must:

(1) Provide:

(a) Water meeting the provisions of chapter 246-290 WAC, Group A public water supplies or chapter 246-291 WAC, Group B public water systems;

(b) Hot and cold water under adequate pressure readily available throughout the enhanced services facility;

(c) Labels or color codes for nonpotable water supplies as "unsafe for domestic use."

(2) Provide faucet controls in lavatories and sinks with:

(a) ~~((Either antiligature fixtures or fixtures))~~ Fixtures with at least four-inch wrist blades or single-levers based on a risk assessment made by the facility;

(b) Sufficient space for full open and closed operation; and

(c) Color-coding and labels to indicate "hot" and "cold."

(3) Ensure that all lavatories and sinks have gooseneck spouts, without aerators in areas requiring infection control. ~~((Locations determined by the facility's risk assessment must be permitted to have antiligature devices.))~~

(4) Provide shower heads that are of the flash-mounted type.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-1000 Mechanical—Ventilation systems.** The facility must ensure:

(1) Ventilation of all rooms is designed to prevent objectionable odors, condensation, and direct drafts on the residents;

(2) All habitable space is mechanically ventilated including air supply and air exhaust systems;

(3) ~~((Installation of air handling duct systems according to the requirements of the International Mechanical Code and))~~ All heating, ventilation, and air conditioning equipment complies with the requirements of the state building code, chapter 51-52 WAC;

(4) ~~((Installation of supply registers and return air grilles at least three inches above the floor;~~

~~(5) Installation of exhaust grilles on or near the ceiling; and~~

~~(6))~~ Outdoor air intakes are located a minimum of twenty-five feet from the exhaust from any ventilating system, combustion equipment, or areas which may collect vehicular exhaust and other noxious fumes, and a minimum of ten feet from plumbing vents. The facility must locate the bottom of outdoor air intakes serving central systems a minimum of three feet above the adjoining grade level or, if installed through the roof, three feet above the highest adjoining roof level.

~~((7) Minimum ventilation requirements meet the pressure relationship and ventilation rates per the following table:~~

PRESSURE RELATIONSHIPS AND VENTILATION OF CERTAIN AREAS				
Function Area	Pressure Relationship To Adjacent Areas <sup>1,2</sup>	Minimum Air Changes of Outdoor Air Per Hour Supplied To Room	Minimum Total Air Changes Per Hour Supplied To Room	All Air Exhausted Directly To Outdoors
<b>RESIDENT CARE</b>				
Resident room (holding room)	±			
Resident corridor	±			
Toilet room	N			
Resident gathering (dining, activity)	±	2	4	Optional
DIAGNOSTIC AND TREATMENT		Optional	2	Optional
Examination room	±	Optional	10	Yes

PRESSURE RELATIONSHIPS AND VENTILATION OF CERTAIN AREAS				
Function Area	Pressure Relationship To Adjacent Areas <sup>1,2</sup>	Minimum Air Changes of Outdoor Air Per Hour Supplied To Room	Minimum Total Air Changes Per Hour Supplied To Room	All Air Exhausted Directly To Outdoors
Physical therapy <sup>3</sup>	N	2	4	Optional
Occupational therapy <sup>3</sup>	N			
Soiled workroom or soiled holding	N	2	6	Optional
Clean workroom or clean holding	P	2	6	Optional
STERILIZING AND SUPPLY		2	6	Optional
Sterilizer exhaust room	N	2	10	Yes
Linen and trash chute room	N	2	4	Optional
Laundry, general <sup>3</sup>	=			
Soiled linen sorting and storage	N	Optional	10	Yes
Clean linen storage	P	Optional	10	Yes
SERVICE		2	10	Yes
Food preparation center <sup>3</sup>	=	Optional	10	Yes
Warewashing room <sup>3</sup>	N	Optional	2	Yes
Dietary day storage	=			
Janitor closet	N	2	10	Yes
Bathroom	N	Optional	10	Yes
Personal services (barber/salon)	N	Optional	2	Yes

<sup>1</sup>P=Positive N=Negative ± = Continuous directional control not required.

<sup>2</sup>Whether positive or negative, pressure must be a minimum of seventy cubic feet per minute (CFM).

<sup>3</sup>The volume of air may be reduced up to fifty percent in these areas during periods of nonuse. The soiled holding area of the general laundry must maintain its full ventilation capacity at all times.)

**AMENDATORY SECTION** (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-1190 Administrator responsibilities.**

The licensee must ensure the administrator:

- (1) Directs and supervises the overall twenty-four hour per day operation of the enhanced services facility;
- (2) Ensures residents receive the care and services identified in their ((individual treatment)) person-centered service plans and assessments;
- (3) Is readily accessible to meet with residents;
- (4) Complies with the enhanced services facility's policies;
- (5) When not available on the premises, either:
  - (a) Is available by telephone or electronic pager; or

(b) Designates a person approved by the licensee to act in place of the administrator. The designee must be:

- (i) Qualified by experience to assume designated duties; and
- (ii) Authorized to make necessary decisions and direct operations of the enhanced services facility during the administrator's absence.

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 388-107-0930 Nursing and nutrition station.

**WSR 16-03-001  
EMERGENCY RULES  
LIQUOR AND CANNABIS  
BOARD**

[Filed January 6, 2016, 12:02 p.m., effective January 6, 2016, 12:02 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Legislation passed in the 2015 legislative session directs the Washington state liquor and cannabis board to regulate the medical marijuana market. Emergency rules are needed to provide clarity to the marijuana licensees and potential marijuana license applicants regarding the application process and requirements for medical marijuana. Licenses will need to be issued to ensure that medical marijuana will be available to patients by the date that collective gardens are mandated to be closed, July 1, 2016.

Citation of Existing Rules Affected by this Order: Amending WAC 314-55-010, 314-55-020, 314-55-050, 314-55-075, 314-55-077, 314-55-080, and 314-55-081.

Statutory Authority for Adoption: RCW 69.50.342 and 69.50.345.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Immediate adoption of these rules is necessary for the preservation of the public health, safety, and welfare. Legislation passed in the 2015 legislative session mandates collective gardens be closed by July 1, 2016. Medical marijuana patients need a smooth transition to obtaining their medication from an alternative source, the legal marijuana market. Licenses will need to be issued to ensure that medical marijuana will be available to patients by the date that collective gardens are mandated to be closed, July 1, 2016.

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 6, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, 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: September 23, 2015.

Jane Rushford  
Chairman

**AMENDATORY SECTION** (Amending WSR 15-11-107, filed 5/20/15, effective 6/20/15)

**WAC 314-55-010 Definitions.** Following are definitions for the purpose of this chapter. Other definitions are in RCW 69.50.101.

(1) "Applicant" or "marijuana license applicant" means any person or business entity who is considered by the board as a true party of interest in a marijuana license, as outlined in WAC 314-55-035. However, for purposes only of determin-

ing an application's priority under RCW 69.50.331 (1)(a), only the person or business entity (sole proprietorship, partnership of any type, limited liability company, privately or publicly held corporation, or nonprofit corporation) that is applying for the license will be considered the applicant.

(2) "Batch" means a quantity of marijuana-infused product containing material from one or more lots of marijuana.

(3) "Business name" or "trade name" means the name of a licensed business as used by the licensee on signs and advertising.

(4) "Child care center" means an entity that regularly provides child day care and early learning services for a group of children for periods of less than twenty-four hours licensed by the Washington state department of early learning under chapter 170-295 WAC.

(5) "Consultant" means an expert who provides advice or services in a particular field, whether a fee is charged or not. A consultant who is in receipt of, or has the right to receive, a percentage of the gross or net profit from the licensed business during any full or partial calendar or fiscal year is a true party of interest and subject to the requirements of WAC 314-55-035. A consultant who exercises any control over an applicant's or licensee's business operations is also subject to the requirements of WAC 314-55-035(4).

(6) "Elementary school" means a school for early education that provides the first four to eight years of basic education and recognized by the Washington state superintendent of public instruction.

(7) "Employee" means any person performing services on a licensed premises for the benefit of the licensee.

(8) "Financier" means any person or entity, other than a banking institution, that has made or will make an investment in the licensed business. A financier can be a person or entity that provides money as a gift, loans money to the applicant/business and expects to be paid back the amount of the loan with or without interest, or expects any percentage of the profits from the business in exchange for a loan or expertise.

(9) "Game arcade" means an entertainment venue featuring primarily video games, simulators, and/or other amusement devices where persons under twenty-one years of age are not restricted.

(10) "Intermediate product" means marijuana flower lots or other material lots that have been converted by a marijuana processor to a marijuana concentrate or marijuana-infused product that must be further processed prior to retail sale.

(11) "Library" means an organized collection of resources made accessible to the public for reference or borrowing supported with money derived from taxation.

(12) "Licensee" or "marijuana licensee" means any person or entity that holds a marijuana license, or any person or entity who is a true party of interest in a marijuana license, as outlined in WAC 314-55-035.

(13) "Lot" means either of the following:

(a) The flowers from one or more marijuana plants of the same strain. A single lot of flowers cannot weigh more than five pounds; or

(b) The trim, leaves, or other plant matter from one or more marijuana plants. A single lot of trim, leaves, or other plant matter cannot weigh more than fifteen pounds.

