

Title 388 WAC
SOCIAL AND HEALTH
SERVICES,
DEPARTMENT OF

Chapters

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Chapter 388-01 WAC

DSHS ORGANIZATION/DISCLOSURE OF PUBLIC RECORDS

WAC

388-01-030 What DSHS records are available?

WAC 388-01-030 What DSHS records are available?

(1) DSHS prepares and keeps public records that relate to the programs it administers. All records DSHS uses to conduct business are public records.

DSHS public records may include, documents, audio and video recordings, pictures, e-mail, computer disks and electronic data.

(2) DSHS records are available to the public unless a law exempts them from disclosure. Some DSHS records contain confidential information that is not available to everyone.

(3) You, or someone authorized to act for you or by you, may have access to confidential records about you that would otherwise be exempt from disclosure to the public.

(4) Upon your request, DSHS may give you records such as rules, policies, indexes, interpretive statements, pamphlets, forms and other publications at cost under WAC 388-01-180 without using the public records disclosure process.

[Statutory Authority: RCW 41.17.020, 41.17.260, and 41.17.300. 03-17-014, § 388-01-030, filed 8/12/03, effective 9/12/03. Statutory Authority: RCW 42.17.250 and 34.05.220. 99-15-065, § 388-01-030, filed 7/19/99, effective 8/19/99.]

Chapter 388-02 WAC

DSHS HEARING RULES
(Formerly chapter 388-08 WAC)

WAC

388-02-0215 What is the authority of the ALJ?

WAC 388-02-0215 What is the authority of the ALJ?

(1) The ALJ must hear and decide the issues de novo (anew) based on what is presented during the hearing.

(2) As needed, the ALJ may:

(a) Determine the order for presenting evidence;

(b) Issue subpoenas or orders directing witnesses to appear or bring documents;

(c) Rule on objections, motions, and other procedural matters;

(d) Rule on an offer of proof made to admit evidence;

(e) Admit relevant evidence;

(f) Impartially question witnesses to develop the record;

(g) Call additional witnesses and request exhibits to complete the record;

(h) Give the parties an opportunity to cross-examine witnesses or present more evidence against the witnesses or exhibits;

(i) Keep order during the hearing;

(j) Allow or require oral or written argument and set the deadlines for the parties to submit argument or evidence;

(k) Permit others to attend, photograph or electronically record hearings, but may place conditions to preserve confidentiality or prevent disruption;

(l) Allow a party to waive rights given by chapters 34.05 RCW or 388-02 WAC, unless another law prevents it;

- (m) Decide whether a party has a right to a hearing;
 - (n) Issue protective orders;
 - (o) Consider granting a stay if authorized by law or DSHS rule; and
 - (p) Take any other action necessary and authorized under these or other rules.
- (3) The ALJ administers oaths or affirmations and takes testimony.
- (4) The ALJ enters an initial order in those cases where the parties may request review of an initial order by a review judge. Cases where the parties may request review of an initial order by a review judge are those relating to:
- (a) Adult family home licenses under chapter 388-76 WAC;
 - (b) Boarding home licenses under chapter 388-78A WAC;
 - (c) Resident protection program findings under WAC 388-97-077;
 - (d) Nursing home licenses under WAC 388-97-550 through 388-97-695;
 - (e) Placement of personal aides providing self-directed care on a state registry under RCW 74.39A.050(9) and WAC 388-71-0150 and 388-71-0155;
 - (f) Where the client has requested a hearing under WAC 388-71-0560, the termination of a provider for placing clients in imminent jeopardy under RCW 74.39A.095(7) and WAC 388-71-0551;
 - (g) Where the client has requested a hearing under WAC 388-71-0560, the termination of a provider due to inadequate performance or inability to deliver quality care under RCW 74.39A.095(7) and WAC 388-71-0540 and 388-71-0551;
 - (h) Where the client has requested a hearing under WAC 388-71-0560, the denial of a contract to a provider due to inability of the provider to appropriately meet the care needs of clients under RCW 74.39A.095(8) and WAC 388-71-0546;
 - (i) Where the client has requested a hearing under WAC 388-71-0560, the denial or termination of a contract and subsequent denial of payment to a provider due to a disqualifying crime or lack of character, competence, or suitability to maintain the health, safety, and well-being of clients under RCW 43.20A.710(5) and WAC 388-71-0540 (3) through (5);
 - (j) Social service eligibility under WAC 388-71-0400 through 388-71-0480, 388-71-0202, and 388-71-0203, and under chapter 388-72A WAC, except for WAC 388-72A-0055(2), 388-72A-0060(1), and 388-72A-0065 (4) through (6);
 - (k) Domestic violence perpetrator treatment program certification under chapter 388-60 WAC;
 - (l) Licensing or certification of child foster care homes, programs, facilities, and agencies under chapter 74.15 RCW and chapters 388-140, 388-145, 388-148 and 388-160 WAC;
 - (m) Child protective services findings of abuse and neglect under RCW 26.44.125 and chapter 388-15 WAC;
 - (n) Adoption support under WAC 388-27-0120 through 388-27-0390, for which a hearing has been held under WAC 388-27-0365;
 - (o) Child day care licenses under chapter 74.15 RCW and chapters 388-150, 388-151, and 388-155 WAC;
 - (p) Background checks of protective payees under WAC 388-460-0025, for which a hearing has been held under WAC 388-460-0070;
 - (q) Background checks of child care providers and other persons under WAC 388-290-0143, for which a hearing has been held under WAC 388-290-0260 as part of the working connections child care program;
 - (r) Background checks of persons acting in the place of a parent under WAC 388-454-0006, for which a hearing has been held under WAC 388-472-0005 (1)(j);
 - (s) Claims of good cause for not cooperating with the division of child support under WAC 388-422-0020;
 - (t) Parent address disclosure under WAC 388-14A-2114 through 388-14A-2140;
 - (u) Chemical dependency treatment provider certification under chapter 388-805 WAC;
 - (v) Community residential services and support certification, for which a hearing has been held under WAC 388-820-920;
 - (w) Denial or termination of eligibility for services under WAC 388-825-030 and 388-825-035, for which a hearing has been held under WAC 388-825-120 (1)(a);
 - (x) Development or modification of an individual service plan under WAC 388-825-050, for which a hearing has been held under WAC 388-825-120 (1)(b);
 - (y) Authorization, denial, reduction, or termination of services under WAC 388-825-055, for which a hearing has been held under WAC 388-825-120 (1)(c);
 - (z) Licensed community facilities under RCW 74.15.210 and WAC 388-730-0090;
 - (aa) Community mental health and involuntary treatment program licenses under WAC 388-865-0480;
 - (bb) Medical, dental, or transportation services, for which a hearing has been held under WAC 388-526-2610;
 - (cc) Medical provider overpayments, for which a hearing has been held under WAC 388-502-0230(5) or 388-502-0240(17); or
 - (dd) Background checks under WAC 388-06-0110 that result in denial of authorization for unsupervised access to children or to individuals with developmental disabilities, for which a hearing has been held under WAC 388-06-0240(1); or
 - (ee) Cases for which a right to a hearing existed, if the request for a hearing was received by OAH or DSHS on or before November 14, 2002, and WAC 388-740-0060 and WAC 388-891-0275 did not apply.
- (5) The ALJ makes the final decision and enters the final order in all cases except those cases set forth in subsection (4) of this section.
- (6) A review judge has the same authority as an ALJ when presiding at a hearing.

[Statutory Authority: RCW 34.05.020 and chapter 34.05 RCW, Parts IV and V. 03-13-046, § 388-02-0215, filed 6/11/03, effective 7/12/03. Statutory Authority: RCW 34.05.020, chapter 34.05 RCW, Parts IV and V, 2002 c 371, § 211. 02-21-061, § 388-02-0215, filed 10/15/02, effective 11/15/02. Statutory Authority: RCW 34.05.020. 00-18-059, § 388-02-0215, filed 9/1/00, effective 10/2/00.]

Chapter 388-14A WAC

DIVISION OF CHILD SUPPORT RULES

WAC

388-14A-1030	What kinds of services can the division of child support provide?
388-14A-2040	Do I have to cooperate with the division of child support in establishing or enforcing child support?
388-14A-2075	What happens if the division of child support determines that I am not cooperating?
388-14A-2135	When might DCS deny a request for address information without going through the notice and hearing process?
388-14A-2150	How much does it cost to get copies of DCS records?
388-14A-2155	Can I appeal a denial of public disclosure by the division of child support?
388-14A-3100	How does the division of child support establish a child support obligation when there is no child support order?
388-14A-3102	When the parents have signed an acknowledgment or affidavit of paternity, which support establishment notice does the division of child support serve on the noncustodial parent?
388-14A-3110	When can a support establishment notice become a final order?
388-14A-3115	The notice and finding of financial responsibility is used to set child support when paternity is not an issue.
388-14A-3120	The notice and finding of parental responsibility is used to set child support when the father's duty of support is based upon an affidavit of paternity which is not a conclusive presumption of paternity.
388-14A-3125	The notice and finding of medical responsibility is used to set a medical support obligation when the custodial parent receiving medical assistance declines full child support enforcement services.
388-14A-3131	What happens if neither parent appears for the hearing?
388-14A-3132	What happens if only one parent appears for the hearing?
388-14A-3133	What happens when the noncustodial parent and the custodial parent both appear for the hearing?
388-14A-3135	Late hearings, or hearing on untimely objections to support establishment notices.
388-14A-3140	What can happen at a hearing on a support establishment notice?
388-14A-3205	How does DCS calculate my income?
388-14A-3300	How does the division of child support require me to make my support payments to the Washington state support registry when my support order says to pay someone else?
388-14A-3315	When DCS serves a notice of support debt or notice of support owed, we notify the custodial parent and/or the payee under the order.
388-14A-3350	Are there any limits on how much back support the division of child support can seek to establish?
388-14A-3370	What legal defenses are available to a noncustodial parent when DCS seeks to enforce a support obligation?
388-14A-3375	What kinds of credits does the division of child support give when establishing or enforcing an administrative support order?
388-14A-3600	The parties may resolve any child support case by entering a consent order or an agreed settlement.
388-14A-3800	Once a support order is entered, can it be changed?
388-14A-3810	Once a child support order is entered how long does the support obligation last?
388-14A-3865	Duties of the administrative law judge when a party requests a temporary support order.
388-14A-3875	What if a party does not agree with a temporary support order?
388-14A-4500	What is the division of child support's license suspension program?
388-14A-4505	The notice of noncompliance and intent to suspend licenses.
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388-14A-4515	How do I avoid having my license suspended for failure to pay child support?
388-14A-4520	Signing a repayment agreement may avoid certification for noncompliance.
388-14A-4525	How to obtain a release of certification for noncompliance.
388-14A-4530	Administrative hearings regarding license suspension are limited in scope.

388-14A-4605	Whose picture can go on the division of child support's DCS most wanted Internet site?
388-14A-5000	How does the division of child support distribute support payments?
388-14A-5008	Can the noncustodial parent prepay support?
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388-14A-6110	When must an ALJ enter an initial order in a DCS hearing proceeding?
388-14A-6115	When must an ALJ enter a final order in a DCS hearing proceeding?
388-14A-6120	What can I do if I do not agree with an initial order or final order entered by an administrative law judge?
388-14A-6125	When does an initial order or final order entered by an ALJ become enforceable?

WAC 388-14A-1030 What kinds of services can the division of child support provide? The services provided by the division of child support include, but are not limited to the following:

- (1) Receiving payments and distributing the payments (see WAC 388-14A-5000);
- (2) Establishing or modifying administrative child support orders (see WAC 388-14A-3100 and 388-14A-3925);
- (3) Enforcing and modifying court orders for child support or maintenance (see WAC 388-14A-3304, 388-14A-3310 and 388-14A-3900);
- (4) Referral to the prosecuting attorney for establishment of paternity;
- (5) Providing locate services as provided in WAC 388-14A-1035;
- (6) Referral for welfare to work services in conjunction with other parts of DSHS, the employment security department (ESD) and private contractors;
- (7) Cooperation with the IV-D agencies of other states and Indian tribes (see WAC 388-14A-1060); and
- (8) Providing any other services allowed by the state plan and applicable state and federal law.

[Statutory Authority: RCW 74.08.090, 34.05.310 (4)(d) and 45 C.F.R. 303.106. 03-20-072, § 388-14A-1030, filed 9/29/03, effective 10/30/03. Statutory Authority: RCW 74.08.090, 45 CFR 303.106. 01-03-089, § 388-14A-1030, filed 1/17/01, effective 2/17/01. Formerly WAC 388-14-205.]

WAC 388-14A-2040 Do I have to cooperate with the division of child support in establishing or enforcing child support? (1) You must cooperate with the division of child support (DCS) when you receive public assistance unless the department determines there is good cause not to cooperate under WAC 388-422-0020. For purposes of this section and WAC 388-14A-2075, cooperating with DCS includes cooperating with those acting on behalf of DCS (its "representatives"), namely the prosecuting attorney, the attorney general, or a private attorney paid per RCW 74.20.350. In cases where paternity is at issue, the custodial parent (CP) of a child who receives assistance must cooperate whether or not the parent receives assistance.

- (2) Cooperation means giving information, attending interviews, attending hearings, or taking actions to help DCS establish and collect child support. This information and assistance is necessary for DCS to:
 - (a) Identify and locate the responsible parent;
 - (b) Establish the paternity of the child(ren) on assistance in the CP's care; and

(c) Establish or collect support payments or resources such as property due the CP or the child(ren).

(3) The CP must also cooperate by sending to DCS any child support received by the CP while on assistance, as required by RCW 74.20A.275 (3)(c). If the client keeps these payments, known as retained support, the CP must sign an agreement to repay under RCW 74.20A.275, and the CP must honor that agreement.

[Statutory Authority: RCW 74.08.090, 34.05.310 (4)(d), 26.23.035, 74.20A.310, 03-20-072, § 388-14A-2040, filed 9/29/03, effective 10/30/03. Statutory Authority: RCW 74.08.090, 26.23.035, 74.20A.310, 01-03-089, § 388-14A-2040, filed 1/17/01, effective 2/17/01. Formerly WAC 388-14-201.]

WAC 388-14A-2075 What happens if the division of child support determines that I am not cooperating? (1) When the division of child support (DCS) or its representatives believe you are not cooperating as defined in WAC 388-14A-2040, DCS sends a notice to you and to the community service office (CSO) stating the noncooperation and explaining the following:

(a) How the noncooperation was determined, including what actions were required;

(b) What actions you must take to resume cooperation;

(c) That this notice was sent to the CSO;

(d) That you may contact the CSO immediately if you disagree with the notice, need help in order to cooperate, or believe the actions required are unreasonable; and

(e) That the CSO may sanction you by either reducing or terminating the grant.

(2) The CSO sends a notice of planned action to you as provided by WAC 388-472-0005 (1)(i).

(3) Either the notice of alleged noncooperation or the CSO's notice of planned action may serve as the basis for a sanction.

(4) If the noncooperation was due to missing an interview without reasonable excuse, you will be considered to be cooperating when you appear for a rescheduled interview and either provide information or attest to the lack of information. DCS or its representative must reschedule the interview within seven business days from the date you contact them to reschedule an interview.

(5) If the noncooperation was due to not taking a required action, cooperation resumes when you take that action.

(6) There is no hearing right for a notice of noncooperation, but you can request a hearing on the sanction imposed by the CSO.

[Statutory Authority: RCW 74.08.090, 34.05.310 (4)(d), 26.23.035, 74.20A.310, 03-20-072, § 388-14A-2075, filed 9/29/03, effective 10/30/03. Statutory Authority: RCW 74.08.090, 26.23.035, 74.20A.310, 01-03-089, § 388-14A-2075, filed 1/17/01, effective 2/17/01. Formerly WAC 388-14-202.]

WAC 388-14A-2135 When might DCS deny a request for address information without going through the notice and hearing process? (1) The division of child support (DCS) denies a request for address information without going through the notice process under WAC 388-14A-2114 if:

(a) The department has determined, under WAC 388-422-0020, that the custodial parent (CP) has good cause for refusing to cooperate;

(b) The order, on which the request is based, restricts or limits the address requesting party's right to contact or visit the other party or the child by imposing conditions to protect the party or the child from harm;

(c) An order has been entered finding that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of the information; or

(d) DCS has information which gives DCS reason to believe that release of the address may result in physical or emotional harm to the other party or to the children.

(2) Whenever DCS denies a request for disclosure under subsection (1) of this section, DCS notifies the nonrequesting party that disclosure of the address was requested and was denied.

[Statutory Authority: RCW 74.08.090, 34.05.310 (4)(d) and 26.23.120, 03-20-072, § 388-14A-2135, filed 9/29/03, effective 10/30/03. Statutory Authority: RCW 26.23.120, 74.08.090, 02-07-091, § 388-14A-2135, filed 3/19/02, effective 4/19/02.]

WAC 388-14A-2150 How much does it cost to get copies of DCS records? (1) WAC 388-01-080 authorizes the division of child support (DCS) to charge copying and postage costs for responses to public disclosure.

(2) DCS charges fifteen cents per page for copies.

(3) DCS may waive copy fees in appropriate circumstances.

[Statutory Authority: RCW 74.08.090, 34.05.310 (4)(d), 03-20-072, § 388-14A-2150, filed 9/29/03, effective 10/30/03. Statutory Authority: RCW 74.08.090, 01-03-089, § 388-14A-2150, filed 1/17/01, effective 2/17/01. Formerly WAC 388-14-030.]

WAC 388-14A-2155 Can I appeal a denial of public disclosure by the division of child support? (1) If the division of child support (DCS) denies a request for public disclosure, you may file an appeal with DCS Public Disclosure Appeals, P.O. Box 9162, Olympia WA 98507-9162.

(2) If DCS denies your appeal, you may pursue the other options listed in WAC 388-01-130.

[Statutory Authority: RCW 74.08.090, 34.05.310 (4)(d), 03-20-072, § 388-14A-2155, filed 9/29/03, effective 10/30/03. Statutory Authority: RCW 74.08.090, 01-03-089, § 388-14A-2155, filed 1/17/01, effective 2/17/01. Formerly WAC 388-14-030.]

WAC 388-14A-3100 How does the division of child support establish a child support obligation when there is no child support order? (1) When there is no order setting the amount of child support a noncustodial parent (NCP) should pay, the division of child support (DCS) serves a support establishment notice on the NCP and the custodial parent. A support establishment notice is an administrative notice that can become an enforceable order for support if nobody requests a hearing on the notice.

(2) DCS may serve a support establishment notice when there is no order that:

(a) Establishes the noncustodial parent's support obligation for the child(ren) named in the notice; or

(b) Specifically relieves the noncustodial parent of a support obligation for the child(ren) named in the notice.

(3) Whether support is based upon an administrative order or a court order, DCS may serve a support establishment notice when the parties to a paternity order subsequently marry each other and then separate, or parties to a decree of dissolution remarry each other and then separate. The remaining provisions of the paternity order or the decree of dissolution, including provisions establishing paternity, remain in effect.

(4) Depending on the legal relationship between the NCP and the child for whom support is being set, DCS serves one of the following support establishment notices:

(a) Notice and finding of financial responsibility (NFFR), see WAC 388-14A-3115. This notice is used when the NCP is either the mother or the legal father of the child. WAC 388-14A-3102 describes when DCS uses a NFFR to set the support obligation of a father who has signed an acknowledgment or affidavit of paternity.

(b) Notice and finding of parental responsibility (NFPR), see WAC 388-14A-3120. This notice is used when the NCP was not married to the mother but has filed an affidavit or acknowledgment of paternity. WAC 388-14A-3102 describes when DCS uses a NFPR to set the support obligation of a father who has signed an acknowledgment or affidavit of paternity.

(c) Notice and finding of medical responsibility (NFMR), see WAC 388-14A-3125. This notice is used when DCS seeks to set only a medical support obligation instead of a monetary child support obligation.

[Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.056, 74.20A.310, 26.26.315, 26.26.320, 26.26.330, 26.26.335, 74.20A.055, 2002 c 302, and 2002 c 199. 03-17-013, § 388-14A-3100, filed 8/12/03, effective 9/12/03. Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.055, 74.20A.056, 00-15-016 and 00-20-022, § 388-14A-3100, filed 7/10/00 and 9/25/00, effective 11/6/00.]

WAC 388-14A-3102 When the parents have signed an acknowledgment or affidavit of paternity, which support establishment notice does the division of child support serve on the noncustodial parent? (1) When the parents of a child are not married, they may sign an affidavit of paternity, also called an acknowledgment of paternity. The legal effect of the affidavit or acknowledgment depends on when it is filed, in what state it is filed, and whether both parents were over age eighteen when the affidavit was signed.

(2) For affidavits or acknowledgments filed on or before August 14, 1997 with the center for health statistics in the state of Washington, the division of child support (DCS) serves a notice and finding of parental responsibility (NFPR). See WAC 388-14A-3120.

(3) For affidavits or acknowledgments filed after August 14, 1997 with the center for health statistics in the state of Washington, DCS serves a notice and finding of financial responsibility (NFFR) under WAC 388-14A-3115, because the affidavit or acknowledgment has become a conclusive presumption of paternity under RCW 26.26.320.

(4) For acknowledgments or affidavits filed with the vital records agency of another state, DCS determines whether to serve a NFFR or NFPR depending on the laws of the state where the affidavit is filed.

(5) DCS relies on the acknowledgment or affidavit, even if the mother or father were not yet eighteen years of age at

the time they signed or filed the acknowledgment or affidavit, as provided in RCW 26.26.315(4).

(6) If the mother was married at the time of the child's birth, but not to the man acknowledging paternity, the man to whom she was married must also have signed and filed a denial of paternity within ten days of the child's birth.

(7) If the acknowledgment or affidavit is legally deficient in any way, DCS may refer the case for paternity establishment in the superior court.

(8) If the mother is the noncustodial parent, DCS serves a NFFR.

[Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.056, 74.20A.310, 26.26.315, 26.26.320, 26.26.330, 26.26.335, 74.20A.055, 2002 c 302, and 2002 c 199. 03-17-013, § 388-14A-3102, filed 8/12/03, effective 9/12/03. Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.055, 74.20A.056, 00-15-016 and 00-20-022, § 388-14A-3102, filed 7/10/00 and 9/25/00, effective 11/6/00.]

WAC 388-14A-3110 When can a support establishment notice become a final order? (1) The notice and finding of financial responsibility (NFFR), notice and finding of parental responsibility (NFPR), or notice and finding of medical responsibility (NFMR) becomes a final, enforceable order if neither the custodial parent or the noncustodial parent objects and requests a timely hearing on the notice. An objection is also called a hearing request.

(2) If a timely objection is filed, the division of child support (DCS) cannot enforce the terms of the notice until a final order as defined in this section is entered.

(3) To be timely, the noncustodial parent must object within the following time limits:

(a) Within twenty days of service, if the noncustodial parent was served in Washington state.

(b) Within sixty days of service, if the noncustodial parent was served outside of Washington state.

(4) To be timely, the custodial parent must object within twenty days of service.

(5) An objection to a support establishment notice is a request for hearing on the notice.

(6) The effective date of the hearing request is the date the division of child support (DCS) receives the request for hearing.

(7) When an NFPR is served, the order will not become a final order if either parent requests genetic testing under WAC 388-14A-3120(14) within the following time limits:

(a) The noncustodial parent must request genetic testing within twenty days of service, if the noncustodial parent was served in Washington state.

(b) The noncustodial parent must request genetic testing within sixty days of service, if the noncustodial parent was served outside of Washington state.

(c) The custodial parent must request genetic testing within twenty days of service of the notice.

(8) The noncustodial parent or custodial parent must make the hearing request or request for genetic testing, either in writing or orally, at any DCS office. See WAC 388-14A-6100 regarding oral requests for hearing.

(9) After a timely request for hearing, the final order is one of the following, whichever occurs latest:

(a) An agreed settlement or consent order under WAC 388-14A-3600;

(b) An initial decision as defined in WAC 388-14A-6105 and further described in WAC 388-14A-6110, for which twenty-one days have passed and no party has filed a petition for review (this includes an order of default if neither party appears for hearing); or

(c) A final order as defined in WAC 388-14A-6105 and further described in WAC 388-14A-6115; or

(d) A review decision.

[Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.056, 74.20A.310, 26.26.315, 26.26.320, 26.26.330, 26.26.335, 74.20A.055, 2002 c 302, and 2002 c 199. 03-17-013, § 388-14A-3110, filed 8/12/03, effective 9/12/03. Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.055, 74.20A.056. 00-15-016 and 00-20-022, § 388-14A-3110, filed 7/10/00 and 9/25/00, effective 11/6/00. Formerly WAC 388-11-210.]

WAC 388-14A-3115 The notice and finding of financial responsibility is used to set child support when paternity is not an issue. (1) A notice and finding of financial responsibility (NFFR) is an administrative notice served by the division of child support (DCS) that can become an enforceable order for support, pursuant to RCW 74.20A.055.

(2) The NFFR:

(a) Advises the noncustodial parent and the custodial parent (who can be either a parent or the physical custodian of the child) of the support obligation for the child or children named in the notice. The NFFR fully and fairly advises the parents of their rights and responsibilities under the NFFR.

(b) Includes the information required by RCW 26.23.050 and 74.20A.055.

(c) Includes the noncustodial parent's health insurance obligation, as required by RCW 26.18.170 and 26.23.050.

(d) May include an obligation to provide support for day care or special child-rearing expenses, pursuant to chapter 26.19 RCW.

(e) Warns the noncustodial parent and the custodial parent that at an administrative hearing, the administrative law judge (ALJ) may set the support obligation in an amount higher or lower than, or different from, the amount stated in the NFFR, if necessary for an accurate support order.

(3) After service of the NFFR, the noncustodial parent and the custodial parent must notify DCS of any change of address, or of any changes that may affect the support obligation.

(4) The noncustodial parent must make all support payments to the Washington state support registry after service of the NFFR. DCS does not give the NCP credit for payments made to any other party after service of a NFFR, except as provided by WAC 388-14A-3375.

(5) DCS may take immediate wage withholding action and enforcement action without further notice under chapters 26.18, 26.23, and 74.20A RCW when the NFFR is a final order. WAC 388-14A-3110 describes when the notice becomes a final order.

(6) In most cases, a child support obligation continues until the child reaches the age of eighteen. WAC 388-14A-3810 describes when the obligation under the NFFR can end sooner or later than age eighteen.

(7) If paternity has been established by an affidavit or acknowledgment of paternity, DCS attaches a copy of the acknowledgment, affidavit, or certificate of birth record information to the notice. A party wishing to challenge the

acknowledgment or denial of paternity may only bring an action in court to rescind or challenge the acknowledgment or denial of paternity under RCW 26.26.330 and 26.26.335.

(8) If the parents filed a paternity affidavit or acknowledgment of paternity in another state, and by that state's law paternity is therefore conclusively established, DCS may serve a NFFR to establish a support obligation.

(9) A hearing on a NFFR is for the limited purpose of resolving the NCP's accrued support debt and current support obligation. The NCP has the burden of proving any defenses to liability.

[Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.056, 74.20A.310, 26.26.315, 26.26.320, 26.26.330, 26.26.335, 74.20A.055, 2002 c 302, and 2002 c 199. 03-17-013, § 388-14A-3115, filed 8/12/03, effective 9/12/03. Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.055, 74.20A.056. 00-15-016 and 00-20-022, § 388-14A-3115, filed 7/10/00 and 9/25/00, effective 11/6/00. Formerly WAC 388-11-285.]

WAC 388-14A-3120 The notice and finding of parental responsibility is used to set child support when the father's duty of support is based upon an affidavit of paternity which is not a conclusive presumption of paternity. (1) A notice and finding of parental responsibility (NFPR) is an administrative notice served by the division of child support (DCS) that can become an enforceable order for support, pursuant to RCW 74.20A.056.

(2) The NFPR differs from a notice and finding of financial responsibility (NFFR) (see WAC 388-14A-3115) because the parties may request genetic testing to contest paternity after being served with a NFPR.

(3) DCS serves a NFPR when:

(a) An affidavit acknowledging paternity is on file with the center for health statistics and was filed before August 14, 1997; or

(b) An affidavit acknowledging paternity is on file with the vital records agency of another state and the laws of that state allow the parents to withdraw the affidavit or challenge paternity.

(4) DCS attaches a copy of the acknowledgment of paternity or certification of birth record information to the NFPR.

(5) The NFPR advises the noncustodial parent and the custodial parent (who is either the mother or the physical custodian of the child) of the support obligation for the child or children named in the notice. The NFPR fully and fairly advises the parents of their rights and responsibilities under the NFPR. The NFPR warns the noncustodial parent and the custodial parent that at an administrative hearing on the notice, the administrative law judge (ALJ) may set the support obligation in an amount higher or lower than, or different from, the amount stated in the NFPR, if necessary for an accurate support order.

(6) The NFPR includes the information required by RCW 26.23.050, 74.20A.055, and 74.20A.056.

(7) The NFPR includes the noncustodial parent's health insurance obligation, pursuant to RCW 26.18.170 and 26.23.050.

(8) The NFPR may include an obligation to provide support for day care expenses or special child-rearing expenses, pursuant to chapter 26.19 RCW.

(9) DCS may not assess an accrued support debt for a period longer than five years before the NFPR is served. This limitation does not apply to the extent that the noncustodial parent hid or left the state of Washington for the purpose of avoiding service.

(10) After service of the NFPR, the noncustodial parent and the custodial parent must notify DCS of any change of address, or of any changes that may affect the support obligation.

(11) The noncustodial parent must make all support payments to the Washington state support registry after service of the NFPR. DCS does not give the NCP credit for payments made to any other party after service of the NFPR, except as provided by 388-14A-3375.

(12) DCS may take immediate wage withholding action and enforcement action without further notice under chapters 26.18, 26.23, and 74.20A RCW when the NFPR is a final order. See WAC 388-14A-3110 for when the notice becomes a final order.

(13) In most cases, a child support obligation continues until the child reaches the age of eighteen. WAC 388-14A-3810 describes when the obligation under the NFPR can end sooner or later than age eighteen.

(14) Either the noncustodial parent, or the mother, if she is also the custodial parent, may request genetic tests. A mother who is not the custodial parent may at any time request that DCS refer the case for paternity establishment in the superior court.

(15) DCS does not stop enforcement of the order unless DCS receives a timely request for hearing or a timely request for genetic tests. See WAC 388-14A-3110 for time limits. DCS does not refund any money collected under the notice if the noncustodial parent is later:

- (a) Excluded from being the father by genetic tests; or
- (b) Found not to be the father by a court of competent jurisdiction.

(16) If the noncustodial parent requested genetic tests and was not excluded as the father, he may request within twenty days from the date of service of the genetic tests in Washington, or sixty days from the date of service of the genetic tests outside of Washington:

- (a) A hearing on the NFPR.
- (b) That DCS initiate a parentage action in superior court under chapter 26.26 RCW.

(17) If the noncustodial parent was not excluded as the father, the mother, if she is also the custodial parent, may within twenty days of the date of service of the genetic tests request:

- (a) A hearing on the NFPR; or
- (b) That DCS initiate a parentage action in superior court under chapter 26.26 RCW.

(18) If the NCP is excluded by genetic testing, DCS may refer the case for paternity establishment in the superior court.

(19) A hearing on a NFPR is for the limited purpose of resolving the accrued support debt, current support obligation and reimbursement to DCS for paternity-related costs. The NCP has the burden of proving any defenses to liability.

[Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.056, 74.20A.310, 26.26.315, 26.26.320, 26.26.330, 26.26.335, 74.20A.055, 2002 c 302, and 2002 c 199. 03-17-013, § 388-14A-3120, filed 8/12/03, effective

9/12/03. Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.055, 74.20A.056. 00-15-016 and 00-20-022, § 388-14A-3120, filed 7/10/00 and 9/25/00, effective 11/6/00. Formerly WAC 388-11-290.]

WAC 388-14A-3125 The notice and finding of medical responsibility is used to set a medical support obligation when the custodial parent receiving medical assistance declines full child support enforcement services. (1) A notice and finding of medical responsibility (NFMR) is an administrative notice served by the division of child support (DCS) that can become an enforceable order for support pursuant to chapter 74.20A RCW to establish and enforce a health insurance obligation.

(2) DCS may serve a NFMR when:

- (a) The custodial parent (who is either a parent or the physical custodian of the child) or a dependent child receives or is certified eligible to receive medical assistance and is not receiving cash grant public assistance under 74.12 RCW; and
- (b) The custodial parent has requested medical support enforcement services only and has asked DCS in writing not to collect monetary child support.

(3) The NFMR advises the NCP and the CP of the medical support obligation for the children named in the notice. The NFMR fully and fairly advises the parties of their rights and responsibilities under the NFMR.

(4) The NFMR warns the noncustodial parent and the custodial parent that at an administrative hearing on the notice, the administrative law judge (ALJ) may set the support obligation in an amount higher or lower than, or different from, the amount stated in the NFMR, if necessary for an accurate support order.

(5) The NFMR includes:

- (a) The information required by RCW 26.23.050;
- (b) The noncustodial parent's health insurance obligation, pursuant to RCW 26.18.170;
- (c) The maximum premium amount the noncustodial parent must pay; and
- (d) The income basis used to calculate the maximum premium amount, pursuant to WAC 388-14A-3200.

(6) The income basis for an obligation established by DCS for a NFMR is not binding on any party in any later action to establish a cash child support obligation.

(7) After service of the NFMR, the noncustodial parent (NCP) and the custodial parent must notify DCS of any change of address, or of any changes that may affect the support obligation.

(8) DCS may take enforcement action under RCW 26.18.170 and chapter 388-14A WAC without further notice when the NFMR is a final order. See WAC 388-14A-3110 for how a notice becomes a final order.

(9) In most cases, a child support obligation continues until the child reaches the age of eighteen. WAC 388-14A-3810 describes when the obligation under the NFMR can end sooner or later than age eighteen.

(10) If the custodial parent applies for full enforcement services while a hearing on a NFMR is pending, DCS may, at any time before the hearing record is closed, convert the hearing to a hearing on a notice and finding of financial responsibility (NFFR) under WAC 388-14A-3115 or a notice and finding of parental responsibility (NFPR) under WAC 388-14A-3120. To convert the hearing, DCS serves a NFFR or

NFPR on the parents and files a copy with the administrative law judge (ALJ). The ALJ may grant a continuance if a party requests additional time to respond to the claim for monetary child support.

(11) In a NFMR hearing, the ALJ must determine the:

- (a) Basic support obligation, without deviations; and
- (b) Maximum premium amount under chapter 26.19 RCW .

(12) A hearing on a NFMR is for the limited purpose of resolving the NCP's medical support responsibility. The NCP has the burden of proving defenses to liability.

[Statutory Authority: RCW 74.08.090, 34.05.310 (4)(d), 34.05.220(1), 74.20A.055, 74.20A.056, 03-20-072, § 388-14A-3125, filed 9/29/03, effective 10/30/03. Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.055, 74.20A.056, 00-15-016 and 00-20-022, § 388-14A-3125, filed 7/10/00 and 9/25/00, effective 11/6/00. Formerly WAC 388-11-215 and 388-11-295.]

WAC 388-14A-3131 What happens if neither parent appears for the hearing? (1) If neither parent appears at the scheduled hearing after being sent a notice of hearing, the administrative law judge (ALJ) enters an order on default, declaring the support establishment notice's claim for support to be final and subject to collection action. See WAC 388-14A-6110 and 388-14A-6115 to determine whether the ALJ issues an initial order or a final order.

(2) As provided in WAC 388-14A-6125, an initial order on default is subject to collection action on the twenty-second day after the order was mailed by the office of administrative hearings, and a final default order is enforceable immediately upon entry.

(3) A parent that did not appear may petition to vacate the default order pursuant to WAC 388-14A-6150.

(a) If the ALJ vacates the order of default, the ALJ then conducts a full hearing on the merits of the NFFR, NFPR or NFMR. All parties may participate in the hearing.

(b) If the parent who did not appear at the hearing is unsuccessful in the motion to vacate the default order, the ALJ may treat the petition as a petition to modify the support order.

[Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.056, 74.20A.310, 26.26.315, 26.26.320, 26.26.330, 26.26.335, 74.20A.055, 2002 c 302, and 2002 c 199, 03-17-013, § 388-14A-3131, filed 8/12/03, effective 9/12/03. Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.055, 74.20A.056, 01-24-081, § 388-14A-3131, filed 12/3/01, effective 1/3/02; 00-15-016 and 00-20-022, § 388-14A-3131, filed 7/10/00 and 9/25/00, effective 11/6/00. Formerly WAC 388-11-400 and 388-11-425.]

WAC 388-14A-3132 What happens if only one parent appears for the hearing? (1) If one parent appears at the hearing, but the other parent fails to appear after being sent a notice of hearing, the administrative law judge (ALJ) enters an order of default against the parent that did not appear. The hearing proceeds as described in WAC 388-14A-3140. See WAC 388-14A-6110 and 388-14A-6115 to determine whether the ALJ issues an initial order or a final order.

(2) The division of child support (DCS) and the parent that did appear may enter a consent order, but not an agreed settlement. The obligation in the consent order may be higher or lower, or different from, the terms set forth in the notice, without further notice to the nonappearing parent, if necessary for an accurate support order. The terms of the consent

order become final when the order of default to the parent that did not appear becomes final, as provided in WAC 388-14A-6125.

(3) DCS and the parent that did appear may proceed to hearing. The ALJ may enter an initial decision setting an obligation which is higher or lower, or different from, the terms set forth in the notice, without further notice to the nonappearing parent, if necessary for an accurate support order. See WAC 388-14A-6110 and 388-14A-6115 to determine whether the ALJ issues an initial order or a final order.

(4) The parent that did not appear may petition to vacate the order of default pursuant to WAC 388-14A-6150.

(5) If the ALJ vacates the order of default, the ALJ then conducts a full hearing on the merits of the notice and finding of financial responsibility (NFFR), notice and finding of parental responsibility (NFPR) or notice and finding of medical responsibility (NFMR). All parties may participate in the hearing.

(6) If the parent who did not appear at the hearing is unsuccessful in the motion to vacate the default order, the ALJ may treat the petition as a petition to modify the support order.

[Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.056, 74.20A.310, 26.26.315, 26.26.320, 26.26.330, 26.26.335, 74.20A.055, 2002 c 302, and 2002 c 199, 03-17-013, § 388-14A-3132, filed 8/12/03, effective 9/12/03. Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.055, 74.20A.056, 01-24-081, § 388-14A-3132, filed 12/3/01, effective 1/3/02; 00-15-016 and 00-20-022, § 388-14A-3132, filed 7/10/00 and 9/25/00, effective 11/6/00. Formerly WAC 388-11-400 and 388-11-425.]

WAC 388-14A-3133 What happens when the non-custodial parent and the custodial parent both appear for the hearing? If both parents appear at the hearing:

(1) All parties may enter an agreed settlement or consent order. WAC 388-14A-3600 describes when an agreed settlement or consent order is a final order.

(2) All parties may proceed to hearing, after which the ALJ issues an order. The ALJ may enter an order setting an obligation which is higher or lower, or different from, the terms set forth in the notice, if necessary for an accurate support order. See WAC 388-14A-6110 and 388-14A-6115 to determine whether the ALJ issues an initial order or a final order.

(3) In a hearing under this section, the division of child support (DCS) proceeds first to document the support amount that DCS believes to be correct. Following DCS' presentation, the custodial parent (CP) and the noncustodial parent (NCP) may proceed in turn to show why the DCS position is wrong.

[Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.056, 74.20A.310, 26.26.315, 26.26.320, 26.26.330, 26.26.335, 74.20A.055, 2002 c 302, and 2002 c 199, 03-17-013, § 388-14A-3133, filed 8/12/03, effective 9/12/03. Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.055, 74.20A.056, 00-15-016 and 00-20-022, § 388-14A-3133, filed 7/10/00 and 9/25/00, effective 11/6/00. Formerly WAC 388-11-400 and 388-11-425.]

WAC 388-14A-3135 Late hearings, or hearing on untimely objections to support establishment notices. (1) For orders established before August 30, 1997, if the noncustodial parent did not timely object to the notice and finding of financial responsibility (NFFR), notice and finding of parental responsibility (NFPR), or notice and finding of medical

responsibility (NFMR), only the noncustodial parent may petition for a late hearing, pursuant to WAC 388-14A-3500.

(2) For orders established after August 30, 1997, if neither parent timely objected to the NFFR, NFPR, or NFMR, either the noncustodial parent or the custodial parent may petition for a late hearing, pursuant to WAC 388-14A-3500. See WAC 388-14A-3110 for the time limits for a timely hearing request.

(3) The division of child support (DCS) continues to enforce the order even if a late request for hearing is filed.

(4) If DCS receives the late hearing request within one year of the date of service of the notice, the parent requesting the hearing is not required to show good cause to have a hearing on the merits of the notice.

(5) If DCS receives the late hearing request more than a year after the date of service of the notice, the parent requesting the hearing must show good cause why the hearing request was not timely. WAC 388-14A-1020 contains the definition of good cause.

[Statutory Authority: RCW 74.08.090, 34.05.310 (4)(d), 34.05.220(1), 74.20A.055, 74.20A.056. 03-20-072, § 388-14A-3135, filed 9/29/03, effective 10/30/03. Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.055, 74.20A.056. 00-15-016 and 00-20-022, § 388-14A-3135, filed 7/10/00 and 9/25/00, effective 11/6/00. Formerly WAC 388-11-400 and 388-11-425.]

WAC 388-14A-3140 What can happen at a hearing on a support establishment notice? (1) When a parent requests a hearing on a notice and finding of financial responsibility (NFFR), notice and finding of parental responsibility (NFPR), or notice and finding of medical responsibility (NFMR), the hearing is limited to resolving the accrued support debt, current support and future support obligation.

(2) The noncustodial parent has the burden of proving any defenses to liability. See WAC 388-14A-3370.

(3) Both the NCP and the custodial parent (CP) must show cause why the terms in the NFFR, NFPR, or NFMR are incorrect.

(4) The administrative law judge (ALJ) or review judge has authority to enter a support obligation that may be higher or lower than the amounts set forth in the NFFR, NFPR, or NFMR, including the support debt, current support, and the future support obligation. The ALJ or review judge may enter an order that differs from the terms stated in the notice, including different debt periods, if the obligation is supported by credible evidence presented by any party at the hearing, without further notice to any nonappearing party, if the ALJ or review judge finds that due process requirements have been met.

(5) The ALJ has no authority to determine custody or visitation issues.

(6) When a party has advised the ALJ that they will participate by telephone, the ALJ attempts to contact that party on the record before beginning the proceeding or rules on a motion. The ALJ may not disclose to the other parties the telephone number or the location of the party appearing by phone.

(7) In certain cases, there is no "custodial parent" because the child or children are in foster care.

(a) If the NCP fails to appear for hearing, see WAC 388-14A-3131.

(b) If the NCP appears for hearing, see WAC 388-14A-3133.

(8) In certain cases, there can be two NCPs, called "joint NCPs." This happens when a husband and wife are jointly served a support establishment notice for a common child who is not residing in their home.

(a) If both NCPs fail to appear for hearing, see WAC 388-14A-3131;

(b) If both NCPs appear for hearing, see WAC 388-14A-3133; or

(c) One joint NCP may appear and represent the other joint NCP.

(9) When the CP asserts good cause level B (see WAC 388-422-0020), DCS notifies the CP that they will continue to receive documents, notices and orders. The CP may choose to participate at any time. Failure to appear at hearing results in a default order but does not result in a sanction for noncooperation under WAC 388-14A-2041.

(10) If any party appears for the hearing and elects to proceed, absent the granting of a continuance the ALJ hears the matter and enters an initial decision and order based on the evidence presented. The ALJ includes a party's failure to appear in the initial decision and order as an order of default against that party. The direct appeal rights of the party who failed to appear shall be limited to an appeal on the record made at the hearing.

[Statutory Authority: RCW 74.08.090, 34.05.310 (4)(d), 34.05.220(1), 74.20A.055, 74.20A.056. 03-20-072, § 388-14A-3140, filed 9/29/03, effective 10/30/03. Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.055, 74.20A.056. 00-15-016 and 00-20-022, § 388-14A-3140, filed 7/10/00 and 9/25/00, effective 11/6/00. Formerly WAC 388-11-400 and 388-11-425.]

WAC 388-14A-3205 How does DCS calculate my income? The division of child support (DCS) calculates a parent's income using the best available information, in the following order:

(1) Actual income;

(2) Estimated income, if DCS has:

(a) Incomplete information;

(b) Information based on the prevailing wage in the parent's trade or profession; or

(c) Information that is not current.

(3) Imputed income under RCW 26.19.071(6).

[Statutory Authority: RCW 74.08.090, 34.05.310 (4)(d), 34.05.220(1), 74.20A.055, 74.20A.056. 03-20-072, § 388-14A-3205, filed 9/29/03, effective 10/30/03. Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.055, 74.20A.056. 00-15-016 and 00-20-022, § 388-14A-3205, filed 7/10/00 and 9/25/00, effective 11/6/00. Formerly WAC 388-11-205.]

WAC 388-14A-3300 How does the division of child support require me to make my support payments to the Washington state support registry when my support order says to pay someone else? (1) If a support order requires the noncustodial parent (NCP) to pay support to anywhere other than the Washington state support registry (WSSR), the division of child support (DCS) may serve a notice on the NCP telling the NCP to make all future payments to the WSSR.

(2) DCS may serve a notice of support debt on a noncustodial parent (NCP) as provided in RCW 74.20A.040. See WAC 388-14A-3304.

(3) DCS may serve a notice of support owed on an NCP as provided in RCW 26.23.110. See WAC 388-14A-3310.

(4) When DCS serves a notice of support debt or a notice of support owed, DCS sends a notice to the payee under the order. See WAC 388-14A-3315.

[Statutory Authority: RCW 74.08.090, 34.05.310 (4)(d), 03-20-072, § 388-14A-3300, filed 9/29/03, effective 10/30/03. Statutory Authority: RCW 74.08.090, 01-03-089, § 388-14A-3300, filed 1/17/01, effective 2/17/01.]

WAC 388-14A-3315 When DCS serves a notice of support debt or notice of support owed, we notify the custodial parent and/or the payee under the order. (1) The division of child support (DCS) sends a notice to a payee under a court order or foreign administrative order for support when DCS receives proof of service on the noncustodial parent (NCP) of:

(a) A notice of support owed under WAC 388-14A-3310; or

(b) A notice of support debt under WAC 388-14A-3304.

(2) DCS sends the notice to payee by first class mail to the last known address of the payee and encloses a copy of the notice served on the NCP.

(3) In a notice to payee, DCS informs the payee of the right to file a request with DCS for a hearing on a notice of support owed under WAC 388-14A-3310 or a notice of support debt under WAC 388-14A-3304 within twenty days of the date of a notice to payee that was mailed to a Washington address.

(4) If the notice to payee was mailed to an out-of-state address, the payee may request a hearing within sixty days of the date of the notice to payee.

(5) The effective date of a hearing request is the date DCS receives the request.

[Statutory Authority: RCW 74.08.090, 34.05.310 (4)(d), 26.23.035, 34.05.220(1), 74.20A.310, 03-20-072, § 388-14A-3315, filed 9/29/03, effective 10/30/03. Statutory Authority: RCW 74.08.090, 26.23.035, 34.05.220(1), 74.20A.310, 01-03-089, § 388-14A-3315, filed 1/17/01, effective 2/17/01. Formerly WAC 388-14-440.]

WAC 388-14A-3350 Are there any limits on how much back support the division of child support can seek to establish? (1) When no public assistance is being paid to the custodial parent (CP) and the children, the division of child support (DCS) starts the claim for support as of the date DCS receives the application for nonassistance services.

(2) When another state or an Indian tribe is paying public assistance to the CP and children, DCS starts the claim for support as of the date specified by the other state or tribe.

(3) For the notice and finding of parental responsibility, WAC 388-14A-3120(9) limits the back support obligation.

(4) When the state of Washington is paying public assistance to the CP and/or the children, the following rules apply:

(a) For support obligations owed for months on or after September 1, 1979, DCS must exercise reasonable efforts to locate the noncustodial parent (NCP);

(b) DCS serves a notice and finding of financial or parental responsibility within sixty days of the date the state assumes responsibility for the support of a dependent child on whose behalf support is sought;

(c) If DCS does not serve the notice within sixty days, DCS loses the right to reimbursement of public assistance

payments made after the sixtieth day and before the notice is served;

(d) DCS does not lose the right to reimbursement of public assistance payments for any period of time:

(i) During which DCS exercised reasonable efforts to locate the NCP; or

(ii) For sixty days after the date on which DCS received an acknowledgment of paternity for the child for whom the state has assumed responsibility, and paternity has not been established.

(5) The limitation in subsection (4) does not apply to:

(a) Cases in which the physical custodian is claiming good cause for not cooperating with the department; and

(b) Cases where parentage is an issue and:

(i) Has not been established by superior court order; or

(ii) Is not the subject of a presumption under RCW 26.26.320.

(6) DCS considers a prorated share of each monthly public assistance payment as paid on each day of the month.

[Statutory Authority: RCW 74.08.090, 34.05.310 (4)(d) and 74.20A.055, 03-20-072, § 388-14A-3350, filed 9/29/03, effective 10/30/03. Statutory Authority: RCW 74.08.090, 74.20A.055, 01-03-089, § 388-14A-3350, filed 1/17/01, effective 2/17/01. Formerly WAC 388-11-045.]

WAC 388-14A-3370 What legal defenses are available to a noncustodial parent when DCS seeks to enforce a support obligation? (1) A noncustodial parent (NCP) who objects to a notice and finding of financial, parental, or medical responsibility has the burden of establishing defenses to liability. Defenses include, but are not limited to:

(a) Proof of payment;

(b) The existence of a superior court order, tribal court order, or administrative order that sets the NCP's support obligation or specifically relieves the NCP of a support obligation for the child(ren) named in the notice;

(c) The party is not a responsible parent as defined by RCW 74.20A.020(7);

(d) The amount requested in the notice is inconsistent with the Washington state child support schedule, chapter 26.19 RCW;

(e) Equitable estoppel, subject to WAC 388-14A-6500; or

(f) Any other matter constituting an avoidance or affirmative defense.

(2) A dependent child's or a custodial parent's ineligibility to receive public assistance is not a defense to the assessment of a support obligation.

(3) An NCP may be excused from providing support for a dependent child if the NCP is the legal custodian of the child and has been wrongfully deprived of physical custody of the child. The NCP may be excused only for any period during which the NCP was wrongfully deprived of custody. The NCP must establish that:

(a) A court of competent jurisdiction of any state has entered an order giving legal and physical custody of the child to the NCP;

(b) The custody order has not been modified, superseded, or dismissed;

(c) The child was taken or enticed from the NCP's physical custody and the NCP has not subsequently assented to deprivation. Proof of enticement requires more than a show-

ing that the child is allowed to live without certain restrictions the NCP would impose; and

(d) Within a reasonable time after deprivation, the NCP exerted and continues to exert reasonable efforts to regain physical custody of the child.

[Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.056, 74.20A.310, 26.26.315, 26.26.320, 26.26.330, 26.26.335, 74.20A.055, 2002 c 302, and 2002 c 199. 03-17-013, § 388-14A-3370, filed 8/12/03, effective 9/12/03. Statutory Authority: RCW 74.08.090, 74.20A.055, 74.20A.056, 01-03-089, § 388-14A-3370, filed 1/17/01, effective 2/17/01. Formerly WAC 388-11-065.]

WAC 388-14A-3375 What kinds of credits does the division of child support give when establishing or enforcing an administrative support order? (1) After the noncustodial parent (NCP) has been advised of the requirement to make payments to the Washington state support registry (WSSR) by service of a support establishment notice, or by entry of a support order requiring payments to WSSR, the NCP may obtain credit against the support obligation only:

(a) By cash, check, electronic funds transfer, or money order payments through WSSR or payment of health insurance premiums; or

(b) As provided under subsections (3) and (6) of this section.

(2) The division of child support (DCS) allows credit against a NCP's support debt for family needs provided directly to a custodial parent (CP), a child, or provided through a vendor or third party only when the:

(a) Items are provided before service of the notice on the NCP;

(b) NCP proves the items provided were intended to satisfy the NCP's support obligation; and

(c) Items are food, clothing, shelter, or medical attendance directly related to the care, support, and maintenance of a child.

(3) After service of the notice, an NCP may obtain credit against the parent's current support obligation only when the NCP proves that the payments were made and:

(a) DCS determines there:

(i) Is no prejudice to:

(A) The CP, a child, or other person; or

(B) An agency entitled to receive the support payments.

(ii) Are special circumstances of an equitable nature justifying credit for payments.

(b) A court of competent jurisdiction determines credit should be granted after a hearing where all interested parties were given an opportunity to be heard.

(4) DCS does not allow credit for shelter payments made before service of the notice in an amount more than the greater of the:

(a) Shelter allocation in the public assistance standards for the period when payments were made; or

(b) One-half of the actual shelter payment.

(5) DCS does not allow credit for shelter payments made after service of the notice.

(6) DCS applies credits for dependent benefits allowed under RCW 26.18.190 as required by WAC 388-14A-4200.

[Statutory Authority: RCW 74.08.090, 34.05.310 (4)(d) and 74.20A.055, 03-20-072, § 388-14A-3375, filed 9/29/03, effective 10/30/03. Statutory Authority: RCW 74.08.090, 74.20A.055, 01-03-089, § 388-14A-3375, filed 1/17/01, effective 2/17/01. Formerly WAC 388-11-015 and 388-14-210.]

WAC 388-14A-3600 The parties may resolve any child support case by entering a consent order or an agreed settlement. (1) The division of child support (DCS) may enter a consent order or agreed settlement to finalize any dispute in which a party requests a hearing. DCS attempts to settle matters through agreement when possible.

(a) An agreed settlement is signed only by the parties (DCS, the custodial parent and the noncustodial parent).

(b) A consent order must be signed by the parties and by an administrative law judge (ALJ) provided that:

(i) In a telephone hearing, the ALJ may sign on behalf of any party if that party gives their consent on the record; and

(ii) The ALJ approves a consent order without requiring testimony or a hearing, unless entry of the order would be unlawful.

(2) An agreed settlement or consent order is final and enforceable on:

(a) The date the last party signs the agreed settlement, if all parties signed the agreed settlement;

(b) The date the ALJ signs the consent order; or

(c) If the ALJ defaults one of the parties to the proceeding, the latest of the following dates:

(i) The date the ALJ signed the consent order;

(ii) The date the last party signed the agreed settlement;

or

(iii) The date the order of default is final. See WAC 388-14A-6110 and 388-14A-6115 to determine whether the ALJ issues an initial order or a final order.

(3) A party to a consent order or an agreed settlement may:

(a) Not petition for review of the settlement or order under WAC 388-02-0560;

(b) Petition for modification under WAC 388-14A-3925; and

(c) Petition to vacate the settlement or consent order under WAC 388-14A-3700. However, the ALJ may only vacate a settlement or consent order after making a finding of fraud by a party, or on any other basis that would result in manifest injustice.

(4) If a hearing has been scheduled, DCS files a copy of the agreed settlement or consent order with the office of administrative hearings (OAH), and OAH issues an order dismissing the hearing. There are no hearing rights on the order dismissing the hearing.

[Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.056, 74.20A.310, 26.26.315, 26.26.320, 26.26.330, 26.26.335, 74.20A.055, 2002 c 302, and 2002 c 199. 03-17-013, § 388-14A-3600, filed 8/12/03, effective 9/12/03. Statutory Authority: RCW 74.08.090, 34.05.220(1), 01-24-082, § 388-14A-3600, filed 12/3/01, effective 1/3/02. Statutory Authority: RCW 74.08.090, 34.05.220(1), 74.20A.055, 74.20A.056, 01-03-089, § 388-14A-3600, filed 1/17/01, effective 2/17/01. Formerly WAC 388-11-150 and 388-11-430.]

WAC 388-14A-3800 Once a support order is entered, can it be changed? (1) Only the court that entered the order can modify a support order entered by a superior court or tribal court. If the order specifically states how the amount of support may be adjusted, the division of child support (DCS) may bring an administrative action under RCW 26.23.110 and WAC 388-14A-3310.

(2) As provided in WAC 388-14A-3900, DCS may review any support order to determine whether DCS should petition to modify the support provisions of the order.

(3) Either DCS, the CP or the NCP may petition to modify an administrative order under WAC 388-14A-3925.

(4) Under appropriate circumstances, an administrative support order may be vacated. See WAC 388-14A-3700.

[Statutory Authority: RCW 74.08.090, 34.05.310 (4)(d), chapter 26.19 RCW, RCW 34.05.220(1), 74.20A.055, 74.20A.056, 03-20-072, § 388-14A-3800, filed 9/29/03, effective 10/30/03. Statutory Authority: RCW 74.08.090, chapter 26.19 RCW, 34.05.220(1), 74.20A.055, 74.20A.056, 01-03-089, § 388-14A-3800, filed 1/17/01, effective 2/17/01. Formerly WAC 388-11-140.]

WAC 388-14A-3810 Once a child support order is entered how long does the support obligation last? (1) A noncustodial parent's obligation to pay support under an administrative order continues until:

- (a) A superior or tribal court order supersedes the order;
- (b) The order is modified under WAC 388-14A-3925;
- (c) The child reaches eighteen years of age;
- (d) The child is emancipated;
- (e) The child marries;
- (f) The child becomes a member of the United States armed forces;
- (g) The child or the responsible parent die;
- (h) A responsible stepparent's marriage is dissolved;
- (i) The parties to the order marry or remarry, as provided in WAC 388-14A-3100(3); or
- (j) A superior court order terminates the responsible parent's liability as provided under RCW 26.16.205.

(2) As an exception to the above rule, a noncustodial parent's obligation to pay support under an administrative order continues and/or may be established for a dependent child who is:

- (a) Under nineteen years of age; and
- (b) A full-time student reasonably expected to complete a program of secondary school or the equivalent level of vocational or technical training before the end of the month in which the student becomes nineteen years of age.

(3) A noncustodial parent's obligation to pay support under an administrative order may be temporarily suspended when the:

- (a) Noncustodial parent (NCP) resides with the child for whom support is sought for purposes other than visitation;
- (b) NCP reconciles with the child and the custodial parent; or
- (c) Child returns to the residence of the NCP from a foster care placement, for purposes other than visitation.

(4) When the NCP's obligation to pay current support on a case is suspended under subsection (3) of this section, the division of child support (DCS) informs the NCP that the obligation is suspended, in writing, sent by regular mail to the NCP's last known address.

(5) If circumstances causing an NCP's support obligation to be temporarily suspended change, the support obligation resumes. DCS sends the NCP a notice that the obligation to make current support payments has resumed.

[Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.056, 74.20A.310, 26.26.315, 26.26.320, 26.26.330, 26.26.335, 74.20A.055, 2002 c 302, and 2002 c 199, 03-17-013, § 388-14A-3810, filed 8/12/03, effective

9/12/03. Statutory Authority: RCW 74.08.090, 01-03-089, § 388-14A-3810, filed 1/17/01, effective 2/17/01. Formerly WAC 388-11-155.]

WAC 388-14A-3865 Duties of the administrative law judge when a party requests a temporary support order.

(1) An administrative law judge (ALJ) who hears a request for a temporary support order must:

- (a) Issue a written order which either:
 - (i) Determines the responsible parent's current and future support obligation beginning no later than the month following the hearing; or
 - (ii) Denies the request for a temporary support order.
- (b) Include in the temporary order:
 - (i) A statement that any amounts collected under the temporary order will be credited and will be offset against any debt established in the initial decision;
 - (ii) A statement that amounts collected will be distributed and may be subject to recovery under WAC 388-14A-5300 from the physical custodian; and
 - (iii) The information required by RCW 26.23.050 and 26.18.170.
- (c) Issue the temporary order within twenty calendar days of the date the request for temporary order is heard by the ALJ.

(2) If the temporary order is entered subsequent to a continuance, the ALJ must set a new hearing date within ninety days from the date of the date the ALJ hears the request for continuance;

(3) The ALJ must comply with the DSHS rules on child support and include a Washington state child support schedule worksheet when entering a temporary support order.

[Statutory Authority: RCW 74.08.090, 34.05.310 (4)(d) and 74.20A.055, 03-20-072, § 388-14A-3865, filed 9/29/03, effective 10/30/03. Statutory Authority: RCW 74.20A.055 and 74.08.090, 00-09-076, § 388-14A-3865, filed 4/18/00, effective 5/19/00. Formerly WAC 388-11-315.]

WAC 388-14A-3875 What if a party does not agree with a temporary support order? (1) A temporary support order or the denial of a TSO is not an initial decision subject to review under WAC 388-02-0560. This means that no party has the right to file a petition for review of a temporary support order.

(2) The terms of a temporary order are not binding on the administrative law judge (ALJ) who later enters the initial decision in the matter.

(3) The issuance of a temporary support order does not affect any party's right to ask for review of the initial decision subsequently entered in the matter.

[Statutory Authority: RCW 74.08.090, 34.05.310 (4)(d) and 74.20A.055, 03-20-072, § 388-14A-3875, filed 9/29/03, effective 10/30/03. Statutory Authority: RCW 74.20A.055 and 74.08.090, 00-09-076, § 388-14A-3875, filed 4/18/00, effective 5/19/00. Formerly WAC 388-11-315.]

WAC 388-14A-4500 What is the division of child support's license suspension program? (1) RCW 74.20A.-320 provides that, in some circumstances, the division of child support (DCS) may certify for license suspension a noncustodial parent (NCP) who is not in compliance with a child support order. The statute calls the NCP the responsible parent.

(a) "Certify" means to notify the department of licensing or other state licensing entities that the NCP is not in compli-

ance with a child support order and to ask them to take appropriate action against licenses held by the NCP. Before DCS can certify an NCP, DCS serves a notice on the NCP as described in WAC 388-14A-4505 and 388-14A-4510. This notice is called the notice of noncompliance and intent to suspend licenses, and is sometimes called the notice of noncompliance.

(b) "Responsible parent" is defined in 388-14A-1020. The responsible parent is also called the "noncustodial parent."

(2) "Noncompliance with a child support order" is defined in RCW 74.20A.020(18) and in WAC 388-14A-4510.

(3) When DCS certifies the NCP, the department of licensing or other licensing entities take action to deny, suspend, or refuse to renew the NCP's license, according to the terms of RCW 74.20A.320 (8) and (12).

(4) This section and sections WAC 388-14A-4505 through 388-14A-4530 cover the DCS license suspension program.

(5) DCS may certify an NCP who is not in compliance with a child support order to the department of licensing or any appropriate licensing entity. In determining which licensing entity receives the certification, DCS considers:

(a) The number and kind of licenses held by the parent; and

(b) The effect that suspension of a particular license will have in motivating the parent to pay support or to contact DCS to make appropriate arrangements for other relief.

(6) DCS may certify a parent to any licensing agency through which it believes the parent has obtained a license. DCS may certify a parent to as many licensing agencies as DCS feels necessary to accomplish the goals of the license suspension program.

(7) In certain circumstances spelled out in WAC 388-14A-4510 (2) and (3), DCS may serve the notice of noncompliance on a noncustodial parent but may stay the commencement of the twenty-day objection period in WAC 388-14A-4505 (4)(b).

[Statutory Authority: RCW 74.20A.320. 03-18-114, § 388-14A-4500, filed 9/2/03, effective 10/15/03. Statutory Authority: RCW 74.08.090, 74.20A.320. 01-03-089, § 388-14A-4500, filed 1/17/01, effective 2/17/01. Formerly WAC 388-14-510.]

WAC 388-14A-4505 The notice of noncompliance and intent to suspend licenses. (1) Before certifying a noncustodial parent (NCP) for noncompliance, the division of child support (DCS) must serve the NCP with a notice of noncompliance and intent to suspend licenses. This notice tells the NCP that DCS intends to submit the NCP's name to the department of licensing and any other appropriate licensing entity as a licensee who is not in compliance with a child support order.

(2) DCS must serve the notice by certified mail, return receipt requested. If DCS is unable to serve the notice by certified mail, DCS must serve the notice by personal service, as provided in RCW 4.28.080.

(3) The notice must include a copy of the NCP's child support order and must contain the address and phone number of the DCS office which issued the notice.

(4) The notice must contain the information required by RCW 74.20A.320(2), telling the NCP that:

(a) The NCP may request an administrative hearing, but that the hearing is limited in scope (see WAC 388-14A-4530);

(b) DCS will certify the NCP unless the NCP makes a request for hearing within twenty calendar days of the date of service of the notice, except when a longer period of time is given, as provided in WAC 388-14A-4510 (2) or (3);

(c) The NCP may avoid certification by agreeing to make timely payments of current support and agreeing to a reasonable payment schedule on the support debt;

(d) Certification by DCS will result in suspension or nonrenewal of the NCP's license by the licensing entity until DCS issues a release stating that the NCP is in compliance with the child support order;

(e) Suspension of a license may affect the NCP's insurance coverage, depending on the terms of any policy;

(f) Filing a petition to modify the support obligation may stay (or put a hold on) the certification process; and

(g) Even after certification, the NCP may obtain a release from certification by complying with the support order.

[Statutory Authority: RCW 74.20A.320. 03-18-114, § 388-14A-4505, filed 9/2/03, effective 10/15/03. Statutory Authority: RCW 74.08.090. 01-03-089, § 388-14A-4505, filed 1/17/01, effective 2/17/01. Formerly WAC 388-14-520.]

WAC 388-14A-4510 Who is subject to the DCS license suspension program? (1) The division of child support (DCS) may serve a notice of noncompliance on a noncustodial parent (NCP) who is not in compliance with a child support order when:

(a) The NCP is required to pay child support under a court order or administrative order;

(b) The NCP is at least six months in arrears; and

(c) The NCP is not currently making payments to the Washington state support registry under a wage withholding action issued by DCS.

(2) DCS may serve a notice of noncompliance on an NCP who meets the criteria of subsection (1) above, even if the NCP is in jail or prison. Unless the NCP has other resources available while in jail or prison, DCS stays the commencement of the twenty-day objection period in WAC 388-14A-4505 (4)(b) until the NCP has been out of jail or prison for thirty days.

(3) DCS may serve a notice of noncompliance on an NCP who meets the criteria of subsection (1) above, even if the NCP is a public assistance recipient. DCS stays the commencement of the twenty-day objection period in WAC 388-14A-4505 (4)(b) until the thirty days after the NCP's cash assistance grant is terminated.

(4) "Noncompliance with a child support order" for the purposes of the license suspension program means a NCP has:

(a) Accumulated a support debt, also called an arrearage or arrears, totaling more than six months of child support payments;

(b) Failed to make payments under a written agreement with DCS towards a support debt in an amount that is more than six months' worth of payments; or

(c) Failed to make payments required by a court order or administrative order towards a support debt in an amount that is more than six months' worth of payments.

(5) There is no minimum dollar amount for the six months of arrears. The following are examples of when a NCP is at least six months in arrears:

(a) The child support order requires monthly payments of five hundred dollars. The NCP has not made a single payment since the order was entered seven months ago. This NCP is at least six months in arrears;

(b) The child support order requires monthly payments of one hundred dollars. The NCP has paid for the last few months, but owes a back debt of over six hundred dollars. This NCP is at least six months in arrears;

(c) The NCP owes a support debt according to a judgment, which requires payments of one hundred dollars per month. The NCP has not made payment for eight months. This NCP is at least six months in arrears; or

(d) The child support order required monthly payments of two hundred dollars, but the child is over eighteen so no current support is owed. However, the NCP has a debt of over twelve hundred dollars. This NCP is at least six months in arrears.

(6) For the purposes of the license suspension program, a NCP is in compliance with the child support order when the amount owed in arrears is less than six months' worth of support.

[Statutory Authority: RCW 74.20A.320. 03-18-114, § 388-14A-4510, filed 9/2/03, effective 10/15/03. Statutory Authority: RCW 74.08.090, 74.20A.320. 01-03-089, § 388-14A-4510, filed 1/17/01, effective 2/17/01. Formerly WAC 388-14-530.]

WAC 388-14A-4515 How do I avoid having my license suspended for failure to pay child support? (1)

After service of the notice of noncompliance, DCS stays certification action if the noncustodial parent (NCP) takes the following action within twenty days of service of the notice:

(a) Requests an administrative hearing under WAC 388-14A-4530; or

(b) Contacts DCS to negotiate a reasonable payment schedule on the arrears and agrees to make timely payments of current support.

(i) The stay for negotiation may last a maximum of thirty calendar days after the NCP contacts DCS; and

(ii) If no payment schedule has been agreed to in writing after thirty calendar days have passed, DCS may proceed with certification of noncompliance;

(iii) A reasonable payment schedule is described in WAC 388-14A-4520, below; and

(iv) The NCP may request a conference board review under WAC 388-14A-6400 if the NCP feels that DCS has not negotiated in good faith.

(2) If the NCP files a court or administrative action to modify the child support obligation, DCS stays the certification action.

(3) The stay for modification action may not exceed six months unless DCS finds good cause to extend the stay.

(4) The NCP must notify DCS that a modification proceeding is pending and must provide a copy of the motion or request for modification to DCS.

(5) A stay of certification does not require DCS to withdraw the notice of noncompliance.

[Statutory Authority: RCW 74.20A.320. 03-18-114, § 388-14A-4515, filed 9/2/03, effective 10/15/03. Statutory Authority: RCW 74.08.090, 74.20A.320. 01-03-089, § 388-14A-4515, filed 1/17/01, effective 2/17/01. Formerly WAC 388-14-540.]

WAC 388-14A-4520 Signing a repayment agreement may avoid certification for noncompliance. (1)

If a noncustodial parent (NCP) signs a repayment agreement, DCS stays the certification action. The NCP must agree to pay current support in a timely manner and make regular payments on the support debt.

(2) The repayment agreement must state that if the NCP fails to make payments under the terms of the agreement, DCS may resume certification action.

(3) The signing of a repayment agreement does not require DCS to withdraw the notice of noncompliance.

(4) In setting the repayment amount, DCS must take into account the financial situation of the NCP and the needs of all children who rely on the NCP for support. The NCP must supply sufficient financial information to allow DCS to analyze and document the NCP's financial situation and requirements, including normal living expenses and emergencies.

(5) A reasonable monthly arrears payment is defined as a percentage of the NCP's "adjusted net income," which is the NCP's net monthly income minus any current support obligation. The following table sets forth the suggested monthly payments on arrears:

Monthly adjusted net income (ANI)	Monthly arrears payment = Percentage of ANI
\$1,000 or less	2%
\$1,001 to \$1,200	3%
\$1,201 to \$1,500	4%
\$1,501 to \$1,900	5%
\$1,901 to \$2,400	6%
\$2,401 to \$3,000	7%
\$3,001 or more	8%

(6) Examples of how to calculate the arrears payment are as follows:

(a) Monthly net income	=	\$1,500
Current support	=	\$300
Adjusted net income	=	\$1,200
Arrears payment = 3% of ANI (\$1,200)	=	\$36
(b) Monthly net income	=	\$3,100
Current support	=	\$-0-
Adjusted net income	=	\$3,100
Arrears payment = 8% of ANI (\$3,100)	=	\$248

(7) The NCP must document any factors which make the NCP eligible for an arrears payment less than the amount shown in the table in subsection (5). Such factors include, but are not limited to:

- (a) Special needs children, or
- (b) Uninsured medical expenses.

(8) The custodial parent and/or DCS must document any factors which make the NCP eligible for an arrears payment higher than the amount shown in the table in subsection (5). Such factors include, but are not limited to the factors listed

in RCW 26.19.075 for deviation from the standard calculation for child support obligations.

(9) If the NCP signs a repayment agreement under this section under the circumstances spelled out in WAC 388-14A-4510 (2) or (3), the NCP may make voluntary payments but DCS does not resume certification action until thirty days after NCP is released or stops receiving public assistance.

[Statutory Authority: RCW 74.20A.320. 03-18-114, § 388-14A-4520, filed 9/2/03, effective 10/15/03. Statutory Authority: RCW 74.08.090, 74.20A.320. 01-03-089, § 388-14A-4520, filed 1/17/01, effective 2/17/01. Formerly WAC 388-14-550.]

WAC 388-14A-4525 How to obtain a release of certification for noncompliance. (1) After DCS has certified a noncustodial parent (NCP) to a licensing entity, the NCP may obtain a release from DCS by taking the following actions:

(a) Paying the support debt in full; or

(b) Signing a repayment agreement under WAC 388-14A-4520 and paying the first installment due under the agreement. Signing a repayment agreement does not require DCS to withdraw the notice of noncompliance.

(2) DCS must provide a copy of the release to any licensing entity to which DCS has certified the NCP.

(3) The NCP must comply with any requirements of the licensing entity to get the license reinstated or reissued.

[Statutory Authority: RCW 74.20A.320. 03-18-114, § 388-14A-4525, filed 9/2/03, effective 10/15/03. Statutory Authority: RCW 74.08.090, 74.20A.320. 01-03-089, § 388-14A-4525, filed 1/17/01, effective 2/17/01. Formerly WAC 388-14-560.]

WAC 388-14A-4530 Administrative hearings regarding license suspension are limited in scope. (1) An administrative hearing on a notice of noncompliance under WAC 388-14A-4505 is limited to the following issues:

(a) Whether the person named in the child support order is the noncustodial parent (NCP);

(b) Whether the NCP is required to pay child support under a child support order; and

(c) Whether the NCP is at least six months in arrears.

(2) The administrative law judge (ALJ) is not required to calculate the outstanding support debt beyond determining whether the NCP is at least six months in arrears. Any debt calculation shall not be binding on the department or the NCP beyond the determination that there is at least six months of arrears.

(3) If the NCP requests a hearing on the notice, DCS stays the certification process until the hearing results in a finding that the NCP is not in compliance with the order, or that DCS is authorized to certify the NCP.

(4) If the NCP requests a hearing on the notice of noncompliance under the circumstances spelled out in WAC 388-14A-4510 (2) and (3), DCS asks the office of administrative hearings to schedule a hearing. If the hearing results in a finding that the NCP is not in compliance with the order, or that DCS is authorized to certify the NCP, DCS stays the certification process until thirty days after the NCP is released or stops receiving cash public assistance.

[Statutory Authority: RCW 74.20A.320. 03-18-114, § 388-14A-4530, filed 9/2/03, effective 10/15/03. Statutory Authority: RCW 74.08.090, 74.20A.320. 01-03-089, § 388-14A-4530, filed 1/17/01, effective 2/17/01. Formerly WAC 388-14-570.]

WAC 388-14A-4605 Whose picture can go on the division of child support's DCS most wanted Internet site? (1) If the child's custodial parent (CP) requests DCS to post the NCP to the DCS most wanted Internet site (also called the "site"), the CP must:

(a) Give written permission to DCS to post the NCP on the site; and

(b) Provide a photograph of the NCP.

(2) Only the NCP's photograph appears on the site. If the CP submits a group photograph, DCS edits out everyone except the NCP.

(3) DCS may post an NCP to the site when:

(a) The NCP:

(i) Has made no payments in at least six months (intercepted IRS refunds are not considered to be payments for purposes of this section); and

(ii) Owes at least five thousand dollars in back child support; or

(b) DCS has been unable to locate the NCP after trying other means for at least twelve months, and:

(i) There is a valid support order; or

(ii) There is a valid paternity affidavit filed for a child on the case, or

(iii) The NCP is:

(A) The mother of the child(ren) on the case; or

(B) The presumed father under RCW 26.26.320.

[Statutory Authority: RCW 74.08.090, 34.05.310 (4)(d) and 26.23.120(2). 03-20-072, § 388-14A-4605, filed 9/29/03, effective 10/30/03. Statutory Authority: RCW 26.23.120(2), 74.08.090. 01-24-083, § 388-14A-4605, filed 12/3/01, effective 1/3/02; 01-03-089, § 388-14A-4605, filed 1/17/01, effective 2/17/01. Formerly WAC 388-11-325.]

WAC 388-14A-5000 How does the division of child support distribute support payments? (1) Under state and federal law, the division of child support (DCS) distributes support money it collects or receives to the:

(a) Department when the department provides or has provided public assistance payments for the support of the family;

(b) Payee under the order, or to the custodial parent (CP) of the child according to WAC 388-14A-5050;

(c) Child support enforcement agency in another state or foreign country which submitted a request for support enforcement services;

(d) Indian tribe which has a TANF program and/or a cooperative agreement regarding the delivery of child support services; or

(e) Person or entity making the payment when DCS is unable to identify the person to whom the support money is payable after making reasonable efforts to obtain identification information.

(2) If DCS is unable to distribute support money because the location of the family or person is unknown, it must exercise reasonable efforts to locate the family or person. When the family or person cannot be located, DCS handles the money in accordance with chapter 63.29 RCW, the uniform unclaimed property act.

(3) WAC 388-14A-5000 and sections WAC 388-14A-5001 through 388-14A-5008 contain the rules for distribution of support money by DCS.

(4) DCS changes the distribution rules based on changes in federal statutes and regulations.

[Statutory Authority: RCW 74.08.090, 34.05.310 (4)(d), 26.23.035, 74.20A.057, 74.20A.310. 03-20-072, § 388-14A-5000, filed 9/29/03, effective 10/30/03. Statutory Authority: RCW 74.08.090, 26.23.035, 74.20A.057, 74.20A.310. 01-03-089, § 388-14A-5000, filed 1/17/01, effective 2/17/01. Formerly WAC 388-14-250, 388-14-270, and 388-14-273.]

WAC 388-14A-5008 Can the noncustodial parent prepay support? If the division of child support (DCS) receives or collects support money representing payment on the required support obligation for future months, DCS must:

(1) Apply the support money to future months when the support debt is paid in full;

(2) Distribute the support money on a monthly basis when payments become due in the future; and

(3) Mail a notice to the last known address of the person entitled to receive support money. The notice informs the person that:

(a) DCS received prepaid support money;

(b) DCS intends to distribute the prepaid money as support payments become due in the future; and

(c) The person may request a conference board under WAC 388-14A-6400 to determine if DCS should immediately distribute the prepaid support money.

(d) DCS does not mail the notice referred to in subsection (3) of this section if the prepaid support is equal to or less than one month's support obligation.

[Statutory Authority: RCW 74.08.090, 34.05.310 (4)(d), 26.23.035, 74.20A.057, 74.20A.310. 03-20-072, § 388-14A-5008, filed 9/29/03, effective 10/30/03. Statutory Authority: RCW 74.08.090, 26.23.035, 74.20A.057, 74.20A.310. 01-03-089, § 388-14A-5008, filed 1/17/01, effective 2/17/01. Formerly WAC 388-14-270.]

WAC 388-14A-6105 What is the difference between an initial order and a final order in a hearing involving the division of child support? (1) In an administrative hearing involving the DSHS division of child support (DCS), the administrative law judge (ALJ) enters either an initial order, which is subject to review, or a final order, which is not subject to review.

(2) The terms "initial order," "final order" and "review" are defined in WAC 388-02-0010, and those definitions are repeated here for ease of reference:

(a) "**Initial order**" is a hearing decision made by an ALJ that may be reviewed by a review judge pursuant to WAC 388-02-0215(4). An initial order is sometimes called an "**initial decision**."

(b) "**Final order**" means an order that is the final DSHS decision.

(c) "**Review**" means the act of reviewing initial orders and making the final agency decision as provided by RCW 34.05.464.

(3) WAC 388-14A-6110 and 388-14A-6115 describe how to determine what kind of order is entered. Whether the ALJ enters an initial order or a final order does not depend on the date the hearing is held or the date the order is entered.

(4) WAC 388-14A-6120 describes what you can do if you disagree with an initial order or final order.

(5) WAC 388-14A-6125 describes when DCS may take enforcement action on an initial order or final order.

[Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.056, 74.20A.310, 26.26.315, 26.26.320, 26.26.330, 26.26.335, 74.20A.055, 2002 c 302, and 2002 c 199. 03-17-013, § 388-14A-6105, filed 8/12/03, effective 9/12/03.]

WAC 388-14A-6110 When must an ALJ enter an initial order in a DCS hearing proceeding? An administrative law judge (ALJ) must enter an initial order in a division of child support (DCS) hearing proceeding if:

(1) The case involves the disclosure of a party's address under WAC 388-14A-2114 through 388-14A-2140;

(2) A custodial parent (CP) or noncustodial parent (NCP) files a hearing request before November 15, 2002;

(3) A CP or NCP files a petition for modification with DCS or the office of administrative hearings (OAH) before November 15, 2002; or

(4) DCS petitions for modification of an administrative order, and either the NCP or the CP is served with the notice of hearing before November 15, 2002.

[Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.056, 74.20A.310, 26.26.315, 26.26.320, 26.26.330, 26.26.335, 74.20A.055, 2002 c 302, and 2002 c 199. 03-17-013, § 388-14A-6110, filed 8/12/03, effective 9/12/03.]

WAC 388-14A-6115 When must an ALJ enter a final order in a DCS hearing proceeding? Except for cases regarding address disclosure under WAC 388-14A-2114 through 388-14A-2140, an administrative law judge (ALJ) must enter a final order in a DCS hearing proceeding if:

(1) A custodial parent (CP) or noncustodial parent (NCP) files a hearing request on or after November 15, 2002;

(2) An NCP or CP files a petition for modification with DCS or the office of administrative hearings (OAH) on or after November 15, 2002;

(3) DCS petitions for modification of an administrative order, and neither the NCP nor the CP is served before November 15, 2002.

[Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.056, 74.20A.310, 26.26.315, 26.26.320, 26.26.330, 26.26.335, 74.20A.055, 2002 c 302, and 2002 c 199. 03-17-013, § 388-14A-6115, filed 8/12/03, effective 9/12/03.]

WAC 388-14A-6120 What can I do if I do not agree with an initial order or final order entered by an administrative law judge? (1) Except for the DCS representative, any party to an initial order entered by an administrative law judge (ALJ) has the right to request review pursuant to chapter 388-02 WAC.

(2) No party may request administrative review of a final order entered by an ALJ.

(3) Any party to an initial order or a final order may petition to vacate an order of dismissal or default, pursuant to WAC 388-14A-3700 and 388-14A-6150.

(4) Any party to an initial order or final order may request correction of a clerical error in the order, pursuant to WAC 388-02-0540 through 388-02-0555.

(5) Any party to a final order may request reconsideration of the order, pursuant to WAC 388-02-0605 through 388-02-0635.

(6) Except for the DCS representative, any party to a final order may petition for judicial review, pursuant to RCW 34.05.510 through 34.05.598. You do not need to request

reconsideration of the order before you petition for judicial review.

[Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.056, 74.20A.310, 26.26.315, 26.26.320, 26.26.330, 26.26.335, 74.20A.055, 2002 c 302, and 2002 c 199. 03-17-013, § 388-14A-6120, filed 8/12/03, effective 9/12/03.]

WAC 388-14A-6125 When does an initial order or final order entered by an ALJ become enforceable? (1) If no party requests review within twenty-one days of the date OAH mailed an initial order, the DSHS division of child support (DCS) may take enforcement action on the twenty-second day after OAH mailed the order.

(2) DCS may take enforcement action on a final order immediately upon entry of the order.

(a) Even if a party files a request for reconsideration, a request to correct a clerical error, a petition to vacate, or a petition for judicial review, DCS does not stop enforcement of the order.

(b) To stop DCS from enforcing a final order, you must obtain a court order staying (stopping) enforcement of the order.

[Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.056, 74.20A.310, 26.26.315, 26.26.320, 26.26.330, 26.26.335, 74.20A.055, 2002 c 302, and 2002 c 199. 03-17-013, § 388-14A-6125, filed 8/12/03, effective 9/12/03.]

Chapter 388-15 WAC

CHILD PROTECTIVE SERVICES

WAC

- 388-15-650 Repealed.
- 388-15-651 Repealed.
- 388-15-652 Repealed.
- 388-15-653 Repealed.
- 388-15-654 Repealed.
- 388-15-655 Repealed.
- 388-15-656 Repealed.
- 388-15-657 Repealed.
- 388-15-658 Repealed.
- 388-15-659 Repealed.
- 388-15-660 Repealed.
- 388-15-661 Repealed.
- 388-15-662 Repealed.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

- 388-15-650 Purpose. [Statutory Authority: RCW 74.39A.007 and 74.08.090. 99-12-072, § 388-15-650, filed 5/27/99, effective 6/27/99.] Repealed by 03-06-024, filed 2/24/03, effective 7/1/03. Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. Later promulgation, see chapter 388-71 WAC.
- 388-15-651 Definitions. [Statutory Authority: RCW 74.39A.007 and 74.08.090. 99-12-072, § 388-15-651, filed 5/27/99, effective 6/27/99.] Repealed by 03-06-024, filed 2/24/03, effective 7/1/03. Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. Later promulgation, see chapter 388-71 WAC.
- 388-15-652 Adult day care (COPEs level I). [Statutory Authority: RCW 74.39A.007 and 74.08.090. 99-12-072, § 388-15-652, filed 5/27/99, effective 6/27/99.] Repealed by 03-06-024, filed 2/24/03, effective 7/1/03. Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. Later promulgation, see chapter 388-71 WAC.
- 388-15-653 Adult day health (level II). [Statutory Authority: RCW 74.39A.007 and 74.08.090. 99-12-072, § 388-15-653, filed 5/27/99, effective 6/27/99.] Repealed by 03-06-

- 024, filed 2/24/03, effective 7/1/03. Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. Later promulgation, see chapter 388-71 WAC.
- 388-15-654 Plan of care. [Statutory Authority: RCW 74.39A.007 and 74.08.090. 99-12-072, § 388-15-654, filed 5/27/99, effective 6/27/99.] Repealed by 03-06-024, filed 2/24/03, effective 7/1/03. Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. Later promulgation, see chapter 388-71 WAC.
- 388-15-655 Title XIX adult day health certification and monitoring. [Statutory Authority: RCW 74.39A.007 and 74.08.090. 99-12-072, § 388-15-655, filed 5/27/99, effective 6/27/99.] Repealed by 03-06-024, filed 2/24/03, effective 7/1/03. Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. Later promulgation, see chapter 388-71 WAC.
- 388-15-656 Administration and organization. [Statutory Authority: RCW 74.39A.007 and 74.08.090. 99-12-072, § 388-15-656, filed 5/27/99, effective 6/27/99.] Repealed by 03-06-024, filed 2/24/03, effective 7/1/03. Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. Later promulgation, see chapter 388-71 WAC.
- 388-15-657 Staffing. [Statutory Authority: RCW 74.39A.007 and 74.08.090. 99-12-072, § 388-15-657, filed 5/27/99, effective 6/27/99.] Repealed by 03-06-024, filed 2/24/03, effective 7/1/03. Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. Later promulgation, see chapter 388-71 WAC.
- 388-15-658 Personnel requirements. [Statutory Authority: RCW 74.39A.007 and 74.08.090. 99-12-072, § 388-15-658, filed 5/27/99, effective 6/27/99.] Repealed by 03-06-024, filed 2/24/03, effective 7/1/03. Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. Later promulgation, see chapter 388-71 WAC.
- 388-15-659 Facility. [Statutory Authority: RCW 74.39A.007 and 74.08.090. 99-12-072, § 388-15-659, filed 5/27/99, effective 6/27/99.] Repealed by 03-06-024, filed 2/24/03, effective 7/1/03. Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. Later promulgation, see chapter 388-71 WAC.
- 388-15-660 Coordination of services. [Statutory Authority: RCW 74.39A.007 and 74.08.090. 99-12-072, § 388-15-660, filed 5/27/99, effective 6/27/99.] Repealed by 03-06-024, filed 2/24/03, effective 7/1/03. Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. Later promulgation, see chapter 388-71 WAC.
- 388-15-661 Clients in residential care or nursing facility care settings. [Statutory Authority: RCW 74.39A.007 and 74.08.090. 99-12-072, § 388-15-661, filed 5/27/99, effective 6/27/99.] Repealed by 03-06-024, filed 2/24/03, effective 7/1/03. Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. Later promulgation, see chapter 388-71 WAC.
- 388-15-662 Expenditures not to exceed. [Statutory Authority: RCW 74.39A.007 and 74.08.090. 99-12-072, § 388-15-662, filed 5/27/99, effective 6/27/99.] Repealed by 03-06-024, filed 2/24/03, effective 7/1/03. Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. Later promulgation, see chapter 388-71 WAC.

WAC 388-15-650 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-15-651 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-15-652 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-15-653 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-15-654 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-15-655 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-15-656 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-15-657 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-15-658 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-15-659 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-15-660 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-15-661 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-15-662 Repealed. See Disposition Table at beginning of this chapter.

Chapter 388-25 WAC

CHILD WELFARE SERVICES—FOSTER CARE

WAC

388-25-0018 What is the agency's goal as to the maximum number of children who remain in foster care in excess of twenty-four months?

WAC 388-25-0018 What is the agency's goal as to the maximum number of children who remain in foster care in excess of twenty-four months? The placement goal for the foster care program is to limit the number of all children who remain in care in excess of twenty-four months to no more than thirty-five percent of the foster care population.

[Statutory Authority: RCW 34.05.353 and 74.13.055. 03-14-062, § 388-25-0018, filed 6/25/03, effective 7/26/03.]

Chapter 388-32 WAC

CHILD WELFARE SERVICES TO PREVENT OUT-OF-HOME PLACEMENT AND ACHIEVE FAMILY RECONCILIATION

WAC

388-32-0025 Who may receive FRS services?
388-32-0030 What FRS services does the department provide?

WAC 388-32-0025 Who may receive FRS services? (1) CA provides FRS to adolescents, thirteen through seventeen years of age, and their families, in instances where the adolescent has runaway and/or is in conflict with his/her family. These populations are defined as follows:

"Families in conflict" means families in which personal or family situations present a serious and imminent threat to the health or stability of the child, which may include an at-risk youth, or family.

"Runaways" means youths who are absent from home for a period of time without parental permission. Services are to actual runaways and not to threatened runaways, unless the threatened runaways meet the definition of families in conflict.

(2) FRS is not provided for any of the following situations, unless the family is seeking an at-risk youth or a child-in-need-of-services (CHINS) family assessment:

(a) The identified youth has not reached his/her thirteenth birthday, or the youth is eighteen years of age or older;

(b) Chronic or long-term multiproblem situations requiring long-term interventions;

(c) Custody and marital disputes unless the dispute creates a conflict between the child and parent with physical custody;

(d) Families currently receiving counseling services related to the parent-child conflict/relationship from other agencies;

(e) Child abuse and neglect cases, unless those cases meet the definition of family in conflict; or

(f) Youth receiving foster care or group care services or follow up to those services.

[Statutory Authority: Chapter 13.32A RCW, RCW 74.08.090, 74.13.031, 2002 c 371. 03-19-051, § 388-32-0025, filed 9/11/03, effective 9/11/03. Statutory Authority: RCW 74.13.031. 01-08-047, § 388-32-0025, filed 3/30/01, effective 4/30/01.]

WAC 388-32-0030 What FRS services does the department provide? The assigned social worker provides services to develop skills and supports within families to resolve family conflicts, achieve a reconciliation between parent and child, and to avoid out-of-home placement. The services may include, but are not limited to, referral to services for suicide prevention, psychiatric or other medical care, or psychological, financial, legal, educational, or other social services, as appropriate to the needs of the child and family. Typically FRS is limited to a ninety-day period. Children's administration (CA) provides intake/assessment services (IAS).

(1) The children's administration's (CA) central intake provides intake services. Youth and/or their families who self-present at a local DCFS office requesting FRS services shall be provided assistance in contacting the appropriate children's administration's intake services to make a formal request for FRS services.

(2) The FRS social worker must contact the family within twenty-four hours of their assignment to the case, to schedule an appointment to begin the phase I family interview process. These FRS phase I sessions are intended to defuse the immediate potential for violence, assess problems, and explore options leading to problem resolution.

(3) CA or its contractors may provide FRS phase II crisis counseling services for up to forty-five days.

(4) Families eligible for FRS phase II crisis counseling are those who, in the opinion of the family and the CA social worker, require more intensive services than those provided through phase I services.

(5) Families must make a commitment to participate in the FRS phase II crisis counseling service and must not concurrently be receiving similar counseling services through other agencies or practitioners. At a minimum, there must be a parent and a child willing to participate.

(6) FRS phase II crisis counseling services may not exceed twelve hours within forty-five days. The assigned counselor helps the family develop skills and supports to resolve conflicts. The counselor may refer to resources including medical, legal, ongoing counseling and CPS for problem resolution.

(a) FRS phase II crisis counseling may not be extended for either additional days or additional hours, except by an exception-to-policy waiver signed by the area administrator.

(b) FRS phase II crisis counseling services are available a maximum of twice in a lifetime for any one family. The family must include a parent/guardian who has legal custody of the youth.

[Statutory Authority: Chapter 13.32A RCW, RCW 74.08.090, 74.13.031, 2002 c 371.03-19-051, § 388-32-0030, filed 9/11/03, effective 9/11/03. Statutory Authority: RCW 74.13.031.01-08-047, § 388-32-0030, filed 3/30/01, effective 4/30/01.]

Chapter 388-71 WAC

HOME AND COMMUNITY SERVICES AND PROGRAMS

WAC

388-71-0194	Home and community services—Nursing services.	388-71-05740	What knowledge and skills must be included in modified basic training?
388-71-0202	Long-term care services—Definitions.	388-71-05745	Is competency testing required for modified basic training?
388-71-0203	Long-term care services—Assessment of task self-performance and determination of required assistance.	388-71-05750	Is there a challenge test for modified basic training?
388-71-0405	What are the home and community programs?	388-71-05755	What documentation is required for successful completion of modified basic training?
388-71-0410	What services may I receive under HCP?	388-71-05760	Who may take modified basic training instead of the full basic training?
388-71-0415	What other services may I receive under the COPEs program?	388-71-05765	What are the training requirements and exemptions for parents who are individual providers for their adult children receiving services through DDD?
388-71-0420	What services are not covered under HCP?	388-71-05770	What are the training requirements and exemptions for parents who are individual providers for their adult children who do not receive services through DDD?
388-71-0425	Who can provide HCP services?	388-71-05775	What is continuing education?
388-71-0430	Am I eligible for one of the HCP programs?	388-71-05780	How many hours of continuing education are required each year?
388-71-0435	Am I eligible for COPEs-funded services?	388-71-05785	What kinds of training topics are required for continuing education?
388-71-0440	Am I eligible for MPC-funded services?	388-71-05790	Is competency testing required for continuing education?
388-71-0442	Am I eligible for Medically Needy Residential waiver services?	388-71-05795	May basic or modified basic training be completed a second time and used to meet the continuing education requirement?
388-71-0445	Am I eligible for Chore-funded services?	388-71-05799	What are the documentation requirements for continuing education?
388-71-0460	Are there limitations to HCP services I can receive?	388-71-0580	Decodified.
388-71-0465	Are there waiting lists for HCP services?	388-71-05805	What is nurse delegation core training?
388-71-0470	Who pays for HCP services?	388-71-05810	What knowledge and skills must nurse delegation core training include?
388-71-0475	Repealed.	388-71-05815	Is competency testing required for nurse delegation core training?
388-71-0480	If I am employed, can I still receive HCP services?	388-71-05820	Is there a challenge test for nurse delegation core training?
388-71-0520	Are there training requirements for an individual provider or a home care agency provider of an adult client?	388-71-05825	What documentation is required for successful completion of nurse delegation core training?
388-71-05640	Self-directed care—Who must direct self-directed care?	388-71-05830	Who is required to complete nurse delegation core training, and when?
388-71-05665	What definitions apply to WAC 388-71-05670 through 388-71-05909?	388-71-05835	What is competency testing?
388-71-05670	What is orientation?	388-71-05840	What components must competency testing include?
388-71-05675	What content must be included in an orientation?	388-71-05845	What experience or training must individuals have to be able to perform competency testing?
388-71-05680	Is competency testing required for orientation?	388-71-05850	What training must include the DSHS-developed competency test?
388-71-05685	Is there a challenge test for orientation?	388-71-05855	How must competency test administration be standardized?
388-71-05690	What documentation is required for orientation?	388-71-05860	What form of identification must providers show a tester before taking a competency or challenge test?
388-71-05695	Who is required to complete orientation, and when must it be completed?	388-71-05865	How many times may a competency test be taken?
388-71-05700	What is basic training?	388-71-05870	What are an instructor's or training entity's responsibilities?
388-71-05705	Is there an alternative to the basic training for some health care workers?	388-71-05875	Must instructors be approved by DSHS or an AAA?
388-71-05710	What core knowledge and skills must be taught in basic training?	388-71-05880	Can DSHS or the AAA deny or terminate a contract with an instructor or training entity?
388-71-05715	Is competency testing required for basic training?	388-71-05885	What is a guest speaker, and what are the minimum qualifications to be a guest speaker for basic training?
388-71-05720	Is there a challenge test for basic training?	388-71-05890	What are the minimum qualifications for an instructor for basic, modified basic or nurse delegation core training?
388-71-05725	What documentation is required for successful completion of basic training?	388-71-05895	What additional qualifications are required for instructors of nurse delegation core training?
388-71-05730	Who is required to complete basic training, and when?	388-71-05899	What must be included in a class on adult education?
388-71-05735	What is modified basic training?	388-71-05905	What physical resources are required for basic, modified basic, or nurse delegation core classroom training and testing?
		388-71-05909	What standard training practices must be maintained for basic, modified basic, or nurse delegation core classroom training and testing?
		388-71-05910	Decodified.
		388-71-05911	Decodified.
		388-71-05912	Decodified.
		388-71-05913	Decodified.
		388-71-05914	Decodified.
		388-71-05915	Decodified.
		388-71-05916	Decodified.
		388-71-05917	Decodified.
		388-71-05918	Decodified.
		388-71-05919	Decodified.
		388-71-05920	Decodified.
		388-71-05921	Decodified.
		388-71-05922	Decodified.
		388-71-05923	Decodified.

		DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER
388-71-05924	Decodified.	
388-71-05925	Decodified.	
388-71-05926	Decodified.	
388-71-05927	Decodified.	
388-71-05928	Decodified.	388-71-0475
388-71-05929	Decodified.	
388-71-05930	Decodified.	
388-71-05931	Decodified.	
388-71-05932	Decodified.	
388-71-05933	Decodified.	388-71-0580
388-71-05934	Decodified.	
388-71-05935	Decodified.	
388-71-05936	Decodified.	
388-71-05937	Decodified.	
388-71-05938	Decodified.	
388-71-05939	Decodified.	
388-71-05940	Decodified.	
388-71-05941	Decodified.	
388-71-05942	Decodified.	
388-71-05943	Decodified.	
388-71-05944	Decodified.	
388-71-05945	Decodified.	388-71-05910
388-71-05946	Decodified.	
388-71-05947	Decodified.	
388-71-05948	Decodified.	
388-71-05949	Decodified.	
388-71-05950	Decodified.	
388-71-05951	Decodified.	388-71-05911
388-71-05952	Decodified.	
388-71-0600	What are residential services?	
388-71-0605	Am I eligible for residential services?	
388-71-0610	Who pays for residential care?	
388-71-0702	Purposes and definitions.	
388-71-0704	Adult day care—Services.	
388-71-0706	Adult day health—Services.	388-71-05912
388-71-0708	Adult day care—Eligibility.	
388-71-0710	Adult day health—Eligibility.	
388-71-0712	Adult day health—Skilled nursing.	
388-71-0714	Adult day health—Rehabilitative therapy.	
388-71-0716	Adult day care—Assessment and service plan.	
388-71-0718	Adult day care—Negotiated care plan.	388-71-05913
388-71-0720	Adult day health—Assessment and service plan.	
388-71-0722	Adult day health—Negotiated care plan.	
388-71-0724	Adult day services—Contracting and rates.	
388-71-0726	Adult day health transportation.	
388-71-0728	Coordination of services.	
388-71-0730	Senior Citizens Services Act/Respite care.	
388-71-0732	Hearing rights.	388-71-05914
388-71-0734	Limiting expenditures.	
388-71-0736	Adult day centers—Administrative policies and procedures.	
388-71-0738	Adult day centers—Operating policies and procedures.	
388-71-0740	Adult day centers—Fiscal operations.	
388-71-0742	Adult day centers—Client policies and procedures.	
388-71-0744	Adult day center—Client records.	388-71-05915
388-71-0746	Adult day center—Documentation.	
388-71-0748	Adult day centers—Record retention.	
388-71-0750	Adult day centers—Personnel policies and procedures.	
388-71-0752	Adult day center—Staffing requirements.	
388-71-0754	Staffing ratios.	
388-71-0756	Adult day care—Staffing requirements.	388-71-05916
388-71-0758	Adult day health—Staffing requirements.	
388-71-0760	Adult day centers—Employee records.	
388-71-0762	Adult day centers—Education and training.	
388-71-0764	Adult day centers—Medication.	
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388-71-0772	Adult day centers—Emergency procedures.	
388-71-0774	Adult day centers—Quality assurance and improvement.	
388-71-0776	Effective date.	
388-71-0800	What is PACE?	
388-71-0805	What services does PACE cover?	388-71-05918
388-71-0810	Who provides these services?	
388-71-0815	Where are these services provided?	
388-71-0820	How do I qualify for Medicaid-funded PACE services?	
388-71-0825	What are my appeal rights?	
388-71-0835	How do I enroll into the PACE program?	
388-71-0840	How do I disenroll from the PACE program?	
388-71-0845	What are my rights as a PACE client?	