(14) "Marijuana strain" means a pure breed or hybrid variety of Cannabis reflecting similar or identical combinations of properties such as appearance, taste, color, smell, cannabinoid profile, and potency.

(15) "Medical marijuana" is defined by rule of the department of health.

(16) "Member" means a principal or governing person of a given entity including, but not limited to: LLC member/manager, president, vice-president, secretary, treasurer, CEO, director, stockholder, partner, general partner, limited partner. This includes all spouses of all principals or governing persons named in this definition and referenced in WAC 314-55-035.

(17) "Paraphernalia" means items used for the storage or use of usable marijuana, marijuana concentrates, or marijuana-infused products, such as, but not limited to, lighters, roach clips, pipes, rolling papers, bong, and storage containers. Items for growing, cultivating, and processing marijuana, such as, but not limited to, butane, lights, and chemicals are not considered "paraphernalia."

(18) "Pesticide" means, but is not limited to: (a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, snail, slug, fungus, weed, and any other form of plant or animal life or virus, except virus on or in a living person or other animal which is normally considered to be a pest; (b) any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and (c) any spray adjuvant. Pesticides include substances commonly referred to as herbicides, fungicides, insecticides, and cloning agents.

(19) "Perimeter" means a property line that encloses an area.

(20) "Plant canopy" means the square footage dedicated to live plant production, such as maintaining mother plants, propagating plants from seed to plant tissue, clones, vegetative or flowering area. Plant canopy does not include areas such as space used for the storage of fertilizers, pesticides, or other products, quarantine, office space, etc.

(21) "Playground" means a public outdoor recreation area for children, usually equipped with swings, slides, and other playground equipment, owned and/or managed by a city, county, state, or federal government.

(22) "Public park" means an area of land for the enjoyment of the public, having facilities for rest and/or recreation, such as a baseball diamond or basketball court, owned and/or managed by a city, county, state, federal government, or metropolitan park district. Public park does not include trails.

(23) "Public transit center" means a facility located outside of the public right of way that is owned and managed by a transit agency or city, county, state, or federal government for the express purpose of staging people and vehicles where several bus or other transit routes converge. They serve as efficient hubs to allow bus riders from various locations to assemble at a central point to take advantage of express trips or other route to route transfers.

(24) "Recreation center or facility" means a supervised center that provides a broad range of activities and events intended primarily for use by persons under twenty-

one years of age, owned and/or managed by a charitable non-profit organization, city, county, state, or federal government.

(25) "Residence" means a person's address where he or she physically resides and maintains his or her abode.

(26) "Secondary school" means a high and/or middle school: A school for students who have completed their primary education, usually attended by children in grades seven to twelve and recognized by the Washington state superintendent of public instruction.

(27) "Selling price" means the same meaning as in RCW 82.08.010, except that when the product is sold under circumstances where the total amount of consideration paid for the product is not indicative of its true value. Selling price means the true value of the product sold as determined or agreed to by the board. For purposes of this subsection:

(a) "Product" means marijuana, marijuana concentrates, usable marijuana, and marijuana-infused products; and

(b) "True value" means market value based on sales at comparable locations in the state of the same or similar product of like quality and character sold under comparable conditions of sale to comparable purchasers. In the absence of such sales of the same or similar product, true value means the value of the product sold as determined by all of the seller's direct and indirect costs attributed to the product.

(28) "Unit" means an individually packaged marijuana-infused solid or liquid product meant to be eaten or swallowed, not to exceed ten servings or one hundred milligrams of active tetrahydrocannabinol (THC), or Delta 9.

AMENDATORY SECTION (Amending WSR 15-11-107, filed 5/20/15, effective 6/20/15)

**WAC 314-55-020 Marijuana license qualifications and application process.** Each marijuana license application is unique and investigated individually. The board may inquire and request documents regarding all matters in connection with the marijuana license application. The application requirements for a marijuana license include, but are not necessarily limited to, the following:

(1) Per RCW 69.50.331, the board shall send a notice to cities and counties, and may send a notice to tribal governments or port authorities regarding the marijuana license application. The local authority has twenty days to respond with a recommendation to approve or an objection to the applicant, location, or both.

(2) Applicants for a new marijuana producer, processor, or retailer license and those who apply to change their location must display a sign provided by the WSLCB on the outside of the premises to be licensed notifying the public that the premises are subject to an application for a marijuana license. Posting notices must occur within seven days of submitting the location confirmation form for new licenses or the change of location application for existing licensees. The WSLCB may check for compliance with these requirements at its discretion. The sign must:

(a) Not be altered. The licensee must post the sign sent by the WSLCB without changing, adding, or subtracting from the text:

(b) Be conspicuously displayed on, or immediately adjacent to, the premises subject to the application and in the location that is most likely to be seen by the public;

(c) Be of a size sufficient to ensure that it will be readily seen by the public, at a minimum these signs must be eight and one-half by eleven inches;

(d) Be posted within seven business days of the date the notice is sent to the applicant by the WSLCB;

(e) Be posted for fourteen consecutive days.

(3) The WSLCB will use a priority system to determine the order that marijuana retailers are licensed. Within priority categories, applications will not be ranked and will be processed in order of submission.

**(a) First priority is given to applicants who:**

(i) Applied to the WSLCB for a marijuana retail license prior to July 1, 2014. To meet this qualification, the applicant must provide the WSLCB a copy of the master business license from department of revenue business licensing services showing the applicant applied for a retail marijuana license prior to July 1, 2014;

(ii) Operated or were employed by a collective garden before January 1, 2013. To meet this qualification, the applicant must provide the WSLCB a copy of the master business license from department of revenue business licensing services showing the applicant owned a collective garden prior to January 1, 2013, or a pay stub or tax information indicating that the applicant was employed by a collective garden prior to January 1, 2013;

(iii) Have maintained a state business license and municipal business license, as applicable in the relevant jurisdiction. To meet this qualification, the applicant must provide the WSLCB a copy of the master business license from department of revenue business licensing services and copies of municipal business licenses from January 1, 2013, through the date of application; and

(iv) Have had a history of paying all applicable state taxes and fees. To meet this qualification, the applicant must provide the WSLCB evidence from the department of revenue that the entity is up to date on all applicable state taxes since January 1, 2013, and that they have paid all applicable fees to the WSLCB for all businesses they are engaged in since January 1, 2013.

**(b) Second priority is given to applicants who:**

(i) Operated or were employed by a collective garden before January 1, 2013. To meet this qualification, the applicant must provide the WSLCB a copy of the master business license from department of revenue business licensing services showing the applicant owned a collective garden prior to January 1, 2013, or a pay stub or tax information indicating that the applicant was employed by a collective garden prior to January 1, 2013;

(ii) Have maintained a state business license and municipal business license, as applicable in the relevant jurisdiction. To meet this qualification, the applicant must provide the WSLCB a copy of the master business license from department of revenue business licensing services and copies of municipal business licenses from January 1, 2013, through the date of application; and

(iii) Have had a history of paying all applicable state taxes and fees. To meet this qualification, the applicant must

provide the WSLCB evidence from the department of revenue that the entity is up to date on all applicable state taxes since January 1, 2013, and that they have paid all applicable fees to the WSLCB for all businesses they are engaged in since January 1, 2013, for all businesses they are engaged in since January 1, 2013.

**(c) Third priority is given to all other applicants who do not meet the qualifications and experience identified for priority one or two.**

(4) All marijuana retail applicants must meet the qualifications required by the WSLCB before they will be granted a license regardless of priority.

(5) The board will verify that the proposed business meets the minimum requirements for the type of marijuana license requested.

~~((3))~~ (6) The board will conduct an investigation of the applicants' criminal history and administrative violation history, per WAC 314-55-040 and 314-55-045.

(a) The criminal history background check will consist of completion of a personal/criminal history form provided by the board and submission of fingerprints to a vendor approved by the board. The applicant will be responsible for paying all fees required by the vendor for fingerprinting. These fingerprints will be submitted to the Washington state patrol and the Federal Bureau of Investigation for comparison to their criminal records. The applicant will be responsible for paying all fees required by the Washington state patrol and the Federal Bureau of Investigation.

(b) Financiers will also be subject to criminal history investigations equivalent to that of the license applicant. Financiers will also be responsible for paying all fees required for the criminal history check. Financiers must meet the three month residency requirement.

~~((4))~~ (7) The board will conduct a financial investigation in order to verify the source of funds used for the acquisition and startup of the business, the applicants' right to the real and personal property, and to verify the true party(ies) of interest.

~~((5))~~ (8) The board may require a demonstration by the applicant that they are familiar with marijuana laws and rules.

~~((6))~~ (9) The board may conduct a final inspection of the proposed licensed business, in order to determine if the applicant has complied with all the requirements of the license requested.

~~((7))~~ (10) Per RCW 69.50.331 (1)(b), all applicants applying for a marijuana license must have resided in the state of Washington for at least ~~((three))~~ six months prior to application for a marijuana license. All partnerships, employee cooperatives, associations, nonprofit corporations, corporations and limited liability companies applying for a marijuana license must be formed in Washington. All members must also meet the ~~((three))~~ six month residency requirement. Managers or agents who manage a licensee's place of business must also meet the ~~((three))~~ six month residency requirement.