388-71-05919	What core knowledge and skills must be taught in basic training? [Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05919, filed 4/30/02, effective 5/31/02.] Amended and decodified by 04-02-001, filed 12/24/03, effective 1/24/04. Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. Recodified as § 388-71-05710.	Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05930, filed 4/30/02, effective 5/31/02.] Decodified by 04-02-001, filed 12/24/03, effective 1/24/04. Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. Recodified as § 388-71-05765.	
388-71-05920	Is competency testing required for basic training? [Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05920, filed 4/30/02, effective 5/31/02.] Amended and decodified by 04-02-001, filed 12/24/03, effective 1/24/04. Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. Recodified as § 388-71-05715.	388-71-05931	What are the training requirements and exemptions for parents who are individual providers for their adult children who do not receive services through DDD? [Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05931, filed 4/30/02, effective 5/31/02.] Decodified by 04-02-001, filed 12/24/03, effective 1/24/04. Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. Recodified as § 388-71-05770.
388-71-05921	Is there a challenge test for basic training? [Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05921, filed 4/30/02, effective 5/31/02.] Decodified by 04-02-001, filed 12/24/03, effective 1/24/04. Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. Recodified as § 388-71-05720.	388-71-05932	What is continuing education? [Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05932, filed 4/30/02, effective 5/31/02.] Decodified by 04-02-001, filed 12/24/03, effective 1/24/04. Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. Recodified as § 388-71-05775.
388-71-05922	What documentation is required for successful completion of basic training? [Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05922, filed 4/30/02, effective 5/31/02.] Decodified by 04-02-001, filed 12/24/03, effective 1/24/04. Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. Recodified as § 388-71-05725.	388-71-05933	How many hours of continuing education are required each year? [Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05933, filed 4/30/02, effective 5/31/02.] Decodified by 04-02-001, filed 12/24/03, effective 1/24/04. Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. Recodified as § 388-71-05780.
388-71-05923	Who is required to complete basic training, and when? [Statutory Authority: RCW 74.39A.050. 03-19-076, § 388-71-05923, filed 9/12/03, effective 10/13/03. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05923, filed 4/30/02, effective 5/31/02.] Decodified by 04-02-001, filed 12/24/03, effective 1/24/04. Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. Recodified as § 388-71-05730.	388-71-05934	What kinds of training topics are required for continuing education? [Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05934, filed 4/30/02, effective 5/31/02.] Decodified by 04-02-001, filed 12/24/03, effective 1/24/04. Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. Recodified as § 388-71-05785.
388-71-05924	What is modified basic training? [Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05924, filed 4/30/02, effective 5/31/02.] Amended and decodified by 04-02-001, filed 12/24/03, effective 1/24/04. Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. Recodified as § 388-71-05735.	388-71-05935	Is competency testing required for continuing education? [Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05935, filed 4/30/02, effective 5/31/02.] Decodified by 04-02-001, filed 12/24/03, effective 1/24/04. Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. Recodified as § 388-71-05790.
388-71-05925	What knowledge and skills must be included in modified basic training? [Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05925, filed 4/30/02, effective 5/31/02.] Amended and decodified by 04-02-001, filed 12/24/03, effective 1/24/04. Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. Recodified as § 388-71-05740.	388-71-05936	May basic or modified basic training be completed a second time and used to meet the continuing education requirement? [Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05936, filed 4/30/02, effective 5/31/02.] Decodified by 04-02-001, filed 12/24/03, effective 1/24/04. Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. Recodified as § 388-71-05795.
388-71-05926	Is competency testing required for modified basic training? [Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05926, filed 4/30/02, effective 5/31/02.] Amended and decodified by 04-02-001, filed 12/24/03, effective 1/24/04. Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. Recodified as § 388-71-05745.	388-71-05937	What are the documentation requirements for continuing education? [Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05937, filed 4/30/02, effective 5/31/02.] Decodified by 04-02-001, filed 12/24/03, effective 1/24/04. Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. Recodified as § 388-71-05799.
388-71-05927	Is there a challenge test for modified basic training? [Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05927, filed 4/30/02, effective 5/31/02.] Decodified by 04-02-001, filed 12/24/03, effective 1/24/04. Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. Recodified as § 388-71-05750.	388-71-05938	What is competency testing? [Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05938, filed 4/30/02, effective 5/31/02.] Decodified by 04-02-001, filed 12/24/03, effective 1/24/04. Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. Recodified as § 388-71-05835.
388-71-05928	What documentation is required for successful completion of modified basic training? [Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05928, filed 4/30/02, effective 5/31/02.] Decodified by 04-02-001, filed 12/24/03, effective 1/24/04. Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. Recodified as § 388-71-05755.	388-71-05939	What components must competency testing include? [Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05939, filed 4/30/02, effective 5/31/02.] Decodified by 04-02-001, filed 12/24/03, effective 1/24/04. Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. Recodified as § 388-71-05840.
388-71-05929	Who may take modified basic training instead of the full basic training? [Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05929, filed 4/30/02, effective 5/31/02.] Decodified by 04-02-001, filed 12/24/03, effective 1/24/04. Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. Recodified as § 388-71-05760.	388-71-05940	What experience or training must individuals have to be able to perform competency testing? [Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05940, filed 4/30/02, effective 5/31/02.] Decodified by 04-02-001, filed 12/24/03, effective 1/24/04. Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. Recodified as § 388-71-05845.
388-71-05930	What are the training requirements and exemptions for parents who are individual providers for their adult children receiving services through DDD? [Statutory	388-71-05941	What training must include the DSHS-developed competency test? [Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05941, filed 4/30/02, effective 5/31/02.] Amended and decodified by

04-02-001, filed 12/24/03, effective 1/24/04. Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. Recodified as § 388-71-05850.

RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. Recodified as § 388-71-05909.

388-71-05942

How must competency test administration be standardized? [Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05942, filed 4/30/02, effective 5/31/02.] Decodified by 04-02-001, filed 12/24/03, effective 1/24/04. Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. Recodified as § 388-71-05855.

WAC 388-71-0194 Home and community services—

Nursing services. (1) Upon department or designee referral, a registered nurse will consult about or visit a Community Options Program Entry System client, Medically Needy Residential waiver client or a Medicaid personal care client to perform a nursing service which may include the following activities:

388-71-05943

What form of identification must providers show a tester before taking a competency or challenge test? [Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05943, filed 4/30/02, effective 5/31/02.] Amended and decodified by 04-02-001, filed 12/24/03, effective 1/24/04. Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. Recodified as § 388-71-05860.

- (a) Nursing assessment/reassessment;
- (b) Instruction to care providers and clients;
- (c) Care coordination;
- (d) File review;
- (e) Evaluation.

388-71-05944

How many times may a competency test be taken? [Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05944, filed 4/30/02, effective 5/31/02.] Decodified by 04-02-001, filed 12/24/03, effective 1/24/04. Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. Recodified as § 388-71-05865.

(2) The frequency and scope of the nursing service will be based on individual client need.

388-71-05945

What are an instructor's or training entity's responsibilities? [Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05945, filed 4/30/02, effective 5/31/02.] Decodified by 04-02-001, filed 12/24/03, effective 1/24/04. Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. Recodified as § 388-71-05870.

(3) This nursing service will not be provided if activities duplicate services that the client is receiving from some other resource. Coordination and/or referrals to appropriate health care providers will occur as necessary.

388-71-05946

Must instructors be approved by DSHS or an AAA? [Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05946, filed 4/30/02, effective 5/31/02.] Amended and decodified by 04-02-001, filed 12/24/03, effective 1/24/04. Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. Recodified as § 388-71-05875.

(4) The registered nurse providing this service will not perform skilled treatment except in the event of an emergency. A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement. The need for any skilled medical or nursing treatments will be referred to a health care provider, a home health agency or a other appropriate resource.

388-71-05947

Can DSHS or the AAA deny or terminate a contact with an instructor or training entity? [Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05947, filed 4/30/02, effective 5/31/02.] Amended and decodified by 04-02-001, filed 12/24/03, effective 1/24/04. Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. Recodified as § 388-71-05880.

(5) The registered nurse must document the result of the nursing service provided on a department-approved form. The registered nurse provides a copy to the staff who has case management responsibility.

388-71-05948

What is a guest speaker, and what are the minimum qualifications to be a guest speaker for basic training? [Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05948, filed 4/30/02, effective 5/31/02.] Decodified by 04-02-001, filed 12/24/03, effective 1/24/04. Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. Recodified as § 388-71-05885.

[Statutory Authority: RCW 74.08.090, 74.04.050, 74.04.057, 74.04.200, 74.09.520, 74.39.020, 74.39A.090, 2003 1st sp.s. c 25, 2003 c 140. 03-24-001, § 388-71-0194, filed 11/19/03, effective 12/20/03. Statutory Authority: 2001 c 269, RCW 74.09.700, 74.08.090, 74.04.050, 74.09.575 and chapter 74.39 RCW. 03-13-052, § 388-71-0194, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.08.090, 74.09.520, and 74.39A.090. 02-21-098, § 388-71-0194, filed 10/21/02, effective 11/21/02.]

388-71-05949

What are the minimum qualifications for an instructor for basic or modified basic training? [Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-15-064, § 388-71-05949, filed 7/11/02, effective 8/11/02.] Amended and decodified by 04-02-001, filed 12/24/03, effective 1/24/04. Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. Recodified as § 388-71-05890.

WAC 388-71-0202 Long-term care services—Definitions.

The department shall use the definition in this section for long-term care services.

388-71-05950

What must be included in a class on adult education? [Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05950, filed 4/30/02, effective 5/31/02.] Decodified by 04-02-001, filed 12/24/03, effective 1/24/04. Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. Recodified as § 388-71-05899.

"Long-term care services" means the services administered directly or through contract by the aging and adult services administration of the department, including but not limited to nursing facility care and home and community services.

388-71-05951

What physical resources are required for basic or modified basic classroom training and testing? [Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05951, filed 4/30/02, effective 5/31/02.] Amended and decodified by 04-02-001, filed 12/24/03, effective 1/24/04. Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. Recodified as § 388-71-05905.

"Aged person" means a person sixty-five years of age or older.

388-71-05952

What standard training practices must be maintained for basic or modified basic classroom training and testing? [Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05952, filed 4/30/02, effective 5/31/02.] Amended and decodified by 04-02-001, filed 12/24/03, effective 1/24/04. Statutory Authority:

"Agency provider" means a licensed home care agency or a licensed home health agency having a contract to provide long-term care personal care services to a client in the client's own home.

"Application" means a written request for medical assistance or long-term care services submitted to the department by the applicant, the applicant's authorized representative, or, if the applicant is incompetent or incapacitated, someone acting responsibly for the applicant. The applicant

shall submit the request on a form prescribed by the department.

"Assessment" or **"reassessment"** means an inventory and evaluation of abilities and needs based on an in-person interview in the client's own home or other place of residence.

"Attendant care" means the chore personal care service provided to a grandfathered client needing full-time care due to the client's need for:

- (1) Assistance with personal care; or
- (2) Protective supervision due to confusion, forgetfulness, or lack of judgment. Protective supervision does not include responsibilities a legal guardian should assume such as management of property and financial affairs.

"Authorization" means an official approval of a departmental action, for example, a determination of client eligibility for service or payment for a client's long-term care services.

"Blind person" means a person determined blind as described under WAC 388-511-1105 by the division of disability determination services of the medical assistance administration.

"Categorically needy" means the financial status of a person as defined under WAC 388-503-0310.

"Client" means an applicant for service or a person currently receiving services.

"Community residence" means:

- (1) The client's **"own home"** as defined in this section;
- (2) Licensed adult family home under department contract;
- (3) Licensed boarding home under department contract;
- (4) Licensed children's foster home;
- (5) Licensed group care facility, as described in chapter 388-148 WAC; or
- (6) Shared living arrangement as defined in this section.

"Community spouse" means a person as described under WAC 388-513-1365 (1)(b).

"Companionship" means the activity of a person in a client's own home to prevent the client's loneliness or to accompany the client outside the home for other than personal care services.

"Contracted program" means services provided by a licensed and contracted home care agency or home health agency.

"COPES" means community options program entry system.

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

"Direct personal care services" means verbal or physical assistance with tasks involving direct client care which are directly related to the client's handicapping condition. Such assistance is limited to allowable help with the tasks of ambulation, bathing, body care, dressing, eating, personal hygiene, positioning, self-medication, toileting, transfer, as defined in **"personal care services"** below.

"Disabled" means a person determined disabled as described under WAC 388-511-1105 by the division of disability determination services of the medical assistance administration.

"Disabling condition" means a condition which prevents a person from self-performance of personal care tasks without assistance.

"Estate recovery" means the department's activity in recouping funds after the client's death which were expended for long-term care services provided to the client during the client's lifetime per WAC 388-527-2742.

"Grandfathered client" means a chore personal care services client approved for either:

- (1) Attendant care services provided under the chore personal care program when these services began before April 1, 1988; and
- (2) Family care services provided under the chore personal care program when these services began before December 14, 1987; and
- (3) The client was receiving the same services as of June 30, 1989.

"Home health agency" means a licensed:

(1) Agency or organization certified under Medicare to provide comprehensive health care on a part-time or intermittent basis to a patient in the patient's place of residence and reimbursed through the use of the client's medical identification card; or

(2) Home health agency, certified or not certified under Medicare, contracted and authorized to provide:

- (a) Private duty nursing; or
- (b) Skilled nursing services under an approved Medicaid waiver program.

"Household assistance" means assistance with incidental household tasks provided as an integral, but subordinate part of the personal care furnished directly to a client by and through the long-term care programs as described in this chapter. Household assistance is considered an integral part of personal care when such assistance is directly related to the client's medical or mental health condition, is reflected in the client's service plan, and is provided only when a client is assessed as needing personal care assistance with one or more direct personal care tasks. Household assistance tasks include travel to medical services, essential shopping, meal preparation, laundry, housework, and wood supply.

"Income" means **"income"** as defined under WAC 388-500-0005.

"Individual provider" means a person employed by a community options program entry system (COPES) or Medicaid personal care client when the person:

- (1) Meets or exceeds the qualifications as defined under WAC 388-71-0500 through 388-71-0580;
- (2) Has signed an agreement to provide personal care services to a client; and
- (3) Has been authorized payment for the services provided in accordance with the client's service plan.

"Individual provider program (IPP)" means a method of chore personal care service delivery where the client employs and supervises the chore personal care service provider.

"Institution" means an establishment which furnishes food, shelter, medically-related services, and medical care to four or more persons unrelated to the proprietor. **"Institution"** includes medical facilities, nursing facilities, and institutions for the mentally retarded, but does not include correctional institutions.

"Institutional eligible client" means a person whose eligibility is determined under WAC 388-513-1315.

"Institutionalized client" means the same as defined in WAC 388-513-1365(f).

"Institutional spouse" means a person described under WAC 388-513-1365 (1)(e).

"Medicaid" means the federal aid Title XIX program under which medical care is provided to:

(1) Categorically needy as defined under WAC 388-503-0310; and

(2) Medically needy as defined under WAC 388-503-0320.

"Medical assistance" means the federal aid Title XIX program under which medical care is provided to the categorically needy as defined under WAC 388-503-0310 and 388-503-1105.

"Medical institution" means an institution defined under WAC 388-500-0005.

"Medically necessary" and **"medical necessity"** mean the same as defined under WAC 388-500-0005.

"Medically oriented tasks" means direct personal care services and household assistance provided as an integral but subordinate part of the personal care and supervision furnished directly to a client.

"Mental health professional" means a person defined under WAC 388-865-0150.

"Own home" means the client's present or intended place of residence:

(1) In a building the client rents and the rental is not contingent upon the purchase of personal care services as defined in this section; or

(2) In a building the client owns; or

(3) In a relative's established residence; or

(4) In the home of another where rent is not charged and residence is not contingent upon the purchase of personal care services as defined in this section.

"Personal care aide" means a person meeting the department's qualification and training requirements and providing direct personal care services to a client. The personal care aide may be an employee of a contracted agency provider or may be an individual provider employed by the client.

"Personal care services" means both physical assistance and/or prompting and supervising the performance of direct personal care tasks and household tasks, as listed in (1) through (17) of this subsection. Such services may be provided for clients who are functionally unable to perform all or part of such tasks or who are incapable of performing the tasks without specific instructions. Personal care services do not include assistance with tasks performed by a licensed health professional.

(1) **"Ambulation"** means assisting the client to move around. Ambulation includes supervising the client when walking alone or with the help of a mechanical device such as a walker if guided, assisting with difficult parts of walking such as climbing stairs, supervising the client if client is able to propel a wheelchair if guided, pushing of the wheelchair, and providing constant or standby physical assistance to the client if totally unable to walk alone or with a mechanical device.

(2) **"Bathing"** means assisting a client to wash. Bathing includes supervising the client able to bathe when guided, assisting the client with difficult tasks such as getting in or out of the tub or washing back, and completely bathing the client if totally unable to wash self.

(3) **"Body care"** means assisting the client with exercises, skin care including the application of nonprescribed ointments or lotions, changing dry bandages or dressings when professional judgment is not required and pedicure to trim toenails and apply lotion to feet. In adult family homes or in licensed boarding homes contracting with DSHS to provide assisted living services, dressing changes using clean technique and topical ointments must be delegated by a registered nurse in accordance with chapter 246-840 WAC.

"Body care" excludes:

(a) Foot care for clients who are diabetic or have poor circulation; or

(b) Changing bandages or dressings when sterile procedures are required.

(4) **"Dressing"** means assistance with dressing and undressing. Dressing includes supervising and guiding client when client is dressing and undressing, assisting with difficult tasks such as tying shoes and buttoning, and completely dressing or undressing client when unable to participate in dressing or undressing self.

(5) **"Eating"** means assistance with eating. Eating includes supervising client when able to feed self if guided, assisting with difficult tasks such as cutting food or buttering bread, and feeding the client when unable to feed self.

(6) **"Essential shopping"** means assistance with shopping to meet the client's health care or nutritional needs. Limited to brief, occasional trips in the local area to shop for food, medical necessities, and household items required specifically for the health, maintenance, and well-being of the client. Essential shopping includes assisting when the client can participate in shopping and doing the shopping when the client is unable to participate.

(7) **"Housework"** means performing or helping the client perform those periodic tasks required to maintain the client in a safe and healthy environment. Activities performed include such things as cleaning the kitchen and bathroom, sweeping, vacuuming, mopping, cleaning the oven, and defrosting the freezer, shoveling snow. Washing inside windows and walls is allowed, but is limited to twice a year. Assistance with housework is limited to those areas of the home which are actually used by the client. This task is not a maid service and does not include yard care.

(8) **"Laundry"** means washing, drying, ironing, and mending clothes and linens used by the client or helping the client perform these tasks.

(9) **"Meal preparation"** means assistance with preparing meals. Meal preparation includes planning meals including special diets, assisting clients able to participate in meal preparation, preparing meals for clients unable to participate, and cleaning up after meals. This task may not be authorized to just plan meals or clean up after meals. The client must need assistance with actual meal preparation.

(10) **"Personal hygiene"** means assistance with care of hair, teeth, dentures, shaving, filing of nails, and other basic personal hygiene and grooming needs. Personal hygiene includes supervising the client when performing the tasks,

assisting the client to care for the client's own appearance, and performing grooming tasks for the client when the client is unable to care for own appearance.

(11) **"Positioning"** means assisting the client to assume a desired position, assistance in turning and positioning to prevent secondary disabilities, such as contractures and balance deficits or exercises to maintain the highest level of functioning which has already been attained and/or to prevent the decline in physical functional level. (Range of motion ordered as part of a physical therapy treatment is not included.)

(12) **"Self-medication"** means assisting the client to self-administer medications prescribed by attending physician. Self-medication includes reminding the client of when it is time to take prescribed medication, handing the medication container to the client, and opening a container.

(13) **"Supervision"** means being available to:

(a) Help the client with personal care tasks that cannot be scheduled, such as toileting, ambulation, transfer, positioning, some medication assistance; and

(b) Provide protective supervision to a client who cannot be left alone because of impaired judgment.

(14) **"Toileting"** means assistance with bladder or bowel functions. Toileting includes guidance when the client is able to care for own toileting needs, helping client to and from the bathroom, assisting with bedpan routines, using incontinent briefs on client, and lifting client on and off the toilet. Toileting may include performing routine perineal care, colostomy care, or catheter care for the client when client is able to supervise the activities. In adult family homes or in licensed boarding homes contracting with DSHS to provide assisted living services colostomy care and catheterization using clean technique must be delegated by a registered nurse in accordance with chapter 246-840 WAC.

(15) **"Transfer"** means assistance with getting in and out of a bed or wheelchair or on and off the toilet or in and out of the bathtub. Transfer includes supervising the client when able to transfer if guided, providing steadying, and helping the client when client assists in own transfer. Lifting the client when client is unable to assist in their own transfer requires specialized training.

(16) **"Travel to medical services"** means accompanying or transporting the client to a physician's office or clinic in the local area to obtain medical diagnosis or treatment.

(17) **"Wood supply"** means splitting, stacking, or carrying wood for the client when the client uses wood as the sole source of fuel for heating and/or cooking. This task is limited to splitting, stacking, or carrying wood the client has at own home. The department shall not allow payment for a provider to use a chain saw or to fell trees.

"Physician" means a doctor of medicine, osteopathy, or podiatry, as defined under WAC 388-500-0005.

"Plan of care" means a **"service plan"** as described under WAC 388-71-0205.

"Property owned" means any real and personal property and other assets over which the client has any legal title or interest.

"Provider" or **"provider of service"** means an institution, agency, or person:

(1) Having a signed department agreement to furnish long-term care client services; and

(2) Qualified and eligible to receive department payment.

"Relative" means:

(1) For chore personal care service, a client's spouse, father, mother, son, or daughter;

(2) For Medicaid personal care service:

(a) **"Legally responsible relative"** means a spouse caring for a spouse or a biological, adoptive, or stepparent caring for a minor child.

(b) **"Nonresponsible relative"** means a parent caring for an adult child and an adult child caring for a parent.

"Service plan" means a plan for long-term care service delivery as described under WAC 388-71-0205.

"Shared living arrangement" for purposes of Medicaid personal care means an arrangement where:

(1) A nonresponsible relative as defined in **"relative"** above is the personal care provider and resides in the same residence with common facilities, such as living, cooking, and eating areas; or

(2) A minor child age seventeen or younger lives in the home of a legally responsible relative as defined in **"relative"** above.

"SSI-related" means a person who is aged, blind, or disabled.

"Supervision" means a person available to a long-term care client as defined under **"personal care services."**

"Supplemental Security Income (SSI)" means the federal program as described under WAC 388-500-0005.

"Title XIX" is the portion of the federal Social Security Act which authorizes federal funding for medical assistance programs, e.g., nursing facility care, COPES, Medically Needy Residential waiver and Medicaid personal care home and community-based services.

"Transfer of resources" means the same as defined under WAC 388-513-1365 (1)(g).

"Unscheduled tasks" means ambulation, toileting, transfer, positioning, and unscheduled medication assistance as described in this chapter.

[Statutory Authority: 2001 c 269, RCW 74.09.700, 74.08.090, 74.04.050, 74.09.575 and chapter 74.39 RCW. 03-13-052, § 388-71-0202, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.08.090, 74.09.520, and 74.39A.090. 02-21-098, § 388-71-0202, filed 10/21/02, effective 11/21/02.]

WAC 388-71-0203 Long-term care services—Assessment of task self-performance and determination of required assistance. (1) Purpose. The assessor as identified in subsection (2)(a) of this section shall:

(a) Identify client strengths to maximize current strengths and promote client independence;

(b) Evaluate physical health, functional and cognitive abilities, social resources and emotional and social functioning for service planning for long-term care;

(c) Identify client values and preferences for effective service planning based on the person's values and lifestyles; and

(d) Determine client's need for informal support, community support and services, and department paid services.

(2) Assessment responsibility.

(a) Department staff or designee while assessing need for case management shall perform the assessment.

(b) Except for adult protective service, the assessors shall perform a separate assessment for each client.

(c) The assessors shall document the assessment on a prescribed form.

(d) The assessors shall perform the assessment based on an in-person interview with the client in the client's home. A case manager may request the assessment be conducted in private.

(e) When performing the assessment, the assessors shall take into account the client's:

- (i) Risk of and eligibility for nursing facility placement;
- (ii) Health status, psychological/social/cognitive functioning, income and resources, and functional abilities;
- (iii) Living situation; and
- (iv) Availability of alternative resources providing needed assistance, including family, neighbors, friends, community programs, and volunteers.

(3) The adult client's functional ability to self-perform each personal care task and household task shall be determined using the following definitions of the assistance required:

(a) Ambulation:

(i) Independent. The client is mobile, with or without an assistive device, both inside and outside the household without the assistance of another person.

(ii) Minimal. The client is mobile inside without assistance but needs the assistance of another person outside; or the client needs occasional assistance of another person inside, and usually needs assistance of another person outside.

(iii) Substantial. The client is only mobile with regular assistance of another person both inside and outside.

(iv) Total. The client is not mobile.

(b) Bathing:

(i) Independent. The client can bathe self.

(ii) Minimal. The client requires oversight help or reminding only. The client can bathe without assistance or supervision, but must be reminded some of the time; or the client cannot get into the tub alone and physical help is limited to stand-by assist only.

(iii) Substantial. The client requires physical help in a large part of the bathing activity, for example, to lather, wash, and/or rinse own body or hair.

(iv) Total. The client is dependent on others to provide a complete bath.

(c) Body care:

(i) Independent. The client can apply ointment, lotion, change bandages or dressings, and perform exercises without assistance.

(ii) Minimal. The client requires oversight help or reminding only, or requires occasional assistance.

(iii) Substantial. The client requires limited physical help to apply ointment, lotion, or to perform dry bandage or dressing change.

(iv) Total. The client is dependent on others to perform all required body care.

(d) Dressing:

(i) Independent. The client can dress and undress without assistance or supervision.

(ii) Minimal. The client can dress and undress, but may need to be reminded or supervised to do so on some days; the

client can assist dressing and undressing, but frequently or most of the time needs some physical assistance.

(ii) Substantial. The client always needs assistance to do parts of dressing and undressing.

(iv) Total. The client is dependent on others to do all dressing and undressing.

(e) Eating:

(i) Independent. The client can feed self, chew and swallow solid foods without difficulty, or can feed self by stomach tube or catheter.

(ii) Minimal. The client:

(A) Can feed self, chew and swallow foods, but needs reminding to maintain adequate intake;

(B) May need food cut up;

(C) Can feed self only if food is brought to the client.

(iii) Substantial. The client:

(A) Can feed self but needs standby assistance for occasional gagging, choking, or swallowing difficulty; or

(B) Needs reminders/assistance with adaptive feeding equipment; or

(C) Must be fed some or all food by mouth by another person.

(iv) Total. The client must be totally fed by another person and/or frequently gags or chokes due to difficulty in swallowing; or the client must be fed by another person by stomach tube or by venous access.

(f) Essential shopping:

(i) Independent. The client can drive and is licensed or the client is capable of using public transportation.

(ii) Minimal. The client can use available transportation and does not need assistance with shopping, but needs instructions or physical assistance to get to or from transportation vehicle.

(iii) Substantial. The client is dependent on being accompanied or helped by others to access community shops and needs assistance with shopping.

(iv) Total. The client is totally dependent on others to do essential shopping.

(g) Housework:

(i) Independent. The client can perform essential housework.

(ii) Minimal. The client needs assistance or needs cuing or supervision in self-performance of essential housework one or two times per month in client use areas.

(iii) Substantial. The client needs weekly assistance of another with essential housework in client use areas.

(iv) Total. The client is dependent on others to do all housework in client use areas.

(h) Laundry:

(i) Independent. The client is capable of using available laundry facilities.

(ii) Minimal. The client is physically capable of using laundry facilities, but requires cuing and/or supervision.

(iii) Substantial. The client is not able to use laundry facilities without physical assistance.

(iv) Total. The client is dependent upon others to do all laundry.

(i) Meal preparation:

(i) Independent. The client can prepare and cook required meals.

(ii) Minimal. The client requires some instruction or physical assistance to prepare meals.

(iii) Substantial. The client can participate but needs substantial assistance to prepare meals.

(iv) Total. The client cannot prepare or participate in preparation of meals.

(j) Personal hygiene:

(i) Independent. The client can manage personal hygiene and grooming tasks on a regular basis.

(ii) Minimal. The client can manage their personal hygiene and grooming but must be reminded or supervised at least some of the time; the client regularly requires some limited assistance with both personal hygiene and grooming.

(iii) Substantial. The client regularly requires assistance with personal hygiene and grooming and cooperates in the process.

(iv) Total. The client is dependent on others to provide all personal hygiene and grooming.

(k) Positioning:

(i) Independent. The client can move to and from a lying position, position their body in bed, and get into and out of bed and chairs.

(ii) Minimal. The client can move to and from a lying position, turn from side to side, and position their body while in bed and chairs but requires assistance some of the time.

(iii) Substantial. The client needs occasional assistance to move to and from a lying position, turn from side to side, and position body while in bed and chairs.

(iv) Total. The client needs assistance most or all of the time to move to and from a lying position, turn from side to side, and position body while in bed and chairs.

(l) Self-medication:

(i) Independent. The client can take own medications or does not take medication.

(ii) Minimal. The client is physically able to take medications but requires another person to:

(A) Remind, monitor, or observe the taking of medications less than daily; or

(B) Open a container, lay out, or organize medications less than daily.

(iii) Substantial. The client can physically take medications, but requires another person to either remind, monitor, or observe the taking of medications daily; or the client can physically take medications if another person daily opens containers, lays out, organizes medications.

(iv) Total. The client cannot physically take medications and requires another person to assist and administer all medications.

(m) Toileting:

(i) Independent. The client can use the toilet without physical assistance or supervision; or the client can manage own closed drainage system if the system has a catheter or sheath; or the client uses and manages protective aids. The client may need grab bars or raised toilet seat.

(ii) Minimal. The client needs stand-by assistance for safety or encouragement. The client may need minimal physical assistance with parts of the task, such as clothing adjustment, washing hands, wiping, and cleansing. The client may need a protective garment and may or may not be aware of this need.

(ii) Substantial. The client cannot get to the toilet without assistance; or the client needs substantial physical assistance with part of the task; or the client needs someone else to manage care of a closed drainage system if it has a catheter or sheath. The client may or may not be aware of own needs.

(iv) Total. The client is physically unable to use toilet. Requires continual observation and total cleansing. The client may require protective garments or padding or linen changes. The client may or may not be aware of own needs.

(n) Transfer:

(i) Independent. The client can transfer without physical assistance.

(ii) Minimal. The client transfers without assistance most of the time, but needs assistance on occasion.

(iii) Substantial. The client can assist with own transfers, but frequently or most of the time needs assistance.

(iv) Total. The client transfers must be done by someone else.

(o) Travel to medical services:

(i) Independent. The client can drive and is licensed; or is capable of using available public transportation.

(ii) Minimal. The client cannot drive or can drive but should not; or public transportation is not available.

(iii) Substantial. The client requires physical assistance or supervision to both get into and out of a vehicle, but can use the transportation without assistance during the trip.

(iv) Total. The client is totally dependent on being accompanied or helped by others during the trip.

(p) Wood supply:

(i) Independent. The client does not rely on wood as the sole fuel source or is capable of splitting, stacking, or carrying wood for heating or cooking.

(ii) Minimal. The client can carry wood but needs occasional assistance with splitting or stacking wood.

(iii) Substantial. The client is not able to carry, split, or stack wood, but is able to use the wood supply once it is inside the residence.

(iv) Total. The client is dependent on another person to establish and maintain heat for cooking or residential heating.

(4) Scoring of functional abilities and supports.

(a) For each direct personal care service and household assistance task listed on the assessment form, the assessor shall determine:

(i) The client's ability to perform each activity;

(ii) Assistance available to the client through alternative resources, including families, friends, neighbors, community programs, and unpaid caregivers; and

(iii) Assistance needed from department programs after alternative resources have been taken into account.

(b) The assessor shall award points for each task based on the level of unmet need. The number of points allowable for each task are listed below under columns identified as 0 = none, M = minimal, S = substantial, and T = total:

TASK	0	M	S	T
Eating				
Breakfast	0	4	7	10
Light meal	0	4	7	10
Main meal	0	5	10	15
Toileting	0	5	10	15
Ambulation	0	4	7	10

TASK	0	M	S	T
Transfer	0	1	3	5
Positioning	0	1	3	5
Body care	0	5	10	15
Personal hygiene	0	1	3	5
Dressing	0	4	7	10
Bathing	0	4	7	10
Self-medication	0	2	4	6
Travel to medical services	0	1	2	3
Essential shopping	0	5	10	15
With client				
or				
For client	0	1	3	5
Meal preparation	0	4	7	10
Breakfast				
Light meal	0	4	7	10
Main meal	0	5	10	15
Laundry	0	1	2	3
Facilities in home				
or				
Facilities out of home	0	3	5	7
Housework	0	1	2	3
Wood supply		3	5	7

(c) The assessor shall add together the points awarded for each task to obtain the total score for the applicant or client.

(5) Hour computation. The assessor shall:

(a) Convert the total score into maximum hours per month which may be authorized using the scoring conversion chart.

Scoring Conversion Chart

MAXIMUM		MAXIMUM		MAXIMUM	
Score	Hours	Score	Hours	Score	Hours
1 - 4	5	60 - 64	44	120 - 124	83
5 - 9	8	65 - 69	47	125 - 129	87
10 - 14	11	70 - 74	51	130 - 134	90
15 - 19	14	75 - 79	54	135 - 139	93
20 - 24	18	80 - 84	57	140 - 144	97
25 - 29	21	85 - 89	60	145 - 149	100
30 - 34	24	90 - 94	64	150 - 154	103
35 - 39	28	95 - 99	67	155 - 159	106
40 - 44	31	100 - 104	70	160 - 164	110
45 - 49	34	105 - 109	74	165 - 169	113
50 - 54	37	110 - 114	77	170 and	
55 - 59	41	115 - 119	80	Above	116

(b) Recognize conversion hours show client need, and may not reflect department-paid hours as determined by program standards.

(6) The assessor shall determine the client's additional hours of supervision needed:

(a) Due to impaired judgment; and

(b) For standby assistance necessary for unscheduled tasks defined under WAC 388-71-0202; and

(c) Recognize supervision hours show client need, and may not reflect department paid hours as determined by program standards.

(7) Department staff or the department's designee shall authorize services to correspond with the client's assessed need according to eligibility criteria for aging and adult ser-

vices administration programs or the eligibility criteria for the division authorizing the service. The department or the department's designee shall notify the client of the right to contest a denial or reduction of services.

(8) Department staff or the department designee shall be responsible for representing the department at any hearing involving the assessment or decisions made relating to such assessment.

[Statutory Authority: 2001 c 269, RCW 74.09.700, 74.08.090, 74.04.050, 74.09.575 and chapter 74.39 RCW. 03-13-052, § 388-71-0203, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.08.090, 74.09.520, and 74.39A.090. 02-21-098, § 388-71-0203, filed 10/21/02, effective 11/21/02.]

WAC 388-71-0405 What are the home and community programs? The HCP are in-home and community residential services funded by:

(1) Community options program entry system (COPES), authorized under RCW 74.39A.030.

(2) Medicaid personal care services (MPC), authorized under RCW 74.09.520.

(3) Chore personal care services, a state-only funded program authorized under RCW 74.39A.110.

(4) Medically Needy Residential waiver, authorized under RCW 74.09.700 and 74.39A.041.

[Statutory Authority: 2001 c 269, RCW 74.09.700, 74.08.090, 74.04.050, 74.09.575 and chapter 74.39 RCW. 03-13-052, § 388-71-0405, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.09.520, 74.08.090, 74.39A.130. 00-04-056, § 388-71-0405, filed 1/28/00, effective 2/28/00.]

WAC 388-71-0410 What services may I receive under HCP? You may receive the following HCP services:

(1) For COPES, MPC or chore: Assistance with personal care tasks and household tasks, as defined in WAC 388-71-0202; and

(2) For all HCP programs: Assistance with personal care tasks and household tasks in a residential setting, as described in WAC 388-71-0600. Note: Household tasks are included as part of the board and room rate.

(3) For COPES, MPC: Personal care assistance when temporarily traveling out of state, as long as:

(a) Your provider is contracted with the state of Washington; and

(b) The travel plans are coordinated with your social service case manager prior to departure; and

(c) Services are authorized on your service plan prior to departure; and

(d) Services are strictly for your personal care, which does not include your provider's travel time, expenses, lodging or subsistence.

[Statutory Authority: 2001 c 269, RCW 74.09.700, 74.08.090, 74.04.050, 74.09.575 and chapter 74.39 RCW. 03-13-052, § 388-71-0410, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.08.090, 74.09.520, and 74.39A.090. 02-21-098, § 388-71-0410, filed 10/21/02, effective 11/21/02. Statutory Authority: RCW 74.08.090, 74.39.010, 74.09.520. 00-04-056, § 388-71-0410, filed 1/28/00, effective 2/28/00.]

WAC 388-71-0415 What other services may I receive under the COPES program? In addition to the services listed in WAC 388-71-0410, you may be eligible for other services under the COPES or Medically Needy Residential waiver as indicated in your assessment and documented in your plan of care. Under one of these programs you may be

eligible to receive the following services in your own home or in your residential setting. Note: The definition of own home as used throughout this section is defined in WAC 388-71-0202. The definition of residential settings is defined in WAC 388-71-0600.

(1) For COPEs in-home clients, adult day care if you meet the eligibility requirements under WAC 388-15-652 or its successor.

(2) Environmental modifications, if the minor physical adaptations to your home:

(a) Are necessary to ensure your health, welfare and safety;

(b) Enable you to function with greater independence in the home;

(c) Directly benefit you medically or remedially;

(d) Meet applicable state or local codes;

(e) Adaptions or improvements to the home, which are of general utility or add to the total square footage of the home are excluded.

(3) Home delivered meals provides nutritional balanced meals, limited to one meal per day, if:

(a) You are homebound and live in your own home;

(b) You are unable to prepare the meal;

(c) You don't have a caregiver (paid or unpaid) available to prepare this meal; and

(d) Receiving this meal is more cost-effective than having a paid caregiver.

(4) Home health aide service tasks in your own home, if the service tasks:

(a) Include assistance with ambulation, exercise, self-administered medications and hands on personal care;

(b) Are beyond the amount, duration or scope of Medicaid reimbursed home health services (WAC 388-551-2100) and are in addition to those available services;

(c) Are health-related. Note: Incidental services such as meal preparation may be performed in conjunction with a health-related task as long as it is not the sole purpose of the aide's visit; and

(d) Do not replace Medicare home health services.

(5) Personal emergency response system (PERS), if the service is necessary to enable you to secure help in the event of an emergency and if you:

(a) Live alone in your own home; or

(b) Are alone, in your own home, for significant parts of the day and have no regular provider for extended periods of time.

(6) Skilled nursing in your own home, if the service is:

(a) Provided by a registered nurse or licensed practical nurse under the supervision of a registered nurse; and

(b) Beyond the amount, duration or scope of Medicaid-reimbursed home health services as provided under WAC 388-551-2100.

(7) Specialized durable and nondurable medical equipment and supplies under WAC 388-543-1000, if the items are:

(a) Medically necessary under WAC 388-500-0005; and

(b) Necessary for life support; or

(c) Necessary to increase your ability to perform activities of daily living; or

(d) Necessary for you to perceive, control, or communicate with the environment in which you live; and

(e) Directly medically or remedially beneficial to you; and

(f) In addition to and do not replace any medical equipment and/or supplies otherwise provided under Medicaid and/or Medicare.

(8) Training needs identified in the comprehensive assessment or in a professional evaluation, if you need to meet a therapeutic goal such as:

(a) Adjusting to a serious impairment;

(b) Managing personal care needs; or

(c) Developing necessary skills to deal with care providers.

(9) Transportation services if you live in your own home, if the service:

(a) Provides you access to community services and resources provided in accordance with a therapeutic goal;

(b) Is not merely diversional in nature;

(c) Is in addition to and does not replace the Medicaid-brokered transportation or transportation services available in the community.

(10) For COPEs or Medically Needy Residential waiver clients, skilled nursing in a residential setting, if the service is:

(a) Provided by a registered nurse or licensed practical nurse under the supervision of a registered nurse; and

(b) Beyond the amount, duration or scope of Medicaid-reimbursed home health services as provided under WAC 388-551-2100; and

(c) In addition to and does not replace the services required by DSHS contract in residential settings.

(11) Specialized durable and nondurable medical equipment and supplies under WAC 388-543-1000, if the items are:

(a) Medically necessary under WAC 388-500-0005; and

(b) Necessary for life support; or

(c) Necessary to increase your ability to perform activities of daily living; or

(d) Necessary for you to perceive, control, or communicate with the environment in which you live; and

(e) Directly medically or remedially beneficial to you; and

(f) In addition to and do not replace any medical equipment and/or supplies otherwise provided under Medicaid and/or Medicare; and

(g) In addition to and do not replace the services required by DSHS contract in residential settings.

(12) Training needs identified in the comprehensive assessment or in a professional evaluation, if you need to meet a therapeutic goal such as:

(a) Adjusting to a serious impairment;

(b) Managing personal care needs; or

(c) Developing necessary skills to deal with care providers; and

(d) The service is in addition to and does not replace the services required by DSHS contract in residential settings.

(13) Transportation services if you live in a residential setting, if the service:

(a) Provides you access to community services and resources provided in accordance with a therapeutic goal;

(b) Is not merely diversional in nature;

(c) Is in addition to and does not replace the Medicaid-brokered transportation or transportation services available in the community; and

(d) Does not replace the services required by DSHS contract in residential settings.

Note: Clients who reside in enhanced residential care, assisted living or adult family homes are not eligible for waiver funded adult day care.

(14) Nurse delegation services if:

(a) You are living in your own home;

(b) You are eligible for COPES; and

(c) You are receiving personal care from a registered or certified nursing assistant who has completed Nurse Delegation Core Training;

(d) Your medical condition is considered stable and predictable by the delegating nurse; and

(e) Services are provided in compliance with WAC 246-840-901 through 246-840-970.

[Statutory Authority: RCW 74.08.090, 74.04.050, 74.04.057, 74.04.200, 74.09.520, 74.39.020, 74.39A.090, 2003 1st sp.s. c 25, 2003 c 140. 03-24-001, § 388-71-0415, filed 11/19/03, effective 12/20/03. Statutory Authority: 2001 c 269, RCW 74.09.700, 74.08.090, 74.04.050, 74.09.575 and chapter 74.39 RCW. 03-13-052, § 388-71-0415, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.08.090, 74.39.020. 00-04-056, § 388-71-0415, filed 1/28/00, effective 2/28/00.]

WAC 388-71-0420 What services are not covered under HCP? HCP does not cover the following services:

(1) For chore personal care and MPC:

(a) Teaching, including teaching how to perform personal care tasks;

(b) Development of social, behavioral, recreational, communication, or other types of community living skills;

(c) Nursing care.

(2) Personal care services provided outside of your residence, unless the services are authorized in your written service plan.

(3) Child care;

(4) Sterile procedures, administration of medications, or other tasks requiring a licensed health professional, unless authorized as an approved nursing delegation task, client self-directed care task, or provided by a family member;

(5) Services provided over the telephone;

(6) Services provided outside the state of Washington if chore personal care;

(7) Services to assist other household members not eligible for services;

(8) Yard care.

[Statutory Authority: 2001 c 269, RCW 74.09.700, 74.08.090, 74.04.050, 74.09.575 and chapter 74.39 RCW. 03-13-052, § 388-71-0420, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.09.520, 74.08.090, 74.39A.130. 00-04-056, § 388-71-0420, filed 1/28/00, effective 2/28/00.]

WAC 388-71-0425 Who can provide HCP services? The following types of providers may provide COPES, MPC, or chore services:

(1) For in-home clients, individual providers, who must meet the requirements outlined in WAC 388-71-0500 through 388-71-0580;

(2) For in-home clients, home care agencies, which must be licensed under chapters 70.127 RCW and 246-336 WAC,

or home health agencies, licensed under chapters 70.127 RCW and 246-327 WAC;

(3) For residential clients, licensed adult family home and boarding home providers who are contracted with DSHS (see WAC 388-71-0600); and

(4) As applicable, service providers who have contracted with the AAA to perform other waiver services under COPES or Medically Needy Residential waiver services listed in WAC 388-71-0415.

[Statutory Authority: 2001 c 269, RCW 74.09.700, 74.08.090, 74.04.050, 74.09.575 and chapter 74.39 RCW. 03-13-052, § 388-71-0425, filed 6/12/03, effective 7/13/03. Statutory Authority: 1999 c 175, chapters 70.126, 70.127 RCW, RCW 74.08.044. 00-04-056, § 388-71-0425, filed 1/28/00, effective 2/28/00.]

WAC 388-71-0430 Am I eligible for one of the HCP programs? You are eligible to receive HCP services if you meet the functional and financial eligibility requirements in WAC 388-71-0435 for COPES, WAC 388-71-0442 for Medically Needy Residential waiver, WAC 388-71-0440 for MPC, or WAC 388-71-0445 for Chore. Functional eligibility for all four programs is determined through an assessment as provided under WAC 388-71-0203. Your eligibility begins upon the date of the department's service authorization.

[Statutory Authority: 2001 c 269, RCW 74.09.700, 74.08.090, 74.04.050, 74.09.575 and chapter 74.39 RCW. 03-13-052, § 388-71-0430, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.08.090, 74.09.520, and 74.39A.090. 02-21-098, § 388-71-0430, filed 10/21/02, effective 11/21/02. Statutory Authority: RCW 74.39A.030. 00-13-077, § 388-71-0430, filed 6/19/00, effective 7/20/00. Statutory Authority: RCW 74.39.010, 74.08.090, 74.39A.110, 74.09.520. 00-04-056, § 388-71-0430, filed 1/28/00, effective 2/28/00.]

WAC 388-71-0435 Am I eligible for COPES-funded services? You are eligible for COPES-funded services if you meet all of the following criteria. The department or its designee must assess your needs and determine that:

(1) You are age:

(a) Eighteen or older and blind or disabled, as defined in WAC 388-511-1105; or

(b) Sixty-five or older.

(2) You meet financial eligibility requirements as defined in WAC 388-515-1505.

(3) You:

(a) Are not eligible for Medicaid personal care services; or

(b) Are eligible for Medicaid personal care services, but the department determines that the amount, duration, or scope of your needs is beyond what Medicaid personal care can provide.

(4) Your comprehensive assessment shows you need the level of care provided in a nursing facility (or will likely need the level of care within thirty days unless waiver services are provided) which means one of the following applies. You:

(a) Require care provided by or under the supervision of a registered nurse or a licensed practical nurse on a daily basis;

(b) Have an unmet need requiring substantial or total assistance with at least two or more of the following activities of daily living (ADLs) as defined in WAC 388-71-0202 and 388-71-0203:

(i) Eating,

- (ii) Toileting,
- (iii) Ambulation,
- (iv) Transfer,
- (v) Positioning,
- (vi) Bathing, and
- (vii) Self-medication.

(c) Have an unmet need requiring minimal, substantial or total assistance in three or more of the ADLS listed in subsection (4)(b)(i) through (vii) of this section; or

(d) Have:

(i) A cognitive impairment and require supervision due to one or more of the following: disorientation, memory impairment, impaired judgment, or wandering; and

(ii) An unmet need requiring substantial or total assistance with one or more of the ADLS listed in subsection (4)(b)(i) through (vii) of this section.

(5) You have a completed service plan, per WAC 388-71-0205.

[Statutory Authority: 2001 c 269, RCW 74.09.700, 74.08.090, 74.04.050, 74.09.575 and chapter 74.39 RCW. 03-13-052, § 388-71-0435, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.08.090, 74.09.520, and 74.39A.090. 02-21-098, § 388-71-0435, filed 10/21/02, effective 11/21/02. Statutory Authority: RCW 74.39A.030. 00-13-077, § 388-71-0435, filed 6/19/00, effective 7/20/00.]

WAC 388-71-0440 Am I eligible for MPC-funded services? To be eligible for MPC-funded services you must:

(1) Have unmet need for substantial assistance with at least one direct personal care task listed in WAC 388-71-0202; or have unmet needs for minimal assistance with three direct personal care tasks; and

(2) Be certified as Title 19 categorically needy, as defined in WAC 388-500-0005.

(3) Be assessed by department staff or designee using a department approved comprehensive assessment and have a determination of unmet needs for HCP services.

[Statutory Authority: RCW 74.08.090, 74.04.050, 74.04.057, 74.04.200, 74.09.520, 74.39.020, 74.39A.090, 2003 1st sp.s. c 25, 2003 c 140. 03-24-001, § 388-71-0440, filed 11/19/03, effective 12/20/03. Statutory Authority: RCW 74.08.090, 74.09.520, and 74.39A.090. 02-23-063, § 388-71-0440, filed 11/18/02, effective 12/19/02. Statutory Authority: RCW 74.09.520. 00-04-056, § 388-71-0440, filed 1/28/00, effective 2/28/00.]

WAC 388-71-0442 Am I eligible for Medically Needy Residential waiver services? You are eligible for Medically Needy Residential waiver services if you will be receiving services in a residential setting and meet all of the following criteria. The department or its designee must assess your needs and determine that:

(1) You are age:

(a) Eighteen or older and blind or disabled, as defined in WAC 388-511-1105; or

(b) Sixty-five or older.

(2) You meet the financial eligibility requirements defined in WAC 388-515-1540.

(3) You are not eligible for Medicaid personal care services or COPES.

(4) You meet the functional criteria for nursing facility level of care as defined in WAC 388-71-0435(4).

(5) You have a completed service plan, per WAC 388-71-0205.

(6) Note: Depending on the number of available spaces, you may be placed on a waiting list.

[Statutory Authority: 2001 c 269, RCW 74.09.700, 74.08.090, 74.04.050, 74.09.575 and chapter 74.39 RCW. 03-13-052, § 388-71-0442, filed 6/12/03, effective 7/13/03.]

WAC 388-71-0445 Am I eligible for Chore-funded services? To be eligible for Chore-funded services, you must:

(1) Be eighteen years of age or older;

(2) Require assistance with at least one of the direct personal care tasks listed in WAC 388-71-0202;

(3) Not be eligible for MPC or COPES, Medically Needy Residential waiver, Medicare home health or other programs if these programs can meet your needs;

(4) Have net household income (as described in WAC 388-450-0005, 388-450-0020, 388-450-0040, and 388-511-1130) not exceeding:

(a) The sum of the cost of your chore services, and

(b) One-hundred percent of the FPL adjusted for family size.

(5) Have resources, as described in chapter 388-470 WAC, which does not exceed ten thousand dollars for a one-person family or fifteen thousand dollars for a two-person family. (Note: One thousand dollars for each additional family member may be added to these limits.)

(6) Not transfer assets on or after November 1, 1995 for less than fair market value as described in WAC 388-513-1365.

[Statutory Authority: 2001 c 269, RCW 74.09.700, 74.08.090, 74.04.050, 74.09.575 and chapter 74.39 RCW. 03-13-052, § 388-71-0445, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.08.090, 74.09.520, and 74.39A.090. 02-21-098, § 388-71-0445, filed 10/21/02, effective 11/21/02. Statutory Authority: RCW 74.39A.110, 74.39A.150. 01-02-051, § 388-71-0445, filed 12/28/00, effective 1/28/01. Statutory Authority: RCW 74.09.520, 74.09.530, 74.39A.110, [74.39A.]120, [74.39A.]130, and 1998 c 346 § 205 (1)(c), and RCW 74.39A.030. 00-18-099, § 388-71-0445, filed 9/5/00, effective 10/6/00. Statutory Authority: RCW 74.39A.110, 74.39A.150. 00-04-056, § 388-71-0445, filed 1/28/00, effective 2/28/00.]

WAC 388-71-0460 Are there limitations to HCP services I can receive? The following are limitations to HCP services you can receive:

(1) HCP services may not replace other available resources, both paid and unpaid.

(2) ADSA published rates and program rules establish your total hours and how much the department pays toward the cost of your services.

(3) The department will not pay for shopping, housework, laundry, meal preparation, or wood supply when you and your individual provider, agency provider, or personal aide live in the same household.

(4) The department will adjust payments to an individual provider, agency provider, or personal aide who is doing household tasks for more than one client living in the same household.

[Statutory Authority: RCW 74.08.090, 74.09.520, 74.39.005. 03-15-010, § 388-71-0460, filed 7/3/03, effective 8/3/03. Statutory Authority: RCW 74.09.520. 00-04-056, § 388-71-0460, filed 1/28/00, effective 2/28/00.]

WAC 388-71-0465 Are there waiting lists for HCP services? For:

(1) COPEs waiver services, the department will create a waiting list in accordance with caseload limits determined by legislative funding. Wait listed clients will gain access in the following manner:

(a) Nursing home residents wanting COPEs waiver services will be ranked first on the wait list by date of application for services; and

(b) After nursing home residents are ranked, clients living in the community with a higher level of need as determined by the department's comprehensive assessment will be ranked higher on the wait list over clients with a lower level of need; and

(c) As between two or more clients in the community with equal need levels, clients with earlier applications for services will have priority over later applications for services.

(2) MPC, there is no waiting list. Note: Instead of waiting lists, the department may be required to revise HCP rules to reduce caseload size, hours, rates, or payments in order to stay within the legislative appropriation.

(3) For Medically Needy Residential waiver, the department will create a waiting list in accordance with caseload limits determined by legislative funding. Wait listed clients will gain access in the following manner:

(a) Nursing home residents wanting MN waiver services will be ranked first on the wait list by date of application for services; and

(b) After nursing home residents are ranked, clients living in the community with a higher level of need as determined by the department's comprehensive assessment will be ranked higher on the wait list over clients with lower level of need; and

(c) As between two or more clients in the community with equal need levels, clients with earlier applications for services will have priority over later applications for services.

[Statutory Authority: RCW 74.39.041 and 2003 1st sp.s. c 25 § 206(9). 04-01-090, § 388-71-0465, filed 12/16/03, effective 1/16/04. Statutory Authority: 2001 c 269, RCW 74.09.700, 74.08.090, 74.04.050, 74.09.575 and chapter 74.39 RCW. 03-13-052, § 388-71-0465, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.39.010, 74.39A.120. 00-04-056, § 388-71-0465, filed 1/28/00, effective 2/28/00.]

WAC 388-71-0470 Who pays for HCP services?

Depending on your income and resources, you may be required to pay participation toward the cost of your care. The department determines exactly what amount, if any, you pay. If you are receiving:

(1) COPEs in-home or residential,

(a) You participate income per rules in WAC 388-515-1505;

(b) If you have nonexempt income that exceeds the cost of COPEs services, you may retain the difference.

(2) MPC in-home services, you do not participate toward the cost of your personal care services.

(3) MPC services in a residential setting and you are:

(a) An SSI beneficiary who receives only SSI income, you only pay for board and room. You are allowed to keep a personal needs allowance of at least thirty-eight dollars and eighty-four cents per month.

(b) An SSI beneficiary who receives SSI and SSA benefits, you only pay for board and room. You are allowed to

keep a personal needs allowance of at least fifty-eight dollars and eighty-four cents per month.

(c) An SSI-related person per WAC 388-511-1105, you may be required to participate towards the cost of your personal care services in addition to your board and room if your financial eligibility is based on the facility's state contracted rate. You will receive a personal allowance of fifty-eight dollars and eighty-four cents.

(d) A GA-X client in a residential care facility, you are allowed to keep a personal allowance of thirty-eight dollars and eighty-four cents only per month. The remainder of your grant must be paid to the facility.

(4) Medically Needy Residential waiver services, the amount you pay is determined in WAC 388-515-1540.

(5) Chore services, you may retain an amount equal to one hundred percent of the federal poverty level, adjusted for family size, as the home maintenance allowance and pay the difference between the FPL and your **nonexempt** income. Exempt income includes:

(a) Income listed in WAC 388-513-1340;

(b) Spousal income allocated and actually paid as participation in the cost of the spouse's community options program entry system (COPEs) services;

(c) Amounts paid for medical expenses not subject to third party payment;

(d) Health insurance premiums, coinsurance or deductible charges; and

(e) If applicable, those work expense deductions listed as WAC 388-71-480(2).

[Statutory Authority: 2001 c 269, RCW 74.09.700, 74.08.090, 74.04.050, 74.09.575 and chapter 74.39 RCW. 03-13-052, § 388-71-0470, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.09.520, 74.09.530, 74.39A.110, [74.39A.]120, [74.39A.]130, and 1998 c 346 § 205 (1)(c), and RCW 74.39A.030. 00-18-099, § 388-71-0470, filed 9/5/00, effective 10/6/00. Statutory Authority: RCW 74.39A.120, 74.39.010, 74.39.020. 00-04-056, § 388-71-0470, filed 1/28/00, effective 2/28/00.]

WAC 388-71-0475 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-71-0480 If I am employed, can I still receive HCP services? If you are disabled, as determined under WAC 388-511-1105, you may be employed and still be eligible to receive HCP services.

(1) If you remain Medicaid eligible under the categorically needy program, you are financially eligible for MPC services.

(2) If you are receiving Medically Needy Residential waiver services in a residential setting, you may have earned income allowances per WAC 388-515-1540.

(3) If you are not Medicaid eligible due to your earned income and resources, and are receiving chore personal care services.

(a) You may be required to pay participation per WAC 388-71-0470(4) for any earned income above one hundred percent of the federal poverty level.

(b) The department will exempt fifty percent of your earned income after work expense deductions. Work expense deductions are:

(i) Personal work expenses in the form of self-employment taxes (FICA); and income taxes when paid;

(ii) Payroll deductions required by law or as a condition of employment in the amounts actually withheld;

(iii) The necessary cost of transportation to and from the place of employment by the most economical means, except rental cars;

(iv) Expenses necessary for continued employment such as tools, materials, union dues, transportation to service customers is not furnished by the employer; and

(v) Uniforms needed on the job and not suitable for wear away from the job.

[Statutory Authority: 2001 c 269, RCW 74.09.700, 74.08.090, 74.04.050, 74.09.575 and chapter 74.39 RCW. 03-13-052, § 388-71-0480, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.09.520, 74.09.530, 74.39A.110, [74.39A.]120, [74.39A.]130, and 1998 c 346 § 205 (1)(c), and RCW 74.39A.030. 00-18-099, § 388-71-0480, filed 9/5/00, effective 10/6/00. Statutory Authority: RCW 74.39A.140, 74.39A.150. 00-04-056, § 388-71-0480, filed 1/28/00, effective 2/28/00.]

WAC 388-71-0520 Are there training requirements for an individual provider or a home care agency provider of an adult client? An individual provider or a home care agency provider for an adult client must meet the training requirements in WAC 388-71-05665 through 388-71-05909.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, § 388-71-0520, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-0520, filed 4/30/02, effective 5/31/02. Statutory Authority: RCW 74.08.090, 74.09.520, 43.20A.050, 43.43.842, 74.39A.090, 43.20A.710, 74.39.050, 43.43.830. 00-03-043, § 388-71-0520, filed 1/13/00, effective 2/13/00.]

WAC 388-71-05640 Self-directed care—Who must direct self-directed care? Self-directed care under chapter 74.39 RCW must be directed by an adult client for whom the health-related tasks are provided. The adult client is responsible to train the individual provider in the health-related tasks which the client self-directs.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, recodified as § 388-71-05640, filed 12/24/03, effective 1/24/04. Statutory Authority: RCW 74.08.090, 74.09.520, 43.20A.050, 43.43.842, 74.39A.090, 43.20A.710, 74.39.050, 43.43.830, 74.39.095. 01-11-019, § 388-71-0580, filed 5/4/01, effective 6/4/01. Statutory Authority: RCW 74.08.090, 74.09.520, 43.20A.050, 43.43.842, 74.39A.090, 43.20A.710, 74.39.050, 43.43.830. 00-03-043, § 388-71-0580, filed 1/13/00, effective 2/13/00.]

WAC 388-71-05665 What definitions apply to WAC 388-71-05670 through 388-71-05909? "Client" means an individual age eighteen or older, receiving in-home services through Medicaid personal care, COPES, or Chore programs. As applicable, the term client also means the client's legal guardian or other surrogate decision maker.

"Competency" means the minimum level of information and skill trainees are required to know and be able to demonstrate.

"DSHS" refers to the department of social and health services.

"Learning outcomes" means the specific information, skills and behaviors desired of the learner as a result of a specific unit of instruction, such as what they would learn by the end of a single class or an entire course. Learning outcomes are generally identified with a specific lesson plan or curriculum.

"Routine interaction" means contact with clients that happens regularly.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, amended and recodified as § 388-71-05665, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05910, filed 4/30/02, effective 5/31/02.]

WAC 388-71-05670 What is orientation? Orientation provides basic introductory information appropriate to the in-home setting and population served. The department does not approve specific orientation programs, materials, or trainers for home care agencies. Department-developed orientation materials must be used for orientation of individual providers. No test is required for orientation.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, recodified as § 388-71-05670, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05911, filed 4/30/02, effective 5/31/02.]

WAC 388-71-05675 What content must be included in an orientation? Orientation may include the use of videotapes, audiotapes, and other media if the person overseeing the orientation is available to answer questions or concerns for the person(s) receiving the orientation. Orientation must include introductory information in the following areas:

- (1) The care setting;
- (2) The characteristics and special needs of the population served;
- (3) Fire and life safety, including:
 - (a) Emergency communication (including phone system if one exists);
 - (b) Evacuation planning (including fire alarms and fire extinguishers where they exist);
 - (c) Ways to handle client injuries and falls or other accidents;
 - (d) Potential risks to clients or providers (for instance, aggressive client behaviors and how to handle them); and
 - (e) The location of agency policies and procedures, when orientation takes place in a home care agency.
- (4) Communication skills and information, including:
 - (a) Methods for supporting effective communication among the client/guardian, the provider, and family members;
 - (b) Use of verbal and nonverbal communication;
 - (c) Review of written communications and/or documentation required for the job, including the client's service plan; and
 - (d) Whom to contact about problems and concerns.
- (5) Universal precautions and infection control, including:
 - (a) Proper hand washing techniques;
 - (b) Protection from exposure to blood and other body fluids;
 - (c) Appropriate disposal of contaminated/hazardous articles;
 - (d) Reporting exposure to contaminated articles, blood, or other body fluids; and
 - (e) What a provider should do if they are ill.
- (6) Client rights, including:
 - (a) The client's right to confidentiality of information about the client;

(b) The client's right to participate in decisions about the client's care, and to refuse care;

(c) The provider's duty to protect and promote the rights of each client, and assist the client to exercise his or her rights;

(d) How and to whom providers should report any concerns they may have about a client's decision concerning the client's care, including the client's case manager;

(e) Providers' duty to report any suspected abuse, abandonment, neglect, or exploitation of a client;

(f) Advocates that are available to help clients (LTC ombudsmen, organizations); and

(g) Complaint lines, hot lines, and client grievance procedures.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, recodified as § 388-71-05675, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05912, filed 4/30/02, effective 5/31/02.]

WAC 388-71-05680 Is competency testing required for orientation? There is no competency testing required for orientation.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, recodified as § 388-71-05680, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05913, filed 4/30/02, effective 5/31/02.]

WAC 388-71-05685 Is there a challenge test for orientation? There is no challenge test for orientation.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, recodified as § 388-71-05685, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05914, filed 4/30/02, effective 5/31/02.]

WAC 388-71-05690 What documentation is required for orientation? The home care agency or individual provider must maintain documentation of completion of orientation, issued by the home care agency, area agency on aging, or DSHS office that provides the orientation, that includes:

- (1) The trainee's name;
- (2) A list of the specific information taught;
- (3) Signature of the person overseeing the orientation indicating completion of the required information;
- (4) The trainee's date of employment;
- (5) The location of the orientation; and
- (6) The date(s) of orientation.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, recodified as § 388-71-05690, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05915, filed 4/30/02, effective 5/31/02.]

WAC 388-71-05695 Who is required to complete orientation, and when must it be completed? (1) Home care agency providers must complete orientation before working with the agency's clients. Orientation must be provided by appropriate agency staff.

(2) Individual providers must complete orientation provided by DSHS or the area agency on aging (AAA) no later than fourteen calendar days after beginning to work with their first DSHS client. Individual providers who live and are providing care at a great distance from the DSHS or AAA office may be oriented by distance learning, with phone con-

tact by the person overseeing the orientation to answer questions.

(3) Parents who are individual providers for their adult children are exempt from the orientation requirement.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, recodified as § 388-71-05695, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05916, filed 4/30/02, effective 5/31/02.]

WAC 388-71-05700 What is basic training? Basic training includes the core knowledge and skills that providers need to provide personal care services effectively and safely. Only the training curriculum developed by DSHS may be used for basic training.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, recodified as § 388-71-05700, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05917, filed 4/30/02, effective 5/31/02.]

WAC 388-71-05705 Is there an alternative to the basic training for some health care workers? Certain health care workers may complete the modified basic training instead of basic training if they meet the requirements in WAC 388-71-05760.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, amended and recodified as § 388-71-05705, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05918, filed 4/30/02, effective 5/31/02.]

WAC 388-71-05710 What core knowledge and skills must be taught in basic training? The basic training knowledge and skills must include all of the learning outcomes and competencies published by the department for the following core knowledge and skills:

(1) Understanding and using effective interpersonal and problem solving skills with clients, family members, and other care team members;

(2) Taking appropriate action to promote and protect client rights, dignity, and independence;

(3) Taking appropriate action to promote and protect the health and safety of the client and the caregiver;

(4) Correctly performing required personal care tasks while incorporating client preferences, maintaining the client's privacy and dignity, and creating opportunities that encourage client independence;

(5) Adhering to basic job standards and expectations.

The basic training learning outcomes and competencies may be obtained from the DSHS aging and disability services administration.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, amended and recodified as § 388-71-05710, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05919, filed 4/30/02, effective 5/31/02.]

WAC 388-71-05715 Is competency testing required for basic training? Competency testing is required for basic training as provided under WAC 388-71-05835 through 388-71-05865.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, amended and recodified as § 388-71-05715, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05920, filed 4/30/02, effective 5/31/02.]

WAC 388-71-05720 Is there a challenge test for basic training? Individuals may take the DSHS challenge test instead of the required training. If a person does not pass a challenge test on the first attempt, they may not retake the challenge test and must attend a class.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, recodified as § 388-71-05720, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05921, filed 4/30/02, effective 5/31/02.]

WAC 388-71-05725 What documentation is required for successful completion of basic training? Basic training must be documented by a certificate of successful completion of training, issued by the instructor or training entity, that includes:

- (1) The name of the trainee;
- (2) The name of the training;
- (3) The location of the training;
- (4) The instructor's name and signature; and
- (5) The date(s) of training.

The trainee must retain the original certificate. A home care agency must keep a copy of the certificate on file. An individual provider must give a copy of the certificate to DSHS or area agency on aging.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, recodified as § 388-71-05725, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05922, filed 4/30/02, effective 5/31/02.]

WAC 388-71-05730 Who is required to complete basic training, and when? Individual providers and home care agency providers must complete basic training developed by the department and demonstrate competency within one hundred twenty days after being authorized to provide department-paid in-home services for a client. A certificate of successful completion of basic training, using a curriculum developed or approved by the department, meets this requirement.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, recodified as § 388-71-05730, filed 12/24/03, effective 1/24/04. Statutory Authority: RCW 74.39A.050. 03-19-076, § 388-71-05923, filed 9/12/03, effective 10/13/03. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05923, filed 4/30/02, effective 5/31/02.]

WAC 388-71-05735 What is modified basic training? Modified basic training is a subset of the basic training curriculum designed for certain health care workers defined in WAC 388-71-05760, whose previous training includes many of the competencies taught in the full basic training. Only the training curriculum developed by DSHS may be used for modified basic training.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, amended and recodified as § 388-71-05735, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05924, filed 4/30/02, effective 5/31/02.]

WAC 388-71-05740 What knowledge and skills must be included in modified basic training? Modified basic training must include all of the learning outcomes and competencies published by DSHS for the following core knowledge and skills:

- (1) Client rights, including mandatory reporting requirements;
- (2) Medication assistance regulations;
- (3) Nurse delegation regulations;
- (4) Assessment and observations in home and community settings;
- (5) Documentation in home and community settings;
- (6) Service planning in home and community care settings;
- (7) Resource information, including information on continuing education; and
- (8) Self-directed care regulations.

The modified basic learning outcomes and competencies may be obtained from the DSHS aging and disability services administration.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, amended and recodified as § 388-71-05740, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05925, filed 4/30/02, effective 5/31/02.]

WAC 388-71-05745 Is competency testing required for modified basic training? Competency testing is required for modified basic training as provided under WAC 388-71-05835 through 388-71-05865.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, amended and recodified as § 388-71-05745, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05926, filed 4/30/02, effective 5/31/02.]

WAC 388-71-05750 Is there a challenge test for modified basic training? Individuals may take the department's challenge test instead of the required training. If a person does not pass a challenge test on the first attempt, they may not retake the challenge test and must attend the class.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, recodified as § 388-71-05750, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05927, filed 4/30/02, effective 5/31/02.]

WAC 388-71-05755 What documentation is required for successful completion of modified basic training? Modified basic training must be documented by a certificate of successful completion of training, issued by the instructor or training entity, that includes:

- (1) The name of the trainee;
- (2) The name of the training;
- (3) The location of the training;
- (4) The instructor's name and signature; and
- (5) The date(s) of training.

The trainee must retain the original certificate. A home care agency must keep a copy of their employees' certificates on file. An individual provider must give a copy to DSHS or area agency on aging.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, recodified as § 388-71-05755, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05928, filed 4/30/02, effective 5/31/02.]

WAC 388-71-05760 Who may take modified basic training instead of the full basic training? Modified basic training may be taken, instead of the full basic training, by a person who can document they have successfully completed

training as a registered or licensed practical nurse, certified nursing assistant, physical therapist, occupational therapist, or Medicare-certified home health aide. In addition, modified basic training may be taken by a natural, step, or adoptive parent who is the individual provider for his or her adult child who is not receiving services through DSHS' division of developmental disabilities.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, recodified as § 388-71-05760, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05929, filed 4/30/02, effective 5/31/02.]

WAC 388-71-05765 What are the training requirements and exemptions for parents who are individual providers for their adult children receiving services through DDD? A natural, step, or adoptive parent who is the individual provider for his or her adult child who is receiving services through DSHS' division of developmental disabilities (DDD):

(1) Must possess a certificate of successfully completing a six-hour DDD-approved training or a specially designed DSHS-approved training within one hundred eighty days of beginning employment; and

(2) Is exempt from the orientation, basic training, and continuing education requirements if the parent provides care only for his or her own adult child.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, recodified as § 388-71-05765, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05930, filed 4/30/02, effective 5/31/02.]

WAC 388-71-05770 What are the training requirements and exemptions for parents who are individual providers for their adult children who do not receive services through DDD? A natural, step, or adoptive parent who is the individual provider for his or her adult child who is not receiving services through DSHS' division of developmental disabilities:

(1) Must:

(a) Possess a certificate of successfully completing modified basic training or the modified basic challenge test within one hundred eighty days of beginning employment, and have documentation that the parent has received individualized or other specific instruction on the care of the adult child; or

(b) Possess a certificate of successfully completing basic training or the basic training challenge test.

(2) Is exempt from the orientation and continuing education requirements if the parent provides care only for his or her own adult child.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, recodified as § 388-71-05770, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05931, filed 4/30/02, effective 5/31/02.]

WAC 388-71-05775 What is continuing education? Continuing education is additional caregiving-related training designed to increase and keep current a person's knowledge and skills. DSHS does not preapprove continuing education programs or instructors.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, recodified as § 388-71-05775, filed 12/24/03, effective

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1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05932, filed 4/30/02, effective 5/31/02.]

WAC 388-71-05780 How many hours of continuing education are required each year? (1) Individual providers and home care agency providers must complete at least ten hours of continuing education each calendar year (January 1 through December 31) after the year in which they successfully complete basic or modified basic training.

(2) One hour of completed classroom instruction or other form of training (such as a video or on-line course) equals one hour of continuing education.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, recodified as § 388-71-05780, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05933, filed 4/30/02, effective 5/31/02.]

WAC 388-71-05785 What kinds of training topics are required for continuing education? Continuing education must be on a topic relevant to the care setting and care needs of clients, including but not limited to:

- (1) Client rights;
- (2) Personal care (such as transfers or skin care);
- (3) Mental illness;
- (4) Dementia;
- (5) Developmental disabilities;
- (6) Depression;
- (7) Medication assistance;
- (8) Communication skills;
- (9) Positive client behavior support;
- (10) Developing or improving client centered activities;
- (11) Dealing with wandering or aggressive client behaviors; and
- (12) Medical conditions.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, recodified as § 388-71-05785, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05934, filed 4/30/02, effective 5/31/02.]

WAC 388-71-05790 Is competency testing required for continuing education? Competency testing is not required for continuing education.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, recodified as § 388-71-05790, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05935, filed 4/30/02, effective 5/31/02.]

WAC 388-71-05795 May basic or modified basic training be completed a second time and used to meet the continuing education requirement? Retaking basic or modified basic training may not be used to meet the continuing education requirement.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, recodified as § 388-71-05795, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05936, filed 4/30/02, effective 5/31/02.]

WAC 388-71-05799 What are the documentation requirements for continuing education? (1) The home care agency or individual provider must maintain documentation of continuing education including:

- (a) The trainee's name;

- (b) The title or content of the training;
 - (c) The instructor's name or the name of the video, on-line class, professional journal, or equivalent instruction materials completed;
 - (d) The number of hours of training; and
 - (e) The date(s) of training.
- (2) Home care individual providers must provide DSHS or the area agency on aging with documentation of completion of continuing education credits.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, recodified as § 388-71-05799, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05937, filed 4/30/02, effective 5/31/02.]

WAC 388-71-0580 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05805 What is nurse delegation core training? Nurse delegation core training is required before a nursing assistant may be delegated a nursing task. DSHS approves instructors for nurse delegation core training.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, § 388-71-05805, filed 12/24/03, effective 1/24/04.]

WAC 388-71-05810 What knowledge and skills must nurse delegation core training include? Only the curricula developed by DSHS may be used for nurse delegation core training.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, § 388-71-05810, filed 12/24/03, effective 1/24/04.]

WAC 388-71-05815 Is competency testing required for nurse delegation core training? Passing the DSHS competency test is required for successful completion of nurse delegation core training, as provided under WAC 388-71-05835 through 388-71-05865.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, § 388-71-05815, filed 12/24/03, effective 1/24/04.]

WAC 388-71-05820 Is there a challenge test for nurse delegation core training? There is no challenge test for nurse delegation core training.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, § 388-71-05820, filed 12/24/03, effective 1/24/04.]

WAC 388-71-05825 What documentation is required for successful completion of nurse delegation core training? (1) Nurse delegation core training must be documented by a certificate of successful completion of training, issued by the instructor or training entity, that includes:

- (a) The name of the trainee;
- (b) The name of the training;
- (c) The name of the training entity giving the training;
- (d) The instructor's name and signature; and
- (e) The date(s) of training.

(2) The trainee must be given an original certificate. Home care agencies must keep a copy of the certificate on file.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, § 388-71-05825, filed 12/24/03, effective 1/24/04.]

WAC 388-71-05830 Who is required to complete nurse delegation core training, and when? Before performing any delegated nursing task, individual providers and home care agency providers must:

- (1) Successfully complete DSHS-designated nurse delegation core training;
- (2) Be a nursing assistant registered or certified under chapter 18.88A RCW; and
- (3) If a nursing assistant registered, successfully complete basic training.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, § 388-71-05830, filed 12/24/03, effective 1/24/04.]

WAC 388-71-05835 What is competency testing? Competency testing, including challenge testing, is evaluating a trainee to determine if they can demonstrate the required level of skill, knowledge, and/or behavior with respect to the identified learning outcomes of a particular course.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, recodified as § 388-71-05835, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05938, filed 4/30/02, effective 5/31/02.]

WAC 388-71-05840 What components must competency testing include? Competency testing must include the following components:

- (1) Skills demonstration of ability to perform and/or implement specific caregiving approaches, and/or activities as appropriate for the training;
- (2) Written evaluation to show knowledge of the learning outcomes included in the training; and
- (3) A scoring guide for the tester with clearly stated scoring criteria and minimum proficiency standards.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, recodified as § 388-71-05840, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05939, filed 4/30/02, effective 5/31/02.]

WAC 388-71-05845 What experience or training must individuals have to be able to perform competency testing? Individuals who perform competency testing must have documented experience or training in assessing competencies.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, recodified as § 388-71-05845, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05940, filed 4/30/02, effective 5/31/02.]

WAC 388-71-05850 What training must include the DSHS-developed competency test? Basic training, modified basic training, and nurse delegation core training must include the DSHS-developed competency test.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, amended and recodified as § 388-71-05850, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05941, filed 4/30/02, effective 5/31/02.]

WAC 388-71-05855 How must competency test administration be standardized? To standardize competency test administration, testing must include the following components:

(1) An instructor for the course who meets all minimum qualifications for the course he or she teaches must oversee all testing; and

(2) The tester must follow DSHS guidelines for:

(a) The maximum length of time allowed for testing;

(b) The amount and nature of instruction given to students before beginning a test;

(c) The amount of assistance to students allowed during testing;

(d) The accommodation guidelines for students with disabilities; and

(e) Accessibility guidelines for students with limited English proficiency.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, recodified as § 388-71-05855, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05942, filed 4/30/02, effective 5/31/02.]

WAC 388-71-05860 What form of identification must providers show a tester before taking a competency or challenge test? Providers must show a tester photo identification before taking a competency test (or challenge test, when applicable) for basic training, modified basic training, or nurse delegation core training.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, amended and recodified as § 388-71-05860, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05943, filed 4/30/02, effective 5/31/02.]

WAC 388-71-05865 How many times may a competency test be taken? (1) A competency test that is part of a course may be taken twice. If the test is failed a second time, the person must retake the course before any additional tests are administered.

(2) If a challenge test is available for a course, it may be taken only once. If the test is failed, the person must take the classroom course.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, recodified as § 388-71-05865, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05944, filed 4/30/02, effective 5/31/02.]

WAC 388-71-05870 What are an instructor's or training entity's responsibilities? The instructor or training entity is responsible for:

(1) Coordinating and teaching classes;

(2) Assuring that the curriculum used is taught as designed;

(3) Selecting qualified guest speakers where applicable;

(4) Administering or overseeing the administration of DSHS competency and challenge tests;

(5) Maintaining training records including student tests and attendance records for a minimum of six years;

(6) Reporting training data to DSHS in DSHS-identified time frames; and

(7) Issuing or reissuing training certificates to students.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, recodified as § 388-71-05870, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05945, filed 4/30/02, effective 5/31/02.]

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WAC 388-71-05875 Must instructors be approved by DSHS or an AAA? (1) DSHS must approve any instructor under contract with DSHS to conduct basic training, modified basic training, or nurse delegation core training classes using the training curricula developed by DSHS. DSHS may select contracted instructors using any applicable contracting procedures. Contractors must meet the minimum qualifications for instructors under this chapter and any additional qualifications established through the contracting procedure.

(2) DSHS contracts with area agencies on aging (AAA) or other entities to conduct orientation, basic, modified basic, nurse delegation core training, and continuing education training programs for individual providers and home care agency providers. The training entity must approve any instructor under contract with the entity to conduct training programs. The entity's contractors must meet the minimum qualifications for instructors under this chapter and any additional qualifications established through the entity's contracting procedures.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, amended and recodified as § 388-71-05875, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05946, filed 4/30/02, effective 5/31/02.]

WAC 388-71-05880 Can DSHS or the AAA deny or terminate a contract with an instructor or training entity? (1) DSHS or an area agency on aging (AAA), as applicable, may determine not to accept an offer by a person or organization seeking a contract with DSHS or the AAA to conduct training programs. No administrative remedies are available to dispute DSHS' or the AAA's decision not to accept an offer, except as may be provided through the contracting process.

(2) DSHS or the AAA may terminate any training contract in accordance with the terms of the contract. The contractor's administrative remedies shall be limited to those specified in the contract.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, amended and recodified as § 388-71-05880, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05947, filed 4/30/02, effective 5/31/02.]

WAC 388-71-05885 What is a guest speaker, and what are the minimum qualifications to be a guest speaker for basic training? Guest speakers for basic training programs teach a specific subject in which they have expertise, under the supervision of the instructor. The guest speaker must have, as minimum qualifications, an appropriate background and experience that demonstrates that the guest speaker has expertise on the topic he or she will teach. The instructor must select guest speakers that meet the minimum qualifications, and maintain documentation of this background. DSHS does not approve guest speakers.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, recodified as § 388-71-05885, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05948, filed 4/30/02, effective 5/31/02.]

WAC 388-71-05890 What are the minimum qualifications for an instructor for basic, modified basic or nurse delegation core training? An instructor for basic,

modified basic, or nurse delegation core training must meet the following minimum qualifications:

- (1) General qualifications:
 - (a) Twenty-one years of age;
 - (b) Has not had a professional health care or social services license or certification revoked in Washington state (however, no license or certification is required).
- (2) Education and work experience:
 - (a) Upon initial approval or hire, must have:
 - (i) A high school diploma and one year of professional or caregiving experience within the last five years in an adult family home, boarding home, supported living through DDD per chapter 388-820 WAC, or home care setting; or
 - (ii) An associate degree in a health field and six months of professional or caregiving experience within the last five years in an adult family home, boarding home, supported living through DDD per chapter 388-820 WAC, or home care setting.
- (3) Teaching experience:
 - (a) Must have one hundred hours of experience teaching adults on topics directly related to the basic training; or
 - (b) Must have forty hours of teaching while being mentored by an instructor who meets these qualifications, and must attend a class on adult education that meets the requirements of WAC 388-71-05899.
- (4) The instructor must be experienced in caregiving practices and capable of demonstrating competency with respect to the course content or units being taught;
- (5) Instructors who will administer tests must have experience or training in assessment and competency testing; and
- (6) If required under WAC 388-71-05730 or 388-71-05760, instructors must successfully complete basic or modified basic training prior to beginning to train others.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, amended and recodified as § 388-71-05890, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-15-064, § 388-71-05949, filed 7/11/02, effective 8/11/02.]

WAC 388-71-05895 What additional qualifications are required for instructors of nurse delegation core training? An instructor for nurse delegation core training must have a current RN license in good standing.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, § 388-71-05895, filed 12/24/03, effective 1/24/04.]

WAC 388-71-05899 What must be included in a class on adult education? A class on adult education must include content, student practice, and evaluation of student skills by the instructor in:

- (1) Adult education theory and practice principles;
- (2) Instructor facilitation techniques;
- (3) Facilitating learning activities for adults;
- (4) Administering competency testing; and
- (5) Working with adults with special training needs (for example, English as a second language or learning and literacy issues).

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, recodified as § 388-71-05899, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05950, filed 4/30/02, effective 5/31/02.]

WAC 388-71-05905 What physical resources are required for basic, modified basic, or nurse delegation core classroom training and testing? (1) Classroom facilities used for basic, modified basic, or nurse delegation core classroom training must be accessible to trainees and provide adequate space for learning activities, comfort, lighting, lack of disturbance, and tools for effective teaching and learning such as white boards and flip charts. Appropriate supplies and equipment must be provided for teaching and practice of caregiving skills in the class being taught.

(2) Testing sites must provide adequate space for testing, comfort, lighting, and lack of disturbance appropriate for the written or skills test being conducted. Appropriate supplies and equipment necessary for the particular test must be provided.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, amended and recodified as § 388-71-05905, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05951, filed 4/30/02, effective 5/31/02.]

WAC 388-71-05909 What standard training practices must be maintained for basic, modified basic, or nurse delegation core classroom training and testing? The following training standards must be maintained for basic, modified basic, or nurse delegation core classroom training and testing:

- (1) Training, including all breaks, must not exceed eight hours within one day;
- (2) Training provided in short time segments must include an entire unit, skill or concept;
- (3) Training must include regular breaks; and
- (4) Students attending a classroom training must not be expected to leave the class to attend to job duties, except in an emergency.

[Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. 04-02-001, amended and recodified as § 388-71-05909, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-05952, filed 4/30/02, effective 5/31/02.]

WAC 388-71-05910 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05911 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05912 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05913 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05914 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05915 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05916 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05917 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05918 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05919 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05920 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05921 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05922 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05923 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05924 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05925 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05926 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05927 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05928 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05929 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05930 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05931 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05932 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05933 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05934 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05935 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05936 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05937 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05938 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05939 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05940 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05941 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05942 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05943 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05944 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05945 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05946 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05947 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05948 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05949 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05950 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05951 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-05952 Decodified. See Disposition Table at beginning of this chapter.

WAC 388-71-0600 What are residential services?
The residential service program provides personal care services, as defined in WAC 388-71-0202, room, board, supervision, and nursing services for elderly and disabled adults. Eligible individuals may choose to receive services from any of the following licensed and contracted residential settings:

(1) **Adult family homes** with a state contract provide services for two to six unrelated adults (chapter 388-76 WAC). Services include room, board and supervision. Residents may also receive limited nursing services, under nurse delegation or if the sponsor or the manager is a nurse. Ser-

services are authorized according to the department's comprehensive assessment and service plan.

(2) **Assisted living** provides services in a licensed boarding home with a state contract (chapter 388-110 WAC, part I and II). Structural requirements include two hundred twenty square foot private room, private bathroom, and a kitchen in each unit. Resident services may include room, board, assistance with ADL and IADL, and limited nursing services. Services are authorized according to the department's comprehensive assessment and service plan.

(3) **Enhanced adult residential care** provides services in a licensed boarding home with a state contract (chapter 388-110 WAC, part I and III). Services may include a shared room, board, limited nursing services, assistance with ADL and IADL, limited nursing services, and supervision. Services are authorized according to the department's comprehensive assessment and service plan.

(4) **Adult residential care** provides services in a licensed boarding home with a state contract (chapter 388-110 WAC, part I and IV). This service is not available under the COPES or MN waiver program. Services include room, board and supervision. Services are authorized according to the department's comprehensive assessment and service plan.

[Statutory Authority: 2001 c 269, RCW 74.09.700, 74.08.090, 74.04.050, 74.09.575 and chapter 74.39 RCW. 03-13-052, § 388-71-0600, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.08.090, 74.09.520, and 74.39A.090. 02-21-098, § 388-71-0600, filed 10/21/02, effective 11/21/02. Statutory Authority: RCW 74.08.44 [74.08.044]. 00-04-056, § 388-71-0600, filed 1/28/00, effective 2/28/00.]

WAC 388-71-0605 Am I eligible for residential services? (1) If you apply for services, you may be eligible to have the department pay for your services through one of the programs listed below. The department assesses and determines your functional and financial eligibility for residential services under one of the following long-term care programs:

(a) Community options program entry system (COPES), described in WAC 388-71-0435;

(b) Medicaid personal care funding (MPC), described in WAC 388-71-0440; or

(c) Medically Needy Residential waiver described in WAC 388-71-0442.

(2) If you are not eligible for services under one of the programs listed above, you may receive state-only funding for residential services if you meet eligibility requirements for general assistance unemployable (GAU), described in WAC 388-400-0025.

(3) If you are on:

(a) MPC, you can receive services in adult family homes and adult residential care facilities.

Note: If you are under eighteen, you may receive MPC services in a children's foster family home or a children's group care facility.

(b) COPES/Medically Needy Residential waiver, you can receive services in adult family homes, enhanced adult residential care facilities, and assisted living facilities.

(c) GAU, you can receive state-funded services in adult family homes and adult residential care facilities.

[Statutory Authority: 2001 c 269, RCW 74.09.700, 74.08.090, 74.04.050, 74.09.575 and chapter 74.39 RCW. 03-13-052, § 388-71-0605, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, and 74.08.090. 01-14-055, § 388-71-0605, filed 6/29/01, effective 7/30/01. Statutory Authority: RCW 74.08.44 [74.08.044]. 00-04-056, § 388-71-0605, filed 1/28/00, effective 2/28/00.]

tive 7/30/01. Statutory Authority: RCW 74.08.44 [74.08.044]. 00-04-056, § 388-71-0605, filed 1/28/00, effective 2/28/00.]

WAC 388-71-0610 Who pays for residential care?

You must use your income to pay for your room and board and services. You are allowed to keep some of your income for personal needs allowance (PNA). The department determines the amount of PNA that you may keep. Rules regarding the amount you must pay or CPI are found in WAC 388-513-1380; 388-515-1505 for COPES; 388-515-1540 for Medically Needy Residential waiver, or 388-478-0045 for all other programs.

(1) The department pays the facility for the difference between what you pay and the department-set rate for the facility. AASA published rates and program rules establish your total hours and how much the department pays toward the cost of your services.

(2) Washington state collects from your estate the cost of the care that the department provides based on chapter 388-527 WAC.

[Statutory Authority: 2001 c 269, RCW 74.09.700, 74.08.090, 74.04.050, 74.09.575 and chapter 74.39 RCW. 03-13-052, § 388-71-0610, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.08.44 [74.08.044]. 00-04-056, § 388-71-0610, filed 1/28/00, effective 2/28/00.]

WAC 388-71-0702 Purposes and definitions. (1) WAC 388-71-0702 through 388-71-0776 contain the eligibility requirements for Medicaid-funded adult day care and adult day health services. These rules also contain the requirements that apply to adult day care or day health centers that contract with the department, an area agency on aging, or other department designee to provide Medicaid services to department clients. Nothing in these rules may be construed as requiring the department, area agency on aging, or other designee to contract with an adult day care or day health center.

(2) An adult day services program is a community-based program designed to meet the needs of adults with impairments through individual plans of care. This type of structured, comprehensive, nonresidential program provides a variety of health, social, and related support services in a protective setting. By supporting families and caregivers, an adult day services program enables the person to live in the community. An adult day services program assesses the needs of the persons served and offers services to meet those needs. The persons served attend on a planned basis. Nothing in this generic description of adult day services may be construed to modify the specific services or eligibility requirements referenced in the definition of adult day care and adult day health.

(3) The following definitions apply under WAC 388-71-0702 through 388-71-0774:

(a) **"Adult day care"** means the services under WAC 388-71-0704 that are provided to clients who meet the eligibility requirement under WAC 388-71-0708.

(b) **"Adult day center"** means an adult day care or adult day health center. A day care or day health center for purposes of these rules is a center operating in a specific location, whether or not the center's owner also operates adult day centers in other locations.

(c) **"Adult day health"** means the services under WAC 388-71-0706 that are provided to clients who meet the eligibility requirements under WAC 388-71-0710.

(d) **"Adult day services"** is a generic term referring to adult day care and adult day health services.

(e) **"Client"** means an applicant for or recipient of Medicaid-reimbursed adult day services.

(f) **"Participant"** means clients and other persons receiving adult day services at an adult day center.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. 03-06-024, § 388-71-0702, filed 2/24/03, effective 7/1/03.]

WAC 388-71-0704 Adult day care—Services. (1)

Adult day care is a supervised daytime program providing core services as defined under subsection (2) of this section. Core services are appropriate for adults with medical or disabling conditions that do not require the intervention or services of a registered nurse or licensed rehabilitative therapist acting under the supervision of the client's physician.

(2) The adult day care center must offer and provide on site the following core services:

(a) The following personal care services as defined in WAC 388-71-0202, **"personal care services,"** or its successor:

- (i) Ambulation;
- (ii) Body care;
- (iii) Eating;
- (iv) Positioning;
- (v) Self-medication;
- (vi) Transfer;
- (vii) Toileting;
- (viii) Personal hygiene at a level that ensures client safety and comfort while in attendance at the program; and
- (ix) Bathing at a level that ensures client safety and comfort while in attendance at the program.

(b) Social services on a consultation basis, which may include:

- (i) Referrals to other providers for services not within the scope of Medicaid reimbursed adult day care services;
- (ii) Caregiver support and education; or
- (iii) Assistance with coping skills.

(c) Routine health monitoring with consultation from a registered nurse that a consulting nurse acting within the scope of practice can provide with or without a physician's order. Examples include:

- (i) Obtaining baseline and routine monitoring information on a client's health status, such as vital signs, weight, and dietary needs;
- (ii) General health education such as providing information about nutrition, illnesses, and preventive care;
- (iii) Communicating changes in the client's health status to the client's caregiver;
- (iv) Annual and as needed updating of the client's medical record;
- (v) Assistance as needed with coordination of health services provided outside of the adult day care program.

(d) General therapeutic activities that an unlicensed person can provide or that a licensed person can provide with or without a physician's order. These services are planned and provided as an integral part of the client's plan of care and are

based on the client's abilities, interests and goals. Examples include:

- (i) Recreational activities;
 - (ii) Diversionary activities;
 - (iii) Relaxation therapy;
 - (iv) Cognitive stimulation;
 - (v) Group range of motion or conditioning exercises.
- (e) General health education that an unlicensed person can provide or that a licensed person can provide with or without a physician's order, including but not limited to topics such as:
- (i) Nutrition;
 - (ii) Stress management;
 - (iii) Disease management skills;
 - (iv) Preventive care.
- (f) A nutritional meal and snacks provided each four-hour period at regular times comparable to normal meal times, including modified diet if needed and within the scope of the program, as provided under WAC 388-71-0768;
- (g) Supervision and/or protection for clients who require supervision or protection for their safety;
- (h) Assistance with arranging transportation to and from the program; and
- (i) First aid and provisions for obtaining or providing care in an emergency.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. 03-06-024, § 388-71-0704, filed 2/24/03, effective 7/1/03.]

WAC 388-71-0706 Adult day health—Services. (1)

Adult day health is a supervised daytime program providing skilled nursing and rehabilitative therapy services in addition to core services outlined in WAC 388-71-0704. Adult day health services are only appropriate for adults with medical or disabling conditions that require the intervention or services of a registered nurse or licensed rehabilitative therapist acting under the supervision of the client's physician.

(2) The adult day health center must offer and provide on site the following services:

- (a) All core services under WAC 388-71-0704;
- (b) Skilled nursing services other than routine health monitoring with nurse consultation;
- (c) At least one of the following skilled therapy services: physical therapy, occupational therapy, or speech-language pathology or audiology, as those services are defined under chapter 18.74, 18.59, and 18.35 RCW, respectively; and
- (d) Psychological or counseling services, including assessing for psycho-social therapy need, dementia, abuse or neglect, and alcohol or drug abuse; making appropriate referrals; and providing brief, intermittent supportive counseling.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. 03-06-024, § 388-71-0706, filed 2/24/03, effective 7/1/03.]

WAC 388-71-0708 Adult day care—Eligibility. (1)

COPES clients may be eligible for adult day care as a COPES service if they are assessed as having an unmet need for one or more of the following core services identified in WAC 388-71-0704:

- (a) Personal care services;

(b) Routine health monitoring with consultation from a registered nurse;

(c) General therapeutic activities; or

(d) Supervision and/or protection for clients who require supervision or protection for their safety.

(2) COPES clients are not eligible for adult day care if they:

(a) Can independently perform or obtain the services provided at an adult day care center;

(b) Have unmet needs that can be met through the COPES program more cost effectively without authorizing day care services;

(c) Have referred care needs that:

(i) Exceed the scope of authorized services that the adult day care center is able to provide;

(ii) Can be met in a less structured care setting; or

(iii) Are being met by paid or unpaid caregivers.

(d) Live in a nursing home, boarding home, adult family home, or other licensed institutional or residential facility; or

(e) Are not capable of participating safely in a group care setting.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. 03-06-024, § 388-71-0708, filed 2/24/03, effective 7/1/03.]

WAC 388-71-0710 Adult day health—Eligibility. (1)

Clients are eligible for adult day health services if they meet all of the following criteria:

(a) Age eighteen years or older; and

(b) Identified on their medical assistance identification (MAID) card, or through other methods of eligibility verification, as enrolled in one of the following medical assistance programs:

(i) Categorically needy (CNP);

(ii) Categorically needy qualified Medicare beneficiaries (CNP-QMB);

(iii) General assistance—Expedited Medicaid Disability (GA-X); or

(iv) Alcohol and Drug Abuse Treatment and Support Act (ADATSA).

(c) Assessed as having an unmet need for skilled nursing under WAC 388-71-0712 or skilled rehabilitative therapy under WAC 388-71-0714, and:

(i) There is a reasonable expectation that these services will improve, restore or maintain the client's health status, or in the case of a progressive disabling condition, will either restore or slow the decline of the client's health and functional status or ease related pain or suffering; and

(ii) The client is at risk for deteriorating health, deteriorating functional ability, or institutionalization; and

(iii) The client has a chronic or acute health condition that he or she is not able to safely manage due to a cognitive, physical, or other functional impairment.

(d) Assessed as having needs for personal care or other core services under WAC 388-71-0708, whether or not those needs are otherwise met.

(2) Clients are not eligible for adult day health if they:

(a) Can independently perform or obtain the services provided at an adult day health center;

(b) Have referred care needs that:

(i) Exceed the scope of authorized services that the adult day health center is able to provide;

(ii) Do not need to be provided or supervised by a licensed nurse or therapist;

(iii) Can be met in a less structured care setting; or

(iv) In the case of skilled care needs, are being met by paid or unpaid caregivers.

(c) Live in a nursing home or other institutional facility; or

(d) Are not capable of participating safely in a group care setting.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. 03-06-024, § 388-71-0710, filed 2/24/03, effective 7/1/03.]

WAC 388-71-0712 Adult day health—Skilled nursing. (1) Skilled nursing services are medically necessary services provided directly or indirectly by a registered nurse under physician supervision, or by a licensed practical nurse under physician or registered nurse supervision, that a licensed nurse acting within the scope of practice can provide or supervise. Physician orders must be obtained when required by applicable state practice laws for licensed nurses.

(2) Skilled nursing services must exceed the level of routine health monitoring, general health education, and general therapeutic activities as defined in WAC 388-71-0704, and must be provided with the reasonable expectation that the services will improve, restore, or maintain function as defined in WAC 388-71-0710 (1)(c). Skilled nursing services are:

(a) Specific to a client diagnosis;

(b) Individualized to the client with planned measurable outcomes; and

(c) Evaluated every ninety days for effect on improvement of health status or prevention of decline.

(3) Skilled nursing services, including the initial client nursing assessment and development of the nursing plan of care, must be provided or supervised by a registered nurse in accordance with nursing practice standards under chapter 246-840 WAC.

(4) A skilled nursing service is not a qualifying adult day health service merely because the service is ordered by a physician or is provided by a nurse. If, by way of example, the service can be performed by the client or at the client's direction by a person other than a licensed nurse, or the client does not meet eligibility criteria, it is not a qualifying adult day health service.

(5) Skilled nursing services must be medically necessary as defined under WAC 388-500-0005. Medically necessary skilled nursing services may, but do not necessarily, include:

(a) Care and assessment of an unstable or unpredictable medical condition, with time limited measurable treatment goals, requiring frequent intervention by a registered nurse or by a licensed practical nurse under the supervision of a registered nurse according to WAC 246-840-705;

(b) Evaluation and management of the care plan when unstable medical conditions or complications require complex nonskilled care and skilled nurse oversight to ensure that the nonskilled care is achieving its purpose;

(c) Time-limited training by licensed nursing staff to teach the client and/or the client's caregiver self-care for

newly diagnosed, acute, or episodic medical conditions that require the skills of a licensed nurse to teach, and that will optimize client function, as illustrated by the following examples:

- (i) Self administration of an injection;
 - (ii) Prefilling insulin syringes;
 - (iii) Irrigating a catheter;
 - (iv) Caring for a colostomy or urostomy;
 - (v) Wound dressing changes or aseptic technique; or
 - (vi) Disease self-management.
- (d) Skilled interventions provided directly by a licensed nurse such as:

- (i) Inserting or irrigating a catheter;
- (ii) Administering medications or oxygen;
- (iii) Administering and managing infusion therapy; or
- (iv) Treating decubitus ulcers, or other types of wound care.

(6) Medically necessary skilled nursing services, by way of example, do **not** include:

- (a) Reminding or coaching the client;
- (b) Monitoring of a medical condition that does not require frequent skilled nursing intervention or a change in physician treatment orders, or where there is no reasonable expectation that skilled services will maintain, improve, or slow the effect of a progressive disabling condition on the pain, health or functioning of a client;

(c) Medication assistance when the client is capable of self-administration or is having this need met through paid or unpaid caregivers;

(d) Evaluation and management of the care plan when the complexity of care to be provided by nonskilled persons does not require skilled nurse oversight beyond routine health monitoring;

(e) Continued training by nursing staff to teach self-care for newly diagnosed, acute, or episodic medical conditions when it is apparent that the training should have achieved its purpose or that the client is unwilling or unable to be trained;

(f) Core services that can be provided by an adult day care center, such as routine health monitoring, general health education, or general therapeutic activities; or

(g) Group therapy or training where three or more clients are being simultaneously treated or trained by the nurse.

(7) Skilled nursing services must be documented as provided under WAC 388-71-0746 and chapter 388-502 WAC.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. 03-06-024, § 388-71-0712, filed 2/24/03, effective 7/1/03.]

WAC 388-71-0714 Adult day health—Rehabilitative therapy. (1) Skilled rehabilitative therapy services are medically necessary services provided by or under the supervision of a licensed physical, occupational, or speech-language pathology or audiology therapist that the therapist acting within the scope of practice can provide or supervise directly or indirectly. Physician orders must be obtained when required by applicable state practice laws for licensed therapists.