~~((8))~~ (11) Submission of an operating plan that demonstrates the applicant is qualified to hold the marijuana license applied for to the satisfaction of the board. The operating plan shall include the following elements in accordance with the

applicable standards in the Washington Administrative Code (WAC).

~~((9))~~ (12) As part of the application process, each applicant must submit in a format supplied by the board an operating plan detailing the following as it pertains to the license

type being sought. This operating plan must also include a floor plan or site plan drawn to scale which illustrates the entire operation being proposed. The operating plan must include the following information:

Producer	Processor	Retailer
Security	Security	Security
Traceability	Traceability	Traceability
Employee qualifications and training	Employee qualifications and training	Employee qualifications and training
Transportation of product including packaging of product for transportation	Transportation of product	Transportation of product
Destruction of waste product	Destruction of waste product	Destruction of waste product
Description of growing operation including growing media, size of grow space allocated for plant production, space allocated for any other business activity, description of all equipment used in the production process, and a list of soil amendments, fertilizers, other crop production aids, or pesticides, utilized in the production process	Description of the types of products to be processed at this location together with a complete description of all equipment to include all marijuana-infused edible processing facility equipment and solvents, gases, chemicals and other compounds used to create extracts and for processing of marijuana-infused products	
Testing procedures and protocols	Testing procedures and protocols	
	Description of the types of products to be processed at this location together with a complete description of processing of marijuana-infused products	
	Description of packaging and labeling of products to be processed	
		What array of products are to be sold and how are the products to be displayed to consumers

After obtaining a license, the license holder must notify the board in advance of any substantial change in their operating plan. Depending on the degree of change, prior approval may be required before the change is implemented.

~~((10))~~ (13) Applicants applying for a marijuana license must be current in any tax obligations to the Washington state department of revenue and other state agencies, as an individual or as part of any entity in which they have an ownership interest. Applicants must sign an attestation that, under penalty of denial or loss of licensure, that representation is correct.

~~((11))~~ (14) The issuance or approval of a license shall not be construed as a license for, or an approval of, any violations of local rules or ordinances including, but not limited to: Building and fire codes, zoning ordinances, and business licensing requirements.

~~((12))~~ (15) Upon failure to respond to the board licensing and regulation division's requests for information within the timeline provided, the application may be administratively closed or denial of the application will be sought.

AMENDATORY SECTION (Amending WSR 14-06-108, filed 3/5/14, effective 4/5/14)

**WAC 314-55-050 Reasons the board may seek denial, suspension, or cancellation of a marijuana license application or license.** Following is a list of reasons the board may deny, suspend, or cancel a marijuana license application or license. Per RCW 69.50.331, the board has broad discretionary authority to approve or deny a marijuana license application for reasons including, but not limited to, the following:

- (1) Failure to meet qualifications or requirements for the specific marijuana producer, processor, or retail license, as outlined in this chapter and chapter 69.50 RCW.
- (2) Failure or refusal to submit information or documentation requested by the board during the evaluation process.
- (3) The applicant makes a misrepresentation of fact, or fails to disclose a material fact to the board during the application process or any subsequent investigation after a license has been issued.
- (4) Failure to meet the criminal history standards outlined in WAC 314-55-040.

(5) Failure to meet the marijuana law or rule violation history standards outlined in WAC 314-55-045.

(6) The source of funds identified by the applicant to be used for the acquisition, startup and operation of the business is questionable, unverifiable, or determined by the board to be gained in a manner which is in violation by law.

(7) Denies the board or its authorized representative access to any place where a licensed activity takes place or fails to produce any book, record or document required by law or board rule.

(8) Has been denied or had a marijuana license or medical marijuana license suspended or canceled in another state or local jurisdiction.

(9) Where the city, county, tribal government, or port authority has submitted a substantiated objection per the requirements in RCW 69.50.331 (7) and (9).

(10) The board shall not issue a new marijuana license if the proposed licensed business is within one thousand feet of the perimeter of the grounds of any of the following entities. The distance shall be measured as the shortest straight line distance from the property line of the proposed building/business location to the property line of the entities listed below:

- (a) Elementary or secondary school;
- (b) Playground;
- (c) Recreation center or facility;
- (d) Child care center;
- (e) Public park;
- (f) Public transit center;
- (g) Library; or
- (h) Any game arcade (where admission is not restricted to persons age twenty-one or older).

(11)(a) A city or county may by local ordinance permit the licensing of marijuana businesses within one thousand feet but not less than one hundred feet of the facilities listed in subsection (10) of this section except elementary and secondary schools, and playgrounds.

(b) If a licensee applies for a marijuana license at a location less than one thousand feet of a recreation center or facility, child care center, public park, public transit center, library, or game arcade, the licensee must provide the WSLCB with a copy of the local ordinance that describes the distance required by the city or county where the facility will be located.

(12) Has failed to pay taxes or fees required under chapter 69.50 RCW or failed to provide production, processing, inventory, sales and transportation reports to documentation required under this chapter.

~~((12))~~ (13) Failure to submit an attestation that they are current in any tax obligations to the Washington state department of revenue.

~~((13))~~ (14) Has been denied a liquor license or had a liquor license suspended or revoked in this or any other state.

~~((14))~~ (15) The operating plan does not demonstrate, to the satisfaction of the board, the applicant is qualified for a license.

~~((15))~~ (16) Failure to operate in accordance with the board approved operating plan.

~~((16))~~ (17) The board determines the issuance of the license will not be in the best interest of the welfare, health, or safety of the people of the state.

AMENDATORY SECTION (Amending WSR 15-11-107, filed 5/20/15, effective 6/20/15)

**WAC 314-55-075 What is a marijuana producer license and what are the requirements and fees related to a marijuana producer license?** (1) A marijuana producer license allows the licensee to produce, harvest, trim, dry, cure, and package marijuana into lots for sale at wholesale to marijuana processor licensees and to other marijuana producer licensees. A marijuana producer can also produce and sell marijuana plants, seed, and plant tissue culture to other marijuana producer licensees. Marijuana production must take place within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors. Outdoor production may take place in nonrigid greenhouses, other structures, or an expanse of open or cleared ground fully enclosed by a physical barrier. To obscure public view of the premises, outdoor production must be enclosed by a sight obscure wall or fence at least eight feet high. Outdoor producers must meet security requirements described in WAC 314-55-083.

(2) The application fee for a marijuana producer license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(3) The annual fee for issuance and renewal of a marijuana producer license is one thousand dollars. The board will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee will be responsible for all fees required for the criminal history checks.

(4) The board will initially limit the opportunity to apply for a marijuana producer license to a thirty-day calendar window beginning with the effective date of this section. In order for a marijuana producer application license to be considered it must be received no later than thirty days after the effective date of the rules adopted by the board. The board may reopen the marijuana producer application window after the initial evaluation of the applications received and at subsequent times when the board deems necessary.

(5) Any entity and/or principals within any entity are limited to no more than three marijuana producer licenses.

(6) ~~The maximum amount of space for marijuana production ((is initially limited to two million square feet, to be increased based on marketplace demand, but not to exceed eight and one-half million square feet without board approval)) will be imposed at a later date.~~ Applicants must designate on their operating plan the size category of the production premises and the amount of actual square footage in their premises that will be designated as plant canopy. There are three categories as follows:

- (a) Tier 1 - Less than two thousand square feet;
- (b) Tier 2 - Two thousand square feet to ten thousand square feet; and
- (c) Tier 3 - Ten thousand square feet to thirty thousand square feet.

(7) The board may reduce a licensee's or applicant's square footage designated to plant canopy for the following reasons:

- (a) If the amount of square feet of production of all licensees exceeds the maximum ~~((of two million))~~ square feet

the board will reduce the allowed square footage by the same percentage.

(b) If fifty percent production space used for plant canopy in the licensee's operating plan is not met by the end of the first year of operation the board may reduce the tier of license.

(8) If the total amount of square feet of marijuana production exceeds (~~two million~~) the maximum square feet, the board reserves the right to reduce all licensee's production by the same percentage or reduce licensee production by one or more tiers by the same percentage.

(9) The maximum allowed amount of marijuana on a producer's premises at any time is as follows:

(a) Outdoor or greenhouse grows - One and one-quarter of a year's harvest; or

(b) Indoor grows - Six months of their annual harvest.

**AMENDATORY SECTION** (Amending WSR 15-11-107, filed 5/20/15, effective 6/20/15)

**WAC 314-55-077 What is a marijuana processor license and what are the requirements and fees related to a marijuana processor license?** (1) A marijuana processor license allows the licensee to process, dry, cure, package, and label usable marijuana, marijuana concentrates, and marijuana-infused products for sale at wholesale to marijuana processors and marijuana retailers.

(2) A marijuana processor is allowed to blend tested usable marijuana from multiple lots into a single package for sale to a marijuana retail licensee providing the label requirements for each lot used in the blend are met and the percentage by weight of each lot is also included on the label.

(3) A marijuana processor licensee must obtain approval from the liquor control board for all marijuana-infused products, labeling, and packaging prior to offering these items for sale to a marijuana retailer. The marijuana processor licensee must submit a picture of the product, labeling, and packaging to the liquor control board for approval.

If the liquor control board denies a marijuana-infused product for sale in marijuana retail outlets, the marijuana processor licensee may request an administrative hearing per chapter 34.05 RCW, Administrative Procedure Act.

(4) Marijuana-infused edible products in solid form must meet the following requirements:

(a) If there is more than one serving in the package, each serving must be packaged individually in childproof packaging (see WAC 314-55-105(7)) and placed in the outer package.

(b) The label must prominently display the number of servings in the package.

(c) Marijuana-infused solid edible products must be homogenized to ensure uniform disbursement of cannabinoids throughout the product.

(d) All marijuana-infused solid edibles must prominently display on the label "This product contains marijuana."

(5) Marijuana-infused edible products in liquid form must meet the following requirements:

(a) If there is more than one serving in the package, a measuring device must be included in the package with the product.

(b) The label must prominently display the number of servings in the package and the amount of product per serving.

(c) Marijuana-infused liquid edibles must be homogenized to ensure uniform disbursement of cannabinoids throughout the product.

(d) All marijuana-infused liquid edibles must prominently display on the label "This product contains marijuana."

(6) A marijuana processor is limited in the types of food or drinks they may infuse with marijuana. Marijuana-infused products that are especially appealing to children are prohibited. Marijuana-infused edible products such as, but not limited to, gummy candies, lollipops, cotton candy, or brightly colored products, are prohibited.

(a) To reduce the risk to public health, potentially hazardous foods as defined in WAC 246-215-01115 may not be infused with marijuana. Potentially hazardous foods require time-temperature control to keep them safe for human consumption and prevent the growth of pathogenic microorganisms or the production of toxins. Any food that requires refrigeration, freezing, or a hot holding unit to keep it safe for human consumption may not be infused with marijuana.

(b) Other food items that may not be infused with marijuana to be sold in a retail store are:

(i) Any food that has to be acidified to make it shelf stable;

(ii) Food items made shelf stable by canning or retorting;

(iii) Fruit or vegetable juices (this does not include shelf stable concentrates);

(iv) Fruit or vegetable butters;

(v) Pumpkin pies, custard pies, or any pies that contain egg;

(vi) Dairy products of any kind such as butter, cheese, ice cream, or milk; and

(vii) Dried or cured meats.

(c) Vinegars and oils derived from natural sources may be infused with dried marijuana if all plant material is subsequently removed from the final product. Vinegars and oils may not be infused with any other substance, including herbs and garlic.

(d) Marijuana-infused jams and jellies made from scratch must utilize a standardized recipe in accordance with 21 C.F.R. Part 150, revised as of April 1, 2013.

(e) Per WAC 314-55-104, a marijuana processor may infuse dairy butter or fats derived from natural sources and use that extraction to prepare allowable marijuana-infused solid or liquid products meant to be ingested orally, but the dairy butter or fats derived from natural sources may not be sold as stand-alone products.

(f) The liquor control board may designate other food items that may not be infused with marijuana.

(7) The recipe for any marijuana-infused solid or liquid products meant to be ingested orally must be kept on file at the marijuana processor's licensed premises and made available for inspection by the liquor control board or its designee.

(8) The application fee for a marijuana processor license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(9) The annual fee for issuance and renewal of a marijuana processor license is one thousand dollars. The board will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee will be responsible for all fees required for the criminal history checks.

(10) A marijuana processor producing a marijuana-infused solid or liquid product meant to be ingested orally in a processing facility as required in WAC 314-55-015(10) must pass a processing facility inspection. Ongoing annual processing facility compliance inspections may be required. The liquor control board will contract with the department of agriculture to conduct required processing facility inspections. All costs of inspections are borne by the licensee and the hourly rate for inspection is sixty dollars. A licensee must allow the liquor control board or their designee to conduct physical visits and inspect the processing facility, recipes and required records per WAC 314-55-087 during normal business hours or at any time of apparent operation without advance notice. Failure to pay for the processing facility inspection or to follow the processing facility requirements outlined in this section and WAC 314-55-015 will be sufficient grounds for the board to suspend or revoke a marijuana license.

(11) The board will initially limit the opportunity to apply for a marijuana processor license to a thirty-day calendar window beginning with the effective date of this section. In order for a marijuana processor application license to be considered it must be received no later than thirty days after the effective date of the rules adopted by the board. The board may reopen the marijuana processor application window after the initial evaluation of the applications that are received and processed, and at subsequent times when the board deems necessary.

(12) A currently licensed marijuana producer may submit an application to add a marijuana processor license at the location of their producer license providing they do not already hold three processor licenses.

(13) Any entity and/or principals within any entity are limited to no more than three marijuana processor licenses.

~~((13))~~ (14) Marijuana processor licensees are allowed to have a maximum of six months of their average usable marijuana and six months average of their total production on their licensed premises at any time.

~~((14))~~ (15) A marijuana processor must accept returns of products and sample jars from marijuana retailers for destruction, but is not required to provide refunds to the retailer. It is the responsibility of the retailer to ensure the product or sample jar is returned to the processor.

#### NEW SECTION

**WAC 314-55-080 Medical marijuana endorsement.** Existing retail license holders and applicants for an initial retail license may apply for a medical endorsement.

(1) A medical marijuana endorsement added to a marijuana retail license allows the marijuana retail licensee to:

(a) Sell marijuana for medical use to qualifying patients and designated providers; and

(b) Provide marijuana at no charge, at their discretion, to qualifying patients and designated providers.

**(2) To maintain a medical marijuana endorsement in good standing, a marijuana retailer must:**

(a) Follow all rules adopted by the department of health regarding marijuana in chapters 246-70, 246-71, and 246-72 WAC;

(b) Have at least one medical marijuana consultant certificate holder on staff with an active credential issued by the department of health under chapter 246-72 WAC;

(c) Prohibit the use of marijuana by anyone, including qualifying patients, at the retail outlet at all times;

(d) Maintain at all times a representative assortment of marijuana products necessary to meet the needs of qualified patients and designated providers. Beginning with the second renewal cycle, not less than twenty-five percent of a marijuana retail outlet's inventory, excluding paraphernalia, must consist of products meeting the requirements of chapter 246-70 WAC. Failure to maintain adequate inventory of such products may result in revocation of the medical marijuana endorsement;

(e) Not market marijuana concentrates, usable marijuana, or marijuana-infused products in a way that make them especially attractive to minors;

(f) Demonstrate the ability to enter qualifying patients and designated providers in the medical marijuana authorization data base established by the department of health;

(g) Agree to enter qualifying patients and designated providers into the data base and issue recognition cards in compliance with the department of health rules found in chapter 246-71 WAC;

(h) Keep copies of the qualifying patient's or designated provider's recognition card or equivalent records to document the validity of tax exempt sales;

**(i) Train employees on the following:**

(i) Procedures regarding the recognition of valid authorizations and the use of equipment to enter qualifying patients and designated providers into the medical marijuana authorization data base;

(ii) Identification of valid recognition cards; and

(iii) Recognition of strains, varieties, THC concentration, CBD concentration, and THC to CBD ratios of marijuana concentrates, usable marijuana, and marijuana-infused products available for sale when assisting qualifying patients and designated providers at the retail outlet.

**(3) A marijuana retailer holding a medical marijuana endorsement may sell products with a THC concentration of 0.3 percent or less.** The licensee may also provide these products at no charge to qualifying patients or designated providers who hold a valid recognition card.

**(4) Unlicensed practice of medicine.** No owner, employee, or volunteer of a retail outlet holding a medical marijuana endorsement may:

(a) Offer or undertake to diagnose or cure any human or animal disease, ailment, injury, infirmity, deformity, pain, or other condition, physical or mental, real or imaginary, by use of marijuana products or any other means or instrumentality; or

(b) Recommend or suggest modification or elimination of any course of treatment that does not involve the medical use of marijuana products.

(5) Failure to comply with subsection (4) of this section may result in suspension or revocation of the medical marijuana endorsement.

**AMENDATORY SECTION** (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

**WAC 314-55-081 Who can apply for a marijuana retailer license?** (1) The WSLCB may accept applications for marijuana retail licenses at time frames published on its web site at lcb.wa.gov. Using estimated consumption data and population data obtained from the office of financial management (OFM) population data, the liquor control board will determine the maximum number of marijuana retail locations per county.

The number of retail locations will be determined using a method that distributes the number of locations proportionate to the most populous cities within each county and to accommodate the medical needs of qualifying patients and designated providers. Locations not assigned to a specific city will be at large. At large locations can be used for unincorporated areas in the county or in cities within the county that have no retail licenses designated. ~~((Once the number of locations per city and at large have been identified, the eligible applicants will be selected by lottery in the event the number of applications exceeds the allotted amount for the cities and county. Any lottery conducted by the board will be witnessed by an independent third party.))~~

(2) The number of ~~((marijuana))~~ retail licenses determined by the board can be found on the ~~((liquor control board))~~ WSLCB web site at ~~((www.liq.wa.gov))~~ lcb.wa.gov.