(a) Persons that can provide rehabilitative care under the direction and supervision of a licensed therapist include occupational therapy aides, occupational therapy assistants, physical therapy aides, physical therapy assistants, and

nurses within their respective scopes of practice. Adult day health program aides, specifically trained in rehabilitative techniques, may also provide care under the direction and supervision of a licensed therapist.

(b) Services, group or individual, must be related to an active written plan of care with time limited measurable treatment goals approved by the physician;

(c) Services, group or individual, must require the assessment, knowledge and skills of a licensed therapist; and

(d) Services, group or individual, must be provided with the reasonable expectation that the services will improve, restore, or maintain function, or slow decline. Rehabilitative services are:

- (i) Specific to a client diagnosis;
- (ii) Individualized to the client with planned, measurable outcomes; and
- (iii) Evaluated every ninety days for effect on improvement of health status or prevention of decline.

(2) Skilled rehabilitative therapy is not a qualifying adult day health service merely because the therapy is ordered by a physician or is provided by a therapist or under the supervision of a therapist. If, by way of example, the therapy can be performed independently by the client or at the client's direction by a person other than a licensed therapist, or the client does not meet eligibility criteria, it is not a qualifying adult day health service.

Skilled rehabilitative therapy services must be medically necessary as defined under WAC 388-500-0005.

(3) Medically necessary physical therapy services may, but do not necessarily include:

(a) Assessing baseline mobility level, strength, range of motion, endurance, balance, and ability to transfer;

(b) One to one and group treatment to relieve pain or develop, restore, or maintain functioning, with individualized and measurable client treatment goals;

(c) Establishing a maintenance or restorative program with measurable treatment goals, and providing written and oral instruction to the client, caregivers, or program staff as needed to assist the client in implementing the program;

(d) Training the client or the client's caregivers in the use of supportive, adaptive equipment or assistive devices;

(e) Evaluation and management of the care plan when medical conditions or complications require complex non-skilled care and skilled therapist oversight to ensure that the non-skilled care is achieving its purpose; or

(f) Providing other medically necessary services that can only be provided by or under the direct or indirect supervision of a physical therapist acting within the therapist's scope of practice.

(4) Medically necessary occupational therapy services may, but do not necessarily include:

(a) Administering a basic evaluation to determine baseline level of functioning, ability to transfer, range of motion, balance, strength, coordination, activities of daily living and cognitive-perceptual functioning;

(b) Teaching and training the client, caregivers, or program staff in the use of therapeutic, creative, and self care activities to improve or maintain the client's capacity for self-care and independence, and to increase the range of motion, strength and coordination;

(c) One to one and group treatment to develop, restore, or maintain functioning with individualized and measurable client treatment goals;

(d) Training the client or the client's caregivers in the use of supportive, adaptive equipment or assistive devices;

(e) Evaluation and management of the care plan when medical conditions or complications require complex non-skilled care and skilled therapist oversight to ensure that the non-skilled care is achieving its purpose; or

(f) Providing other medically necessary services that can only be provided by or under the direct or indirect supervision of an occupational therapist acting within the therapist's scope of practice.

(5) Medically necessary speech-language pathology or audiology services may, but do not necessarily include;

(a) Assessing baseline level of speech, swallowing, auditory, or communication disorders;

(b) Establishing a treatment program to improve speech, swallowing, auditory, or communication disorders;

(c) Providing speech therapy procedures that include auditory comprehension tasks, visual and/or reading comprehensive tasks, language intelligibility tasks, training involving the use of alternative communication devices, or swallowing treatment;

(d) Training the client or the client's caregivers in methods to assist the client in improving speech, communication, or swallowing disorders;

(e) Evaluation and management of the care plan when medical conditions or complications require complex non-skilled care and skilled therapist oversight to ensure that non-skilled care is achieving its purpose; or

(f) Providing other medically necessary services that can only be provided by or under the direct or indirect supervision of a speech-language pathology or audiology therapist acting within the therapist's scope of practice.

(6) Medically necessary skilled rehabilitative therapy services, by way of example, do **not** include:

(a) Reminding or coaching the client in tasks that are not essential to the skilled therapy or intervention in the client's service plan;

(b) Monitoring of a medical condition that does not require frequent skilled therapist intervention or a change in physician treatment orders, or where there is no reasonable expectation that skilled services will maintain, improve, or slow the effect of a progressive disabling condition on the pain, health or functioning of a client;

(c) Massage therapy;

(d) Evaluation and management of the care plan when the complexity of the care to be provided by non-skilled persons does not require the skills of a licensed therapist for oversight;

(e) Continued training by therapy staff to teach self-care for newly diagnosed, acute, or episodic medical conditions when it is apparent that the training should have achieved its purpose or that the client is unwilling or unable to be trained;

(f) Core services that can be provided by an adult day care center, such as routine health monitoring, general health education, or general therapeutic activities; or

(g) Group therapy or training where the ratio of licensed therapists and assisting program staff to clients is inadequate to ensure that:

(i) The group activity contributes to the individual client's planned therapy goals; and

(ii) The complexity of the individual client's need can be met.

(7) Skilled therapy services must be documented as provided under WAC 388-71-0746 and chapter 388-502 WAC.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. 03-06-024, § 388-71-0714, filed 2/24/03, effective 7/1/03.]

WAC 388-71-0716 Adult day care—Assessment and service plan.

(1) The department or an authorized case manager must assess a client's need for adult day care in accordance with WAC 388-71-0203 and 388-71-0716. Based on the assessment, the case manager determines whether the client should be referred for day care services or whether the client's needs can be met in other ways.

(2) If the case manager determines an unmet need for a core service that may be provided at a day care center, the case manager works with the client and/or the client's representative to develop a service plan that documents the needed services and the number of days per week that the services are to be provided. The case manager refers the client to a COPES-contracted day care center that the client and the case manager agree can potentially meet the client's needs.

(3) Clients receiving adult day care services must be reassessed at least annually in accordance with WAC 388-71-0203 and 388-71-0716.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. 03-06-024, § 388-71-0716, filed 2/24/03, effective 7/1/03.]

WAC 388-71-0718 Adult day care—Negotiated care plan.

(1) Upon referral of a COPES eligible client by the case manager, the day care center must conduct an intake evaluation based on an interview with the client and/or the client's representative to assess the center's ability to meet the client's needs as identified in the department service plan. The case manager will provide the client's service plan to the adult day care provider within five working days after the client or client's representative has signed it.

(2) Within two working days of the referral, the day care center must respond to the referral and notify the case manager of its ability to process and evaluate the referral.

(3) Within ten working days of the initial date of client attendance at the day care center, the center must determine whether it can meet the client's needs, how those needs will be met, and whether to accept the client to the program. The center must not accept a client whose needs the center cannot meet.

(4) Within thirty days of acceptance into the program, the day care center must develop a negotiated care plan signed by the client or the client's representative and the day care center. The care plan must:

(a) Be consistent with the department-authorized service plan and include all day care services authorized in the service plan;

(b) Document the client's needs as identified in the service plan, the adult day care services that will be provided to meet those needs, and when, how, and by whom the services will be provided;

(c) Document the client's choices and preferences concerning the provision of care and services, and how those preferences will be accommodated;

(d) Document potential behavioral issues identified in the assessment, service plan, or through the intake evaluation, and how those issues will be managed;

(e) Document contingency plans for responding to a client's emergent care needs or other crises; and

(f) Be approved by the client's case manager.

(5) The adult day care center must keep the negotiated care plan in the client's file, must offer a copy of the plan to the client or client representative, and must provide a copy to the client's case manager. The case manager must review the negotiated care plan for inclusion of services that are appropriate and authorized for the client's care needs.

(6) The negotiated care plan must limit the frequency of services to the number of days authorized in the department-authorized service plan.

(7) The day care center must review each service in the negotiated care plan if the client's condition changes, and determine if the care plan continues to meet the client's needs. Changes in the client's condition or unanticipated absences of more than three consecutive days of scheduled service must be reported to the client's case manager within one week. Unanticipated absences by way of example may include absences due to client illness or injury, or a change in transportation access. The case manager may follow-up with the client and determine if any updates to the assessment, service plan, and service authorization are needed.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. 03-06-024, § 388-71-0718, filed 2/24/03, effective 7/1/03.]

WAC 388-71-0720 Adult day health—Assessment and service plan. (1) The department or an authorized case manager must assess a client's potential need for adult day health in accordance with WAC 388-71-0203 and 388-71-0720.

(2) If the client **has** a department or area agency on aging case manager, the adult day health center or other referral source must notify the case manager of the client's potential adult day health service need. The case manager must assess the client's need for skilled nursing or skilled rehabilitative therapy within the department's normal time frames for client reassessments.

(3) If the client does not have a department or area agency on aging case manager, the adult day health center or other referral source must notify the department of the referral and the client's potential adult day health service need, or refer the client to the department for intake. The department's assigned case manager must assess the client's need for adult day health services within the department's normal time frames for initial client eligibility assessments.

(4) Based on the assessment, the department or area agency on aging case manager determines whether the client should be referred for a day health service evaluation or whether the client's needs can be met in other ways. The case manager may consult with the client's practitioner, department or area agency on aging nursing services staff, or other pertinent collateral contacts, concerning the client's need for skilled nursing or rehabilitative therapy.

(5) If the department or area agency on aging case manager determines and documents a potential unmet need for day health services, the case manager works with the client and/or the client's representative to develop a service plan that documents the potential unmet needs and the anticipated number of days per week that the services are needed. The case manager refers the client to a department contracted day health center for evaluation and the development of a preliminary negotiated plan of care.

(6) The department or area agency on aging case manager must reassess adult day health clients at least annually in accordance with WAC 388-71-0203 and 388-71-0720 or its successor. Clients must also be reassessed if they have a break in service of more than thirty days. The adult day center must inform the case manager of the break in service so payment authorization can be discontinued.

(7) Effective upon the adoption of these rules, recipients of adult day health services must be assessed by the department or an authorized case manager for continued or initial eligibility in accordance with this section. The assessment from the department will occur in conjunction with the:

(a) Annual reassessment for department clients;

(b) Adult day health quarterly review for current nondepartmental clients as resources allow; and

(c) New referrals for adult day health services are to be forwarded to local department offices for intake and assessment for eligibility.

(8) The department or area agency on aging case manager must review a client's continued eligibility for adult day health services every ninety days, coinciding with the quarterly review completed by the adult day health program. At the case manager's discretion, additional information will be gathered through face to face, collateral or other contact methods to determine continued eligibility. Services will be continued, adjusted, or terminated based upon the case manager's determination during the eligibility review.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. 03-06-024, § 388-71-0720, filed 2/24/03, effective 7/1/03.]

WAC 388-71-0722 Adult day health—Negotiated care plan. (1) Upon referral of a client by the department or an authorized case manager, the day health center must conduct an intake evaluation and multidisciplinary assessment based on an interview with the client or the client's representative to determine the center's ability to meet the client's core service needs and potential adult day health needs as identified in the preliminary department service plan. The case manager will provide the client's service plan to the day health center within five working days after the client or client's representative has signed it. The day health center must evaluate the client's skilled and core service needs, and may provide up to ten days of paid service to complete the evaluation and develop a preliminary or negotiated plan of care to be provided to the client and the case manager.

(2) Within two working days of the referral, the day health center must respond to the referral and notify the case manager of its ability to process and evaluate the referral.

(3) Within ten paid days of service, the day health center must determine whether it can meet the client's needs, how those needs will be met, and whether to accept the client to

the program. The center must not accept a client whose needs the center cannot meet. The center will be reimbursed under WAC 388-71-0724 for any service days provided from the start of the evaluation if the case manager has authorized services. The evaluation includes acceptance of the client to the center, the development of the initial assessment, and the preliminary negotiated plan of care.

(4) Upon approval by the case manager of the adult day health preliminary or negotiated care plan, the day health center multidisciplinary team must obtain and provide to the case manager any required practitioner's orders for skilled nursing and rehabilitative therapy along with a copy of the negotiated plan of care, according to department documentation requirements. Orders must indicate how often the client is to be seen by the authorized practitioner. The case manager or nursing services staff may follow up with the practitioner or other pertinent collateral contacts concerning the client's need for skilled services. Services may not be authorized for payment without current practitioner orders and the client's consent to follow up with the practitioner.

(5) Within thirty days of the client's acceptance into the program, the day health multidisciplinary team must work with the client to develop a negotiated care plan signed by the client or the client's representative and the day health center. The care plan must:

(a) Be consistent with the department-authorized service plan and include all day health services authorized in the service plan;

(b) Include an authorized practitioner's order(s) for skilled nursing and/or skilled rehabilitative therapy according to applicable state practice laws for licensed nurses or therapists;

(c) Document that the client or the client's representative has consented to follow up with the primary authorizing practitioner;

(d) Document the client's needs as identified in the service plan, the authorized services that will be provided to meet those needs, and when, how, and by whom the services will be provided;

(e) Establish time-limited, client specific, measurable goals, not to exceed ninety days from the date of signature of the negotiated care plan, for accomplishing the objectives of adult day health skilled services and/or discharging or transitioning the client to other appropriate settings or services;

(f) Document the client's choices and preferences concerning the provision of care and services, and how those preferences will be accommodated;

(g) Document potential behavioral issues identified in the assessment, service plan, or through the intake evaluation, and how those issues will be managed;

(h) Document contingency plans for responding to a client's emergent care needs or other crises; and

(i) Be approved by the case manager.

(6) The adult day health center must keep the negotiated care plan in the client's file, the plan to the client or client representative, and must provide a copy to the client's case manager, including any required authorizing practitioner orders. The department case manager must review the negotiated care plan for inclusion of services that are appropriate and authorized for the client's care needs.

(7) The negotiated care plan must limit the frequency of department-funded services to the number of days in the department-authorized service plan.

(8) The day health center must review each service in the negotiated care plan every ninety days or more often if the client's condition changes, or if the client is reassessed for eligibility after a break in service of more than thirty days. Changes in the client's condition or unanticipated absences of more than three consecutive days of scheduled service must be reported to the client's case manager within one week. Unanticipated absences by way of example may include absences due to client illness or injury. The case manager may follow-up with the client and determine if any updates to the assessment, service plan, and service authorization are needed.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. 03-06-024, § 388-71-0722, filed 2/24/03, effective 7/1/03.]

WAC 388-71-0724 Adult day services—Contracting and rates.

(1) The department, or an area agency on aging (or other department designee) as authorized by the department, must determine that the adult day care or day health center meets the applicable adult day care or day health requirements and any additional requirements for contracting with the area agency on aging through a COPEs contract or with the department through a Medicaid provider contract. If a center is contracting for both day care and day health, requirements of both adult day services must be met.

(a) A prospective provider desiring to provide adult day services shall be provided an application form from the department or the area agency on aging.

(b) The prospective provider will provide the area agency on aging with evidence of compliance with, or administrative procedures to comply with, the adult day service rules under this chapter.

(c) The area agency on aging will conduct a site inspection of the adult day center and review of the requirements for contracting.

(d) Within thirty days of completing the site visit, the area agency on aging will advise the prospective provider in writing of any deficiencies in meeting contracting requirements.

(e) The area agency on aging will verify correction of any deficiencies within thirty days of receiving notice from the prospective provider that deficiencies have been corrected, before contracting can take place.

(f) The area agency on aging will provide the department with a written recommendation as to whether or not the center meets contracting requirements.

(2) Minimum application information required to apply for contract with the department, or an area agency on aging includes:

(a) Mission statement, articles of incorporation, and bylaws, as applicable;

(b) Names and addresses of the center's owners, officers, and directors as applicable;

(c) Organizational chart;

(d) Total program operating budget including all anticipated revenue sources and any fees generated;

(e) Program policies and operating procedure manual;

(f) Personnel policies and job descriptions of each paid staff position and volunteer position functioning as staff;

(g) Policies and procedures meeting the requirements of mandatory reporting procedures as described in chapter 74.34 RCW to adult protective services for vulnerable adults and local law enforcement for other participants;

(h) Audited financial statement;

(i) Floor plan of the facility;

(j) Local building inspection, fire department, and health department reports;

(k) Updated TB test for each staff member according to local public health requirements;

(l) Sample client case file including all forms that will be used; and

(m) Activities calendar for the month prior to application, or a sample calendar if the day service provider is new.

(3) The area agency on aging or other department designee monitors the adult day center at least annually to determine continued compliance with adult day care and/or adult day health requirements and the requirements for contracting with the department or the area agency on aging.

(a) The area agency on aging will send a written notice to the provider indicating either compliance with contacting requirements or any deficiencies based on the annual monitoring visit and request a corrective action plan. The area agency on aging will determine the date by which the corrective action must be completed

(b) The area agency on aging will notify the department of the adult day center's compliance with contracting requirements or corrected deficiencies and approval of the corrective action plan for continued contracting.

(4) Adult day care services are reimbursed on an hourly basis up to four hours per day. Service provided four or more hours per day will be reimbursed at the daily rate.

(5) Payment rates are established on an hourly and daily basis for adult day care centers as may be adopted in rule. Rate adjustments are determined by the state legislature. Providers seeking current reimbursement rates can refer to SSPS billing instructions.

(6) Rates as of July 1, 2002, are as follows:

Counties	COPES Adult Day Care	
	Daily Rate	Hourly Rate
King	\$36.48	\$9.10
Benton, Clark, Franklin, Island, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom, & Yakima	\$32.45	\$8.11
All other counties	\$30.75	\$7.69

(7) Payment rates are established on a daily basis for adult day health centers as may be adopted in rule. Rate adjustments are determined by the state legislature. Providers seeking current reimbursement rates can refer to MAA billing instructions or <http://maa.dshs.wa.gov>.

(8) Rates as of July 1, 2002, are as follows:

Counties	Day Health Daily
King	\$47.48
Benton, Clark, Franklin, Island, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom, & Yakima	\$43.06
All other counties	\$40.68

A one-time only initial intake evaluation provided by an adult day health center, including development of a negotiated care plan, is reimbursed at an established rate as may be adopted in rule. The rate as of July 1, 2002 is eighty-nine dollars and thirty-eight cents. Rate adjustments are determined by the state legislature. Separate reimbursement is not available for subsequent evaluations.

(9) Transportation to and from the program site is not reimbursed under the adult day care rate. Transportation arrangements are made with locally available transportation providers or informal resources.

(10) Transportation to and from the program site is not reimbursed under the adult day health rate. Transportation arrangements for eligible Medicaid clients are made with local Medicaid transportation brokers, informal providers, or other available resources per chapter 388-546 WAC.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. 03-06-024, § 388-71-0724, filed 2/24/03, effective 7/1/03.]

WAC 388-71-0726 Adult day health transportation.

The following rules apply if Medicaid transportation services are requested:

(1) The day health center must refer the client to a local Medicaid transportation broker. The broker may consult with the client, the client's physician, family, case manager, or day health center as needed in making any transportation arrangements.

(2) In referring the client to a day health center, the case manager may consider: The frailty and endurance of the client, the client's skilled nursing or rehabilitative therapy needs, and a reasonable round-trip travel time that may not exceed two hours, unless there is no closer center that can meet the client's skilled care needs. Documentation of language barriers may be considered on an exception to rule basis by the case manager.

(3) All brokered transportation under this subsection is subject to the requirements of chapter 388-546 WAC or its successors. In the case of any conflicts, the provisions of chapter 388-546 WAC take precedence.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. 03-06-024, § 388-71-0726, filed 2/24/03, effective 7/1/03.]

WAC 388-71-0728 Coordination of services.

(1) A COPES-eligible client may receive adult day care services on some days and adult day health services on different days if the service plan documents which level of service is to be provided on which days. However, core services must be provided on all days that adult day health skilled services are provided, and reimbursement is limited to the day health rate on days that day health services are provided.

(2) Clients receiving services from the department in an adult family home, boarding home, or other licensed commu-

nity residential facility may not receive COPES-funded adult day care, but may receive Medicaid adult day health services when the skilled nursing or rehabilitative services are approved by the client's case manager as part of the client's service plan.

(3) A licensed boarding home providing department-approved day care under chapter 388-78A WAC is subject to any applicable provisions of that chapter and is also subject to the rules under this chapter if the facility contracts with an area agency on aging or the department to provide COPES or other Medicaid-funded adult day services.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. 03-06-024, § 388-71-0728, filed 2/24/03, effective 7/1/03.]

WAC 388-71-0730 Senior Citizens Services Act/Respite care. (1) Except as provided under this section, the adult day services rules under this chapter do not apply to adult day care or day health services funded under chapters 74.38 and 74.41 RCW.

(2) An area agency on aging that elects to provide adult day services using Senior Citizens Services Act funding under chapter 74.38 RCW or respite care funding under chapter 74.41 RCW must contract with an adult day center that meets all administrative and facility requirements under WAC 388-71-0736 through 388-71-0774.

(3) The adult day care or day health services funded under chapters 74.38 or 74.41 RCW must be the same as the day care services required under WAC 388-71-0704 or the day health services required under WAC 388-71-0706. The area agency on aging may require additional services by contract.

(4) The area agency on aging may, by contract, establish eligibility and assessment requirements for day care or day health services in accordance with locally identified needs. However, funding provided under chapters 74.38 or 74.41 RCW may only be used to meet the needs of individuals who are not eligible for adult day care under WAC 388-71-0708 or for adult day health under WAC 388-71-0710, or who are eligible for those services and are not receiving them because of funding limitations.

(5) Nothing in this section or chapter may be construed as requiring an area agency on aging to contract with an adult day center, whether or not the center has a COPES or other Medicaid contract. Nor may anything in this section or chapter be construed as creating an entitlement to state-funded adult day services authorized under chapters 74.38 and 74.41 RCW.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. 03-06-024, § 388-71-0730, filed 2/24/03, effective 7/1/03.]

WAC 388-71-0732 Hearing rights. (1) If the department or area agency on aging denies, terminates, or reduces an individual client's adult day care or day health services, the client has the right to a fair hearing as provided under chapter 388-02 WAC.

(2) An adult day care or day health center has those hearing or dispute resolution rights that are afforded under RCW 43.20B.675 and the center's contract with the area agency on aging or the department. An adult day health center has any

other applicable hearing or dispute resolution rights under chapter 388-502 WAC.

(3) Adult day health centers are subject to all applicable provisions of chapter 388-502 WAC, and the department's aging and adult services administration may exercise the department's authority under that chapter to the same extent as the medical assistance administration.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. 03-06-024, § 388-71-0732, filed 2/24/03, effective 7/1/03.]

WAC 388-71-0734 Limiting expenditures. (1) In order to provide adult day services within the limits of available funding, the department may limit services when program expenditures exceed the budget appropriation or when limiting services is required to prevent expenditures from exceeding the appropriation.

(2) When adult day health program expenditures exceed available funding, the department may limit adult day health services based on the four care level system as determined through the established department assessment and described in chapter 388-105 WAC.

(a) Using the care level determined by the department assessment tool, the department will limit adult day services on a statewide basis to clients whose total scores exceed the assessed need level identified by the department as necessary to provide adult day health services to the extent of available funding.

(b) At least thirty days before implementing the limitation on services under this subsection, the department will notify the area agencies on aging, adult day health centers, and the affected adult day health clients that services are being limited and for what period of time the limitation is estimated to remain in effect.

(c) For purposes of RCW 74.08.080, the reduction in services shall be deemed an assistance adjustment for an entire class of recipients that is required by state laws prohibiting the department from expending funds in excess of appropriations.

(3) The department may adopt additional or alternative rules to control costs, such as, but not limited to, imposing a moratorium on contracting with new adult day centers, limiting services to clients based on level of care need, or reducing the numbers of days per week that clients may receive services.

(4) Effective upon the adoption of these rules, and until this subsection is repealed, a moratorium is imposed on contracting with new adult day health centers, including but not limited to additional sites operated by currently contracted providers, except in an area where no existing program is available, funding is available, and prior departmental approval has been obtained.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. 03-06-024, § 388-71-0734, filed 2/24/03, effective 7/1/03.]

WAC 388-71-0736 Adult day centers—Administrative policies and procedures. (1) Adult day centers must have written policies, procedures, and documentation of the organizational structure and administration of the program.

(2) Administrative policies and procedures must include:

- (a) Mission statement;
- (b) Articles of incorporation and bylaws, as applicable;
- (c) Current business license;
- (d) Names and addresses of the center's owners, officers, and directors, as applicable;
- (e) Certificates of insurance, including but not limited to property and general liability insurance; business auto if the center uses vehicles to transport clients; professional liability; workers' compensation; employers' liability if applicable; coverage for acts and omissions of employees and volunteers; and certificates of insurance for any subcontractors;
- (f) Minutes of last three meetings of the board of directors, if applicable, and the advisory committee;
- (g) Role and functions of an advisory committee, which must meet at least twice a year and which must be representative of the community and include family members of current or past clients and nonvoting staff representatives (When an adult day center is a subdivision of a multifunction organization, a committee or subcommittee of the governing body of the multifunction organization may serve as the advisory committee. A single purpose agency may utilize its governing board as an advisory committee.);
- (h) An organizational chart illustrating the lines of authority and communication channels of the center, which must be available to all staff and clients;
- (i) A calendar of programming (or sample calendar if the center is new);
- (j) A monthly menu (or sample menu if the center is new);
- (k) Current building, health, food service and fire safety inspection reports, and food handler permits, as applicable; and
- (l) Quality improvement plans and results.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. 03-06-024, § 388-71-0736, filed 2/24/03, effective 7/1/03.]

WAC 388-71-0738 Adult day centers—Operating policies and procedures. (1) All policies and procedures must be reviewed on a regular basis, at least annually by the advisory committee, and conform to the requirements outlined in WAC 388-71-0702 through 388-71-0774, as applicable.

- (2) Policies and procedures must include:
 - (a) Core values and mission of the organization;
 - (b) Ethical standards of the center and professional standards of conduct;
 - (c) Short- and long-range program goals;
 - (d) Definition of the target population, including number, age, and needs of participants;
 - (e) Geographical definition of the service area;
 - (f) Hours and days of operation (Centers or a combination of centers under single ownership must operate at least three days a week for four consecutive hours, with each center providing at least four hours of programming a day.);
 - (g) Description of basic services and any optional services;
 - (h) Description of service delivery;
 - (i) Procedures for assessments, reassessments, and the development of a negotiated care plan with clients and/or

representatives, including provisions for the utilization of a multidisciplinary team for this process;

- (j) If applicable, research procedures that comply with chapter 388-04 WAC;
- (k) Staffing pattern;
- (l) A plan for utilizing community resources;
- (m) Gift policy;
- (n) Marketing plan;
- (o) Contracting for services; and
- (p) Grievance and complaint processes for staff and participants.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. 03-06-024, § 388-71-0738, filed 2/24/03, effective 7/1/03.]

WAC 388-71-0740 Adult day centers—Fiscal operations. (1) Adult day centers must demonstrate fiscal responsibility by using generally accepted accounting principles. Fiscal policies, procedures, and records must be developed to enable the administrator to meet the fiscal reporting needs of the governing body.

(2) Adult day centers must develop a plan to address the future financial needs of the center. The plan must include projected program growth, capital purchases, projected revenue, projected expenses, and plans for fund raising, if applicable.

(3) Adult day centers must create a total center operating budget, including all revenue sources and participant fees generated annually.

(4) A financial statement or the latest audit report of the organization by a certified public accountant must be available.

(5) A statement of charges for services, including private pay rates and/or ancillary charges for additional services outside the scope of these rules, must be available.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. 03-06-024, § 388-71-0740, filed 2/24/03, effective 7/1/03.]

WAC 388-71-0742 Adult day centers—Client policies and procedures. (1) Center policies must define admission criteria, discharge criteria, Health Insurance Portability and Accountability Act (HIPAA) policies, medication policy, participant rights and responsibilities, fee schedule, confidentiality, and grievance procedures.

(2) The center must comply with all applicable nondiscrimination laws, including but not limited to age, race, color, gender, religion, national origin, creed, marital status, Vietnam era or disabled veteran's status, or sensory, physical, or mental handicap.

(3) A participant bill of rights describing the client's rights and responsibilities must be developed, posted, distributed to, and explained to participants, families, staff, and volunteers. Participants will be provided the bill of rights in the language understood by the individual upon request.

(4) The center must have an advance directive policy as required by the Patient Self Determination Act of 1990 (see 42 C.F.R. § 489.102 and chapter 70.122 RCW).

(5) Discharge policies must include specific criteria that establish when the participant is no longer eligible for services and under what circumstances the participant may be

discharged for other factors, unless the discharge is initiated by the client's department or authorized case manager, the center must notify the client, client representative if applicable, and case manager in writing of the specific reasons for the discharge. The center must also provide the client with adequate information about appeal and hearing rights. Discharge may occur due to client choice, other criteria as defined in the center's policy such as standards of conduct or inappropriate behavior, or changes in circumstances making the client ineligible for services under WAC 388-71-0708 or 388-71-0710.

(6) Incident report policies must include investigation and reporting of any neglect, abuse, exploitation, accident, or incident jeopardizing or affecting a participant's health or safety. The policy must include how the center will determine the circumstances of the event, restrictions on staff or clients during the investigation, how similar future situations will be prevented or decreased, and the location of incident reports. The center must keep a log of all reported incidents, participant grievances, complaints, and outcomes.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. 03-06-024, § 388-71-0742, filed 2/24/03, effective 7/1/03.]

WAC 388-71-0744 Adult day center—Client records. (1) The adult day center must have policies and procedures to ensure that the client's record/chart is appropriately organized and that confidentiality of information is maintained.

(2) Client information forms must be standardized, with each page showing the client's name or identification number.

(3) Individual client files must include:

(a) Personal/biographical data, including addresses, phone numbers, emergency contacts, and client representatives, reviewed and updated as needed;

(b) Application, enrollment, and consent to services forms;

(c) Department-authorized service plan and service authorization;

(d) All client information, including but not limited to the intake evaluation, negotiated care plan, attendance and service records, progress notes, and correspondence;

(e) Signed authorizations concerning the release of client information, photographs, and receipt of emergency medical care, as appropriate;

(f) Client photograph, with client or client representative permission, updated as needed;

(g) Transportation plans;

(h) Fee determination forms;

(i) Appropriate medical information, with client consent, including but not limited to significant illnesses, accidents, treatments, medical conditions, immunizations, allergies, medications, tobacco use, and alcohol or substance use;

(j) Advance directives (if any) and a statement signed by the client that he or she has received the center's policies concerning advance directives; and, as applicable,

(k) Physician orders for skilled nursing and/or rehabilitative therapy containing department-required information and in accordance with applicable licensing and practice act regulations.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. 03-06-024, § 388-71-0744, filed 2/24/03, effective 7/1/03.]

WAC 388-71-0746 Adult day center—Documentation. (1) Entries in the client's record must be typewritten or legibly written in ink, dated, and signed by the recording person with his/her title. Identification of the author may be a signature, initials, or other unique identifier within the requirements of applicable licensing standards and center policy.

(2) Progress notes must be chronological, timely, and recorded at least weekly by adult day health centers and at least monthly by adult day care center. Client dates of attendance are to be kept daily.

(3) Consultation and/or care plan reviews must be dated and initialed by the physician or other authorizing practitioner who reviewed them. If the reports are presented electronically, there must be representation of review by the ordering practitioner.

(4) Documentation of medication use must include the name of the medication, dosage, route of administration, site of injection if applicable, and signature or initials of the person administering the medication, title, and date.

(5) The record must be legible to someone other than the writer.

(6) Department-contracted adult day health centers must comply with all other applicable documentation requirements under WAC 388-502-0020.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. 03-06-024, § 388-71-0746, filed 2/24/03, effective 7/1/03.]

WAC 388-71-0748 Adult day centers—Record retention. (1) The adult day center must maintain a secure client record system to ensure confidentiality for all records, whether paper or electronic, in accordance with state and federal laws, including but not limited to the Health Insurance Portability and Accountability Act (HIPAA).

(2) The adult day center must maintain a permanent registry of all clients with dates of admission and discharge.

(3) The adult day center must have written policies concerning:

(a) Confidentiality and the protection of records that define procedures governing the use and removal, and conditions for release of information contained in the records;

(b) The release of client information and circumstances under which a signed authorization from the client or client representative is required; and

(c) The retention and storage of records for at least six years from the last date of service to the client, including contingency plans in the event the center discontinues operation.

(4) Client records maintained on the center's premises must be in a secure storage area that includes locking cabinets or storage. Computerized records must be backed up weekly and stored off-site.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. 03-06-024, § 388-71-0748, filed 2/24/03, effective 7/1/03.]

WAC 388-71-0750 Adult day centers—Personnel policies and procedures. (1) Personnel policies and procedures must be in place to ensure that staff are trained and knowledgeable to provide quality services in a safe environment. Policies must include at least the following:

(a) The center must have policies concerning the recruitment, orientation, training, evaluation, and professional development of staff and volunteers.

(b) The center must have job descriptions for each paid staff and volunteer position that are in accordance with ADA requirements and that specify qualifications for the job, delineation of tasks, and lines of supervision and authority.

(c) Each employee must receive, review, and sign a copy of the job description at the time of employment and whenever job descriptions are modified. Volunteers who function as staff must receive written descriptions of responsibilities.

(d) Probationary evaluations and annual performance evaluations, in accordance with job descriptions, must be conducted and must conform to the policy of the funding or parent organization. Both the employee and supervisor will sign the written evaluation. Copies will be kept in locked personnel files.

(e) Each staff person is to have a tuberculin test within thirty days of employment. If a test has been performed within twelve months of employment, the results of that test may be accepted. Tuberculin tests will be repeated according to local public health requirements.

(f) The center must have policies to restrict a staff person or participant's contact with clients when the staff person or participant has a known communicable disease in the infectious stage that is likely to spread in the center.

(g) Policies must also be established concerning hand washing, universal precautions, infection control, infectious waste disposal, blood borne pathogens, and laundry and handling of soiled and clean items.

(2) The center must have policies and procedures concerning suspected abuse, neglect, or exploitation reporting that include provisions preventing access to any participant until the center investigates and takes action to assure the participant's safety.

(3) The center must not interfere with the lawful investigation of a complaint, coerce a participant, or conceal evidence of alleged improprieties occurring within the center.

(4) The center must have policies that meet the requirements of mandatory reporting procedures as described in chapter 74.34 RCW to adult protective services for vulnerable adults and to local law enforcement for other participants.

(5) Each employee must receive or have access to a copy of the program's personnel policies at the time of employment.

(6) Whenever volunteers function in the capacity of staff, all applicable personnel policies must pertain.

(7) The center must conform to federal and state labor laws and be in compliance with equal opportunity guidelines.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. 03-06-024, § 388-71-0750, filed 2/24/03, effective 7/1/03.]

WAC 388-71-0752 Adult day center—Staffing requirements. (1) Staff selection is dependent on participant needs, program design, and contracting requirements. The

center must have the proper balance of professionals and paraprofessionals or nonprofessionals to adequately meet the needs of participants. Services must be delivered by those with adequate professional training. A staff person can have multiple functions, such as an administrator who is also responsible for providing nursing services or social services.

(2) To ensure continuity of direction and supervision, there must be a clear division of responsibility between the governing body and the adult day center administrator.

(3) The administrator must be given full authority and responsibility to plan, staff, direct, and implement the program. The administrator must also have the responsibility for establishing collaborative relations with other community organizations to ensure necessary support services to participants and their families/caregivers.

(4) The administrator must be on site to manage the center's day-to-day operations during hours of operation. If the administrator is responsible for more than one site, or has duties not related to adult day center administration or provision of services, a program director must be designated for each additional site and must report to the administrator.

(5) The administrator must be responsible for the development of a written plan of operation with approval of the governing body and the development, coordination, supervision, fiscal control, and evaluation of services provided through the adult day center.

(6) A nurse or personnel trained in first aid and CPR must be on hand whenever participants are present.

(7) Background checks pursuant to RCW 43.43.830 and 43.43.832 must be performed for all applicants hired, existing employees, and volunteers. Unsupervised access to participants is prohibited until a background check has been completed and the employee's suitability for employment has been determined.

(8) Required credentials must be verified to ensure that they are current and in good standing for licensed and certified staff.

(9) Adult day centers may utilize a range of staff under contract or consulting from a larger parent organization or from a private entity to provide services.

(10) Staff commonly utilized by both adult day care and adult day health centers must meet the following requirements:

(a) An activity coordinator must have a bachelor's degree in recreational therapy or a related field and one year of experience (full-time equivalent) in social or health services; or an associate degree in recreational therapy or a related field plus two years of appropriate experience; or three years of paid experience in an activity program and expertise with the population served at the center.

(b) The nurse must be a registered nurse (RN) with valid state credentials and have at least one-year applicable experience (full-time equivalent). In addition to a registered nurse, an adult day center can utilize a licensed practical nurse (LPN), but the LPN must be supervised in compliance with all applicable nurse practice acts and standards. The LPN must have valid state credentials and at least one-year applicable experience (full-time equivalent).

(c) The social services professional must have a master's degree in social work, gerontology, or other human services field, or counseling and at least one year of professional work

experience (full-time equivalent), or a bachelor's degree in social work, counseling, or a related field and two years of experience in a human services field.

(d) Program assistant/aides or personal care aides must have one or more years of experience (full-time equivalent) in working with adults in a health care or social service setting.

(e) Consultants from a larger parent organization without formal contracts may be utilized whenever the center is part of a larger organization that has the ability to provide professional services within the larger framework.

(f) Consultants, with appropriate, valid state credentials may be utilized as needed to meet the requirements outlined in this chapter.

(g) Secretary/bookkeepers must have at least a high school diploma or equivalent and skills and training to carry out the duties of the position.

(h) If the adult day center provides transportation drivers must have a valid and appropriate state driver's license, a safe driving record, and training in first aid and CPR. The driver must meet all state requirements for licensure or certification.

(i) Volunteers may be individuals or groups who desire to work with adult day center clients and must take part in program orientation and training. Volunteers and staff must mutually determine the duties of volunteers. Duties to be performed under the supervision of a staff member must either supplement staff in established activities or provide additional services for which the volunteer has special talents. Volunteers will be included in the staff ratio only when they conform to the same standards and requirements as paid staff, meet the job qualification standards of the organization, and have designated responsibilities.

(j) Dietitians must be certified with valid state credentials and have a minimum of one year applicable experience (full-time equivalent).

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. 03-06-024, § 388-71-0752, filed 2/24/03, effective 7/1/03.]

WAC 388-71-0754 Staffing ratios. (1) Staffing levels in adult day centers will vary based upon the number of participants and the care provided.

(2) The staffing level must be sufficient to serve the number and functioning levels of adult day center participants, meet program objectives, and provide access to other community resources.

(3) There must be sufficient maintenance and house-keeping personnel to assure that the facility is clean, sanitary, and safe at all times.

(4) To ensure adequate care and safety of participants, there must be provision for qualified substitute staff.

(5) As the number of participants with functional impairments, skilled nursing or skilled rehabilitative therapy needs increases, the required staff-participant ratio must be adjusted accordingly.

(6) All centers must have written policies regarding staff-participant ratios. The ratio must be a minimum of one staff to six participants. The provider must ensure that appropriate professionals provide needed services to the participants based upon the participants' service and care plans. The

center is also required to employ sufficient staff to meet the needs of the participants.

(7) Staff counted in the staff-participant ratio are those who provide direct service to participants. When there is more than one participant present, there must be at least two staff members on the premises, one of whom is directly supervising the participants.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. 03-06-024, § 388-71-0754, filed 2/24/03, effective 7/1/03.]

WAC 388-71-0756 Adult day care—Staffing requirements. (1) Minimum staffing requirements for adult day care centers include an administrator/program director, activity coordinator, a consulting registered nurse, and a consulting social worker.

(2) The administrator/program director must have a master's degree and one year of supervisory experience in health or social services (full-time equivalent); or a bachelor's degree in health, social services or a related field, with two years of supervisory experience (full-time equivalent) in a social or health service setting; or a high school diploma or equivalent and four years of experience in a health or social services field, of which two years must be in a supervisory position, and have expertise with the populations served at the center.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. 03-06-024, § 388-71-0756, filed 2/24/03, effective 7/1/03.]

WAC 388-71-0758 Adult day health—Staffing requirements. (1) Minimum staffing requirements for adult day health centers include an administrator, program director, registered nurse, activity coordinator, a PT/OT or speech therapist, and a social worker. The administrator and program director may be the same person.

(2) The program administrator must have a master's degree and one year of supervisory experience in health or social services (full-time equivalent), or a bachelor's degree and two years of supervisory experience in a social or health service setting. The degree may be in nursing.

(3) The program director must have a bachelor's degree in health, social services or a related field with one year of supervisory experience (full-time equivalent) in a social or health service setting. Upon approval by the department, a day health center may request an exception for an individual with an associate's or vocational degree in health, social services, or a related field with four years of experience in a health or social service setting, of which two years must be in a supervisory position.

(4) Therapists, regardless of specific expertise, such as physical therapists, occupational therapists, speech therapists, recreation therapists, mental health therapists, or any other therapists used, must have valid state credentials and one year of experience in a social or health setting.

(5) Rehabilitative therapeutic assistants must be certified with valid state credentials, have at least one year of applicable experience (full-time equivalent), and meet the requirements of chapter 246-915, 246-847, or 246-828 WAC.

(6) A certified or registered nursing assistant must meet the requirements of RCW 18.88A.020.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. 03-06-024, § 388-71-0758, filed 2/24/03, effective 7/1/03.]

WAC 388-71-0760 Adult day centers—Employee records. (1) Each employee must have an individual file containing the employee's application, verification of references, TB status, signed job description, and all performance evaluations. Copies of current license or certificate and verification of current good standing, and certification of CPR and first aid training, if applicable, must also be in the file.

(2) Centers must maintain employee records for the duration of staff employment and at least seven years after termination of employment.

(3) Employee records must contain all records of training, such as staff orientation and training pertinent to duties or regulatory compliance, including CPR, first aid, and universal precautions training.

(4) Employee records must contain criminal history disclosure and background checks.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. 03-06-024, § 388-71-0760, filed 2/24/03, effective 7/1/03.]

WAC 388-71-0762 Adult day centers—Education and training. (1) Provision must be made for orientation of new employees, contractors, and volunteers.

(2) All staff, contractors, and volunteers must receive, at a minimum, quarterly in-service training and staff development that meets their individual training needs to support program services. This must be documented and readily accessible in the personnel file and in a general file.

(3) Staff, contractors, and volunteers must receive training about documentation, reporting requirements, and universal precautions.

(4) At a minimum, one staff person per shift must be trained and certified in CPR.

(5) Staff and volunteers must receive training on all applicable policies and procedures.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. 03-06-024, § 388-71-0762, filed 2/24/03, effective 7/1/03.]

WAC 388-71-0764 Adult day centers—Medication.

(1) The center must develop written medication policies that are explained and accessible to all staff, contractors, volunteers, and participants that have responsibility in this area. At a minimum, policies must meet the following requirements:

(a) Medications must be kept in locked storage. If medications need to be refrigerated, they should be in a locked box, if not in a separate refrigerator dedicated to medication refrigeration.

(b) Medication policies must describe:

(i) Under what conditions licensed program staff will administer medications;

(ii) How medications brought to the program by a client must be labeled;

(iii) How nonprescription medications such as aspirin or laxatives are to be used;

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(iv) How the administration of medications will be entered in participant case records as described in WAC 388-71-0744(4); and

(v) Medication policies must be consistent with laws governing medication administration under RCW 69.41.010 and chapter 246-888 WAC.

(2) Participants who need to take medications while at the center, and who are able to self-medicate, must be encouraged and expected to bring and take their own medications as prescribed. Some participants may need assistance with their medications, and a few may need to have their medications administered by qualified program staff.

(3) In order for center staff to administer any prescribed medication, there must be a written authorization from the participant's authorizing practitioner stating that the medication is to be administered at the program site.

(4) Staff must be trained to observe medication usage and effects, and to document and report any concerns or difficulties with medications.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. 03-06-024, § 388-71-0764, filed 2/24/03, effective 7/1/03.]

WAC 388-71-0766 Adult day centers—Facility. (1)

Selection of a location for a center must be based on information about potential participants in the service area and be made in consultation with other agencies, organizations, and institutions serving older individuals and those with functional impairments, as well as considering the availability of a suitable location.

(2) Centers must have available a current floor plan of the facility indicating usage of space with interior measurements, building inspection report, fire department inspection report, and the local health department inspection report if operating a kitchen.

(3) The facility must comply with applicable state, county, and local building regulations, zoning, fire, and health codes or ordinances.

(4) When possible, the facility should be located at street level. If the facility is not located at street level, it is essential to have a ramp and/or elevators. An evacuation plan for relocation of participants must also be in place in the event of an emergency.

(5) Each adult day center co-located in a facility housing other services must have its own separate identifiable space for main activity areas during operational hours. Certain space can be shared, such as the kitchen and therapy rooms.

(6) Each center must provide appropriate hardware on doors of storage rooms, closets, bathrooms, and other rooms to prevent participants from being accidentally locked in.

(7) When possible, the location should be within a transit authority's core service area.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. 03-06-024, § 388-71-0766, filed 2/24/03, effective 7/1/03.]

WAC 388-71-0768 Adult day centers—Physical environment requirements. (1) The facility must have sufficient space to accommodate the full range of program activities and services. The facility must be adaptable to accommodate variations of activities (group and/or individual) and services.

The program must provide and maintain essential space necessary to provide services and to protect the privacy of the participants receiving services. There must be sufficient private space to permit staff to work effectively and without interruption. There must be sufficient space available for private discussions.

(2) The facility must provide at least sixty square feet of program space for multipurpose use for each day center participant. In determining adequate square footage, only those activity areas commonly used by participants are to be included. Dining and kitchen areas are to be included only if these areas are used by clients for activities other than meals. Reception areas, storage areas, offices, restrooms, passageways, treatment rooms, service areas, or specialized spaces used only for therapies are not to be included when calculating square footage.

(3) Storage space.

(a) There must be adequate storage space for program and operating supplies.

(b) Toxic substances, whether for activities or cleaning, must be stored in an area not accessible to participants. Substances must be clearly marked, the contents identified, and stored in original containers.

(4) Restrooms.

(a) The facility's restrooms must be located as near the activity area as possible, preferably no more than forty feet away. The facility must include at least one toilet for every ten participants.

(b) Programs that have a large number of participants who require more scheduled toileting or assistance with toileting must have at least one toilet for every eight participants.

(c) The toilets shall be equipped for use by mobility-limited persons and easily accessible from all program areas. One toilet area should be designed to allow assistance from one or two staff. More accessible units may be required based upon the needs of the participants.

(d) Each restroom must contain an adequate supply of soap, toilet tissues, and paper towels.

(e) Showers are to be accessible to those who require bathing as a core service.

(5) Rest area.

(a) In addition to space for program activities, the facility must have a rest area and designated areas to permit privacy and to isolate participants who become ill or disruptive, or who may require rest.

(b) The rest area must be located away from activity areas and near a restroom and the nurse's office. There must be at least one bed, couch, or recliner for every ten participants that can be used for resting or the isolation of a participant who is ill or suspected of coming down with a communicable disease.

(c) If beds are used, the mattresses must be protected and linens changed after each use by different participants.

(6) Loading zones/parking/entrances/exits.

(a) A loading zone with sufficient space for getting in and out of a vehicle must be available for the safe arrival and departure of participants and the use of emergency personnel.

(b) There must be sufficient parking available to accommodate family caregivers, visitors, and staff.

(c) When necessary, arrangements must be made with local authorities to provide safety zones for those arriving by motor vehicle and adequate traffic signals for people entering and exiting the facility.

(d) Adequate lighting must be provided in all loading and parking zones, entrances, and exits.

(e) An adult day center must be visible and recognizable as a part of the community. The entrance to the facility must be clearly identified. The center must also be appealing and protective to participants and others.

(f) At least two well-identified exits must be accessible from the building.

(7) Atmosphere and design.

(a) The center's design must facilitate the participants movement throughout the facility and encourage involvement in activities and services.

(b) The environment must reinforce orientation and awareness of the surroundings by providing cues and information about specific rooms, locations, and functions that help the participant to get his/her orientation to time and space.

(c) A facility must be architecturally designed in conformance with the requirements of section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act to accommodate individuals with a disability and meet any state and local barrier-free requirements.

(d) Illumination levels in all areas must be adequate, and careful attention must be given to avoiding glare. Attention must be paid to lighting in transitional areas, such as outside to inside and between different areas of the facility.

(e) Sound transmission must be controlled. Excessive noise, such as fan noise, must be avoided.

(f) Comfortable conditions must be maintained within a comfortable temperature range. Excessive drafts must be avoided uniformly throughout the facility.

(g) Sufficient furniture must be available for the entire population present. Furnishings must accommodate the needs of participants and be attractive, comfortable, sturdy, and safe. Straight-backed chairs with arms must be used during activities and meals.

(h) A telephone must be available for participant use. Local calls are to be available at no cost to the participant.

(8) Safety and sanitation.

(a) The facility and grounds must be safe, clean, and accessible to all participants, and must be designed, constructed, and maintained in compliance with all applicable local, state, and federal health and safety regulations.

(b) Nonslip surfaces or bacteria-resistant carpets must be provided on stairs, ramps, and interior floors.

(c) Alarm/warning systems are necessary to ensure the safety of the participants in the facility in order to alert staff to potentially dangerous situations. It is recommended that call bells be installed or placed in the rest areas, restroom stalls, and showers.

(d) An evacuation plan/disaster plan must be strategically posted in each facility.

(e) The facility must be free of hazards, such as high steps, steep grades, and exposed electrical cords. Steps and curbs must be painted and the edges of stairs marked appropriately to highlight them. All stairs, ramps, and bathrooms

accessible to those with disabilities must be equipped with securely anchored handrails.

(f) Emergency first-aid kits must be visible and accessible to staff. Contents of the kits must be replenished after use and reviewed as needed.

(g) Maintenance and housekeeping must be carried out on a regular schedule and in conformity with generally accepted sanitation standards, without interfering with the program.

(h) If smoking is permitted, an adequately ventilated area away from the main program area must be provided and supervised.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. 03-06-024, § 388-71-0768, filed 2/24/03, effective 7/1/03.]

WAC 388-71-0770 Adult day center—Food and nutrition services. Centers must provide meal service to all participants as outlined in WAC 388-71-0704 and 388-71-0706

(1) All meals provided are to meet one-third of the minimum required daily allowance or dietary reference intake as determined by the Food and Nutrition Board of the Institute of Medicine.

(2) The center must ensure that food served meets nutritional needs, takes into consideration individual and ethnic preferences to the extent reasonably possible, caloric need, special dietary requirements, and any physical condition making food intake difficult.