(3) Any entity and/or principals within any entity are limited to no more than three retail marijuana licenses ~~((with no multiple location licensee allowed more than thirty-three percent of the allowed licenses in any county or city.))~~

(4) ~~The board will initially limit the opportunity to apply for a marijuana retailer license to a thirty-day calendar window beginning with the effective date of this section. In order for a marijuana retailer license application to be considered it must be received no later than thirty days after the effective date of the rules adopted by the board. The board may reopen the marijuana retailer application window after the initial evaluation of the applications received and at subsequent times when the board deems necessary).~~

The Basic Plus waiver and Core waiver both provide home and community-based services to individuals as an alternative to placement in an intermediate care facility for individuals with intellectual disabilities. CMS has approved an amendment that removes personal care services from those waivers, as those services are available through the state's 1915(k) Community First Choice (CFC) program in the medicaid state plan. The CMS amendments also added a new service, wellness education, to both the Basic and Core waivers which provides wellness information to participants designed to assist them in achieving goals identified during their person-centered planning process.

Statutory Authority for Adoption: RCW 71A.12.030 General authority of secretary—Rule adoption; RCW 34.05.-350 (1)(b) Emergency rules and amendments; C.F.R. 441.510(d).

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: 42 C.F.R. § 431.232(d) requires the state to discontinue medicaid benefits following an initial administrative order that affirms the state's decision to reduce or terminate those benefits. WAC 388-825-0135(2) currently allows continued benefits (including medicaid benefits) past the initial order. This emergency rule is necessary to conform DSHS rules with federal requirements.

Number of Sections Adopted in Order to Comply with Federal Statute: New 4, 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 4, Amended 0, Repealed 0.

Date Adopted: December 29, 2015.

Katherine I. Vasquez  
Rules Coordinator

## Wellness Education

### NEW SECTION

#### **WAC 388-845-2280 What is wellness education?**

Wellness education provides you with monthly individualized printed educational materials designed to assist you in managing health related issues and achieving wellness goals identified in your person-centered service plan that address your health and safety issues. Individualized educational materials are developed by the state, other content providers and the contracted wellness education provider. This service is available on the Basic Plus and Core Waivers.

### **WSR 16-03-004**

#### **EMERGENCY RULES DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Developmental Disabilities Administration)

[Filed January 6, 2016, 2:00 p.m., effective January 7, 2016]

Effective Date of Rule: January 7, 2016.

Purpose: These rules will support the below Center for Medicare and Medicaid Services (CMS) decision and support the requirement in C.F.R. 441.510(d).

NEW SECTION

**WAC 388-845-2283 How are my wellness educational materials selected?** Individualized educational materials are selected for you by the wellness education provider's algorithm and are based on your DDA assessment. Goals, diagnoses, treatments, conditions and other factors identified in your DDA assessment provide the basis for the algorithm to select educational materials for you. These goals, diagnoses, treatments, conditions and other factors may include, but are not limited to the following:

- (1) Diabetes - IDDM;
- (2) Diabetes - NIDDM;
- (3) COPD;
- (4) Cardiovascular disease;
- (5) Rheumatoid arthritis;
- (6) Traumatic brain injury;
- (7) Cerebral palsy;
- (8) Alzheimer's disease;
- (9) Anxiety disorder;
- (10) Asthma;
- (11) Autism;
- (12) Stroke;
- (13) Congestive heart failure;
- (14) Decubitus ulcer;
- (15) Depression;
- (16) Emphysema;
- (17) GERD;
- (18) Hypertension;
- (19) Hypotension;
- (20) Down's syndrome;
- (21) Fragile X syndrome;
- (22) Prader-Willi;
- (23) ADD;
- (24) ADHD;
- (25) Post-traumatic stress disorder;
- (26) Asperger's syndrome;
- (27) Hepatitis;
- (28) Paraplegia;
- (29) Quadriplegia;
- (30) Fetal alcohol syndrome/fetal alcohol effect;
- (31) Epilepsy;
- (32) Seizure disorder;
- (33) Sleep apnea;
- (34) Urinary tract infection;
- (35) Multiple sclerosis;
- (36) Falls;
- (37) Smoking;
- (38) Alcohol abuse;
- (39) Substance abuse;
- (40) Bowel incontinence;
- (41) Bladder incontinence;
- (42) Diabetic foot care;
- (43) Pain daily;
- (44) Sleep issues;
- (45) BMI = or greater than 25;
- (46) BMI less than 18.5;
- (47) Skin care (pressure ulcers, abrasions, burns, rashes);
- (48) Seasonal allergies;
- (49) Edema;
- (50) Poor balance;

- (51) Recent loss/grieving;
- (52) Conflict management;
- (53) Importance of regular dental visits;
- (54) ADA diet;
- (55) Cardiac diet;
- (56) Celiac diet;
- (57) Low sodium diet;
- (58) Goals; and
- (59) Parkinson's Disease.

NEW SECTION

**WAC 388-845-2285 Are there limits to wellness education?** Wellness education is a once a month service. In the basic plus waiver, you are limited to the aggregate service expenditure limits defined in WAC 388-845-0210.

NEW SECTION

**WAC 388-845-2290 Who are qualified providers of wellness education?** The wellness education provider must have the ability and resources to:

- 1) Receive and manage client data in compliance with all applicable federal HIPPA regulations, state law and rules and ensure client confidentiality and privacy;
- 2) Translate materials into the preferred language of the participant;
- 3) Ensure that materials are targeted to the participant's assessment and person-centered service plan;
- 4) Manage content sent to participants to prevent duplication of materials;
- 5) Deliver newsletters and identify any undeliverable client/representative addresses prior to each monthly mailing and manage any returned mail in a manner that ensures participants receive the monthly information; and
- 6) Contract with AL TSA or DDA to provide this 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 16-03-005  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 16-03—Filed January 6, 2016, 4:24 p.m., effective January 6, 2016, 4:24 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules in Tokul Creek.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19000U and 220-310-19000V; and amending WAC 220-310-190.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of

notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: An emergency rule is needed to correct a clerical error in filing WSR 16-01-092. There is insufficient time to adopt permanent rules.

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 2.

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: January 6, 2016.

Joe Stohr  
for J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-310-19000V Freshwater exceptions to statewide rules—Puget Sound.** Notwithstanding the provisions of WAC 220-310-190, immediately through 5:00 p.m. January 14, 2016, it is permissible to fish in waters of Tokul Creek from the Fish Hatchery Road Bridge upstream to the posted cable boundary marker below the hatchery intake. Unless otherwise amended all permanent rules remain in effect.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-310-19000U Freshwater exceptions to statewide rules—Puget Sound. (15-444)

The following section of the Washington Administrative Code is repealed effective January 15, 2016:

WAC 220-310-19000V Freshwater exceptions to statewide rules—Puget Sound.

**WSR 16-03-006  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 16-04—Filed January 6, 2016, 4:33 p.m., effective January 6, 2016, 4:33 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for the Nisqually River.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19000U; and amending WAC 220-310-190.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: An emergency rule is needed to correct a clerical error in filing WSR 16-02-081. There is insufficient time to adopt permanent rules.

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 0, Amended 0, Repealed 0.

Date Adopted: January 6, 2016.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-310-19000W Freshwater exceptions to statewide rules—Puget Sound** Notwithstanding the provisions of WAC 220-310-190, effective immediately until further notice, it is unlawful to fish in waters of the Nisqually River from the mouth to military tank crossing bridge (located one mile upstream of mouth of Muck Creek).

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-310-19000U Freshwater exceptions to statewide rules—Puget Sound. (16-01)

**WSR 16-03-010**  
**EMERGENCY RULES**  
**DEPARTMENT OF AGRICULTURE**

[Filed January 7, 2016, 2:06 p.m., effective January 7, 2016, 2:06 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This rule-making order amends chapter 16-470 WAC by:

(1) Adding municipal solid waste, yard debris, organic feedstocks, organic materials, and agricultural wastes to the list of commodities regulated under the apple maggot quarantine;

(2) Establishing a special permit to allow transportation and disposition of municipal solid waste from the area under quarantine for disposal at a solid waste landfill or disposal facility in the apple maggot and plum curculio pest-free area; and

(3) Establishing a special permit to allow transportation and disposition of yard debris, organic feedstocks, organic materials, and agricultural wastes from the area under quarantine for disposal at a solid waste landfill or treatment at a composting facility in the apple maggot and plum curculio pest-free area.

Citation of Existing Rules Affected by this Order: Amending WAC 16-470-101, 16-470-108, 16-470-111, 16-470-113, 16-470-115, 16-470-118, 16-470-122, 16-470-127, and 16-470-130.

Statutory Authority for Adoption: RCW 17.24.011, 17.24.041.

Other Authority: Chapter 34.05 RCW.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The agency had been working with the solid waste industry and other stakeholders regarding reissuance of a special permit under WAC 16-470-130 when it determined that section applied only to special permits for transport of fresh fruit. Without the emergency adoption of a rule allowing issuance of special permits for transport of municipal solid waste, yard debris, organic feedstocks, organic materials, and agricultural wastes to solid waste disposal facilities or composting facilities in the pest-free area, the affected industry stakeholder(s) would lack alternatives to properly dispose of existing waste, creating storage and disposal back-ups with potential health risks and financial risks to the municipal corporations dependent on their contractors to properly and timely dispose of the waste.

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 9, 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 9, Repealed 0.

Date Adopted: January 7, 2016.

Derek I. Sandison  
 Director

AMENDATORY SECTION (Amending WSR 06-14-004, filed 6/22/06, effective 8/1/06)

**WAC 16-470-101 Establishing quarantine for apple maggot and plum curculio.** Apple maggot (*Rhagoletis pomonella*) and plum curculio (*Conotrachelus nenuphar*) are insects with a larval (worm) stage that develops within fruit. These insects are capable of attacking many fruit crops grown in Washington. Apple maggot is not established in significant portions of the major fruit production areas east of the Cascade Mountains, and plum curculio is not established anywhere in the state. An increased range for either insect would cause decreased environmental quality and economic loss to the agricultural industries of the state by increasing production inputs and jeopardizing foreign and domestic markets.

(1) The director of agriculture, pursuant to chapter 17.24 RCW, has determined that the regulation and/or exclusion of fresh fruits grown or originating from areas infested with apple maggot or plum curculio is necessary to protect the environmental quality and agricultural crops of the state.

(2) The director of agriculture, pursuant to chapter 17.24 RCW, has determined that municipal solid waste originating from areas infested with apple maggot is a host medium for apple maggot and is a "regulated commodity" as provided in WAC 16-470-111. The exclusion of such municipal solid waste from the pest free area is necessary to protect the environmental quality and agricultural crops of the state. The transport into and disposition of such municipal solid waste in the pest free area may be allowed by a special permit as provided in WAC 16-470-124(1).

(3) The director of agriculture, pursuant to chapter 17.24 RCW, has determined that yard debris, organic feedstocks, organic materials, and agricultural wastes as defined in WAC 173-350-100 originating from areas infested with apple maggot is a host medium for apple maggot and is a "regulated commodity" as provided in WAC 16-470-111. The exclusion of such waste from the pest free area is necessary to protect the environmental quality and agricultural crops of the state. The transport into and disposition of yard debris, organic feedstocks, organic materials, and agricultural wastes in the pest free area may be allowed by a special permit as provided in WAC 16-470-124(2).

AMENDATORY SECTION (Amending WSR 01-14-075, filed 7/3/01, effective 8/3/01)

**WAC 16-470-108 Distribution of infested or damaged fruit is prohibited.** Regulated commodities ((described)) specified in WAC 16-470-111(1) and 16-470-

125(2) that are known or found to be infested or damaged by apple maggot or plum curculio may not be distributed, sold, held for sale, or offered for sale, unless the fruit has undergone cold storage treatment, in compliance with WAC 16-470-113 (1)(a) and (b) or 16-470-127 (1)(a) and (b), and the necessary certificate has been issued by the appropriate plant protection organization.

AMENDATORY SECTION (Amending WSR 06-14-004, filed 6/22/06, effective 8/1/06)

**WAC 16-470-111 (~~What~~) Commodities (~~are~~) regulated for apple maggot(?)**. (1) All fresh fruit of apple (including crab apple), cherry (except cherries that are commercial fruit), hawthorn (haw), pear (except pears that are commercial fruit from California, Idaho, Oregon, Utah, and Washington), plum, prune, and quince are regulated under quarantine for apple maggot.

(2) Municipal solid waste as defined in WAC 173-350-100 is regulated under quarantine for apple maggot. Municipal solid waste from the quarantine areas is a host medium for apple maggot containing or likely to contain those fruits listed under subsection (1) of this section.

(3) Yard debris, organic feedstocks, organic materials, and agricultural wastes as defined in WAC 173-350-100 are regulated under quarantine for apple maggot. Yard debris, organic feedstocks, organic materials, and agricultural wastes from quarantine areas are host mediums for apple maggot containing or likely to contain those fruits listed under subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 01-14-075, filed 7/3/01, effective 8/3/01)

**WAC 16-470-113 (~~What do you need~~) Requirements to ship commodities regulated for apple maggot from a state under quarantine into the pest free area for apple maggot(?)**. Shipment of (~~regulated commodities~~) fruit, as (~~described~~) specified in WAC 16-470-111(1), from an area under quarantine, as (~~described~~) specified in WAC 16-470-105(3), into the pest free area for apple maggot, as (~~described~~) specified in WAC 16-470-105(1), is prohibited, unless at least one of the following conditions is met:

(1) The shipment is accompanied by an official certificate issued by the plant protection organization of the state of origin evidencing at least one of the following:

(a) The shipment is composed of apples, which (~~have~~) has undergone cold treatment for a continuous period of at least ninety days. During this ninety days, the temperature within the storage room must be maintained at thirty-seven and nine-tenths (37.9) degrees Fahrenheit or less.

(b) The shipment is composed of (~~regulated commodities~~) fresh fruit specified in WAC 16-470-111(1) other than apples, which (~~have~~) has undergone cold treatment for a continuous period of forty days or more. During this forty days, the temperature within the storage room must be maintained at thirty-two (32) degrees Fahrenheit or less.

(c) The shipment is composed of (~~regulated commodities~~) fresh fruit specified in WAC 16-470-111(1) from Oregon, Idaho, or Utah, certified by the state of origin in compliance with WAC 16-470-122.

(d) Each lot or shipment consists of repacked fruit, which was grown outside the area under quarantine and has been (~~identity~~) identified and maintained (~~while~~) separately from any fruit specified in WAC 16-470-111(1) grown within the area under quarantine. For repacked fruit, the certificate must show the following information:

- (i) State in which the fruit was grown;
- (ii) Point of repacking and reshipment;
- (iii) Amount and kind of commodities comprising the lot or shipment; and
- (iv) Names and addresses of the shipper and consignee.

(2) The fruit originated outside the area under quarantine for apple maggot and is a reshipment in original, unopened containers. The containers must each bear labels or other identifying marks evidencing origin outside the area under quarantine.

(3) The fruit is frozen solid.

AMENDATORY SECTION (Amending WSR 06-14-004, filed 6/22/06, effective 8/1/06)

**WAC 16-470-115 (~~Within Washington state, what is required to ship fruit~~) Requirements for shipment of regulated commodities from the quarantine area for apple maggot into the pest free area (~~for apple maggot from quarantined areas?~~) within Washington state**. Shipment of regulated commodities, as (~~described~~) specified in WAC 16-470-111, from an area under quarantine, as (~~described~~) specified in WAC 16-470-105(2), into the pest free area for apple maggot, as (~~described~~) specified in WAC 16-470-105(1), is prohibited, unless one of the following conditions is met:

(1) The shipment of fresh fruit is accompanied by a permit for movement of fruit issued by the department verifying one of the following:

(a) The fruit came from orchards and production sites that are not threatened with infestation; or

(b) The fruit has completed treatment as specified in WAC 16-470-118(3). If records of treatment verifying compliance with conditions specified in WAC 16-470-118(3) are made available to the department, no reinspection is required by the department.

(2) The shipment of fresh fruit is accompanied by a permit issued by the department in fulfillment of WAC 16-470-118 (2) and (3), which specifies conditions for shipment from orchards and production sites that are infested or threatened with infestation.

(3) The shipment of municipal solid waste from the quarantine area to the pest free area for purposes of disposal in a municipal solid waste landfill or appropriate disposal or treatment facility is accompanied by a special permit issued by the department as provided in WAC 16-470-124(1).

(4) The shipment of yard debris, organic feedstocks, organic materials, or agricultural wastes from the quarantine area to the pest free area for purposes of disposal in a municipal solid waste landfill or appropriate treatment or composting facility is accompanied by a special permit issued by the department as provided in WAC 16-470-124(2).

AMENDATORY SECTION (Amending WSR 06-14-004, filed 6/22/06, effective 8/1/06)

**WAC 16-470-118 Requirement within Washington state(~~(, what is required)~~) to ship fruit into, within, or through the pest free area for apple maggot from an orchard or production site that is infested or threatened with infestation(~~(?)~~).** All (~~(regulated commodities)~~) fresh fruit, as (~~(described)~~) specified in WAC 16-470-111(1), from an orchard or production site that is infested or threatened with infestation by apple maggot must be inspected (~~(except graded culls—See subsection (4) of this section)~~) by the department following accepted agency standards.

(1) If (~~(regulated commodities are)~~) the fruit is inspected and found free of apple maggot, the shipment must be accompanied by a permit for movement of fruit issued by the department.

(2) If (~~(regulated commodities are)~~) the fruit is found to be infested with apple maggot, a permit from the department, which specifies conditions for handling and shipment, is required to transport the fruit within or through the pest free area. No permit may be issued under this subsection for transportation of (~~(regulated commodities)~~) fresh fruit found to be infested with apple maggot into the pest free area for apple maggot.

(3) If (~~(regulated commodities are)~~) the fruit is found to be infested with apple maggot, one or more of the following treatments must be performed and verified by the department as specified in WAC 16-470-115 (1)(b) before the (~~(commodity)~~) fruit is moved from area(s) designated or quarantined by the department:

(a) Apples (including crab apples) cold treated as specified in WAC 16-470-113 (1)(a).

(b) (~~(Regulated commodities)~~) Fruit other than apples cold treated as specified in WAC 16-470-113 (1)(b).

(c) Other methods as prescribed in writing by the department.

(4) If the shipment contains graded culls, it must comply with the conditions specified in WAC 16-470-113 (1)(a) (~~(and)~~) or (b), dependent on the category of fruit.