(3) The center must provide a variety of foods and not repeat menus for a minimum of three weeks.

(4) Participant input must be gathered when planning meals.

(5) Menus must be posted at least one week in advance; indicate the date, day of the week, month and year; and include all food and snacks served that contribute to nutritional requirements.

(6) Nutrient concentrates, supplements, and dysphagia-modified diets related to a choking or aspiration risk, are to be served only with the written approval of the participant's physician.

(7) Safe and sanitary handling, storage, preparation, and serving of food must be assured. If meals are prepared on the premises, kitchen appliances, food preparation area, and equipment must meet state and local requirements.

(8) All staff and volunteers handling or serving meals must have the appropriate food handler's permits, if applicable.

(9) In the event meals are prepared at a separate kitchen facility, the adult day center must ensure that persons preparing food have a food handler's permit and that the food is transported in airtight containers to prevent contamination.

(10) The center must ensure that the food is transported and served at the appropriate and safe temperature.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. 03-06-024, § 388-71-0770, filed 2/24/03, effective 7/1/03.]

WAC 388-71-0772 Adult day centers—Emergency procedures. (1) A written emergency/disaster/earthquake plan must be posted at each program site and in all program

owned vehicles. Staff must be trained to ensure smooth implementation of the emergency plan.

(2) All staff and volunteers must be trained in evacuation/fire safety procedures.

(3) A written illness/injury/medical emergency/death procedure must be followed in the event a participant becomes ill, is injured, or dies. The procedures must be posted in at least one visible location at all program sites and must be explained to staff, volunteers, and participants. The procedures must describe arrangements for hospital inpatient and emergency room service and include directions on how to secure ambulance transportation and complete incident reports.

(4) Procedures for fire safety as approved by the local fire authority must be adopted and posted, including provisions for fire drills, inspection and maintenance of fire extinguishers, and periodic inspection and training by fire department personnel. The center must conduct and document quarterly fire drills and document the center's ability to meet procedures. Improvements must be based on the fire drill evaluation. Smoke detectors must also be used.

(5) Each center must provide adequate emergency lighting or flashlights in all areas.

(6) Each center must provide and maintain first aid kits in adequate numbers to meet the needs of the participant and staff.

(7) Each center must ensure, in accordance with local emergency procedures, that supplies, food, water and equipment are available in the event power, heat and/or electricity are not available during an emergency.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. 03-06-024, § 388-71-0772, filed 2/24/03, effective 7/1/03.]

WAC 388-71-0774 Adult day centers—Quality assurance and improvement. (1) Every adult day center must develop a quality improvement plan, with specific measurable objectives, designed to meet requirements of any licensing, funding sources, professional standards, or regulatory compliance.

(2) Policies and procedures for monitoring program quality and determining further action must be developed by the administrator with the advice of the multidisciplinary staff team and the advisory committee, and with the approval of the governing body and center clients and/or representatives.

(3) Quality assurance and improvement plans may include but are not limited to annual evaluations, utilization reviews, participant satisfaction surveys, and participant improvement and/or care plan audits.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. 03-06-024, § 388-71-0774, filed 2/24/03, effective 7/1/03.]

WAC 388-71-0776 Effective date. WAC 388-71-0702 through 388-71-0776 are effective July 1, 2003.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.200, 74.08.090, 74.09.520, and 74.39A.030. 03-06-024, § 388-71-0776, filed 2/24/03, effective 7/1/03.]

WAC 388-71-0800 What is PACE? (1) PACE, which stands for the program of all-inclusive care for the elderly, is a managed care program that provides:

(a) All Medicaid and Medicare services in a comprehensive and coordinated manner for a frail elderly population; and

(b) A home and community-based alternative to nursing facility care.

(2) PACE is authorized under sections 1934 and 1894 of the Social Security Act and is administered by the department. The laws allow the department to expand home and community-based care options for the frail elderly population.

[Statutory Authority: RCW 74.04.057, 74.08.090, 74.09.520. 03-13-091, § 388-71-0800, filed 6/16/03, effective 7/17/03. Statutory Authority: RCW 74.04.057, 74.08.090, 74.09.520 and 74.39A.030. 99-19-048, § 388-71-0800, filed 9/13/99, effective 10/14/99.]

WAC 388-71-0805 What services does PACE cover?

Under their contract with the department, the PACE provider develops an individualized plan of care, as defined in 42 CFR 460.106, that integrates necessary long-term care, medical services, mental health services, and alcohol and substance abuse treatment services.

(1) The care plan includes, but is not limited to any of the following long-term care services:

(a) Care coordination;

(b) Home and community-based services:

(i) Personal (in-home) care;

(ii) Residential care.

(c) And, if necessary, nursing facility care.

(2) The care plan may also include, but is not limited to the following medical services:

(a) Primary medical care;

(b) Vision care;

(c) End of life care;

(d) Restorative therapies, including speech, occupational, and physical therapy;

(e) Oxygen therapy;

(f) Audiology (including hearing aids);

(g) Transportation;

(h) Podiatry;

(i) Durable medical equipment (e.g., wheelchair);

(j) Dental care;

(k) Pharmaceutical products;

(l) Immunizations and vaccinations;

(m) Emergency room visits and inpatient hospital stays.

(3) The care plan may also include any other services determined necessary by the interdisciplinary team to improve and maintain the client's overall health status.

[Statutory Authority: RCW 74.04.057, 74.08.090, 74.09.520. 03-13-091, § 388-71-0805, filed 6/16/03, effective 7/17/03. Statutory Authority: RCW 74.04.057, 74.08.090, 74.09.520 and 74.39A.030. 99-19-048, § 388-71-0805, filed 9/13/99, effective 10/14/99.]

WAC 388-71-0810 Who provides these services? (1)

A PACE interdisciplinary team, with the help of the client, family, and department case manager, develops and delivers necessary long-term care, medical services, mental health services, and alcohol and substance abuse treatment services. The PACE interdisciplinary team is composed of at least the following members:

(a) Primary care physician;

(b) Registered nurse;

(c) Social worker;

(d) Physical therapist;

(e) Occupational therapist;

(f) Recreation therapist or activity coordinator;

(g) Dietitian;

(h) PACE center manager;

(i) Home care coordinator;

(j) Personal care attendant;

(k) Van driver or his or her representative.

(2) As needed, the PACE provider may subcontract with other qualified professionals to provide services.

[Statutory Authority: RCW 74.04.057, 74.08.090, 74.09.520. 03-13-091, § 388-71-0810, filed 6/16/03, effective 7/17/03. Statutory Authority: RCW 74.04.057, 74.08.090, 74.09.520 and 74.39A.030. 99-19-048, § 388-71-0810, filed 9/13/99, effective 10/14/99.]

WAC 388-71-0815 Where are these services provided? In general, most of the covered services are offered at the PACE center. The PACE team may also provide care in homes, hospitals, nursing facilities, and community-based residential settings including adult family homes, assisted living facilities, and boarding homes.

[Statutory Authority: RCW 74.04.057, 74.08.090, 74.09.520. 03-13-091, § 388-71-0815, filed 6/16/03, effective 7/17/03. Statutory Authority: RCW 74.04.057, 74.08.090, 74.09.520 and 74.39A.030. 99-19-048, § 388-71-0815, filed 9/13/99, effective 10/14/99.]

WAC 388-71-0820 How do I qualify for Medicaid-funded PACE services? To qualify for Medicaid-funded PACE services, you must apply for an assessment by contacting your local Home and Community Services office. A case manager will assess and determine whether you:

(1) Are age:

(a) Fifty-five or older, and blind or disabled as defined in WAC 388-511-1105, SSI-related eligibility requirements; or

(b) Sixty-five or older.

(2) Need nursing facility level of care as defined in WAC 388-71-0435(4) or 388-72A-0055, titled Am I eligible for COPES-funded services? Note: If you are already enrolled, but no longer need nursing facility care, you may still be eligible for PACE services if the case manager reasonably expects you to need nursing facility care within the next six months in the absence of continued PACE coverage;

(3) Live within the designated service area of the PACE provider; and

(4) Meet financial eligibility requirements. This means the department will assess your finances and determine if your income and resources fall within the limits set in WAC 388-515-1505.

[Statutory Authority: RCW 74.04.057, 74.08.090, 74.09.520. 03-13-091, § 388-71-0820, filed 6/16/03, effective 7/17/03; 02-15-138, § 388-71-0820, filed 7/22/02, effective 8/22/02. Statutory Authority: RCW 74.04.057, 74.08.090, 74.09.520 and 74.39A.030. 99-19-048, § 388-71-0820, filed 9/13/99, effective 10/14/99.]

WAC 388-71-0825 What are my appeal rights? If the department determines you are ineligible, but you disagree, you may appeal the department's decision. For more information on your appeal rights, refer to chapter 388-02 WAC,

DSHS hearing rules and 42 CFR 460.124, Additional appeal rights under Medicare or Medicaid.

[Statutory Authority: RCW 74.04.057, 74.08.090, 74.09.520. 03-13-091, § 388-71-0825, filed 6/16/03, effective 7/17/03. Statutory Authority: RCW 74.04.057, 74.08.090, 74.09.520 and 74.39A.030. 99-19-048, § 388-71-0825, filed 9/13/99, effective 10/14/99.]

WAC 388-71-0835 How do I enroll into the PACE program? Once you qualify for PACE, enrollment into the program is voluntary. However, before you can participate, you must:

- (1) Contact your local PACE provider or local home and community services office.
- (2) Not be enrolled in any other medical coverage plan that purchases services on a prepaid basis (e.g., prepaid health plan); and
- (3) Agree to receive services exclusively through the PACE provider and the PACE provider's network of contracted providers.

[Statutory Authority: RCW 74.04.057, 74.08.090, 74.09.520. 03-13-091, § 388-71-0835, filed 6/16/03, effective 7/17/03. Statutory Authority: RCW 74.04.057, 74.08.090, 74.09.520 and 74.39A.030. 99-19-048, § 388-71-0835, filed 9/13/99, effective 10/14/99.]

WAC 388-71-0840 How do I disenroll from the PACE program? (1) You may choose to voluntarily disenroll from the PACE program without cause at any time. To do so, you must give the PACE provider written notice. If you give notice:

- (a) Before the fifteenth of the month, disenrollment is effective at the end of the month.
- (b) After the fifteenth, disenrollment is not effective until the end of the following month.
- (2) You may also be involuntarily disenrolled from the program by the PACE provider, if you:
 - (a) Move out of the designated service area or are out of the service area for more than thirty consecutive days, unless the PACE provider agrees to a longer absence due to extenuating circumstances;
 - (b) Engage in disruptive or threatening behavior such that the behavior jeopardizes your health or safety, or the safety of others;
 - (c) Fail to comply with your plan of care or the terms of the PACE enrollment agreement;
 - (d) Fail to pay or make arrangements to pay your part of the costs after the thirty-day grace period;
 - (e) Become financially ineligible for Medicaid services, unless you choose to pay privately;
 - (f) Are enrolled with a provider that loses its license and/or contract; or
 - (g) No longer meet the nursing facility level of care requirement as defined in WAC 388-71-0435(4) and are not deemed PACE eligible.

(3) For any of the above reasons, the PACE provider must give you written notice, explaining that they are terminating benefits. If the provider gives you notice:

- (a) Before the fifteenth of the month, then you may be disenrolled at the end of the month.
- (b) After the fifteenth, then you may be disenrolled at the end of the following month.

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(4) Before the PACE provider can involuntarily disenroll you from the PACE program, the department must review and approve all proposed involuntary disenrollments.

[Statutory Authority: RCW 74.04.057, 74.08.090, 74.09.520. 03-13-091, § 388-71-0840, filed 6/16/03, effective 7/17/03. Statutory Authority: RCW 74.04.057, 74.08.090, 74.09.520 and 74.39A.030. 99-19-048, § 388-71-0840, filed 9/13/99, effective 10/14/99.]

WAC 388-71-0845 What are my rights as a PACE client? You have a right to:

- (1) Receive any information regarding your care under PACE;
- (2) Participate in creating or changing your treatment plan;
- (3) Receive confidential treatment;
- (4) Disenroll at any time;
- (5) Express grievances when a disagreement exists; and
- (6) A fair hearing as described in chapter 388-02 WAC.

For information on resolving a disagreement, refer to your contract with the PACE provider.

[Statutory Authority: RCW 74.04.057, 74.08.090, 74.09.520. 03-13-091, § 388-71-0845, filed 6/16/03, effective 7/17/03. Statutory Authority: RCW 74.04.057, 74.08.090, 74.09.520 and 74.39A.030. 99-19-048, § 388-71-0845, filed 9/13/99, effective 10/14/99.]

Chapter 388-72A WAC

COMPREHENSIVE ASSESSMENT REPORTING EVALUATION (CARE) TOOL

WAC

388-72A-0005	When do the rules in chapter 388-72A WAC apply to me?
388-72A-0010	Does chapter 388-71 WAC apply to me?
388-72A-0015	If the department did not use the CARE tool for my last assessment, may I have my assessments done on the assessment form used for my last assessment?
388-72A-0020	What is an assessment?
388-72A-0025	What is the process for conducting an assessment?
388-72A-0030	What is the purpose of an assessment?
388-72A-0035	What are personal care services?
388-72A-0040	What information does the assessor gather?
388-72A-0045	How will the department plan to meet my care needs?
388-72A-0050	What if I disagree with the result of the assessment or the decisions about what services I may receive?
388-72A-0055	Am I eligible for COPES-funded services?
388-72A-0060	Am I eligible for MPC-funded services?
388-72A-0065	Am I eligible for Chore-funded services?
388-72A-0070	What are the in-home hours and residential rate based on?
388-72A-0075	What does the CARE computerized assessment tool do with the client information entered by department staff?
388-72A-0080	What are the elements that the CARE tool evaluates for each of the criteria in WAC 388-72A-0075?
388-72A-0085	How does the CARE tool evaluate the criteria elements?
388-72A-0090	What are the maximum hours that I can receive for in-home services?
388-72A-0095	How are the number of hours I can receive for in-home services determined?
388-72A-0100	Are there other in-home services I may be eligible to receive in addition to those described in WAC 388-72A-0095(3)?
388-72A-0105	What would cause a change in the maximum hours authorized?
388-72A-0110	How much will the department pay for my care?

WAC 388-72A-0005 When do the rules in chapter 388-72A WAC apply to me? The rules in chapter 388-72A WAC apply when the department or designee uses the comprehensive assessment reporting evaluation (CARE) tool for your:

- (1) Initial assessment;
- (2) Annual reassessment; or
- (3) Assessment due to a significant change in condition.

[Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090. 03-05-097, § 388-72A-0005, filed 2/19/03, effective 3/22/03.]

WAC 388-72A-0010 Does chapter 388-71 WAC apply to me? Yes. Chapter 388-71 WAC applies with the exception of the following: WAC 388-71-0203, 388-71-0205, 388-71-0430, 388-71-0435, 388-71-0440, and 388-71-0445.

[Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090. 03-05-097, § 388-72A-0010, filed 2/19/03, effective 3/22/03.]

WAC 388-72A-0015 If the department did not use the CARE tool for my last assessment, may I have my assessments done on the assessment form used for my last assessment? You may not have assessments done on the last assessment form once you've been assessed under CARE. The CARE tool replaces all assessment forms previously used by the department to determine your eligibility and service payment level for home and community programs.

[Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090. 03-05-097, § 388-72A-0015, filed 2/19/03, effective 3/22/03.]

WAC 388-72A-0020 What is an assessment? Assessment is defined in WAC 388-71-0202.

[Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090. 03-05-097, § 388-72A-0020, filed 2/19/03, effective 3/22/03.]

WAC 388-72A-0025 What is the process for conducting an assessment? The department staff or designees will:

- (1) Assess your abilities and needs using a department-prescribed assessment tool, called the comprehensive assessment reporting evaluation (CARE); and
- (2) Perform the assessment based on an in-person interview with you in your own home or other place of residence, which is defined in WAC 388-71-0202. A case manager may request the assessment be conducted in private.

[Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090. 03-05-097, § 388-72A-0025, filed 2/19/03, effective 3/22/03.]

WAC 388-72A-0030 What is the purpose of an assessment? Department staff or designees will perform an assessment using CARE to:

- (1) Determine eligibility for department-paid home and community programs;
- (2) Identify your strengths;
- (3) Evaluate your living situation and environment;
- (4) Evaluate your physical health, functional and cognitive abilities, social resources, income and financial resources, and emotional and social functioning for service planning purposes;
- (5) Identify your values and preferences for effective service planning based on your lifestyle;
- (6) Determine availability of alternative resources including family, neighbors, friends, community programs, volunteers, and other service delivery options that will provide needed assistance;

(7) Determine risk of and program eligibility for nursing facility placement; and

(8) Determine need for case management activities.

[Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090. 03-05-097, § 388-72A-0030, filed 2/19/03, effective 3/22/03.]

WAC 388-72A-0035 What are personal care services? Personal care services means physical or verbal assistance with activities of daily living (ADL) and instrumental activities of daily living (IADL). Assistance means verbal or physical assistance with ADL and IADL. Assistance is evaluated with use of assistive devices.

(1) Activities of daily living consist of the following care tasks that are directly related to your disabling condition:

(a) Bathing, how you take a full-body bath/shower, sponge bath, and transfer in/out of tub/shower;

(b) Bed mobility, how you move to and from a lying position, turn side to side, and position your body while in bed;

(c) Body care, how you perform with passive range of motion, applications of dressings and ointments or lotions to the body and pedicure to trim toenails and apply lotion to feet. In adult family homes or in licensed boarding homes contracting with DSHS to provide assisted living services, dressing changes using clean technique and topical ointments must be delegated by a registered nurse in accordance with chapter 246-840 WAC. Body care excludes:

(i) Foot care for clients who are diabetic or have poor circulation; or

(ii) Changing bandages or dressings when sterile procedures are required.

(d) Dressing, how you put on, fasten, and take off all items of clothing, including donning/removing prosthesis;

(e) Eating, how you eat and drink, regardless of skill. Eating includes any method of receiving nutrition, e.g., by mouth, tube or through a vein;

(f) Locomotion in room and immediate living environment, how you move between locations in your room and immediate living environment. If you are in a wheelchair, locomotion includes how self-sufficient you are once in your wheelchair;

(g) Locomotion outside of immediate living environment including outdoors, how you move to and return from more distant areas. If you are living in boarding home or nursing facility (NF), this includes areas set aside for dining, activities, etc. If you are living in your own home or in an adult family home, locomotion outside immediate living environment including outdoors includes how you move to and return from a patio or porch, backyard, to the mailbox, to see the next-door neighbor, etc;

(h) Walk in room, hallway and rest of immediate living environment, how you walk between locations in your room and immediate living environment;

(i) Medication management, describes the amount of assistance, if any, required to receive medications, over the counter preparations or herbal supplements;

(j) Toilet use, how you use the toilet room, commode, bedpan, or urinal, transfer on/off toilet, cleanse, change pad, manage ostomy or catheter, and adjust clothes;

(k) Transfer, how you move between surfaces, i.e., to/from bed, chair, wheelchair, standing position. Transfer does not include how you move to/from the bath or toilet; and

(l) Personal hygiene, how you maintain personal hygiene, including combing hair, brushing teeth, applying makeup, washing/drying face hands, menses care, and perineum. This does not include personal hygiene in baths and showers.

(2) Instrumental activities of daily living (IADL) consist of the following routine activities performed around the home or in the community.

(a) Meal preparation, how meals are prepared (e.g., planning meals, cooking, assembling ingredients, setting out food, utensils, and cleaning up after meals). NOTE: This task may not be authorized to just plan meals or clean up after meals. You must need assistance with actual meal preparation;

(b) Ordinary housework, how ordinary work around the house is performed (e.g., doing dishes, dusting, making bed, tidying up, laundry);

(c) Essential shopping, how shopping is completed to meet your health and nutritional needs (e.g., selecting items). Shopping is limited to brief, occasional trips in the local area to shop for food, medical necessities and household items required specifically for your health, maintenance or well-being. This includes shopping with or for you;

(d) Wood supply, how wood is supplied (e.g., splitting, stacking, or carrying wood) when you use wood as the sole source of fuel for heating and/or cooking;

(e) Travel to medical services, how you travel by vehicle to a physician's office or clinic in the local area to obtain medical diagnosis or treatment—includes driving vehicle yourself, traveling as a passenger in a car, bus, or taxi;

(f) Managing finances, how bills are paid, checkbook is balanced, household expenses are managed. The department cannot pay for any assistance with managing finances; and

(g) Telephone use, how telephone calls are made or received (with assistive devices such as large numbers on telephone, amplification as needed).

[Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090. 03-05-097, § 388-72A-0035, filed 2/19/03, effective 3/22/03.]

WAC 388-72A-0040 What information does the assessor gather? (1) The case manager gathers information from you, your caregivers, family members, and other sources to determine whether you have unmet or partially met needs for assistance with ADL's and IADL's.

(2) For each ADL, except as otherwise provided for bathing, body care, and medication management, the case manager assesses the level of your ability to self-perform the ADL and the level of support provided by others.

(a) For each ADL, the case manager measures your level of self-performance by determining what you actually did within the last seven days, not what you might be capable of doing. If you:

(i) Received no help or oversight, or if you needed help or oversight only once or twice, you are assessed as being independent;

(ii) Received oversight (monitoring or standby), encouragement, or cueing three or more times, or needed physical

assistance in addition to supervision only once or twice, you are assessed as needing supervision;

(iii) Were:

(A) Highly involved in the activity,

(B) Given physical help in guided maneuvering of limbs or other nonweight bearing assistance on three or more occasions, or

(C) Given weight bearing assistance but only one or two times, you are assessed as needing limited assistance.

(iv) Performed part of the activity, but on three or more occasions, you needed weight bearing support or you received full performance of the activity during part, but not all, of the activity from others, you were assessed as needing extensive assistance;

(v) Received full caregiver performance of the activity and all subtasks during the entire seven-day period from others, you are assessed as having total dependence. Total dependence means complete nonparticipation by you in all aspects of the ADL; or

(vi) Or others do not perform an ADL over the last seven days before your assessment, your assessment will indicate that the activity did not occur during the entire seven-day period. The activity may not have occurred because:

(A) You were not able (e.g., walking, if paralyzed); or

(B) No provider was available to assist; or

(C) You declined assistance with the task.

(b) For each ADL, the case manager also determines the level of support provided, which means the highest level of support provided by others over the last seven days, even if that level of support occurred only once. For each ADL, the assessment will indicate one of the following levels of support provided:

(i) No set-up or physical help provided by others;

(ii) Set-up help only provided, which is the type of help characterized by providing you with articles, devices, or preparation necessary for greater self-performance of the activity (such as giving or holding out an item that you take from others);

(iii) One-person physical assist provided;

(iv) Two- or more person physical assist provided; or

(v) Activity did not occur during entire seven-day period.

(3) The activity of bathing is assessed in the same way as other ADL's under subsection (2) of this section, except you are assessed as needing:

(a) Limited assistance with bathing if physical help is limited to transfer only.

(b) Extensive assistance with bathing if you needed physical help with part of the activity (other than transfer).

(4) The activity of body care is assessed to determine whether you need assistance. You are assessed as needing assistance if you require:

(a) Application of ointment or lotions;

(b) Trimming of toenails;

(c) Dry bandage changes; or

(d) Passive range of motion treatment.

(5) The activity of medication management is assessed to determine whether you need assistance managing your medications. If you:

(a) Remember to take medications as prescribed and manage your medications without assistance, you are assessed as being independent with medical management.

(b) Need assistance from a nonlicensed provider to facilitate your self-administration of a prescribed, over the counter, or herbal medication, you are assessed as needing assistance with medication management. Assistance required includes reminding or coaching you, handing you the medication container, opening the container, using an enabler to assist you in getting the medication into your mouth, and placing the medication in your hand. This does not include assistance with intravenous or injectable medications. You must be aware that you are taking medications.

(c) Are a person with a functional disability who is capable of and who chooses to self-direct your medication assistance/administration, you are assessed as needing self-directed medication assistance/administration.

(d) Must have medications placed in your mouth or applied to your skin or mucus membrane by a licensed professional or as delegated by a registered nurse (RN) to: A provider who is not a RN or a licensed practical nurse (LPN) in an adult family home or boarding home following nurse delegation protocols in chapter 246-840 WAC, or by a family member or unpaid caregiver, you are assessed as needing medications administered to you. Intravenous or injectable medications must be administered by a licensed health care professional, family member, or unpaid caregiver.

(6) For each IADL, the case manager assesses the level of your ability to self-perform the IADL and how difficult it is (or would be) for you to perform the activity on your own.

(a) The case manager measures the level of your ability to self-perform the activity by determining what you actually did within the last thirty days, not what you might be capable of doing. If you:

(i) Received no help, set-up help, or supervision, you are assessed as being independent;

(ii) Received set-up help or arrangements only, you are assessed as needing supervision;

(iii) Sometimes performed the activity yourself and other times needed assistance, you are assessed as needing limited assistance;

(iv) Were involved in performing the activity, but required cueing/supervision or partial assistance at all times, you are assessed as needing extensive assistance;

(v) Needed the activity fully performed by others, you are assessed as having total dependence; or

(vi) Others did not perform the activity within the assessment period, the assessment will indicate that the activity did not occur.

(b) For each IADL, the case manager determines how difficult it is or would be for you to perform the activity. The assessment will determine whether you have or would have:

(i) No difficulty in performing the activity;

(ii) Some difficulty in performing the activity (e.g., you need some help, are very slow, or fatigue easily); or

(iii) Great difficulty in performing the activity (e.g., little or no involvement in the activity is possible).

[Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090. 03-05-097, § 388-72A-0040, filed 2/19/03, effective 3/22/03.]

WAC 388-72A-0045 How will the department plan to meet my care needs? Department staff or designees will:

(1) Authorize services to correspond with your assessed need, per WAC 388-72A-0040;

(2) Develop a service plan with you that identifies:

(a) Your specific abilities and needs;

(b) A plan for meeting each need for which you want assistance;

(c) Ways to meet your needs with the most appropriate services, both formal and informal;

(d) Who is responsible for carrying out each part of the plan;

(e) Anticipated outcomes;

(f) Dates and changes to the plan;

(g) Dates of referral, service initiation, follow-up reviews;

(h) Those needs that you do not want assistance with at this time; and

(i) Agreement to the service plan by you or your representative.

[Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090. 03-05-097, § 388-72A-0045, filed 2/19/03, effective 3/22/03.]

WAC 388-72A-0050 What if I disagree with the result of the assessment or the decisions about what services I may receive? You have a right to contest a denial or reduction of services. The department or the department's designee will notify you of the right to contest a denial or reduction of services and provide you with the address to which you can write to request a hearing on the denial or reduction.

[Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090. 03-05-097, § 388-72A-0050, filed 2/19/03, effective 3/22/03.]

WAC 388-72A-0055 Am I eligible for COPES-funded services? You are eligible for COPES-funded services if you meet all of the following criteria. The department or its designee must assess your needs and determine that:

(1) You are age:

(a) Eighteen or older and blind or disabled, as defined in WAC 388-511-1105; or

(b) Sixty-five or older.

(2) You meet financial eligibility requirements. This means the department will assess your finances and determine if your income and resources fall within the limits set in WAC 388-515-1505, Community options program entry system (COPES);

(3) You:

(a) Are not eligible for Medicaid personal care services (MPC); or

(b) Are eligible for MPC services, but the department determines that the amount, duration, or scope of your needs is beyond what MPC can provide.

(4) Your comprehensive assessment shows you need the level of care provided in a nursing facility (or will likely need the level of care within thirty days unless COPES services are provided) which means one of the following applies.

(a) You require care provided by or under the supervision of a registered nurse or a licensed practical nurse on a daily basis, or:

(b) You have an unmet or partially met need or the activity did not occur (because you were unable or no provider was available) with at least three or more of the following, as defined in WAC 388-72A-0040:

- (i) Setup in eating (e.g., cutting meat and opening containers at meals; giving one food category at a time);
- (ii) Supervision in toileting;
- (iii) Supervision in bathing;
- (iv) Supervision plus setup in transfer;
- (v) Supervision plus setup in bed mobility;
- (vi) Supervision plus set up help in one of the following three tasks:

(A) Walk in room, hallway and rest of immediate living environment;

(B) Locomotion in room and immediate living environment;

(C) Locomotion outside of immediate living environment including outdoors.

(vii) Assistance required in medication management; or

(c) You have an unmet or partially met need with at least two or more of the following, as defined in WAC 388-72A-0040:

(i) Extensive assistance plus one person physical assistance in toileting;

(ii) Extensive assistance plus one person physical assistance in one of the following three tasks:

(A) Walk in room, hallway and rest of immediate living environment;

(B) Locomotion in room and immediate living environment;

(C) Locomotion outside of immediate living environment including outdoors.

(iii) Extensive assistance plus one person physical assistance in transfer;

(iv) Limited assistance plus one person physical assistance in bed mobility and need turning/repositioning;

(v) Physical help limited to transfer plus one person physical assist in bathing;

(vi) Supervision plus one person physical assist in eating; or

(vii) Daily assistance required in medication management; or

(d) You have a cognitive impairment and require supervision due to one or more of the following: Disorientation, memory impairment, impaired decision making, or wandering and have an unmet or partially met need with at least one or more of the following, as defined in WAC 388-72A-0040:

(i) Extensive assistance plus one person physical assistance in toileting;

(ii) Extensive assistance plus one person physical assistance in one of the following three tasks:

(A) Walk in room, hallway and rest of immediate living environment;

(B) Locomotion in room and immediate living environment;

(C) Locomotion outside of immediate living environment including outdoors.

(iii) Extensive assistance plus one person physical assistance in transfer;

(iv) Limited assistance plus one person physical assistance in bed mobility;

(v) Physical help limited to transfer plus one person physical assist in bathing;

(vi) Supervision plus one person physical assist in eating; or

(vii) Daily assistance required in medication management.

[Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090. 03-05-097, § 388-72A-0055, filed 2/19/03, effective 3/22/03.]

WAC 388-72A-0060 Am I eligible for MPC-funded services? You are eligible for MPC-funded services when the department or its designee assesses your needs and determines that you meet all of the following criteria:

(1) Are certified as Title XIX categorically needy, as defined in WAC 388-500-0005.

(2) Have an unmet or partially met need or the activity did not occur (because you were unable or no provider was available) in at least three or more of the following, as defined in WAC 388-72A-0040:

(a) Help/oversight one or two times during the last seven days plus setup in eating;

(b) Supervision in toileting;

(c) Supervision in bathing;

(d) Supervision in dressing;

(e) Supervision plus setup in transfer;

(f) Supervision plus setup in bed mobility;

(g) Supervision plus set up help in one of the following three tasks:

(i) Walk in room, hallway and rest of immediate living environment;

(ii) Locomotion in room and immediate living environment;

(iii) Locomotion outside of immediate living environment including outdoors.

(h) Assistance required in medication management;

(i) Supervision in personal hygiene;

(j) Assistance with body care, which means you need:

(i) Application of ointment or lotions;

(ii) Your toenails trimmed;

(iii) Dry bandage changes; or

(iv) Passive range of motion treatment.

(3) You have an unmet or partially met need or the activity did not occur (because you were unable or no provider was available) with at least one or more of the following, as defined in WAC 388-72A-0040:

(a) Extensive assistance plus one person physical assistance in toileting;

(b) Extensive assistance plus one person physical assistance in one of the following three tasks:

(i) Walk in room, hallway and rest of immediate living environment;

(ii) Locomotion in room and immediate living environment;

(iii) Locomotion outside of immediate living environment including outdoors.

(c) Extensive assistance plus one person physical assistance in transfer;

(d) Limited assistance plus one person physical assistance in bed mobility and need turning/repositioning;

(e) Physical help limited to transfer plus one person physical assist in bathing;

- (f) Supervision plus one person physical assist in eating;
- or
- (g) Daily assistance required in medication management;
- or
- (h) Assistance with body care, which means you need:
- (i) Application of ointment or lotions;
- (ii) Your toenails trimmed;
- (iii) Dry bandage changes; or
- (iv) Passive range of motion treatment.
- (i) Extensive assistance plus one person physical assistance in dressing.
- (j) Extensive assistance plus one person physical assistance in personal hygiene.

[Statutory Authority: RCW 74.08.090, 74.04.050, 74.04.057, 74.04.200, 74.09.520, 74.39.020, 74.39A.090, 2003 1st sp.s. c 25, 2003 c 140. 03-24-001, § 388-72A-0060, filed 11/19/03, effective 12/20/03. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090. 03-05-097, § 388-72A-0060, filed 2/19/03, effective 3/22/03.]

WAC 388-72A-0065 Am I eligible for Chore-funded services? To be eligible for Chore-funded services, you must:

- (1) Be eighteen years of age or older;
- (2) Have an unmet or partially met need or the activity did not occur (because you were unable or no provider was available) in at least one or more of the following, as defined in WAC 388-72A-0040:
 - (a) Help/oversight one or two times during the last seven days plus setup in eating;
 - (b) Supervision in toileting;
 - (c) Supervision in bathing;
 - (d) Supervision in dressing;
 - (e) Supervision plus setup in transfer;
 - (f) Supervision plus setup in bed mobility;
 - (g) Supervision plus set up help in one of the following three tasks:
 - (i) Walk in room, hallway and rest of immediate living environment;
 - (ii) Locomotion in room and immediate living environment;
 - (iii) Locomotion outside of immediate living environment including outdoors.
 - (h) Assistance required in medication management;
 - (i) Supervision in personal hygiene;
 - (j) Assistance with body care, which means you need:
 - (i) Application of ointment or lotions;
 - (ii) Your toenails trimmed;
 - (iii) Dry bandage changes; or
 - (iv) Passive range of motion treatment.
- (3) Currently be on the Chore program and not be eligible for MPC or COPES, Medicare home health or other programs if these programs can meet your needs;
- (4) Have net household income (as described in WAC 388-450-0005, 388-450-0020, 388-450-0040, and 388-511-1130) not exceeding:
 - (a) The sum of the cost of your chore services; and
 - (b) One-hundred percent of the Federal Poverty Level (FPL) adjusted for family size.
- (5) Have resources, as described in chapter 388-470 WAC, which does not exceed ten thousand dollars for a one-person family or fifteen thousand dollars for a two-person

family. (Note: One thousand dollars for each additional family member may be added to these limits.)

(6) Not transfer assets on or after November 1, 1995 for less than fair market value as described in WAC 388-513-1365.

[Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090. 03-05-097, § 388-72A-0065, filed 2/19/03, effective 3/22/03.]

WAC 388-72A-0070 What are the in-home hours and residential rate based on? The department employs a client classification methodology consisting of fourteen care groups. The department uses an automated assessment tool known as the comprehensive assessment reporting evaluation (CARE) tool to assess client characteristics.

[Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090. 03-05-097, § 388-72A-0070, filed 2/19/03, effective 3/22/03.]

WAC 388-72A-0075 What does the CARE computerized assessment tool do with the client information entered by department staff? The CARE software program evaluates the information about the client using the following criteria:

- (1) Cognitive performance;
- (2) Clinical complexity, e.g., medical conditions;
- (3) Mood/behaviors; and
- (4) Activities of daily living (ADL).

[Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090. 03-05-097, § 388-72A-0075, filed 2/19/03, effective 3/22/03.]

WAC 388-72A-0080 What are the elements that the CARE tool evaluates for each of the criteria in WAC 388-72A-0075? The CARE tool evaluates for:

- (1) Cognitive performance
 - (a) Short term memory;
 - (b) Self-performance in eating;
 - (c) Ability to make self understood;
 - (d) Ability to make decisions regarding ADLs; and
 - (e) Comatose or in a persistent vegetative state.
- (2) Clinical complexity
 - (a) Diagnoses requiring more than average care time and/or special care;
 - (b) Skin problems receiving treatment;
 - (c) Unstable clinical conditions; and
 - (d) Skilled nursing needs.
- (3) Mood/behaviors the assessment data evaluated may include, but is not limited to the following:
 - (a) Assaulting care givers;
 - (b) Resisting care;
 - (c) Wandering; and
 - (d) Depression.
- (4) Activities of daily living (ADLs), the amount of assistance the client needs to perform ADLs.

[Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090. 03-05-097, § 388-72A-0080, filed 2/19/03, effective 3/22/03.]

WAC 388-72A-0085 How does the CARE tool evaluate the criteria elements? The CARE tool evaluates the criteria elements for:

(1) Cognitive performance by using the cognitive performance scale (CPS) and assigning a score. The score assigns ranges from zero to six with six being very severely impaired;

(2) Clinical complexity by determining whether your medical conditions take more or less time and/or require special care;

(3) Mood/behavior by determining whether your mood/behavior symptoms take more or less time;

(4) ADLs by scoring the assistance needed to perform ADLs.

[Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090. 03-05-097, § 388-72A-0085, filed 2/19/03, effective 3/22/03.]

WAC 388-72A-0090 What are the maximum hours that I can receive for in-home services? The maximum hours that you can receive for in-home services is determined through the CARE tool. These hours are based on criteria outlined in WAC 388-72A-0095.

[Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090. 03-05-097, § 388-72A-0090, filed 2/19/03, effective 3/22/03.]

WAC 388-72A-0095 How are the number of hours I can receive for in-home services determined? (1) In addition to criteria defined in WAC 388-72A-0075, 388-72A-0080, and 388-72A-0085, CARE will take into account your:

(a) Assistance available to meet your needs. This is defined as:

- (i) Met;
- (ii) Unmet;
- (iii) Partially met.

NOTE: Home and community programs (HCP) services may not replace other available resources the department identified when completing CARE. The hours will be adjusted to account for tasks that are either fully or partially met by other available resources. These resources may be unpaid or paid for by other state or community sources.

(b) Environment, such as whether you:

- (i) Have laundry facilities out of home; and/or
- (ii) Use wood as a primary source of heat and/or;
- (iii) The time it takes to access essential shopping services.

(c) Living arrangement. The department will adjust payments to a personal care provider who is doing household tasks at the same time (e.g., essential shopping, meal preparation, laundry, and wood supply) if:

- (i) There is more than one client living in the same household; or
- (ii) You and your paid provider live in the same household.

(2) The CARE tool will provide a maximum number of hours that can be used to develop your care plan. The assessor must take into account cost effectiveness, client health and safety, and program limits in determining how hours can be used to meet identified client needs.

(3) Within the limits of subsection (2) of this section, you and your case manager will work to determine what services you choose to receive if you are eligible. The hours may be used to authorize:

(a) Personal care services (per WAC 388-72A-0055, 388-72A-0060, or 388-72A-0065);

(b) Home delivered meals (per WAC 388-72A-0055);

(c) Adult day care (per WAC 388-72A-055 or 388-15-652);

(d) Adult day health (per WAC 388-72A-055 or 388-15-653);

(c) A home health aide (per WAC 388-72A-0055).

[Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090. 03-05-097, § 388-72A-0095, filed 2/19/03, effective 3/22/03.]

WAC 388-72A-0100 Are there other in-home services I may be eligible to receive in addition to those described in WAC 388-72A-0095(3)? Yes. If you meet the eligibility criteria outlined in WAC 388-71-0415 and 388-72A-0055 you may also receive the following services:

- (1) Environmental modifications;
- (2) Personal response system (PERS);
- (3) Skilled nursing;
- (4) Specialized medical equipment;
- (5) Training; or
- (6) Transportation services.

[Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090. 03-05-097, § 388-72A-0100, filed 2/19/03, effective 3/22/03.]

WAC 388-72A-0105 What would cause a change in the maximum hours authorized? Hours you are eligible to receive may be adjusted if you have had a change in any criteria listed in WAC 388-72A-0095.

[Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090. 03-05-097, § 388-72A-0105, filed 2/19/03, effective 3/22/03.]

WAC 388-72A-0110 How much will the department pay for my care? The department publishes rates and/or adopts rules to establish how much the department pays toward the cost of your care in a residential care facility or for in-home services.

[Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.090. 03-05-097, § 388-72A-0110, filed 2/19/03, effective 3/22/03.]

Chapter 388-76 WAC

ADULT FAMILY HOMES MINIMUM LICENSING REQUIREMENTS

WAC

388-76-655	General management and administration.
388-76-675	Reporting requirements.

WAC 388-76-655 General management and administration. (1) The provider shall not admit or retain any resident whose needs the provider cannot meet.

(2) The provider shall ensure all of the following:

(a) That staff are competent and receive necessary training, including but not limited to any training required under chapter 388-112 WAC to perform assigned tasks;

(b) The adult family home is in compliance with the requirements of this chapter and other applicable state laws;

(c) The home employs sufficient staff to meet the needs of the residents; and

(d) That he/she is available to respond to resident needs and caregiver inquiries within a reasonable time frame. In the event a provider is unavailable (including but not limited to being on vacation), a person must be designated to respond on behalf of the provider.

(3) The provider shall ensure that all caregivers are at least eighteen years of age or older.

(4) The provider shall ensure that the provider, entity representative, resident manager and all caregivers:

(a) Are able to communicate or make provisions for communicating with the resident in his or her primary language;

(b) Have a clear understanding of job responsibilities and knowledge of residents' negotiated care plans in order to be able to provide care specific to each resident's needs; and

(c) Not engage in the illegal use of drugs or the excessive use of alcohol when providing care to residents; and

(d) Possess a valid first-aid and CPR card prior to providing care for residents unless such care is directly supervised by a fully qualified caregiver who has a valid first-aid and CPR card.

(5) The provider shall ensure that:

(a) There is at least one caregiver present in the home whenever one or more residents are on the premises;

(b) The caregiver referred to in (a) of this subsection is capable of understanding and speaking English well enough to be able to respond appropriately to emergency situations; and

(c) At least one caregiver is accessible by phone or beeper for emergencies when there are no residents on the home's premises.

(6) An adult family home shall be exempt from subsection (5)(a) of this section if:

(a) The home provides care to residents whose primary disabilities are developmental disabilities as defined by WAC 388-76-590; and

(b) It is determined and documented in a resident's current negotiated care plan that the resident is capable and willing to be left alone unsupervised in the adult family home during normal awake hours. The maximum period of time a resident can be left alone must be documented in the negotiated care plan.

[Statutory Authority: RCW 70.128.040. 03-14-018, § 388-76-655, filed 6/19/03, effective 7/20/03. Statutory Authority: RCW 18.20.090, 70.128.040, 74.39A.050, 34.05.020, 2000 c 121, and 2002 c 233. 02-15-065, § 388-76-655, filed 7/11/02, effective 8/11/02. Statutory Authority: RCW 70.128.040, chapters 70.128 and 70.129 RCW. 98-11-095, § 388-76-655, filed 5/20/98, effective 7/1/98. Statutory Authority: RCW 70.128.040, 70.128.060, 70.128.120, 70.128.130, 43.43.842, 18.88A.210 and 18.88A.230. 96-14-003 (Order 3984), § 388-76-655, filed 6/19/96, effective 7/20/96.]

WAC 388-76-675 Reporting requirements. (1) The provider and all caregivers shall immediately notify the department's toll-free complaint telephone number of any incidents involving allegations of resident abuse, neglect, exploitation or abandonment in accordance with the provisions of chapter 74.34 RCW.

(2) The provider shall keep a log of injuries and accidents to residents.

(3) When there is a significant change in a resident's condition, or a serious injury, trauma, or death of a resident, the provider shall immediately notify:

(a) The resident's family, surrogate decision maker, physician and other appropriate professionals, and other persons identified in the negotiated care plan; and

(b) The case manager, if the resident is receiving services paid for fully or partially by the department.

(4) The adult family home shall immediately report to the department's aging and disability services administration:

(a) Any event, actual or potential, requiring the evacuation or relocation of all or part of the home's residents to another address;

(b) Circumstances which threaten the home's ability to ensure continuation of services to residents; and

(c) Instances when a resident is determined to be missing.

(5) The provider shall notify local law enforcement in accordance with the provisions of RCW 74.34.035.

(6) The provider shall notify the local public health officer and the department of any occurrence of food poisoning or communicable disease as required by the state board of health.

[Statutory Authority: RCW 74.34.165, 74.34.020, and 74.34.035. 04-01-032, § 388-76-675, filed 12/8/03, effective 1/8/04. Statutory Authority: RCW 70.128.040, chapters 70.128 and 70.129 RCW. 98-11-095, § 388-76-675, filed 5/20/98, effective 7/1/98. Statutory Authority: RCW 70.128.040, 70.128.060, 70.128.120, 70.128.130, 43.43.842, 18.88A.210 and 18.88A.230. 96-14-003 (Order 3984), § 388-76-675, filed 6/19/96, effective 7/20/96.]

Chapter 388-78A WAC

BOARDING HOME LICENSING RULES

(Formerly chapter 246-316 WAC)

WAC

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388-78A-0070	Initial assessment.
388-78A-0080	Timing of initial assessment.
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388-78A-0120	Resident participation in assessments.
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388-78A-0140	Negotiated service agreement contents.
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388-78A-0230	Storing, securing, and accounting for medications.
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388-78A-0260	Family assistance with medication.
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388-78A-0300	Supervision of nursing services.
388-78A-0310	Responsibilities of nursing supervisor.
388-78A-0320	Resident-arranged services.
388-78A-0330	Coordination of health care services.
388-78A-0340	Implementation of negotiated service agreement.
388-78A-0350	Monitoring residents' well-being.
388-78A-0360	Adult day care.
388-78A-0370	Dementia care.
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388-78A-040	Repealed.

388-78A-0400	Protection of resident records.	388-78A-1110	Plant restrictions.
388-78A-0410	Content of resident records.	388-78A-1120	Responsibilities during inspections.
388-78A-0420	Format of resident records.	388-78A-1130	Communication during inspections.
388-78A-0430	Record retention.	388-78A-1140	Communication following inspections.
388-78A-0440	Resident review of records.	388-78A-1150	Statements of deficiencies and plans of correction.
388-78A-045	Repealed.	388-78A-1160	Authorized enforcement remedies.
388-78A-0450	Resident register.	388-78A-1170	Statutory circumstances resulting in discretionary enforcement remedies.
388-78A-0460	Staff.	388-78A-1180	Circumstances resulting in required enforcement remedies.
388-78A-0470	Criminal history background checks.	388-78A-1190	Statutorily required enforcement remedies; denial, suspension, revocation, or nonrenewal of license.
388-78A-0480	TB tests.	388-78A-120	Repealed.
388-78A-0490	Specialized training for developmental disabilities.	388-78A-1200	Other circumstances resulting in discretionary enforcement remedies.
388-78A-050	Repealed.	388-78A-1210	Informal dispute resolution.
388-78A-0500	Specialized training for mental illness.	388-78A-1220	Appeal rights.
388-78A-0510	Specialized training for dementia.	388-78A-1230	Fees.
388-78A-0520	Administrator qualifications.	388-78A-130	Repealed.
388-78A-0530	Qualifying administrator training program.	388-78A-140	Repealed.
388-78A-0540	Administrator training requirements.	388-78A-150	Repealed.
388-78A-055	Repealed.	388-78A-160	Repealed.
388-78A-0550	Administrator training documentation.	388-78A-170	Repealed.
388-78A-0560	Administrator responsibilities.	388-78A-180	Repealed.
388-78A-0570	Notification of change in administrator.	388-78A-190	Repealed.
388-78A-0580	Use of home health/home care.	388-78A-200	Repealed.
388-78A-0590	Management agreements.	388-78A-210	Repealed.
388-78A-060	Repealed.	388-78A-220	Repealed.
388-78A-0600	Policies and procedures.	388-78A-230	Repealed.
388-78A-0605	Pets.	388-78A-240	Repealed.
388-78A-0610	Infection control.	388-78A-250	Repealed.
388-78A-0620	Reporting abuse and neglect.	388-78A-260	Repealed.
388-78A-0630	Reporting significant change in a resident's condition.	388-78A-265	Repealed.
388-78A-0635	Reporting fires and incidents.	388-78A-268	Repealed.
388-78A-0640	Resident rights.	388-78A-280	Repealed.
388-78A-0650	Services by resident for boarding home.	388-78A-290	Repealed.
388-78A-0660	Boarding home use of audio and video monitoring.	388-78A-300	Repealed.
388-78A-0670	Resident use of electronic monitoring.	388-78A-310	Repealed.
388-78A-0680	Safety measures and disaster preparedness.	388-78A-320	Repealed.
388-78A-0690	Disclosure of services.	388-78A-330	Repealed.
388-78A-070	Repealed.	388-78A-335	Repealed.
388-78A-0700	Timing of disclosure.	388-78A-340	Repealed.
388-78A-0710	Licensee qualifications.	388-78A-990	Repealed.
388-78A-0720	Necessary information.		
388-78A-0730	Application process.		
388-78A-0740	Requirements to change boarding home licensee.		
388-78A-0750	Annual renewal.		
388-78A-0760	Licensee's responsibilities.		
388-78A-0770	Change in licensee.		
388-78A-0780	Changes in licensed bed capacity.		
388-78A-0790	Criteria for increasing licensed bed capacity.		
388-78A-080	Repealed.		
388-78A-0800	Building requirements and exemptions.	388-78A-010	Definitions. [Statutory Authority: RCW 18.20.090 and 18.20.240. 98-24-038, § 388-78A-010, filed 11/24/98, effective 1/1/99. Statutory Authority: RCW 18.20.240. 98-20-021, recodified as § 388-78A-010, filed 9/25/98, effective 9/25/98. Statutory Authority: RCW 18.20.090. 94-13-180, § 246-316-010, filed 6/21/94, effective 7/22/94; 92-02-018 (Order 224), § 246-316-010, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.70.040. 91-02-049 (Order 121), recodified as § 246-316-010, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.20.090. 89-09-034 (Order 2786), § 248-16-001, filed 4/14/89; 83-13-068 (Order 264), § 248-16-001, filed 6/16/83; Order 147, § 248-16-001, filed 6/29/77; Order 97, § 248-16-001, filed 4/5/74; § 248-16-001, filed 10/3/67; Emergency Regulation filed 8/4/67; Regulation.16.001, effective 3/11/60; Subsec. 6, Rule 1 and Subsec. 7, Rule 2, filed 5/31/61.] Repealed by 03-16-047, filed 7/31/03, effective 9/1/04. Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW.
388-78A-0810	Conversion of licensed nursing homes.		
388-78A-0820	Licenses for multiple buildings.		
388-78A-0830	Required reviews of building plans.		
388-78A-0840	Relocation of residents during construction.		
388-78A-0850	Vacant buildings.		
388-78A-0860	Changing use of rooms.		
388-78A-0870	Time frame for approval.		
388-78A-0880	Retention of approved construction documents.		
388-78A-0890	Applicable building codes.		
388-78A-090	Repealed.		
388-78A-0900	Area for nursing supplies and equipment.		
388-78A-0910	Communication system.		
388-78A-0920	Two-way intercom systems.		
388-78A-0930	Water supply.		
388-78A-0940	Sewage and liquid waste disposal.		
388-78A-0950	Garbage and refuse disposal.		
388-78A-0960	Lighting.		
388-78A-0970	Heating-cooling—Temperature.		
388-78A-0980	Ventilation.		
388-78A-0990	Resident room—Room furnishings-storage.	388-78A-020	Licensure—Initial, renewal, day care approval respite care, modifications. [Statutory Authority: RCW 18.20.240. 99-15-067, § 388-78A-020, filed 7/19/99, effective 8/19/99; 98-20-021, recodified as § 388-78A-020, filed 9/25/98, effective 9/25/98. Statutory Authority: RCW 18.20.090. 94-13-180, § 246-316-020, filed 6/21/94, effective 7/22/94. Statutory Authority: RCW 43.43.830 through 43.43.842. 93-16-030 (Order 381), § 246-316-020, filed 7/26/93, effective 8/26/93. Statutory Authority: RCW 18.20.090 and 34.05.220. 92-02-018 (Order 224), § 246-316-020, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.70.040. 91-02-049 (Order 121), recodified as § 246-316-020, filed 12/27/90, effective 1/31/91. Statutory Authority: Chapter 34.05 RCW, RCW 34.05.220 (1)(a) and 18.20.909 [18.20.090]. 90-06-019 (Order 039), § 248-16-031, filed 2/28/90, effective 3/1/90. Statutory Authority: RCW
388-78A-100	Repealed.		
388-78A-1000	Calculating floor space.		
388-78A-1010	Toilet rooms and bathrooms.		
388-78A-1020	Laundry.		
388-78A-1030	Day rooms.		
388-78A-1040	Storage space.		
388-78A-1050	Stairs—Ramps.		
388-78A-1060	Guardrails—Handrails.		
388-78A-1070	Maintenance and housekeeping.		
388-78A-1080	Safe storage of supplies and equipment.		
388-78A-1090	Areas for cleaning and storing soiled equipment, supplies and laundry.		
388-78A-110	Repealed.		
388-78A-1100	Areas for handling and storing clean supplies and equipment.		