AMENDATORY SECTION (Amending WSR 01-14-075, filed 7/3/01, effective 8/3/01)

**WAC 16-470-122 (~~(What are the)~~) Requirements to ship regulated articles from Oregon, Idaho, or Utah into the pest free area for apple maggot(~~(?)~~).** Commercially grown fresh fruit from Oregon, Idaho, or Utah may be shipped into the pest free area for apple maggot if both of the subsections of this section are complied with:

(1) A permit has been agreed to by the plant protection organization of the state of origin and the department. The permits must specify that the plant protection organization of the state of origin has conducted an adequate apple maggot detection program, which includes immediate written notification to the department of detections in counties where apple maggot has not previously been detected.

(2) The plant protection organization of the state of origin certifies that the fruit originated in areas in which apple maggot is not established, was grown in a commercial orchard, and has not been placed under quarantine.

NEW SECTION

**WAC 16-470-124 Special permits for solid waste and organic waste transport and disposition.** (1) The director may issue special permits admitting or allowing transportation and distribution of municipal solid waste for disposal at a solid waste landfill or appropriate disposal facility in the pest free area from the area under quarantine established in WAC 16-470-101, subject to conditions and provisions which the director may prescribe to prevent introduction, escape, or spread of the quarantined pests. For purposes of this section "solid waste" and "solid waste landfill" or "disposal facility" refer to solid waste and solid waste facilities regulated under chapters 70.95 RCW and 173-351 WAC by the Washington state department of ecology.

(2) The director may issue special permits admitting or allowing transportation and distribution of yard debris, organic feedstocks, organic materials, or agricultural wastes for treatment at a composting facility in the pest free area from the area under quarantine established in WAC 16-470-101, subject to conditions and provisions which the director may prescribe to prevent introduction, escape, or spread of the quarantined pests. For purposes of this section "yard debris," "organic feedstocks," "organic materials," and "agricultural wastes" or "composting facility" refer to waste and composting facilities regulated under chapters 70.95 RCW and 173-350 WAC by the Washington state department of ecology.

(3) When the owner of the waste identified in subsections (1) and (2) of this section transfers ownership of the waste to a different person receiving the waste for disposal or treatment in the pest free area, both owners must apply for and receive special permits under this section. A special permit to transport will not be issued to the transporting owner unless a special permit is concurrently issued to the receiving facility owner under conditions specified by the director.

AMENDATORY SECTION (Amending WSR 01-14-075, filed 7/3/01, effective 8/3/01)

**WAC 16-470-127 (~~(What do you need)~~) Requirements to ship commodities regulated for plum curculio into Washington(~~(?)~~).** Shipment into the state of Washington of regulated commodities described in WAC 16-470-125 from states under quarantine for plum curculio is prohibited, unless one of the following conditions is met:

(1) The shipment is accompanied by an official certificate issued by the plant protection organization of the state of origin evidencing at least one of the following:

(a) The shipment consists of apples, which have undergone cold treatment for a continuous period of at least ninety days. During this ninety days, the temperature within the storage room must be maintained at thirty-seven and ninetieths (~~((37.9))~~) degrees Fahrenheit or less.

(b) The shipment consists of regulated commodities, which have undergone cold treatment for a continuous period of forty days or more. During this forty days, the temperature within the storage room must be maintained at thirty-two (~~((32))~~) degrees Fahrenheit or less.

(c) Each lot or shipment consists of repacked fruit, which was grown outside the area under quarantine and has been

identity maintained while within the area under quarantine. For repacked fruit, the certificate must show the following information:

- (i) State in which the fruit was grown;
  - (ii) Point of repacking and reshipment;
  - (iii) Amount and kind of commodities comprising the lot or shipment; and
  - (iv) Names and addresses of the shipper and consignee.
- (2) The fruit originated outside the area under quarantine for plum curculio and is a reshipment in original, unopened containers. The containers must each bear labels or other identifying marks evidencing origin outside the area under quarantine.
- (3) The shipment consists of fresh fruit from Utah counties where plum curculio is established and is made in compliance with terms of a permit agreed upon by both the Utah and Washington plant protection organizations.
- (4) The shipment consists of fresh fruit from Utah counties where plum curculio is not established, and all of the following conditions are complied with:
- (a) The Utah plant protection organization has conducted an adequate plum curculio detection program, which includes immediate written notification to the department of detections in counties where plum curculio has not previously been detected; and
  - (b) The Utah plant protection organization certifies that the fruit originated in areas in which plum curculio is not established, was grown in a commercial orchard, and has not been placed under quarantine.

**AMENDATORY SECTION** (Amending WSR 01-14-075, filed 7/3/01, effective 8/3/01)

**WAC 16-470-130 Special permits for fresh fruit transport and distribution.** The director may issue special permits admitting, or allowing transportation and distribution of, regulated commodities described in WAC 16-470-111(1) and 16-470-125(2), which would not otherwise be eligible for entry from the area under quarantine, or for transportation or distribution, subject to conditions and provisions which the director may prescribe to prevent introduction, escape or spread of the quarantined pests.

**WSR 16-03-014**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Children's Administration)

[Filed January 8, 2016, 9:39 a.m., effective January 8, 2016, 9:39 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is changing licensing regulations in WAC 388-148-1320(4) and 388-145-1335(4) to include further instructions on how to proceed with applicants that have a positive TB test result due to latent TB which is not contagious, nor does it pose a risk to others. This change will allow the division of licensed resources (DLR) to license these homes that otherwise meet the minimum licensing requirements with a physician's statement.

The department is changing licensing regulations in WAC 388-148-1320(6) and 388-145-1335(5) to include a medical exemption to the influenza vaccination for foster parents and their household members and agency staff and volunteers. The exemption requires a licensed health care professional's statement for a medical reason not to obtain the influenza vaccination because it would result in severe medical consequences to the person and there is no other form of the influenza vaccine that would not cause severe medical consequences. The basis for these provisions is the need to license appropriate and qualified homes to provide care for foster children. The current WAC language impedes DLR in being able to license these otherwise appropriate homes and there are a number of children waiting for homes.

The CR-101 was filed on July 14, 2015 (WSR 15-15-083) and the CR-102 was filed on September 15, 2015 (WSR 15-19-082). A public hearing was held on October 27, 2015. The public comments received are addressed in the concise explanatory statement attached to the CR-103P packet. The department made changes to improve these requirements based on the public comment. The CR-103P was filed on December 18, 2015 (WSR 16-01-121). This extension is being filed to cover the interim period between the expiration of the first filing of the CR-103E which is January 8, 2016, until the CR-103P becomes permanent on January 18, 2016.

Citation of Existing Rules Affected by this Order: Amending WAC 388-148-1320 (4), (6) and 388-145-1335 (4), (5).

Statutory Authority for Adoption: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: WAC 388-145-1335 and 388-148-1320 were revised on January 11, 2015, and this revision required all foster parents, their household members over the age of eighteen years, and agency staff or volunteers to submit a negative TB test. There are applicants that receive a positive TB test, but have "latent TB" which is not contagious and does not pose a risk to others. This will allow for these applicants to be licensed.

The WAC revised on January 11, 2015, also required all foster parents, their household members and agency staff or volunteers receive the influenza vaccination in order to be licensed to serve children birth to two years of age. The WAC revision will allow an exception to the influenza vaccination for foster parents and their household members, agency staff and volunteers with a medical doctor's (MD) statement if the vaccine would cause severe medical consequences to the person and there are no other alternate influenza vaccines that would not cause medical issues. This will allow these applicants and agencies to be licensed for birth to two years of age.

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 0, Repealed 0.

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

Date Adopted: December 31, 2015.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-145-1335 What additional steps must I complete prior to licensing?** (1) You must submit to your licensor a detailed written program description for DLR approval. In the description you must outline:

- (a) Your mission and goals;
- (b) A description of the services you will provide to children and their families;
- (c) Your written policies covering qualifications, duties and ongoing training for developing and upgrading staff skills; and
- (d) A description of your agency's policies and procedures.
- (e) For staffed residential facilities in family homes, you must provide a written plan to the child's DSHS worker for the supervision of children in your care if you work outside of your staffed residential home.

(2) You must have a site inspection by your DLR licensor or someone designated by DLR who can verify that your premises have:

- (a) Adequate storage for staff and client files;
- (b) A landline working telephone;
- (c) Adequate space for privacy when interviewing parents and children;
- (d) Room or area used for administrative purposes;
- (e) Adequate space for visitation;
- (f) Appropriate furnishings for the children in your facility; and
- (g) Your license clearly posted (if inspection is for a renewal license).

(3) All facilities described in this chapter, (except for staffed residential homes for five or fewer children), are required to meet the health requirements to receive a certificate of compliance from the Washington state department of health (DOH) and the fire safety requirements from the Washington state patrol fire protection bureau (WSP/FPB).

(4) You, your employees and volunteers are required to submit a negative tuberculosis test or an X ray. If there is a positive TB test, then the individual must submit a physician's statement identifying that there is no active TB or risk of contagion to children in care.

(a) We may grant an exception to the TB test requirement, in consultation with a licensed health care provider.

(b) This exception would require a statement from a licensed health care provider (MD, DO, ND, PA or ARNP) indicating that a valid medical reason exists for not having a TB test.