**DISPOSITION OF SECTIONS FORMERLY
CODIFIED IN THIS CHAPTER**

- 18.20.090. 89-09-034 (Order 2786), § 248-16-031, filed 4/14/89.] Repealed by 03-16-047, filed 7/31/03, effective 9/1/04. Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW.
- 388-78A-030 Responsibilities and rights—Licensee and department. [Statutory Authority: RCW 18.20.240. 98-20-021, recodified as § 388-78A-030, filed 9/25/98, effective 9/25/98. Statutory Authority: RCW 18.20.090. 94-13-180, § 246-316-030, filed 6/21/94, effective 7/22/94; 92-02-018 (Order 224), § 246-316-030, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.70.040. 91-02-049 (Order 121), recodified as § 246-316-030, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.20.090. 89-09-034 (Order 2786), § 248-16-033, filed 4/14/89.] Repealed by 03-16-047, filed 7/31/03, effective 9/1/04. Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW.
- 388-78A-040 Administrator. [Statutory Authority: RCW 18.20.240. 99-15-067, § 388-78A-040, filed 7/19/99, effective 8/19/99; 98-20-021, recodified as § 388-78A-040, filed 9/25/98, effective 9/25/98. Statutory Authority: RCW 18.20.090. 94-13-180, § 246-316-040, filed 6/21/94, effective 7/22/94. Statutory Authority: RCW 43.43.830 through 43.43.842. 93-16-030 (Order 381), § 246-316-040, filed 7/26/93, effective 8/26/93. Statutory Authority: RCW 18.20.090. 92-02-018 (Order 224), § 246-316-040, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.70.040. 91-02-049 (Order 121), recodified as § 246-316-040, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.20.090. 89-09-034 (Order 2786), § 248-16-036, filed 4/14/89.] Repealed by 03-16-047, filed 7/31/03, effective 9/1/04. Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW.
- 388-78A-045 Criminal history, disclosure, and background inquiries. [Statutory Authority: RCW 18.20.240. 98-20-021, recodified as § 388-78A-045, filed 9/25/98, effective 9/25/98. Statutory Authority: RCW 18.20.090. 94-13-180, § 246-316-045, filed 6/21/94, effective 7/22/94. Statutory Authority: RCW 43.43.830 through 43.43.842. 93-16-030 (Order 381), § 246-316-045, filed 7/26/93, effective 8/26/93.] Repealed by 03-16-047, filed 7/31/03, effective 9/1/04. Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW.
- 388-78A-050 Staff. [Statutory Authority: RCW 18.20.090. 70.128.040, 74.39A.050, 34.05.020, 2000 c 121, and 2002 c 233. 02-15-066, § 388-78A-050, filed 7/11/02, effective 8/11/02. Statutory Authority: RCW 18.20.240. 99-15-067, § 388-78A-050, filed 7/19/99, effective 8/19/99; 98-20-021, recodified as § 388-78A-050, filed 9/25/98, effective 9/25/98. Statutory Authority: RCW 18.20.090. 94-13-180, § 246-316-050, filed 6/21/94, effective 7/22/94. Statutory Authority: RCW 43.43.830 through 43.43.842. 93-16-030 (Order 381), § 246-316-050, filed 7/26/93, effective 8/26/93. Statutory Authority: RCW 43.70.040. 91-02-049 (Order 121), recodified as § 246-316-050, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.20.090. 89-09-034 (Order 2786), § 248-16-046, filed 4/14/89.] Repealed by 03-16-047, filed 7/31/03, effective 9/1/04. Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW.
- 388-78A-055 Policies and procedures. [Statutory Authority: RCW 18.20.240. 99-15-067, § 388-78A-055, filed 7/19/99, effective 8/19/99; 98-20-021, recodified as § 388-78A-055, filed 9/25/98, effective 9/25/98. Statutory Authority: RCW 18.20.090. 94-13-180, § 246-316-055, filed 6/21/94, effective 7/22/94.] Repealed by 03-16-047, filed 7/31/03, effective 9/1/04. Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW.
- 388-78A-060 HIV/AIDS education and training. [Statutory Authority: RCW 18.20.240. 98-20-021, recodified as § 388-78A-060, filed 9/25/98, effective 9/25/98. Statutory Authority: RCW 18.20.090. 94-13-180, § 246-316-060, filed 6/21/94, effective 7/22/94. Statutory Authority: RCW 43.70.040. 91-02-049 (Order 121), recodified as § 246-316-060, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 70.24.310. 89-21-038 (Order 3), § 248-16-048, filed 10/12/89, effective 11/12/89.] Repealed by 03-16-047, filed 7/31/03, effective 9/1/04. Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW.
- 388-78A-070 Construction. [Statutory Authority: RCW 18.20.240. 98-20-021, recodified as § 388-78A-070, filed 9/25/98, effective 9/25/98. Statutory Authority: RCW 18.20.090. 94-13-180, § 246-316-070, filed 6/21/94, effective 7/22/94. Statutory Authority: RCW 18.20.090. 89-09-034 (Order 2786), § 248-16-031, filed 4/14/89.] Repealed by 03-16-047, filed 7/31/03, effective 9/1/04. Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW.
- 388-78A-080 Communication system. [Statutory Authority: RCW 18.20.240. 98-20-021, recodified as § 388-78A-080, filed 9/25/98, effective 9/25/98. Statutory Authority: RCW 18.20.090. 94-13-180, § 246-316-080, filed 6/21/94, effective 7/22/94. Statutory Authority: RCW 43.70.040. 91-02-049 (Order 121), recodified as § 246-316-080, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.20.090. 89-09-034 (Order 2786), § 248-16-060, filed 4/14/89; 83-13-068 (Order 264), § 248-16-060, filed 6/16/83; Order 147, § 248-16-060, filed 6/29/77; Regulation .16.060, effective 3/11/60.] Repealed by 03-16-047, filed 7/31/03, effective 9/1/04. Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW.
- 388-78A-090 Water supply. [Statutory Authority: RCW 18.20.240. 98-20-021, recodified as § 388-78A-090, filed 9/25/98, effective 9/25/98. Statutory Authority: RCW 18.20.090. 94-13-180, § 246-316-090, filed 6/21/94, effective 7/22/94; 92-02-018 (Order 224), § 246-316-090, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.70.040. 91-02-049 (Order 121), recodified as § 246-316-090, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.20.090. 89-09-034 (Order 2786), § 248-16-070, filed 4/14/89; 83-13-068 (Order 264), § 248-16-070, filed 6/16/83; Order 147, § 248-16-070, filed 6/29/77; Regulation .16.070, effective 3/11/60.] Repealed by 03-16-047, filed 7/31/03, effective 9/1/04. Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW.
- 388-78A-100 Sewage and liquid waste disposal. [Statutory Authority: RCW 18.20.240. 98-20-021, recodified as § 388-78A-100, filed 9/25/98, effective 9/25/98. Statutory Authority: RCW 18.20.090. 94-13-180, § 246-316-100, filed 6/21/94, effective 7/22/94; 92-02-018 (Order 224), § 246-316-100, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.70.040. 91-02-049 (Order 121), recodified as § 246-316-100, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.20.090. 89-09-034 (Order 2786), § 248-16-080, filed 4/14/89; 83-13-068 (Order 264), § 248-16-080, filed 6/29/77; Regulation .16.080, effective 3/11/60.] Repealed by 03-16-047, filed 7/31/03, effective 9/1/04. Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW.
- 388-78A-110 Garbage and refuse disposal. [Statutory Authority: RCW 18.20.240. 98-20-021, recodified as § 388-78A-110, filed 9/25/98, effective 9/25/98. Statutory Authority: RCW 18.20.090. 94-13-180, § 246-316-110, filed 6/21/94, effective 7/22/94. Statutory Authority: RCW 43.70.040. 91-02-049 (Order 121), recodified as § 246-316-110, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.20.090. 89-09-034 (Order 2786), § 248-16-090, filed 4/14/89; 83-13-068 (Order 264), § 248-16-090, filed 6/16/83; Order 147, § 248-16-090, filed 6/29/77; Regulation .16.090, effective 3/11/60.] Repealed by 03-16-047, filed 7/31/03, effective 9/1/04. Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW.
- 388-78A-120 Lighting. [Statutory Authority: RCW 18.20.240. 98-20-021, recodified as § 388-78A-120, filed 9/25/98, effective 9/25/98. Statutory Authority: RCW 18.20.090. 94-13-180, § 246-316-120, filed 6/21/94, effective 7/22/94. Statutory Authority: RCW 43.70.040. 91-02-049 (Order 121), recodified as § 246-316-120, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.20.090. 89-09-034 (Order 2786), § 248-16-105, filed 4/14/89; 83-13-068 (Order 264), § 248-16-105, filed 6/16/83.] Repealed by 03-16-047, filed 7/31/03, effective 9/1/04. Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW.
- 388-78A-130 Heating—Temperature. [Statutory Authority: RCW 18.20.240. 98-20-021, recodified as § 388-78A-130, filed 9/25/98, effective 9/25/98. Statutory Authority: RCW 18.20.090. 94-13-180, § 246-316-130, filed 6/21/94, effective 7/22/94. Statutory Authority: RCW

- 43.70.040. 91-02-049 (Order 121), recodified as § 246-316-130, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.20.090. 89-09-034 (Order 2786), § 248-16-110, filed 4/14/89; 83-13-068 (Order 264), § 248-16-110, filed 6/16/83; Order 147, § 248-16-110, filed 6/29/77; Regulation .16.110, effective 3/11/60.] Repealed by 03-16-047, filed 7/31/03, effective 9/1/04. Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW.
- 388-78A-140 Ventilation. [Statutory Authority: RCW 18.20.240. 98-20-021, recodified as § 388-78A-140, filed 9/25/98, effective 9/25/98. Statutory Authority: RCW 18.20.090. 94-13-180, § 246-316-140, filed 6/21/94, effective 7/22/94. Statutory Authority: RCW 43.70.040. 91-02-049 (Order 121), recodified as § 246-316-140, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.20.090. 89-09-034 (Order 2786), § 248-16-115, filed 4/14/89; 83-13-068 (Order 264), § 248-16-115, filed 6/16/83.] Repealed by 03-16-047, filed 7/31/03, effective 9/1/04. Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW.
- 388-78A-150 Resident room—Room furnishings—Storage. [Statutory Authority: RCW 18.20.240. 99-15-067, § 388-78A-150, filed 7/19/99, effective 8/19/99; 98-20-021, recodified as § 388-78A-150, filed 9/25/98, effective 9/25/98. Statutory Authority: RCW 18.20.090. 94-13-180, § 246-316-150, filed 6/21/94, effective 7/22/94; 92-02-018 (Order 224), § 246-316-150, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.70.040. 91-02-049 (Order 121), recodified as § 246-316-150, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.20.090. 89-09-034 (Order 2786), § 248-16-121, filed 4/14/89.] Repealed by 03-16-047, filed 7/31/03, effective 9/1/04. Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW.
- 388-78A-160 Toilet rooms and bathrooms. [Statutory Authority: RCW 18.20.240. 98-20-021, recodified as § 388-78A-160, filed 9/25/98, effective 9/25/98. Statutory Authority: RCW 18.20.090. 94-13-180, § 246-316-160, filed 6/21/94, effective 7/22/94. Statutory Authority: RCW 43.70.040. 91-02-049 (Order 121), recodified as § 246-316-160, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.20.090. 89-09-034 (Order 2786), § 248-16-131, filed 4/14/89.] Repealed by 03-16-047, filed 7/31/03, effective 9/1/04. Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW.
- 388-78A-170 Food and nutrition services. [Statutory Authority: RCW 18.20.240. 98-20-021, recodified as § 388-78A-170, filed 9/25/98, effective 9/25/98. Statutory Authority: RCW 18.20.090. 94-13-180, § 246-316-170, filed 6/21/94, effective 7/22/94; 92-02-018 (Order 224), § 246-316-170, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.70.040. 91-02-049 (Order 121), recodified as § 246-316-170, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.20.090. 89-09-034 (Order 2786), § 248-16-141, filed 4/14/89.] Repealed by 03-16-047, filed 7/31/03, effective 9/1/04. Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW.
- 388-78A-180 Day rooms. [Statutory Authority: RCW 18.20.240. 98-20-021, recodified as § 388-78A-180, filed 9/25/98, effective 9/25/98. Statutory Authority: RCW 18.20.090. 94-13-180, § 246-316-180, filed 6/21/94, effective 7/22/94. Statutory Authority: RCW 43.70.040. 91-02-049 (Order 121), recodified as § 246-316-180, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.20.090. 89-09-034 (Order 2786), § 248-16-150, filed 4/14/89; 83-13-068 (Order 264), § 248-16-150, filed 6/16/83; Order 147, § 248-16-150, filed 6/29/77; § 248-16-150, filed 10/3/67; Emergency Regulation, filed 8/4/67; Regulation .16.150, effective 3/11/60.] Repealed by 03-16-047, filed 7/31/03, effective 9/1/04. Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW.
- 388-78A-190 Laundry. [Statutory Authority: RCW 18.20.240. 98-20-021, recodified as § 388-78A-190, filed 9/25/98, effective 9/25/98. Statutory Authority: RCW 18.20.090. 94-13-180, § 246-316-190, filed 6/21/94, effective 7/22/94. Statutory Authority: RCW 43.70.040. 91-02-049 (Order 121), recodified as § 246-316-190, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.20.090. 89-09-034 (Order 2786), § 248-16-160, filed 4/14/89; 83-13-068 (Order 264), § 248-16-160, filed 6/16/83; Regulation .16.160, effective 3/11/60.]
- Repealed by 03-16-047, filed 7/31/03, effective 9/1/04. Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW.
- 388-78A-200 Storage space. [Statutory Authority: RCW 18.20.240. 98-20-021, recodified as § 388-78A-200, filed 9/25/98, effective 9/25/98., Statutory Authority: RCW 18.20.090. 94-13-180, § 246-316-200, filed 6/21/94, effective 7/22/94; 92-02-018 (Order 224), § 246-316-200, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.70.040. 91-02-049 (Order 121), recodified as § 246-316-200, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.20.090. 89-09-034 (Order 2786), § 248-16-170, filed 4/14/89; 83-13-068 (Order 264), § 248-16-170, filed 6/16/83; Regulation .16.170, effective 3/11/60.] Repealed by 03-16-047, filed 7/31/03, effective 9/1/04. Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW.
- 388-78A-210 Stairs—Ramps. [Statutory Authority: RCW 18.20.240. 98-20-021, recodified as § 388-78A-210, filed 9/25/98, effective 9/25/98. Statutory Authority: RCW 18.20.090. 94-13-180, § 246-316-210, filed 6/21/94, effective 7/22/94. Statutory Authority: RCW 43.70.040. 91-02-049 (Order 121), recodified as § 246-316-210, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.20.090. 89-09-034 (Order 2786), § 248-16-180, filed 4/14/89; 83-13-068 (Order 264), § 248-16-180, filed 6/16/83; Regulation .16.180, effective 3/11/60.] Repealed by 03-16-047, filed 7/31/03, effective 9/1/04. Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW.
- 388-78A-220 Guardrails—Handrails. [Statutory Authority: RCW 18.20.240. 98-20-021, recodified as § 388-78A-220, filed 9/25/98, effective 9/25/98. Statutory Authority: RCW 18.20.090. 94-13-180, § 246-316-220, filed 6/21/94, effective 7/22/94. Statutory Authority: RCW 43.70.040. 91-02-049 (Order 121), recodified as § 246-316-220, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.20.090. 89-09-034 (Order 2786), § 248-16-190, filed 4/14/89; 83-13-068 (Order 264), § 248-16-190, filed 6/16/83; Regulation .16.190, effective 3/11/60.] Repealed by 03-16-047, filed 7/31/03, effective 9/1/04. Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW.
- 388-78A-230 Maintenance and housekeeping. [Statutory Authority: RCW 18.20.240. 98-20-021, recodified as § 388-78A-230, filed 9/25/98, effective 9/25/98. Statutory Authority: RCW 18.20.090. 94-13-180, § 246-316-230, filed 6/21/94, effective 7/22/94. Statutory Authority: RCW 43.70.040. 91-02-049 (Order 121), recodified as § 246-316-230, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.20.090. 89-09-034 (Order 2786), § 248-16-202, filed 4/14/89; 83-13-068 (Order 264), § 248-16-202, filed 6/16/83; Order 147, § 248-16-202, filed 6/29/77.] Repealed by 03-16-047, filed 7/31/03, effective 9/1/04. Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW.
- 388-78A-240 Criteria for accepting and retaining residents. [Statutory Authority: RCW 18.20.240. 99-15-067, § 388-78A-240, filed 7/19/99, effective 8/19/99; 98-20-021, recodified as § 388-78A-240, filed 9/25/98, effective 9/25/98. Statutory Authority: RCW 18.20.090. 94-13-180, § 246-316-240, filed 6/21/94, effective 7/22/94; 94-01-058, § 246-316-240, filed 12/8/93, effective 1/8/94; 92-02-018 (Order 224), § 246-316-240, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.70.040. 91-02-049 (Order 121), recodified as § 246-316-240, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.20.090. 89-09-034 (Order 2786), § 248-16-213, filed 4/14/89; 83-13-068 (Order 264), § 248-16-213, filed 6/16/83; Order 147, § 248-16-213, filed 6/29/77.] Repealed by 03-16-047, filed 7/31/03, effective 9/1/04. Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW.
- 388-78A-250 Resident rights. [Statutory Authority: RCW 18.20.240. 98-20-021, recodified as § 388-78A-250, filed 9/25/98, effective 9/25/98. Statutory Authority: RCW 18.20.090. 94-13-180, § 246-316-250, filed 6/21/94, effective 7/22/94. Statutory Authority: RCW 43.70.040. 91-02-049 (Order 121), recodified as § 246-316-250, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.20.090. 89-09-034 (Order 2786), § 248-16-215, filed 4/14/89; 83-13-068 (Order 264), § 248-16-215, filed 6/16/83; Order 147, § 248-16-215, filed 6/29/77; Order 116, § 248-16-215, filed 5/23/75; §

- 248-16-215, filed 10/3/67; Emergency Regulation, filed 8/4/67.] Repealed by 03-16-047, filed 7/31/03, effective 9/1/04. Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW.
- 388-78A-260 Resident services. [Statutory Authority: RCW 18.20.240. 98-20-021, recodified as § 388-78A-260, filed 9/25/98, effective 9/25/98. Statutory Authority: RCW 18.20.090. 94-13-180, § 246-316-260, filed 6/21/94, effective 7/22/94; 94-01-058, § 246-316-260, filed 12/8/93, effective 1/8/94. Statutory Authority: RCW 43.70.040. 91-02-049 (Order 121), recodified as § 246-316-260, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.20.090. 89-09-034 (Order 2786), § 248-16-216, filed 4/14/89.] Repealed by 03-16-047, filed 7/31/03, effective 9/1/04. Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW.
- 388-78A-265 Limited nursing services. [Statutory Authority: RCW 18.20.090. 02-17-027, § 388-78A-265, filed 8/12/02, effective 9/12/02. Statutory Authority: RCW 18.20.240. 99-15-067, § 388-78A-265, filed 7/19/99, effective 8/19/99; 98-20-021, recodified as § 388-78A-265, filed 9/25/98, effective 9/25/98. Statutory Authority: RCW 18.20.090. 94-13-180, § 246-316-265, filed 6/21/94, effective 7/22/94.] Repealed by 03-16-047, filed 7/31/03, effective 9/1/04. Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW.
- 388-78A-268 Health care services—Resident-arranged. [Statutory Authority: RCW 18.20.240. 98-20-021, recodified as § 388-78A-268, filed 9/25/98, effective 9/25/98. Statutory Authority: RCW 18.20.090. 94-13-180, § 246-316-268, filed 6/21/94, effective 7/22/94.] Repealed by 03-16-047, filed 7/31/03, effective 9/1/04. Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW.
- 388-78A-280 Notification—Change in resident's condition. [Statutory Authority: RCW 18.20.240. 98-20-021, recodified as § 388-78A-280, filed 9/25/98, effective 9/25/98. Statutory Authority: RCW 18.20.090. 94-13-180, § 246-316-280, filed 6/21/94, effective 7/22/94. Statutory Authority: RCW 43.70.040. 91-02-049 (Order 121), recodified as § 246-316-280, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.20.090. 89-09-034 (Order 2786), § 248-16-223, filed 4/14/89; 83-13-068 (Order 264), § 248-16-223, filed 6/16/83; Order 147, § 248-16-223, filed 6/29/77.] Repealed by 03-16-047, filed 7/31/03, effective 9/1/04. Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW.
- 388-78A-290 Safety measures and quality assurance. [Statutory Authority: RCW 18.20.240. 98-20-021, recodified as § 388-78A-290, filed 9/25/98, effective 9/25/98. Statutory Authority: RCW 18.20.090. 94-13-180, § 246-316-290, filed 6/21/94, effective 7/22/94. Statutory Authority: RCW 43.70.040. 91-02-049 (Order 121), recodified as § 246-316-290, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.20.090. 89-09-034 (Order 2786), § 248-16-226, filed 4/14/89; 83-13-068 (Order 264), § 248-16-226, filed 6/16/83; Order 147, § 248-16-226, filed 6/29/77.] Repealed by 03-16-047, filed 7/31/03, effective 9/1/04. Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW.
- 388-78A-300 Medication services. [Statutory Authority: RCW 18.20.240. 98-20-021, recodified as § 388-78A-300, filed 9/25/98, effective 9/25/98. Statutory Authority: RCW 18.20.090. 94-13-180, § 246-316-300, filed 6/21/94, effective 7/22/94. Statutory Authority: RCW 43.70.040. 91-02-049 (Order 121), recodified as § 246-316-300, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.20.090. 89-09-034 (Order 2786), § 248-16-229, filed 4/14/89.] Repealed by 03-16-047, filed 7/31/03, effective 9/1/04. Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW.
- 388-78A-310 Resident register. [Statutory Authority: RCW 18.20.240. 98-20-021, recodified as § 388-78A-310, filed 9/25/98, effective 9/25/98. Statutory Authority: RCW 18.20.090. 94-13-180, § 246-316-310, filed 6/21/94, effective 7/22/94. Statutory Authority: RCW 43.70.040. 91-02-049 (Order 121), recodified as § 246-316-310, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.20.090. 89-09-034 (Order 2786), § 248-16-230, filed 4/14/89; 83-13-068 (Order 264), § 248-16-230, filed 6/16/83; Order 147, § 248-16-230, filed 6/29/77; Order 116, § 248-16-230, filed 5/23/75; § 248-16-230, filed 10/3/67; Emergency Regulation, filed 8/4/67; Regulation .16.230, effective 3/11/60; Subsection 1, filed 5/31/61.] Repealed by 03-16-047, filed 7/31/03, effective 9/1/04. Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW.
- 388-78A-320 Resident health record. [Statutory Authority: RCW 18.20.240. 99-15-067, § 388-78A-320, filed 7/19/99, effective 8/19/99; 98-20-021, recodified as § 388-78A-320, filed 9/25/98, effective 9/25/98. Statutory Authority: RCW 18.20.090. 94-13-180, § 246-316-320, filed 6/21/94, effective 7/22/94; 92-02-018 (Order 224), § 246-316-320, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.70.040. 91-02-049 (Order 121), recodified as § 246-316-320, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.20.090. 89-09-034 (Order 2786), § 248-16-235, filed 4/14/89; 83-13-068 (Order 264), § 248-16-235, filed 6/16/83.] Repealed by 03-16-047, filed 7/31/03, effective 9/1/04. Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW.
- 388-78A-330 Adult day care. [Statutory Authority: RCW 18.20.240. 99-15-067, § 388-78A-330, filed 7/19/99, effective 8/19/99; 98-20-021, recodified as § 388-78A-330, filed 9/25/98, effective 9/25/98. Statutory Authority: RCW 18.20.090. 94-13-180, § 246-316-330, filed 6/21/94, effective 7/22/94; 92-02-018 (Order 224), § 246-316-330, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.70.040. 91-02-049 (Order 121), recodified as § 246-316-330, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.20.090. 89-09-034 (Order 2786), § 248-16-300, filed 4/14/89.] Repealed by 03-16-047, filed 7/31/03, effective 9/1/04. Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW.
- 388-78A-335 Residents—Dementia care. [Statutory Authority: RCW 18.20.090. 00-01-086, § 388-78A-335, filed 12/14/99, effective 1/14/00. Statutory Authority: RCW 18.20.240. 98-20-021, recodified as § 388-78A-335, filed 9/25/98, effective 9/25/98. Statutory Authority: RCW 18.20.090. 94-13-180, § 246-316-335, filed 6/21/94, effective 7/22/94.] Repealed by 03-16-047, filed 7/31/03, effective 9/1/04. Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW.
- 388-78A-340 Exemptions. [Statutory Authority: RCW 18.20.240. 98-20-021, recodified as § 388-78A-340, filed 9/25/98, effective 9/25/98. Statutory Authority: RCW 18.20.090. 94-13-180, § 246-316-340, filed 6/21/94, effective 7/22/94. Statutory Authority: RCW 43.70.040. 91-02-049 (Order 121), recodified as § 246-316-340, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.20.090. 89-09-034 (Order 2786), § 248-16-900, filed 4/14/89. Statutory Authority: 1985 c 213. 86-08-002 (Order 2348), § 248-16-900, filed 3/20/86; Order 147, § 248-16-900, filed 6/29/77.] Repealed by 03-16-047, filed 7/31/03, effective 9/1/04. Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW.
- 388-78A-990 Fees. [Statutory Authority: RCW 18.20.090 and 18.20.240. 98-24-038, § 388-78A-990, filed 11/24/98, effective 1/1/99. Statutory Authority: RCW 18.20.240. 98-20-021, recodified as § 388-78A-990, filed 9/25/98, effective 9/25/98. Statutory Authority: RCW 18.20.050. 43.70.110 and 43.70.250. 98-01-165, § 246-316-990, filed 12/22/97, effective 1/22/98; 96-12-027, § 246-316-990, filed 5/30/96, effective 6/30/96. Statutory Authority: RCW 43.70.250, 43.70.110 and 43.20B.020. 95-12-097, § 246-316-990, filed 6/7/95, effective 7/8/95. Statutory Authority: RCW 43.70.110 and 43.70.250. 94-13-180, § 246-316-990, filed 6/21/94, effective 7/22/94. Statutory Authority: RCW 43.70.250. 92-12-086 (Order 276), § 246-316-990, filed 6/2/92, effective 7/1/92. Statutory Authority: RCW 43.70.040. 91-02-050 (Order 122), § 246-316-990, filed 12/27/90, effective 1/31/91.] Repealed by 03-16-047, filed 7/31/03, effective 9/1/04. Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW.

WAC 388-78A-0010 Purpose. This chapter is written to implement chapter 18.20 RCW, to promote the safety and well-being of boarding home residents, to specify standards for boarding home operators, and to further establish requirements for the operation of boarding homes.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0010, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0020 Definitions. "Abandonment" means action or inaction by a person with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

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

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

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

(3) **"Sexual abuse"** means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual 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.

(5) **"Financial exploitation"** means the illegal or improper use of the property, income, resources, or trust funds of the resident by any person for any person's profit or advantage.

"Activities of daily living" means those tasks related to basic personal care such as bathing; toilet use, including perineal care; dressing; personal hygiene, including grooming; locomotion, including transferring; and eating.

"Adult day care" means care and services provided to individuals on the boarding home premises for a period of less than twenty-four continuous hours and does not involve an overnight stay.

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

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

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

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

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

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

"Board" means, in the definition of boarding home, the provision of meal service and lodging.

"Boarding home" means any home or other institution, however named, which is advertised, announced, or maintained for the express or implied purpose of providing board and domiciliary care to seven or more residents after July 1, 2002. However, a boarding home that is licensed to provide board and domiciliary care to three to six residents on July 1, 2000, may maintain its boarding home license as long as it is continually licensed as a boarding home. **"Boarding home"** does not include facilities certified as group training homes pursuant to RCW 71A.22.040, nor any home, institution or section thereof which is otherwise licensed and regulated under the provisions of state law providing specifically for the licensing and regulation of such home, institution or section thereof. Nor shall it include any independent senior housing, independent living units in continuing care retirement communities, or other similar living situations including those subsidized by the department of Housing and Urban Development.

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

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

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

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

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

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

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

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

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

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

"Domiciliary care":

(1) Means:

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

(b) Assuming general responsibility for the safety and well-being of the resident; or

(c) Intermittent nursing services, if provided by the boarding home.

(2) Does not include general observation or preadmission assessment for the purposes of transitioning to a licensed care setting.

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

"Exploitation" - see definition of **"abuse."**

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

"General responsibility for the safety and well-being of the resident" does not include:

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

(2) Services customarily provided under landlord tenant agreements governed by the Residential Landlord-Tenant Act, chapter 59.18 RCW. Such services do not include care or supervision.

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

"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.

"Independent living unit" means an apartment, condominium or other self-sufficient dwelling unit occupied by a nonresident individual or individuals not receiving domiciliary care directly, or indirectly by contract, from the boarding home.

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

"Infirmary" means a disability that materially limits normal activity without requiring inpatient medical or nursing care. An infirmity may be based on conditions, including but not limited to physical handicap, mental illness, developmental disability, mental confusion, disability or disturbance.

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

"Licensed resident bed capacity" means the resident occupancy level requested by the licensee and approved by the department. All residents receiving domiciliary care and their roommates count towards the licensed resident bed capacity. Adult day care clients do not count towards the licensed resident bed capacity.

"Manager" means the person, as defined in this chapter, providing services under a management agreement.

"Management agreement" means a written, executed agreement between the licensee and the manager regarding the provision of certain services in a boarding home.

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

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

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

(a) The sum of the number of approved bed spaces for all resident rooms; or

(b) Twice the seating capacity of the dining area(s) consistent with WAC 388-78A-0270; or

(c) The number of residents permitted by calculating the ratios of toilets, sinks, and bathing fixtures to residents consistent with WAC 388-78A-1010; or

(d) For boarding homes licensed on or before December 31, 1988, the total day room area in square feet divided by ten square feet, consistent with WAC 388-78A-1030; or

(e) For boarding homes licensed after December 31, 1988, the total day room area in square feet divided by twenty square feet, consistent with WAC 388-78A-1030.

"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 a person legally authorized to do so.

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

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

"Neglect" means:

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

(2) An act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the resident's health, welfare, or safety.

"Nonpractitioner" means any individual who is not a practitioner as defined in WAC 388-78A-0020 and chapter 69.41 RCW.

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

(1) **"Licensed practical nurse"** (LPN); or

(2) **"Registered nurse"** (RN).

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

"Person" means any individual, firm, partnership, corporation, company, association, or joint stock association.

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

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

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

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

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

(1) **"Recurring problem"** means that the department has cited the boarding home for a violation of WAC or RCW and the circumstances of (a) or (b) of this subsection are present:

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

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

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

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

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

(b) Significant harm has actually occurred to a resident,

or

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

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

"Prospective resident" means an individual who demonstrates an interest, intends, or applies to move into a boarding home but has not signed an admission agreement or moved in.

"RCW" means Revised Code of Washington.

"Records" means:

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

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

"Resident" means:

(1) An individual who:

(a) Lives in a boarding home, including those receiving respite care;

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

(c) By reason of age or disability, receives domiciliary care provided either directly, or indirectly by contract, by the boarding home.

(2) The roommates of individuals who require domiciliary care.

"Resident-care staff person" means any boarding home employee, temporary employee, volunteer, or contractor who provides hands-on personal care or nursing care to a resident, including but not limited to cuing, reminding, or supervision of a resident on behalf of a boarding home, except **"resident-care staff person"** does not include volunteers who are supervised by an employee, temporary employee or contractor who is on the premises and is quickly and easily available to the volunteer while the volunteer is performing volunteer activities.

"Resident's representative" means:

(1) An individual legally appointed, or designated by the resident in writing, to act in the resident's behalf; or

(2) If the resident is not competent, an individual authorized to provide informed consent on behalf of the resident consistent with RCW 7.70.065.

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

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

(1) Confinement, unless agreed to as provided in WAC 388-78A-0380;

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

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

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

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

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

"Significant change" means a change in a resident's health status or physical, emotional or mental functioning that requires the intervention of a physician, a physician assistant as defined in WAC 246-918-005, or an advanced

registered nurse practitioner as defined in WAC 246-840-299.

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

"Stable and predictable condition" means the resident's clinical and behavioral status is known through initial and on-going assessments to be nonfluctuating and consistent, and does not require the frequent presence and frequent evaluation of a registered nurse. As long as the boarding home has the capacity to meet the resident's identified needs, a resident in a stable and predictable condition also includes:

- (1) A terminally ill resident, whose deteriorating condition is predictable; and
- (2) A resident with an acute, time-limited illness of brief duration.

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

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

"Volunteer" means an individual who regularly provides planned and organized services within the boarding home without reimbursement, but does not mean an individual who visits residents socially or provides occasional entertainment.

"Vulnerable adult" means **"vulnerable adult"** as defined in chapter 74.34 RCW, except that 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.

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

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0020, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0030 Applicability. (1) A person must have a boarding home license issued by the department under chapter 18.20 RCW and this chapter if the person advertises as, or operates, or maintains a facility within Washington state that provides board and domiciliary care as defined in this chapter, except as otherwise exempted by RCW 18.20.170 and in subsection (2) of this section.

(2) A boarding home license is not required:

(a) For only providing housing or services that are customarily provided under landlord tenant agreements governed by the Residential Landlord-Tenant Act, chapter 59.18 RCW; or

(b) For only providing emergency assistance when that emergency assistance is not provided on a frequent or routine basis to any one nonresident individual and the nonresident individual resides in:

- (i) Independent senior housing;
- (ii) An independent living unit in a continuing care retirement community;
- (iii) An independent living unit having common ownership with a licensed boarding home; or

(iv) Other similar living situations including those subsidized by the department of housing and urban development.

(c) When housing nonresident individuals who, without ongoing assistance from the boarding home, initiate and arrange for services provided by persons other than the boarding home or the boarding home's contractor.

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

(4) For the purposes of this section, residents receiving domiciliary care, provided directly or indirectly by contract by the boarding home, are not considered nonresident individuals.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0030, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0040 Other requirements. (1) The boarding home must comply with all other applicable federal, state, county and municipal statutes, rules, codes and ordinances, including without limitations those that prohibit discrimination.

(2) The boarding home must have its building approved by the Washington state fire marshal, fire protection bureau in order to be licensed.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0040, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0050 Resident characteristics. The boarding home may accept and retain an individual as a resident in a boarding home only if:

(1) The boarding home can meet the individual's needs, including providing any specialized training to resident-care staff persons that may be required according to WAC 388-78A-0490 through 388-78A-0510;

(2) The individual's health care condition is stable and predictable, as determined jointly by the boarding home and the resident or the resident's representative if appropriate.

(a) When the resident requires the services of a licensed nurse on the boarding home premises, the registered nurse responsible for assessing the resident's nursing needs must specifically assess, determine and document in the resident's record if the resident's health care condition is stable and predictable.

(b) If the resident does not require the services of a licensed nurse on the boarding home premises, it is assumed the resident's condition is stable and predictable and a registered nurse does not need to assess and determine that the resident's health care condition is stable and predictable.

(3) The individual is ambulatory, unless the boarding home is approved by the Washington state director of fire protection to care for semiambulatory or nonambulatory residents; and

(4) The individual meets the acceptance criteria the boarding home described in the boarding home's disclosure information.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0050, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0060 Individuals in buildings prior to licensing. A person must ensure all of the following conditions are present if any individual moves into a planned boarding home prior to the department issuing a boarding home license:

(1) The prospective licensee does not represent or advertise the building as a licensed boarding home or other licensed facility;

(2) The prospective licensee does not provide any assistance with activities of daily living to the individuals living in the building whether directly or through a contractor;

(3) The prospective licensee does not provide any nursing services or other health care to individuals living in the building;

(4) The prospective licensee does not assume any responsibility for the safety or well-being of the individuals in the boarding home, other than those associated with customary landlord-tenant relations; and

(5) All of the individuals living in the building are either totally independent, or are able to make arrangements with community resources to meet their service needs without the assistance of the prospective licensee.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0060, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0070 Initial assessment. The boarding home must obtain sufficient information to be able to initially assess each prospective resident and enable staff persons:

(1) To gain an adequate understanding of the individual's:

- (a) Needs,
- (b) Capabilities, and
- (c) Preferences.

(2) To determine if the boarding home has the necessary resources or could arrange for them, including staff, facilities, and equipment to provide the required care and services; and

(3) To develop a preliminary service agreement that adequately addresses the individual's needs, capabilities, and preferences.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0070, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0080 Timing of initial assessment. Except in cases of genuine emergency, the boarding home must ensure an initial assessment of the resident is completed before each prospective resident moves into the boarding home. The boarding home must ensure the initial assessment is completed within five calendar days of the resident moving into the boarding home when the resident moves in under emergency conditions.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0080, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0090 Qualified assessor. (1) The boarding home must ensure the person responsible for completing an initial assessment of a prospective resident:

(a) Has a master's degree in social services, human services, behavioral sciences or an allied field and two years social service experience working with adults who have functional or cognitive disabilities; or

(b) Has a bachelor's degree in social services, human services, behavioral sciences, or an allied field and three years social service experience working with adults who have functional or cognitive disabilities; or

(c) Has a valid Washington state license to practice nursing consistent with chapter 18.79 RCW; or

(d) Is a physician with a valid state license to practice medicine; or

(e) Has three years of successful experience in a licensed boarding home, acquired prior to September 1, 2004, assessing prospective boarding home residents.

(2) The boarding home must ensure a registered nurse is responsible for the assessment of the nursing needs of each prospective resident who requires the services of a nurse while on the boarding home premises.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0090, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-010 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-78A-0100 Assessment topics. The boarding home must obtain sufficient information to be able to assess the capabilities, needs and preferences for each prospective resident in the following areas, consistent with chapter 70.129 RCW:

(1) Individual's recent medical history, including, but not limited to:

- (a) Health professional's diagnosis (unless the resident objects for religious reasons);
- (b) Chronic, current, and potential skin conditions;
- (c) Known allergies to foods, medications, or other considerations for providing care or services.

(2) Currently necessary and contraindicated medications and treatments for the individual, including:

(a) What prescribed medications, and what over-the-counter medications commonly taken by the individual, the individual is able to independently self-administer, or safely and accurately direct others to administer to him/her;

(b) What prescribed medications, and what over-the-counter medications commonly taken by the individual, the individual is able to self-administer when he/she has the assistance of a resident-care staff person; and

(c) What prescribed medications, and what over-the-counter medications commonly taken by the individual, the individual is not able to self-administer, and needs to have administered to him or her.

(3) The individual's nursing needs when the individual requires the services of a nurse on the boarding home premises. The boarding home must ensure a registered nurse is responsible for the nursing assessment of each current and prospective resident who requires a nursing assessment;

(4) Individual's sensory abilities, including:

- (a) Vision, and
- (b) Hearing.

(5) Individual's communication abilities, including:

- (a) Modes of expression,
- (b) Ability to make self understood, and
- (c) Ability to understand others.

(6) Significant known behaviors or symptoms of the individual causing concern or requiring special care, including:

- (a) History of substance abuse;
- (b) History of harming self, others, or property or other conditions that may require behavioral intervention strategies;
- (c) Individual's ability to leave the boarding home unsupervised; and
- (d) Other safety considerations that may pose a danger to the individual or others, such as use of medical devices or the individual's ability to smoke unsupervised, if smoking is permitted in the boarding home.

(7) Individual's special needs, by evaluating available information, or selecting and using an appropriate tool, to determine the presence of symptoms consistent with, and implications for care and services of:

- (a) Mental illness, or needs for psychological or mental health services, except where protected by confidentiality laws;
- (b) Developmental disability;
- (c) Dementia, using the DSHS 13-692; or
- (d) Other conditions affecting cognition, such as traumatic brain injury.
- (8) Individual's level of personal care needs, including:
 - (a) Ability to perform activities of daily living;
 - (b) Medication management ability, including:
 - (i) The individual's ability to obtain and appropriately use over-the-counter medications; and
 - (ii) How the individual will obtain prescribed medications for use in the boarding home.
 - (9) Individual's activities, typical daily routines, habits and service preferences;
 - (10) Individual's personal identity and lifestyle, to the extent the individual is willing to share the information, and the manner in which they are expressed, including preferences regarding food, community contacts, hobbies, spiritual preferences, or other sources of pleasure and comfort; and
 - (11) Who has decision making authority for the individual, including:

- (a) The presence of any advance directive, or other legal document that will establish a substitute decision maker in the future;
- (b) The presence of any legal document that establishes a current substitute decision maker; and
- (c) The scope of decision-making authority of any substitute decision maker.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0100, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0110 On-going assessments. The boarding home must:

- (1) Complete a full reassessment addressing the elements set forth in WAC 388-78A-0100 for each resident at least annually;
- (2) Complete a limited assessment of a resident's identified problems and related issues:
 - (a) Consistent with the resident's change of condition as specified in WAC 388-78A-0350; or
 - (b) When the resident's negotiated service agreement no longer addresses the resident's current needs.

(3) Determine the qualifications of the staff person responsible for performing the on-going assessments of current residents in the boarding home;

(4) Ensure the staff person performing the on-going assessments is competent to perform them; and

(5) Ensure a registered nurse is responsible for the assessment or reassessment of the nursing needs of each current resident who requires the services of a licensed nurse while on the boarding home premises.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0110, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0120 Resident participation in assessments. The boarding home must directly involve each resident or prospective resident, to the extent possible, along with any appropriate resident representative approved by the resident, in the assessment and reassessment process in the boarding home.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0120, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0130 Service agreement planning. The boarding home must:

(1) Develop a preliminary negotiated service agreement, based upon discussions with the resident and the resident's representative if the resident has one, and the assessment of a qualified assessor, before a resident moves into a boarding home;

(2) Integrate the assessment information provided by the department's case manager into the negotiated service agreement for each resident whose care is partially or wholly funded by the department;

(3) Develop a negotiated service agreement for each resident by reviewing and updating each resident's preliminary negotiated service agreement, based upon additional information obtained after the resident moves in, within thirty days of the resident moving in;

(4) Review and update each resident's negotiated service agreement consistent with WAC 388-78A-0350:

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

(b) Whenever the negotiated service agreement no longer adequately addresses the resident's current assessed needs and preferences.

(5) Review each resident's negotiated service agreement following a complete annual reassessment and update the plan as necessary;

(6) Involve the following persons in the process of developing a negotiated service agreement to the extent they are willing and capable:

- (a) The resident or prospective resident;
- (b) The resident's representative, if the resident has one;
- (c) The resident's family, if desired and approved by the resident;

- (d) Other individuals the resident wants included;
- (e) Any public or private case manager, if available; and
- (f) Staff designated by the boarding home.

(7) Ensure:

(a) Individuals participating in developing the resident's negotiated service agreement:

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

(ii) Negotiate and agree upon the care and services to be provided to support the resident.

(b) A registered nurse develops the nursing component of the negotiated service agreement for any resident who needs licensed nursing services on the boarding home premises; and

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

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0130, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0140 Negotiated service agreement contents. The boarding home must develop, and document in the resident's record, the agreed upon plan to address and support each resident's assessed capabilities, needs and preferences, including the following:

(1) The care and services necessary to meet the resident's needs, including:

(a) The plan to monitor the resident and address interventions for risks to the resident's health and safety that were identified in the resident's assessment;

(b) The plan to provide assistance with activities of daily living;

(c) The plan to provide necessary nursing services, if provided by the boarding home;

(d) The resident's preferences for how services will be provided; and

(e) The plans to accommodate the resident's preferences.

(2) Clearly defined respective roles and responsibilities of the resident, the boarding home staff, and resident's family or other significant persons in meeting the resident's needs and preferences. If a person other than a resident-care staff person is to be responsible for providing care or services to the resident in the boarding home, the boarding home must specify in the negotiated service agreement an alternate plan for providing care or service to the resident in the event the necessary services are not provided. The boarding home may develop an alternate plan:

(a) Exclusively for the individual resident, or

(b) Based on standard policies and procedures in the boarding home.

(3) The times services will be delivered, including frequency and approximate time of day, as appropriate;

(4) The resident's preferences for activities and how those preferences will be supported;

(5) Appropriate behavioral interventions, if needed;

(6) A communication plan, if special communication needs are present; and

(7) The resident's ability to leave the boarding home premises unsupervised.

(8) The boarding home must not require or ask the resident or the resident's representative to sign any contract or agreement, including a negotiated service or risk agreement, that purports to waive any rights of the resident or that purports to place responsibility or liability for losses of personal property or injury on the resident.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0140, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0150 Signing negotiated service agreement. The boarding home must ensure that the negotiated service agreement is agreed to and signed at least annually by:

(1) The resident, or the resident's representative if the resident has one and is unable to sign or chooses not to sign;

(2) A representative of the boarding home duly authorized by the boarding home to sign on its behalf; and

(3) Any public or private case manager for the resident, if available.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0150, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0160 Basic boarding home services.

(1) The boarding home must assume general responsibility for each resident and promote each resident's health, well-being and safety consistent with the resident's negotiated service agreement.

(2) All boarding homes must provide to each resident, consistent with the resident's negotiated service agreement, assistance with:

(a) **Activities**—Arranging for social, recreational, religious, or other activities in the boarding home and in the community, based on the resident's assessed abilities and preferences;

(b) **Arranging transportation**—Assisting the resident with arranging transportation to medical appointments, but the boarding home is not required to directly provide transportation;

(c) **Functional aids and equipment**—Assisting the resident in obtaining and maintaining functional aids and equipment, including but not limited to glasses, hearing aids, dentures, canes, crutches, walkers, wheelchairs, and assistive communication devices;

(d) **Housework**—Maintaining safe, clean and comfortable personal living quarters for the resident;

(e) **Laundry**—Keeping the resident's clothing clean and in good repair, and providing on a weekly basis or more often as necessary to maintain cleanliness, clean towels, washcloths, bed sheets and pillow case;

(f) **Preparing for necessary health care services**—Cuing and monitoring the resident to follow instructions related to preparation for medical or laboratory services;

(g) **Self-administration of medication**—Self-administration (of medications) with assistance as described in RCW 69.41.010 and chapter 246-888 WAC;

(h) **Self-administration of treatments**—Assisting the resident with self-administration of prescribed treatments to the degree that does not require a licensed professional's intervention;

(i) **Therapeutic diets**—Providing prescribed modified and therapeutic diets and assisting the resident with following them.

(3) When a boarding home provides, either directly or indirectly, assistance with activities of daily living, the boarding home must provide to each resident, at a minimum, assistance as needed, with:

(a) **Bathing**—Including supervising the resident who is able to bathe when cued and encouraged, and steadying the resident getting in or out of the tub/shower, or washing areas

that are hard to reach, such as the residents' legs, feet, and back;

(b) **Dressing**—Including setting up clothes and cuing and monitoring the resident, donning and removing prostheses, and providing the physical assistance necessary for the resident to put on, fasten, and take off clothing;

(c) **Eating**—Cuing, encouraging, and supervising the resident as needed when the resident is eating, and assisting the resident with tasks that are difficult for the resident, such as cutting food or buttering bread;

(d) **Locomotion**—Assisting the resident with walking and wheelchair mobility, including cuing, monitoring, and providing standby assistance necessary to enable residents to take part in services and activities available in the boarding home, and to safely evacuate in emergencies;

(e) **Personal hygiene**—Assisting the resident with care of hair, teeth, dentures, shaving, filing of nails, and other basic personal hygiene and grooming needs, including supervising the resident when the resident is performing the tasks, assisting the resident to care for his/her own appearance, and occasionally performing grooming tasks for the resident when the resident is unable to care for his/her own appearance;

(f) **Toilet use**—Assisting the resident with toileting, including guidance when the resident is able to care for his/her own toileting needs, helping the resident to and from the bathroom, assisting the resident with incontinent products, cuing the resident to wash hands, and performing occasional perineal care, but the boarding home is not required to provide continuous or routine perineal care; and

(g) **Transferring**—Monitoring and providing one-person standby assistance to the resident when the resident is able to assist in his/her own transfers including, but not limited to, getting into and out of bed, wheelchair, vehicle, and onto and off of a toilet/commode or shower chair.

(4) The boarding home must have the capacity to deliver the basic boarding home services on both a scheduled and a nonscheduled basis, and provide them as needed by residents.

(5) The boarding home must:

(a) Provide care and services to each resident by staff persons who are able to communicate with the resident in a language the resident understands; or

(b) Make provisions for communications between staff persons and residents to ensure an accurate exchange of information.

(6) The boarding home must ensure each resident is able to obtain individually preferred personal care items when:

(a) The preferred personal care items are reasonably available, and

(b) The resident is willing and able to pay for obtaining the preferred items.