(5) If you are being licensed to care for children under the age of two, you, your employees and volunteers working in the facility caring for children under the age of two are required to provide documentation verifying you have current pertussis and influenza vaccinations. The department may license you to serve children under the age of two even though you, your employees or volunteers are unable to obtain an influenza vaccination for medical reasons. In this case, a medical doctor's (MD) statement is required noting that the influenza vaccination would result in severe medical consequences to the person and that there is no other form of the influenza vaccine that would not cause severe medical consequences. All other employees or volunteers must still be vaccinated. We recommend (but do not require) these immunizations for you, your employees and volunteers when you serve children age two and older.

(6) You must have proof of current immunizations for any children living on the premises, not in out-of-home care. We may, in consultation with a licensed health care provider, grant exceptions to this requirement if you have a statement from a licensed health care provider (MD, DO, ND, PA or ARNP).

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-148-1320 When will the department grant me a foster family license?** (1) We issue you a license when you and everyone in your household meet the licensing requirements contained in this chapter, and all required documents are in the licensing file.

(2) You and other caregivers over the age of eighteen must:

- (a) Complete first aid training and age-appropriate adult and/or infant CPR (cardiopulmonary resuscitation). Training must be department approved and accredited with nationally recognized standards; and
- (b) Complete HIV/AIDS and bloodborne pathogens training including infection control standards consistent with educational materials published by the department of health, office on HIV/AIDS.

(3) You, your household members and anyone else having unsupervised contact with your foster child(ren) must pass the following background check requirements per chapter 388-06 WAC (This includes people living on any part of your property):

(a) Anyone over the age of sixteen must pass a criminal history check.

(b) Anyone over the age of eighteen must pass an FBI fingerprint check.

(c) Anyone over the age of eighteen must complete a child abuse and neglect registry check from each state they have lived in over the past five years indicating:

(i) No license denials or revocations from an agency that regulates the care of children or vulnerable adults, unless the

department determines that you do not pose a risk to a child's health, safety, well-being and long-term stability; and

(ii) No finding or substantiation of abuse or neglect of a child or a vulnerable adult, unless the department determines that you do not pose a risk to a child's safety, well-being, and long-term stability.

(4) You, and your household members over the age of eighteen must submit a negative tuberculosis test or an X-ray, unless you can demonstrate a medical reason prohibiting the TB test, or have had a negative TB test in the previous twelve months. If there is a positive TB test, then the individual must submit a physician's statement identifying that there is no active TB or risk of contagion to children in care.

(5) You must have proof of current immunizations for any children living on your premises, not in out-of-home care. We may, in consultation with a licensed health care provider, grant exception to this requirement if you have a statement from a licensed health care provider (MD, DO, ND, PA and ARNP).

(6) We recommend that you have pertussis and influenza immunizations. The department will not license you to serve foster children under the age of two, without proof of pertussis and influenza immunizations for all people living in your home. The department may license you to serve children under the age of two even though you or someone in your home is unable to obtain an influenza vaccination for medical reasons. In this case, a medical doctor's (MD) statement is required noting that the influenza vaccination would result in severe medical consequences to the person and that there is no other form of the influenza vaccine that would not cause severe medical consequences. All other persons in the home must still be vaccinated.

(7) Before granting or renewing a license, your licensor will assess your ability to provide a safe home and to provide the quality of care needed by children placed in your home. Your licensor will also determine that you meet training requirements.

(8) Foster children under the care and authority of the department living in your home do not need to obtain a criminal history check, FBI fingerprint check or TB test.

**WSR 16-03-022**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-05—Filed January 8, 2016, 4:08 p.m., effective January 8, 2016,  
4:08 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules for sea urchins.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07300T; and amending WAC 220-52-073.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or

general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: An emergency rule is needed to close red sea urchin harvest in Districts 1, 2 and 4 as the quota limit is approaching. Harvestable surpluses of green sea urchins exist in the districts specified to allow for commercial harvest. There is insufficient time to adopt permanent rules.

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 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: January 8, 2016.

Joe Stohr  
for J. W. Unsworth  
Director

NEW SECTION

**WAC 220-52-07300U Sea urchins** Notwithstanding the provisions of WAC 220-52-073, effective immediately until further notice, it is unlawful to take or possess sea urchins taken for commercial purposes except as provided for in this section:

(1) The following areas are open for green sea urchin harvest seven days-per-week: Sea Urchin District 1, District 2, District 3 east of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude, District 4 west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude, District 6, and District 7. It is unlawful to harvest green sea urchins smaller than 2.25 inches (size is largest test diameter exclusive of spines).

(2) The maximum cumulative landing of green sea urchins for each weekly fishery opening period is 3,000 pounds per valid designated sea urchin harvest license. It is permissible for all or any fraction of the maximum 3,000 pound total to be harvested during any legal harvest date within any legal harvest area so long as the cumulative total for the fishery week does not exceed the maximum. Each fishery week begins Monday and ends Sunday.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-07300T Sea urchins. (15-436)

**WSR 16-03-073**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-07—Filed January 19, 2016, 3:46 p.m., effective January 19, 2016, 3:46 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for razor clams.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-36000H; and amending WAC 220-56-360.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1 and 4. Washington department of health has certified clams from this beach to be safe for human consumption. There is insufficient time to adopt permanent rules.

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 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: January 19, 2016.

J. W. Unsworth  
 Director

NEW SECTION

**WAC 220-56-36000H Razor clams—Areas and seasons.** Notwithstanding the provisions of WAC 220-56-360, it is unlawful to dig for or possess razor clams taken for personal use from any beach in Razor Clam Areas 1, 2, 3, 4, 5, 6 or 7 except as provided for in this section:

(1) Effective 12:01 p.m. January 21 through 11:59 p.m. January 27, 2016, razor clam digging is permissible in Razor Clam Area 1. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(2) Effective 12:01 p.m. January 22 through 11:59 p.m. January 22, 2016, razor clam digging is permissible in Razor

Clam Area 4. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(3) It is unlawful to dig for razor clams at any time in the Long Beach or Copalis Beach Clam sanctuaries defined in WAC 220-56-372.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. January 28, 2016:

WAC 220-56-36000H Razor clams—Areas and seasons.

**WSR 16-03-092**  
**EMERGENCY RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed January 20, 2016, 11:52 a.m., effective January 20, 2016, 11:52 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Immediate rule adoption is required to allow work based learning provided by a state-approved skill center program to be claimed for enhanced skill center vocational funding.

Citation of Existing Rules Affected by this Order: Amending WAC 392-121-124.

Statutory Authority for Adoption: RCW 28A.150.305.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: For the 2015-16 school year, skill center programs will be offering work based learning opportunities for their students. With this rule adoption, skill centers will be able to report the student's enrollment for enhanced skill center vocational funding and will not be required to have interdistrict agreements in place to report nonresident students. Nonresident students will be covered by the skill center cooperative agreements with their local districts. The agency has filed notice of its intent to adopt the rule as a permanent rule, and is actively undertaking the appropriate procedures to adopt the rule as a permanent 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 0, Amended 1, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making:

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

Date Adopted: July 7, 2015.

Randy Dorn  
State Superintendent  
of Public Instruction

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

**AMENDATORY SECTION** (Amending WSR 13-02-004 [15-18-078], filed 12/19/12 [8/28/15], effective 1/19/13 [9/28/15])

**WAC 392-121-124 Full-time equivalent enrollment for work based learning.** For work based learning provided pursuant to WAC 392-410-315, a student's full-time equivalent shall be determined as follows:

(1) For cooperative work based learning experience, in accordance with WAC 392-410-315 (1)(g), divide the student's hours of work experience for the month by two hundred; for example: Forty hours of cooperative work experience equals two tenths of a full-time equivalent ( $40 \div 200 = 0.20$ ). For instructional work based learning experience, in accordance with WAC 392-410-315 (1)(f) and 296-125-043(4), divide the student's enrolled hours of work experience for the month by one hundred; for example: Twenty hours of instructional work experience equals two tenths of a full-time equivalent ( $20 \div 100 = 0.20$ ). Enrollment exclusions in WAC 392-121-108 apply to instructional work based learning enrolled hours.

(2) Estimated or scheduled hours of cooperative work based learning experience may be used in determining a student's full-time equivalent on an enrollment count date: Provided, That the combined monthly hours reported for the school year shall not exceed the student's actual hours of cooperative work based learning experience documented on the student's work records and maintained by the school district for audit purposes.

(3) Work based learning provided as part of a state-approved vocational education program qualifies for enhanced vocational funding and may be included in determining a student's vocational full-time equivalent enrollment.

(4) Work based learning provided as part of a state-approved skill center program qualifies for enhanced skill center vocational funding and may be included in determining a student's skill center vocational full-time equivalent enrollment.

(5) No more than three hundred sixty hours of cooperative work based learning may be claimed for funding for each credit a student pursues as reported on the student's transcript. No more than one hundred eighty hours of instructional work based learning may be claimed for funding for each credit a student pursues as reported on the student's transcript.

~~((5))~~ (6) Funding may be claimed only for work based learning hours that occur after the work based learning plan, work based agreement, program orientation and new employee orientation, as defined in WAC 392-410-315, are completed.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.