(7) The boarding home may provide more extensive services than the basic boarding home services, consistent with state and federal law, the boarding home's disclosure statement as required by WAC 388-78A-0690 and 388-78A-0050.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0160, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0170 Activities. The boarding home must:

(1) Provide space and staff support necessary for:

(a) Each resident to engage in independent or self-directed activities that are appropriate to the setting, consistent with the resident's assessed interests, functional abilities, preferences, and negotiated service agreement; and

(b) Group activities at least three times per week that may be planned and facilitated by resident-care staff persons consistent with the collective interests of a group of residents.

(2) Make available supplies and equipment necessary for activities described in subsection (1) of this section.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0170, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0180 Medication services. (1) The boarding home must ensure the following residents receive their medications as prescribed, except as provided for in WAC 388-78A-0200:

(a) Each resident who requires medication assistance and his or her negotiated service agreement indicates the boarding home will provide medication assistance; and

(b) Each resident who requires medication administration and his or her negotiated service agreement indicates the boarding home will provide medication administration, if the boarding home provides medication administration services.

(2) The boarding home must provide medication assistance, consistent with applicable statutes and administrative rules, to residents who need and desire this service.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0180, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0190 Prescribed medication authorizations. (1) The boarding home must have one of the following present in the boarding home before the boarding home may provide medication assistance or medication administration to a resident for prescribed medications:

(a) A prescription label completed by a licensed pharmacy,

(b) A written order from the prescriber,

(c) A facsimile or other electronic transmission of the order from the prescriber, or

(d) Written documentation by a nurse of a telephone order from the prescriber.

(2) The documentation required above in subsection (1) of this section must include the following information:

(a) The name of the resident,

(b) The name of the medication,

(c) The dosage and dosage frequency of the medication, and

(d) The name of the prescriber.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0190, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-020 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-78A-0200 Medication refusal. (1) When a resident who is receiving medication assistance or medication administration services from the board home chooses to not take his or her medications, the boarding home must ensure:

(a) If there is a staff person available who, acting within his or her scope of practice, is able to evaluate the significance of the resident not getting his or her medication, such staff person;

(i) Conducts an evaluation; and

(ii) Takes the appropriate action, including notifying the prescriber or primary care practitioner when there is a consistent pattern of the resident choosing to not take his or her medications.

(b) If a staff person meeting the criteria in (a) of this subsection is not available to evaluate the condition of the resident and the significance of the medication, another staff person:

(i) Notifies the prescriber or primary care practitioner of the resident not getting his or her medication;

(ii) Informs the prescriber or primary care practitioner if the staff person is not a nurse; and

(iii) Does not exceed his or her scope of practice regarding any directives issued from the prescriber or primary care practitioner in response to the notification.

(2) The boarding home must comply with subsection (1)(a) through (b) of this section, unless the prescriber or primary care practitioner has provided the boarding home with:

(a) Specific directions for addressing the refusal of the identified medication;

(b) The boarding home documents such directions; and

(c) The boarding home is able to fully comply with such directions.

(3) When a resident who is receiving medication assistance or medication administration services chooses to not take his or her medications, the boarding home must:

(a) Respect the resident's right to choose to not take the medication; and

(b) Document the time, date and medication the resident did not take.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0200, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0210 Nonavailability of medications.

(1) When the boarding home has assumed responsibility for obtaining a resident's prescribed medications, the boarding home must obtain them in a correct and timely manner.

(2) When prescribed medications are not available for a resident requiring medication assistance or medication administration services from the boarding home and the responsibility for obtaining the resident's medications remains with the resident, the resident's family or other individual acting on behalf of the resident, the boarding home must ensure:

(a) If there is a staff person available who, acting within his or her scope of practice, is able to evaluate the significance of the resident not getting his or her medication, such staff person conducts an evaluation and takes the appropriate action.

(b) If no such staff person meeting the criteria in (a) of this subsection is available to evaluate the significance of the resident not getting his or her medication, a staff person notifies the prescriber or primary care practitioner within a reasonable time that the medication is not available for the resident. The boarding home must ensure such staff person:

(i) Informs the prescriber or primary care practitioner if the staff person is not a nurse, and

(ii) Not exceed his or her scope of practice regarding any directives issued from the prescriber or primary care practitioner in response to the notification.

(3) The boarding home must review and modify as necessary the plan for obtaining the resident's prescribed medications with the resident and those responsible for obtaining the medications on the resident's behalf when medications are not available for the resident.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0210, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0220 Alteration of medications. (1)

The boarding home must provide medications in the form they are prescribed when administering medications or providing medication assistance to a resident, except the boarding home may provide medications in an altered form when:

(a) The resident is unable or unwilling to take the medications in their normal form;

(b) The boarding home has documentation that a practitioner acting within his or her scope of practice has determined that it is safe and appropriate to alter the medication in a specified manner;

(c) The boarding home has informed the resident that the medication is being offered or administered in an altered form before taken by the resident; and

(d) The resident agrees to take the medications in the altered form.

(2) The boarding home must ensure any staff persons who alter medications in the boarding home are acting within their scope of practice and applicable statutes and rules regarding the practice of pharmacy and nursing.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0220, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0230 Storing, securing, and accounting for medications. (1)

The boarding home must secure medications for residents who are not capable of safely storing their own medications.

(2) The boarding home must ensure all medications under the boarding home's control are properly stored:

(a) In containers with pharmacist-prepared label or original manufacturer's label;

(b) Together for each resident and physically separated from other residents' medications;

(c) Separate from food or toxic chemicals;

(d) In a locked compartment that is accessible only to designated responsible staff persons or appropriate resident; and

(e) In environments recommended on the medication label.

(3) The boarding home must have two staff persons inventory and document no less than once per day, all drugs stored by the boarding home described as schedule II and III drugs in chapter 246-887 WAC.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0230, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0240 Resident controlled medications. (1) The boarding home must ensure all medications are stored in a manner that prevents each resident from gaining access to another resident's medications.

(2) The boarding home must allow the following residents, who are capable of responsibly securing their own medications, to control and secure the medications that they self-administer, and the medications they direct others to administer:

(a) Residents who are capable of independently self-administering specific medications on their own; and

(b) Residents who are capable of safely directing others to administer their medications.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0240, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0250 Medication organizers. (1) The boarding home must ensure no staff person other than a nurse fills medication organizers for residents. A nurse may fill a medication organizer for a resident only when:

(a) The resident understands the use of the medications that have been prescribed for him or her; and

(b) The resident is totally independent with self-administration of medications when using a medication organizer, except for the physical assistance required to fill the medication organizer, or the resident can safely direct others to administer his or her medications; and

(c) Staff persons have no further responsibility for:

(i) Storing the resident's medication; or

(ii) Providing any additional medication assistance to the resident beyond filling the medication organizer; or

(iii) Providing medication administration services to the resident.

(d) The medication organizer carries a label that clearly identifies:

(i) The name of the resident,

(ii) The name of the medications in the organizer, and

(iii) The frequency of the dosage.

(2) Consistent with subsections (1) and (3) of this section, the boarding home must not use a medication organizer for a resident, filled by anyone other than a licensed pharmacy, any time the boarding home is:

(a) Involved in storing the resident's medications;

(b) Providing medication assistance to the resident; or

(c) Providing medication administration services to the resident.

(3) A resident may use a medication organizer only when he or she stores and secures the medication organizer and is capable of either:

(a) Independently self-administering his or her own medications contained in the medication organizer, or

(b) Safely directing others to administer his or her medications contained in the medication organizer.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0250, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0260 Family assistance with medication. (1) If the boarding home allows family assistance with medications and the resident and a family member(s) agree a family member will provide medication assistance or medi-

cation administration services to the resident, the boarding home must:

(a) Jointly develop a plan for medication assistance or medication administration with the resident and the responsible family member(s);

(b) Include a back-up plan in the event the family does not provide the medication services; and

(c) Clearly delineate and document in the resident's negotiated service agreement, each party's respective responsibilities.

(2) The boarding home must ensure that whenever a resident's family provides medication assistance or medication administration services, the resident's medications remain on the boarding home premises whenever the resident is on the boarding home premises.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0260, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0270 Food and nutrition services. (1) The boarding home must:

(a) Provide a minimum of three meals a day:

(i) At regular intervals;

(ii) With no more than fourteen hours between the evening meal and breakfast, unless the boarding home provides a nutritious snack between the evening meal and breakfast.

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

(c) 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 (f) 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 retained at least six months;

(v) Provide a variety of foods; and

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

(d) Prepare on site, or provide through a contract with a food service establishment located in the vicinity and that meets the requirements of chapter 246-215 WAC, palatable, attractively served meals and nourishments that meet the current recommended dietary allowances established by the Food and Nutrition Board, National Research Council, adjusted for:

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

(ii) Individual and ethnic preferences to the extent reasonably possible.

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

(f) Make available and known to residents alternate choices in entrees for midday and evening meals that are of comparable quality and nutritional value. The boarding home 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;

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

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

(2) The boarding home 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 as ordered:

(a) Resident specific, modified or therapeutic diets according to a diet manual, when and as prescribed by a health care practitioner. The boarding home 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) Nutrient concentrates and supplements when prescribed in writing by a health care practitioner.

(3) The boarding home may provide to a resident at his or her request and as agreed upon in the resident's negotiated service agreement, nonprescribed:

- (a) Modified or therapeutic diets;
- (b) Nutritional concentrates or supplements.

(4) The boarding home must manage food, and maintain any on site food service facilities in compliance with chapter 246-215 WAC, Food service sanitation, except the boarding home may:

(a) Serve home-canned jams, jellies and fruit with a pH of less than 4.6; and

(b) In boarding homes licensed for sixteen or fewer beds, use domestic or home-type kitchen appliances, provided that:

(i) If a home-type mechanical dishwasher was installed before September 1, 2004, the boarding home must:

- (A) Operate it according to manufacturer directions; and
- (B) Ensure the dishwasher is supplied with water heated to 155°F or more.

(ii) If a home-type mechanical dishwasher is installed after September 1, 2004, the boarding home must ensure the dishwasher has:

(A) A high temperature final rinse water at a minimum of 180°F measured by the gauge;

(B) A high temperature final rinse resulting in a minimum of 160°F measured at the surface of the utensil;

(C) A continuous supply of water heated to 155°F throughout its operating cycle; or

(D) An automatically dispensed approved concentration of chemical sanitizer as described in 21 C.F.R. Part 178.

(5) The boarding home must ensure employees working as food service workers obtain a food worker card according to chapter 246-217 WAC.

(6) The boarding home must ensure a resident obtains a food worker card according to chapter 246-217 WAC whenever:

(a) The resident is routinely or regularly involved in the preparation of food to be served to other residents;

(b) The resident is paid for helping to prepare food; or

(c) The resident is preparing food to be served to other residents as part of an employment-training program.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0270, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0280 Need to provide nursing services. Nursing services are an optional service that a boarding home may provide. However, the boarding home must ensure:

(1) Each resident who requires nursing services in the boarding home either:

(a) Receives the nursing services according to his or her negotiated service agreement from:

- (i) The boarding home;
- (ii) Nursing resources acting on the boarding home's behalf; or

(iii) Resources external to the boarding home that have been arranged by the resident or a person acting on the resident's behalf, and coordinated with the boarding home as specified in WAC 388-78A-330.

(b) Is transferred or discharged to an appropriate setting consistent with RCW 70.129.110 if necessary nursing services are not provided in the boarding home.

(2) Needed nursing services are provided consistent with any disclosure statements made to the public.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0280, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0290 Tube feeding. (1) The boarding home must provide nursing services to develop and implement the nursing component of the negotiated service agreement, administer feedings and necessary medications, and provide routine care of the tube insertion site whenever any resident requiring tube feeding is not able to:

- (a) Independently and safely manage:
 - (i) Maintenance of the tube insertion site;
 - (ii) Necessary medication administration through the tube; and

(iii) Feeding administration through the tube.

(b) Arrange for an outside resource to provide:

- (i) Maintenance of the tube insertion site;
- (ii) Necessary medication administration through the tube; and

(iii) Feeding administration through the tube.

(2) The boarding home is not required to provide nursing services to a resident simply because the resident requires tube feeding if the resident can either independently manage or arrange for an outside resource to perform the tasks specified in subsection (1)(a) and (b) of this section.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0290, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-030 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-78A-0300 Supervision of nursing services. The boarding home must ensure a registered nurse supervises any nursing services the boarding home provides. In order to supervise the services, the boarding home may:

- (1) Hire a registered nurse on staff;

- (2) Contract directly with an individual registered nurse;
or
(3) Contract with an agency, organization or service to provide registered nurse supervision.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0300, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0310 Responsibilities of nursing supervisor. The boarding home must ensure the registered nurse supervising any nursing services provided by the boarding home:

- (1) Supervises the system of providing nursing services in the boarding home;
- (2) Ensures nursing services and nurse delegation are provided consistent with applicable statutes and administrative rules, including, but not limited to:
 - (a) Chapter 18.79 RCW, Nursing care;
 - (b) Chapter 18.88A RCW, Nursing assistants;
 - (c) Chapter 246-840 WAC, Practical and registered nursing;
 - (d) Chapter 246-841 WAC, Nursing assistants; and
 - (e) Chapter 246-888 WAC, Medication assistance.
- (3) Ensures a registered nurse:
 - (a) Is responsible for the nursing assessments and reassessments of the nursing needs of current and prospective residents who require licensed nursing services on the boarding home premises;
 - (b) Develops or amends as necessary the nursing portion of the negotiated service agreements for residents who require licensed nursing services on the boarding home premises;
 - (c) Supervises the implementation of residents' nursing plans; and
 - (d) Is available in person, by pager, or by telephone and can respond to residents' needs on the boarding home premises as necessary, consistent with the boarding home's disclosure statement regarding the extent of nursing services the boarding home provides.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0310, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0320 Resident-arranged services. (1) The boarding home must allow a resident to arrange to receive on-site care and services from a practitioner, consistent with:

- (a) Title 18 RCW regulating health care professions;
 - (b) Chapter 70.129 RCW, Long-term care resident rights;
 - (c) The boarding home's policies and procedures; and
 - (d) The boarding home's disclosure statement.
- (2) The boarding home must coordinate resident-arranged health care services consistent with WAC 388-78A-0330.

(3) The boarding home is not required to supervise the activities of a person providing care or services to a resident when the resident or resident's representative has independently arranged for or contracted with the person and the person is not directly or indirectly controlled or paid by the boarding home.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0320, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0330 Coordination of health care services. (1) The boarding home must coordinate services with external health care providers to meet the residents' needs, consistent with the resident's negotiated service agreement.

(2) The boarding home must develop, implement, and make known to residents the boarding home's policies regarding how the boarding home interacts with external health care providers, including:

(a) The conditions under which health care information regarding a resident will be shared with external health care providers, consistent with chapter 70.02 RCW; and

(b) How residents' rights to privacy will be protected, including provisions for residents to authorize the release of health care information.

(3) The boarding home may disclose health care information about a resident to external health care providers without the resident's authorization if the conditions in RCW 70.02.050 are met.

(4) If the conditions in RCW 70.02.050 are not met, the boarding home must request, but may not require, a resident to authorize the boarding home and the external health care provider to share the resident's health care information when:

(a) The boarding home becomes aware that a resident is receiving health care services from a source other than the boarding home; and

(b) The resident has not previously authorized the boarding home to release health care information to an external health care provider.

(5) When a resident authorizes the release of health care information or resident authorization is not required under RCW 70.02.050, the boarding home must contact the external health care provider and coordinate services.

(6) When authorizations to release health care information are not obtained, or when an external health care provider is unresponsive to the boarding home's efforts to coordinate services, the boarding home must:

(a) Document the boarding home's actions to coordinate services;

(b) Provide notice to the resident of the risks of not allowing the boarding home to coordinate care with the external provider; and

(c) Address known associated risks in the resident's negotiated service agreement.

(7) When coordinating care or services, the boarding home must:

(a) Integrate relevant information from the external provider into the resident's assessment, and when appropriate, negotiated service agreement; and

(b) Respond appropriately when there are observable or reported changes in the resident's physical, mental, or emotional functioning.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0330, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0340 Implementation of negotiated service agreement. The boarding home must provide the care and services as agreed upon in the negotiated service agreement to each resident unless a deviation from the negotiated service agreement is mutually agreed upon between the boarding home and the resident or the resident's representative at the time the care or services are scheduled.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0340, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0350 Monitoring residents' well-being. The boarding home must:

- (1) Observe each resident consistent with his or her assessed needs and negotiated service agreement;
- (2) Identify any changes in the resident's physical, emotional, and mental functioning that are a:
 - (a) Departure from the resident's customary range of functioning; or
 - (b) Recurring condition in a resident's physical, emotional, or mental functioning that has previously required intervention by others.
- (3) Evaluate the change identified in the resident per subsection (2) of this section to determine if there is a need for further action, including but not limited to reassessment;
- (4) Ensure that changes that may require further action by the boarding home are documented in the resident's record;
- (5) Reassess a resident consistent with WAC 388-78A-0110 if reassessment is identified as needed;
- (6) Update the negotiated service as needed; and
- (7) Take appropriate action in response to each resident's changing needs.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0350, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0360 Adult day care. (1) The boarding home may, but is not required to, provide an adult day care program for nonresidents.

- (2) If adult day care is provided, the boarding home must:
 - (a) Ensure each adult day care client receives appropriate supervision and agreed upon care and services during the time spent in the day care program;
 - (b) Ensure the care and services provided to adult day care clients do not compromise the care and services provided to boarding home residents;
 - (c) Ensure the total number of residents plus adult day care clients does not exceed the boarding home's maximum facility capacity;
 - (d) Only accept adult day care clients who are appropriate for boarding home care and services, consistent with WAC 388-78A-0050;
 - (e) Provide sufficient furniture for the comfort of day care adults, in addition to furniture provided for residents;
 - (f) Notify appropriate individuals specified in the client's record and consistent with WAC 388-78A-0630 when there is a significant change in the condition of an adult day care client;
 - (g) Investigate and document incidents and accidents involving adult day care clients consistent with WAC 388-78A-0680;
 - (h) Maintain a separate register of adult day care clients; and
 - (i) Maintain a resident record for each adult day care client.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0360, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0370 Dementia care. (1) The boarding home must, to the fullest extent reasonably possible, obtain for each resident meeting the screening criteria according to WAC 388-78A-0510:

- (a) Information regarding the resident's significant life experiences, including:
 - (i) Parents, step-parents, siblings, and step-siblings;
 - (ii) Current and former spouses, children, and step-children or other significant relationships;
 - (iii) Education and training;
 - (iv) Employment and career experiences;
 - (v) Religious or spiritual preferences;
 - (vi) Familiar roles or sources of pride and pleasure.
- (b) Information regarding the resident's ability or inability to:
 - (i) Articulate his or her personal needs; and
 - (ii) Initiate activity.
- (c) Information regarding any patterns of resident behavior that express the resident's needs or concerns that the resident is not able to verbalize. Examples of such behaviors include, but are not limited to:
 - (i) Agitation;
 - (ii) Wandering;
 - (iii) Resistance to care;
 - (iv) Social isolation; and
 - (v) Aggression.
- (2) The boarding home, in consultation with the resident's family or others familiar with the resident, must evaluate the significance and implications of the information obtained per subsection (1) of this section and integrate appropriate aspects into an individualized negotiated service agreement for the resident.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0370, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0380 Restricted egress. A boarding home must ensure all of the following conditions are present before moving residents into units or buildings with exits that may restrict a resident's egress:

- (1) Each resident, or a person authorized under RCW 7.70.065 to provide consent on behalf of the resident, consents to living in such unit or building.
- (2) Each resident assessed as being cognitively and physically able to safely leave the boarding home is able to do so independently without restriction.
- (3) Each resident, assessed as being cognitively able to safely leave the boarding home but has physical challenges that make exiting difficult, is able to leave the boarding home when the resident desires and in a manner consistent with the resident's negotiated service agreement.
- (4) Each resident who is assessed as being unsafe to leave the boarding home unescorted is able to leave the boarding home consistent with his or her negotiated service agreement.
- (5) Areas from which egress is restricted are equipped throughout with an approved automatic fire detection system and automatic fire sprinkler system electrically interconnected with a fire alarm system that transmits an alarm off site to a twenty-four hour monitoring station.
- (6) Installation of special egress control devices in all proposed construction issued a project number by Construc-

tion Review Services on or after September 1, 2004 must conform to standards adopted by the state building code council.

(7) Installation of special egress control devices in all construction issued a project number by Construction Review Services prior to September 1, 2004 must conform to the following:

(a) The egress control device must automatically deactivate upon activation of either the sprinkler system or the smoke detection system.

(b) The egress control device must automatically deactivate upon loss of electrical power to any one of the following:

- (i) The egress control device itself;
- (ii) The smoke detection system; or
- (iii) The means of egress illumination.

(c) The egress control device must be capable of being deactivated by a signal from a switch located in an approved location.

(d) An irreversible process which will deactivate the egress control device must be initiated whenever a manual force of not more than fifteen pounds is applied for two seconds to the panic bar or other door-latching hardware. The egress control device must deactivate within an approved time period not to exceed a total of fifteen seconds. The time delay must not be field adjustable.

(e) Actuation of the panic bar or other door-latching hardware must activate an audible signal at the door.

(f) The unlatching must not require more than one operation.

(g) A sign must be provided on the door located above and within twelve inches of the panic bar or other door-latching hardware reading:

"Keep pushing. The door will open in fifteen seconds. Alarm will sound."

The sign lettering must be at least one inch in height and must have a stroke of not less than one-eighth inch.

(h) Regardless of the means of deactivation, relocking of the egress control device must be by manual means only at the door.

(8) The boarding home must have a system in place to inform and permit visitors, staff persons and appropriate residents how they can exit without sounding the alarm.

(9) Units or buildings from which egress is restricted are equipped with a secured outdoor space for walking which:

- (a) Is accessible to residents without staff assistance;
- (b) Is surrounded by walls or fences at least seventy-two inches high;
- (c) Has areas protected from direct sunshine and rain throughout the day;
- (d) Has walking surfaces that are firm, stable, slip-resistant and free from abrupt changes and are suitable for individuals using wheelchairs and walkers;
- (e) Has suitable outdoor furniture; and
- (f) Has plants that are not poisonous or toxic to humans.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0380, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0390 Resident records. The boarding home must maintain adequate records concerning residents to enable the boarding home:

(1) To effectively provide the care and services agreed upon with the resident; and

(2) To respond appropriately in emergency situations.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0390, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-040 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-78A-0400 Protection of resident records. The boarding home must:

(1) Maintain a systematic and secure method of identifying and filing resident records for easy access;

(2) Maintain resident records and preserve their confidentiality in accordance with applicable state and federal statutes and rules, including chapters 70.02 and 70.129 RCW;

(3) Allow authorized representatives of the department and other authorized regulatory agencies access to resident records;

(4) Provide any resident or other individual or organization access to resident records upon written consent of the resident or the resident's representative, unless state or federal law provide for broader access;

(5) Allow authorized agents, such as a management company, to use resident records solely for the purpose of providing care and services to residents and ensure that agents do not disclose such records except in a manner consistent with law; and

(6) Maintain ownership and control of resident records, except that resident records may be transferred to a subsequent person licensed by the department to operate the boarding home.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0400, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0410 Content of resident records. The boarding home must maintain in the boarding home relevant current documentation of the following in the active records for each resident:

(1) Resident identifying information, including resident's:

- (a) Name,
- (b) Birth date,
- (c) Move-in date, and
- (d) Sleeping room identification.

(2) Current name, address, and telephone number of:

- (a) Resident's primary health care provider;
- (b) Resident's representative, if the resident has one;
- (c) Individual(s) to contact in case of emergency, illness or death; and
- (d) Family members or others, if any, the resident requests to be involved in the development or delivery of services for the resident.

(3) Resident's written acknowledgment of receipt of:

(a) Required disclosure information prior to moving into the boarding home, and relevant updates; and

(b) Long-term care resident rights per RCW 70.129.030.

(4) The resident's assessment and reassessment information.

(5) Clinical information such as admission weight, height, blood pressure, temperature, blood sugar and other laboratory tests required by the negotiated service agreement.

(6) The resident's negotiated service agreement consistent with WAC 388-78A-0140.

(7) Any orders for medications, treatments, and modified or therapeutic diets, including any directions for addressing a resident's refusal of medications, treatments, and prescribed diets.

(8) Medical and nursing services provided by the boarding home for a resident, including:

(a) A record of providing medication assistance and medication administration, which contains:

(i) The medication name, dose, and route of administration;

(ii) The time and date of any medication assistance or administration;

(iii) The signature or initials of the person providing any medication assistance or administration; and

(iv) Documentation of a resident choosing to not take his or her medications.

(b) A record of any nursing treatments, including the signature or initials of the person providing them.

(9) Dates and descriptions of a resident's:

(a) Accidents,

(b) Incidents,

(c) Injuries, and

(d) Changes in condition as specified in WAC 388-78A-0350.

(10) Staff interventions or responses to subsection (9) of this section, including any modifications made to the resident's negotiated service agreement.

(11) Notices of and reasons for relocation as specified in RCW 70.129.110.

(12) The individuals who were notified of a significant change in the resident's condition and the time and date of the notification.

(12) When available, a copy of any legal documents in which:

(a) The resident has appointed another individual to make his or her health care, financial, or other decisions;

(b) The resident has created an advance directive or other legal document that establishes a surrogate decision maker in the future and/or provides directions to health care providers; and

(c) A court has established guardianship on behalf of the resident.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0410, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0420 Format of resident records. The boarding home must organize and maintain resident records in a format that the boarding home determines to be useful and functional for the boarding home to effectively provide care and services to each resident.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0420, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0430 Record retention. (1) The boarding home must maintain on the boarding home premises in a

resident's active record(s) all relevant information and documentation necessary for meeting a resident's current needs.

(2) The boarding home may remove outdated information from the resident's active records that is no longer significant or relevant to the resident's current service and care needs, and maintain it in an inactive record that must remain on the boarding home premises as long as the resident remains in the boarding home.

(3) The boarding home must maintain all documentation filed in a closed resident record, on the boarding home premises for six months after the date the resident leaves the boarding home and on the boarding home premises or another location for five years after the date the resident leaves the boarding home.

(4) All active, inactive, and closed resident records must be available for review by department staff and other authorized persons.

(5) If a boarding home ceases to operate as a licensed boarding home, the most recent licensee must make arrangements to ensure that the former residents' records are retained according to the times specified in this section and are available for review by department staff and other authorized individuals.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0430, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0440 Resident review of records. (1) The boarding home must assemble all records pertaining to a resident and make them available to a resident within twenty-four hours of the resident's or the resident's representative's request to review the resident's records per RCW 70.129.030.

(2) The boarding home must provide to the resident or the resident's representative, photocopies of the records or any portions of the records pertaining to the resident, within two working days of the resident's or resident's representative's request for the records.

(a) For the purposes of this section, "working days" means Monday through Friday, except for legal holidays.

(b) The boarding home may charge the resident or the resident's representative a fee not to exceed twenty-five cents per page for the cost of photocopying the resident's record.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0440, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-045 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-78A-0450 Resident register. (1) The boarding home must maintain in the boarding home a single current roster of all boarding home residents, their roommates and identification of the rooms in which such persons reside or sleep.

(2) The boarding home must make this roster immediately available to:

(a) Authorized department staff;

(b) Representatives of the long-term care ombudsman's office; and

(c) Representatives of the Washington state fire protection bureau when conducting fire safety inspections.

(3) The boarding home must maintain a readily available permanent, current book, computer file, or register with entries in ink or typewritten, of all former boarding home residents within the past five years, including:

- (a) Date of moving in;
- (b) Full name;
- (c) Date of birth;
- (d) Date of moving out;
- (e) Reason for moving out; and
- (f) New address if known.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0450, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0460 Staff. (1) Each boarding home must provide sufficient, trained staff persons to:

(a) Furnish the services and care needed by each resident consistent with the boarding home's disclosure statements provided according to WAC 388-78A-0690;

(b) Maintain the boarding home free of safety hazards; and

(c) Implement fire and disaster plans.

(2) The boarding home must:

(a) Develop and maintain written job descriptions for the administrator and each staff position and provide each staff person with a copy of his or her job description before or upon the start of employment;

(b) Verify staff persons' work references prior to hiring;

(c) Verify prior to hiring that staff persons have the required licenses, certification, registrations, or other credentials for the position, and that such licenses, certifications, registrations, and credentials are current and in good standing;

(d) Document and retain for twelve weeks, weekly staffing schedules, as planned and worked;

(e) Ensure all resident care and services are provided only by staff persons who have the training, credentials, experience and other qualifications necessary to provide the care and services;

(f) Ensure at least one resident-care staff person, who is eighteen years of age or older and has current cardiopulmonary resuscitation and first-aid cards, is present and available to assist residents at all times:

(i) When one or more residents are present on the boarding home premises;

(ii) During boarding home activities off of the boarding home premises; and

(iii) When staff persons transport a resident.

(g) Ensure resident-care staff persons provide on site supervision of any resident voluntarily providing services for the boarding home;

(h) Provide staff orientation and appropriate training for expected duties, including:

(i) Organization of boarding home;

(ii) Physical boarding home layout;

(iii) Specific duties and responsibilities;

(iv) How to report resident abuse and neglect consistent with chapter 74.34 RCW and boarding home policies and procedures;

(v) Policies, procedures, and equipment necessary to perform duties;

(vi) Needs and service preferences identified in the negotiated service agreements of residents with whom the resident-care staff persons will be working; and

(vii) Resident rights, including without limitation, those specified in chapter 70.129 RCW.

(i) Develop and implement a process to ensure resident-care staff persons:

(i) Acquire the necessary information from the assessment and negotiated service agreement relevant to providing services to each resident with whom the resident-care staff person works;

(ii) Are informed of changes in the negotiated service agreement of each resident with whom the resident-care staff person works; and

(iii) Are given an opportunity to provide information to responsible staff regarding the resident when assessments and negotiated service agreements are updated for each resident with whom the resident-care staff person works.

(j) Ensure all resident-care staff persons have access to resident records relevant to effectively providing care and services to the resident.

(3) The boarding home must:

(a) Ensure that staff persons meet the training requirements specified in chapter 388-112 WAC;

(b) Protect all residents by ensuring any staff person suspected or accused of abuse does not have access to any resident until the boarding home investigates and takes action to ensure resident safety;

(c) Not interfere with the investigation of a complaint, coerce a resident or staff person regarding cooperating with a complaint investigation, or conceal or destroy evidence of alleged improprieties occurring within the boarding home;

(d) Prohibit staff persons from being directly employed by a resident or a resident's family during the hours the staff person is working for the boarding home;

(e) Maintain the following documentation on the boarding home premises, during employment, and at least two years following termination of employment:

(i) Staff orientation and training pertinent to duties, including but not limited to:

(A) Training required by chapter 388-112 WAC, including as appropriate for each staff person, orientation, basic training or modified basic training, specialty training, nurse delegation core training, and continuing education;

(B) Cardiopulmonary resuscitation;

(C) First-aid; and

(D) HIV/AIDS training.

(ii) Criminal history disclosure and background checks as required in WAC 388-78A-0470; and

(iii) Verification of contacting work references and professional licensing and certification boards as required by subsection (1) of this section.

(4) The boarding home is not required to keep on the boarding home premises, staff records that are unrelated to staff performance of duties. Such records include, but are not limited to pay records, and health and insurance benefits for staff.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0460, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0470 Criminal history background checks. (1) The boarding home must:

(a) Not hire or retain, directly or by contract, any individual having unsupervised access to residents, except as provided in RCW 43.43.842 and subsection (1)(h) of this section, if that individual has been:

(i) Convicted of a crime against persons as defined in RCW 43.43.830;

(ii) Convicted of a crime relating to financial exploitation as defined in RCW 43.43.830;

(iii) Found in any disciplinary board final decision to have abused a vulnerable adult under RCW 43.43.830;

(iv) The subject in a protective proceeding under chapter 74.34 RCW;

(v) Convicted of criminal mistreatment; or

(vi) Found by the department to have abused, neglected, or exploited a vulnerable person in any matter in which an administrative hearing due process right is offered and the finding is upheld through the hearing process or the individual failed to timely appeal the finding.

(b) Inform each individual identified below who is associated with the boarding home and who will have unsupervised access to residents in the boarding home, of the requirement for a criminal history background check:

(i) Employees,

(ii) Managers,

(iii) Volunteers who are not residents,

(iv) Contractors,

(v) Students, and

(vi) Any other nonresident individuals associated with the boarding home having unsupervised access to residents.

(c) Require the individuals identified in subsection (1)(b) of this section to complete and sign a DSHS background authorization form prior to the individual having unsupervised access to residents;

(d) Submit all criminal history background check authorization forms to the department's:

(i) Aging and disability services administration with the initial application for licensure; and

(ii) Background check central unit every two years for each individual identified in subsection (1)(b) of this section. A background check result is only valid for two years from the date it is conducted, at which point a new criminal history background check must be conducted.

(e) Except as provided in subsection (1)(h) of this section, not hire an individual who may have unsupervised access to residents prior to receiving favorable results of the background check;

(f) Verbally inform the named individual of his/her individual background check results and offer to provide him or her a copy of the background check results within ten days of receipt;

(g) Ensure that all disclosure statements and background check results are:

(i) Maintained on site in a confidential and secure manner;

(ii) Used for employment purposes only;

(iii) Not disclosed to any individual except:

(A) The individual named on the background check result;

(B) Authorized state and federal employees;

(C) The Washington state patrol auditor; and

(D) As otherwise authorized in chapter 43.43 RCW.

(iv) Retained and available for department review:

(A) During the individual's employment or association with a facility, and

(B) At least two years following termination of employment or association with a facility.

(h) The boarding home may conditionally employ, contract with, accept as a volunteer or associate, an individual having unsupervised access to residents pending a background inquiry, provided the boarding home:

(i) Obtains a criminal history background check authorization form from the individual prior to the individual beginning to work or perform volunteer activities; and

(ii) Submits the criminal history background check authorization form to the department no later than one business day after the individual started working or volunteer activity.

(2) The department may require the boarding home or any other individual associated with the boarding home who has unsupervised access to residents to complete additional disclosure statements or background inquiries if the department has reason to believe that offenses specified under RCW 43.43.830 have occurred since completion of the previous disclosure statement or background inquiry.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0470, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0480 TB tests. (1) The boarding home must ensure each staff person is screened for tuberculosis, as follows:

(a) A staff person must have a baseline two-step skin test initiated within three days of being hired unless the staff person meets the requirements in (b) or (c) of this subsection. The skin test must be:

(i) Given no more than one to three weeks apart;

(ii) By intradermal (Mantoux) administration of purified protein derivative (PPD);

(iii) Read in forty-eight to seventy-two hours of administration, by trained personnel; and

(iv) Recorded in millimeters of induration.

(b) A staff person needs to have only a one-step skin test within three days of being hired if:

(i) There is documented history of a negative result from previous two-step testing, or

(ii) There was a documented negative result from one-step skin testing in the previous twelve months.

(c) A staff person does not need to be skin tested for tuberculosis if he/she has:

(i) Documented history of a previous positive skin test consisting of ten or more millimeters of induration; or

(ii) Documented evidence of adequate therapy for active disease; or

(iii) Documented evidence of adequate preventive therapy for infection.

(d) A staff person must have one-step skin test annually unless he/she has a documented history of a previous positive skin test;

(e) If a skin test results in a positive reaction, the boarding home must:

(i) Ensure that the staff person has a chest X ray within seven days;

(ii) Report positive chest X rays to the appropriate public health authority; and

(iii) Follow precautions ordered by a physician or public health authority.

(2) The boarding home must:

(a) Retain in the boarding home for the duration of the staff person's employment, and at least two years following termination of employment, records of:

(i) Tuberculin test results,

(ii) Reports of X-ray findings, and

(iii) Physician or public health official orders.

(b) Provide staff persons with a copy of the records specified in (a) of this subsection:

(i) During the time the staff person is employed in the boarding home, limited to one copy per report; and

(ii) When requested by the staff person.

(3) The boarding home must ensure that resident-care staff persons caring for a resident with suspected tuberculosis comply with the WISHA standard for respiratory protection.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0480, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0490 Specialized training for developmental disabilities. The boarding home must provide resident-care staff persons with specialized training, consistent with chapter 388-112 WAC, to serve residents with developmental disabilities, whenever at least one of the residents in the boarding home is:

(1) A person who meets the eligibility criteria for services defined in chapter 388-825 WAC; or

(2) A person with a severe, chronic disability which is attributable to cerebral palsy or epilepsy, or any other condition, other than mental illness, found to be closely related to mental retardation which results in impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation, and requires treatment or services similar to those required for these persons (i.e., autism), and:

(a) The condition was manifested before the person reached eighteen;

(b) The condition is likely to continue indefinitely; and

(c) The condition results in substantial functional limitations in three or more of the following areas of major life activities:

(i) Self-care,

(ii) Understanding and use of language,

(iii) Learning,

(iv) Mobility,

(v) Self-direction, and

(vi) Capacity for independent living.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0490, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-050 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-78A-0500 Specialized training for mental illness. The boarding home must provide resident-care staff

persons with specialized training, consistent with chapter 388-112 WAC, to serve residents with mental illness, whenever at least one of the residents in the boarding home is a person who has been diagnosed with or treated for an Axis I or Axis II diagnosis, as described in the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision*, and:

(1) Who has received the diagnosis or treatment within the previous two years; and

(2) Whose diagnosis was made by, or treatment provided by, one of the following:

(a) A licensed physician,

(b) A mental health professional,

(c) A psychiatric advanced registered nurse practitioner,

or

(d) A licensed psychologist.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0500, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0510 Specialized training for dementia. (1) The boarding home must provide resident-care staff persons with specialized training, consistent with chapter 388-112 WAC, to serve residents with dementia, whenever at least one of the residents in the boarding home meets the screening criteria for dementia as outlined on DSHS 13-692.

(2) While screening a resident for dementia, the boarding home must base any determination that the resident has short-term memory loss upon objective evidence, and document the evidence in the resident's record.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0510, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0520 Administrator qualifications. (1) The licensee must appoint an administrator who is at least twenty-one years old and who is not a resident, and is qualified to perform the administrator's duties specified in WAC 388-78A-0560.

(2) The licensee must only appoint as a boarding home administrator an individual who meets at least one of the following qualifications listed in (a) through (f) below:

(a) The individual was actively employed as a boarding home administrator and met existing qualifications on September 1, 2004;

(b) The individual holds a current state nursing home administrator license in good standing;

(c) Prior to assuming duties as a boarding home administrator, the individual has met the qualifications listed in both (i) and (ii) below:

(i) Obtained certification of completing administrator training, or certification of passing an administrator examination, from or endorsed by a department-recognized national accreditation health or personal care organization such as:

(A) The American Association of Homes and Services for the Aging, or

(B) The American Health Care Association, or

(C) The Assisted Living Federation of America, or

(D) The National Association of Board of Examiners of Long Term Care Administrators.

(ii) Three years paid experience:

(A) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults,

such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

(B) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living.

(d) The individual holds an associate degree in a related field of study such as health, social work, or business administration and meets the qualifications listed in either (i) or (ii) or (iii) below:

(i) Obtains certification of completing administrator training, or certification of passing an administrator examination, within six months of beginning duties as the administrator, from or endorsed by a department-recognized national accreditation health or personal care organization such as:

(A) The American Association of Homes and Services for the Aging, or

(B) The American Health Care Association, or

(C) The Assisted Living Federation of America, or

(D) The National Association of Board of Examiners of Long Term Care Administrators.

(ii) Has two years paid experience:

(A) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

(B) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living.

(iii) Has completed a qualifying administrator training program supervised by a qualified administrator according to WAC 388-78A-0530.

(e) The individual holds a bachelors degree in a related field of study such as health, social work, or business administration and meets the qualifications listed in either (i) or (ii) or (iii) below:

(i) Obtains certification of completing administrator training, or certification of passing an administrator examination, within six months of beginning duties as the administrator, from or endorsed by a department-recognized national accreditation health or personal care organization such as:

(A) The American Association of Homes and Services for the Aging, or

(B) The American Health Care Association, or

(C) The Assisted Living Federation of America, or

(D) The National Association of Board of Examiners of Long Term Care Administrators.

(ii) Has one year paid experience:

(A) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social

service agency for the provision of care to vulnerable adults, such as supported living; and/or

(B) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living.

(iii) Has completed a qualifying administrator training program supervised by a qualified administrator according to WAC 388-78A-0530.

(f) Prior to assuming duties as an administrator, the individual has five years of paid experience:

(i) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

(ii) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0520, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0530 Qualifying administrator training program. Before the licensee appoints an individual who must have completed a qualifying administrator training program in order to qualify as a boarding home administrator, the licensee must verify the individual has completed the training and obtain documentation from the individual that the training program met the following requirements:

(1) The department was notified of the beginning date of the administrator training program;

(2) The administrator training program was at least six months in duration following notification of the department;

(3) Only training, supervision, and experience occurring following notification of the department were credited to the qualifying training;

(4) The supervising administrator met the qualifications to be an administrator specified in WAC 388-78A-0520;

(5) The trainee was a full-time employee of a boarding home and spent at least forty percent of his/her time for six months of the training program performing administrative duties customarily assigned to boarding home administrators or included in the job description of the administrator for the boarding home in which the training occurred;

(6) The supervising administrator was present on site at the boarding home during the time the trainee performed administrator duties;

(7) The supervising administrator spent a minimum of one hundred direct contact hours with the trainee during the six months supervising and consulting with the trainee;

(8) Both the trainee and supervising administrator signed documentation of the trainee's qualifying experience and the supervising administrator's performance of required oversight duties; and

(9) The individual completing the qualifying administrator training program maintains the documentation of completing the program.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0530, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0540 Administrator training requirements. The licensee must ensure the boarding home administrator:

(1) Meets the training requirements of chapter 388-112 WAC; and

(2) Completes department training of Washington state statutes and administrative rules related to the operation of a boarding home.

(a) The training must include, but is not limited to, an overview of:

(i) Chapter 18.20 RCW, Boarding homes;

(ii) Chapter 43.43 RCW, Criminal history background checks;

(iii) Chapter 74.34 RCW, Abuse of vulnerable adults;

(iv) Chapter 70.129 RCW, Long-term care resident rights;

(v) Chapter 388-78A WAC; and

(vi) Chapter 388-112 WAC, Long-term care services training.

(b) The introduction to the training must be completed within two weeks of assuming duties as a boarding home administrator.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0540, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-055 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-78A-0550 Administrator training documentation. The boarding home must maintain for department review, documentation of the administrator completing:

(1) Training required per chapter 388-112 WAC, Long-term care services training;

(2) Department training in an overview of Washington state statutes and administrative rules related to the operation of a boarding home;

(3) As applicable, certification from a department-recognized national accreditation health or personal care organization; and

(4) As applicable, the qualifying administrator-training program.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0550, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0560 Administrator responsibilities. The licensee must ensure the administrator:

(1) Adequately directs and supervises the overall twenty-four-hour-per-day operation of the boarding home;

(2) Ensures residents receive adequate care and services that meet the standards of this chapter;

(3) Is readily accessible to meet with residents;

(4) Complies with the boarding home's policies;

(5) When the administrator is 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 decisions and direct operations of the boarding home that are necessary during the administrator's absence.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0560, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0570 Notification of change in administrator. The licensee must notify the department in writing within ten calendar days of the effective date of a change in the boarding home administrator. The notice must include the full name of the new administrator and the effective date of the change.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0570, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0580 Use of home health/home care. If a boarding home licensee also has a home health or home care license, the licensee may not provide care or services to nonresident individuals living in independent living units on the boarding home premises under the home health or home care license if:

(1) The licensee assumes general responsibility for the safety and well-being of the individual;

(2) The individual requiring such services is not able to receive them in his or her own home and is required to move to another room as a condition for receiving such services;

(3) The individual receiving such services is required to receive them from the licensee as a condition for residing in the building, and is not free to receive such services from any appropriately licensed provider of his or her choice; or

(4) The licensee provides other care or services to the individual, that falls under the jurisdiction of boarding home licensing and this chapter.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0580, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0590 Management agreements. (1) If the licensee uses a manager, the licensee must have a written management agreement approved by the department that is consistent with this section.

(2) The licensee may enter into a management agreement only if the management agreement creates a principal/agent relationship between the licensee and the manager.

(3) The licensee must ensure the manager acts in conformance with a department-approved management agreement with the boarding home licensee.

(4) A licensee must not delegate the following to a manager:

(a) The licensee's responsibility to ensure that the boarding home is operated in a manner consistent with all laws and rules applicable to boarding homes;

(b) The licensee's responsibility to review, acknowledge and sign all boarding home initial and renewal license applications.

(5) The licensee must ensure that its manager does not represent itself as, or give the appearance that it is the licensee.

(6) A duly authorized manager may execute resident leases or agreements on behalf of the licensee, but all such resident leases or agreements must be between the licensee and the resident.

(7) The licensee must notify the department of its use of a manager and provide a copy of any written management agreement to the department upon the following:

- (a) Initial application for a license;
- (b) Retention of a manager following initial application;
- (c) Change of managers; or
- (d) Modification of existing management agreement.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0590, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-060 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-78A-0600 Policies and procedures. (1) The boarding home must develop and implement policies and procedures necessary to:

- (a) Maintain or enhance the quality of life for residents;
- (b) Provide the necessary care and services for residents, including those with special needs; and
- (c) Safely operate the boarding home.

(2) The boarding home must develop, implement and train staff persons on policies and procedures to address what staff persons must do:

(a) When there is reason to believe a resident is not capable of making necessary decisions and no substitute decision maker is available;

(b) When a substitute decision maker is no longer appropriate because:

- (i) The resident's condition has changed; or
- (ii) The substitute decision maker is not acting according to chapters 7.70, 11.88, 11.92, 11.94, or 70.122 RCW, or other applicable statutes or rules.

(c) When a resident stops breathing or a resident's heart appears to stop beating, including the action staff persons must take:

- (i) Related to cardio-pulmonary resuscitation (CPR);
- (ii) Related to calling 911;
- (iii) When a resident has documents related to Emergency Medical Services (EMS) No CPR Guidelines consistent with chapter 43.70 RCW and chapter 246-976 WAC;
- (iv) To provide EMS personnel with a copy of the resident's advance directive when the resident has executed an advance directive;

(v) When a resident has a do-not-resuscitate (DNR) order/ directive from a health professional;

(vi) When a resident has a full code directive;

(vii) When a resident has not made known his or her decision or preferences about CPR;

(viii) When a resident is incompetent and not able to make a decision about CPR; and

(ix) When a resident is in a hospice program.

(d) When a resident does not have a personal physician or health care provider;

- (e) In response to medical emergencies;

(f) When there are urgent situations in the boarding home requiring additional staff support;

(g) In the event of an internal or external disaster, consistent with WAC 388-78A-0680;

(h) To supervise and monitor residents, including accounting for residents who leave the premises;

(i) To appropriately respond to aggressive or assaultive residents, including but not limited to:

- (i) Actions to take if a resident becomes violent,
- (ii) Actions to take to protect other residents, and
- (iii) When and how to seek outside intervention.

(j) To prevent and limit the spread of infections consistent with WAC 388-78A-0610;

(k) To manage residents' medications, consistent with WAC 388-78A-0180 through 388-78A-0260, including:

(i) How medications will be ordered and brought into the boarding home;

(ii) Actions to take if a resident's medications are not available;

(iii) Recording and documenting prescriber's orders;

(iv) Providing and documenting medication assistance;

(v) Providing and documenting medication administration, if this service is provided in the boarding home;

(vi) Sending medications with a resident when the resident leaves the premises;

(vii) Safe and secure storage of medications;

(viii) Inventory of schedule II and III drugs;

(ix) Disposing of discontinued and/or outdated medications;

(x) Use of medication organizers; and

(xi) Actions to take when a resident chooses not to take prescribed medications.

(1) When services related to medications and treatments are provided under the delegation of registered nurse consistent with chapter 246-840 WAC;

(m) Related to food services consistent with chapter 246-215 WAC, including:

(i) Food service sanitation,

(ii) Procuring and storing food,

(iii) Food preparation, and

(iv) Modified diets and nutritional supplements.

(n) Regarding the safe operation of any boarding home vehicles used to transport residents, and the qualifications of the drivers.

(3) The boarding home must make the policies and procedures specified in subsection (2) of this section available to staff persons at all times and residents and residents' representatives upon request.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0600, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0605 Pets. If a boarding home allows pets to live on the premises, the boarding home must:

(1) Develop, implement and disclose to potential and current residents, policies regarding:

(a) The types of pets that are permitted in the boarding home, and

(b) The conditions under which pets may be in the boarding home.

(2) Ensure animals living on the boarding home premises:

(a) Have regular examinations and immunizations, appropriate for the species, by a veterinarian licensed in Washington state;

(b) Are certified by a veterinarian to be free of diseases transmittable to humans;

(c) Are restricted from central food preparation areas.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0605, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0610 Infection control. (1) The boarding home must institute appropriate infection control practices in the boarding home to prevent and limit the spread of infections.

(2) The boarding home must:

(a) Develop and implement a system to identify and manage infections;

(b) Restrict a staff person's contact with residents when the staff person has a known communicable disease in the infectious stage that is likely to be spread in the boarding home setting or by casual contact;

(c) Provide staff persons with the necessary supplies, equipment and protective clothing for preventing and controlling the spread of infections;

(d) Provide all resident care and services according to current acceptable standards for infection control;

(e) Perform all housekeeping, cleaning, laundry, and management of infectious waste according to current acceptable standards for infection control;

(f) Report communicable diseases in accordance with the requirements in chapter 246-100 WAC.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0610, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0620 Reporting abuse and neglect. (1) The boarding home must ensure that each staff person:

(a) Makes a report to the department consistent with chapter 74.34 RCW in all cases where the staff person has reasonable cause to believe that abandonment, abuse, financial exploitation, or neglect of a vulnerable adult has occurred; and

(b) Makes an immediate report to the appropriate law enforcement agency and the department consistent with chapter 74.34 RCW of all incidents of suspected sexual abuse or physical abuse of a resident.

(2) The boarding home must prominently post so it is readily visible to staff, residents and visitors, the department's toll-free telephone number for reporting resident abuse and neglect.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0620, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0630 Reporting significant change in a resident's condition. (1) The boarding home must consult with the resident's representative, the resident's physician, and other individual(s) designated by the resident as soon as possible whenever:

(a) There is a significant change in the resident's condition;

(b) The resident is relocated to a hospital or other health care facility; or

(c) The resident dies.

(2) The boarding home must notify any agency responsible for paying for the resident's care and services as soon as possible whenever:

(a) The resident is relocated to a hospital or other health care facility; or

(b) The resident dies.

(3) Whenever the conditions in subsections (1) or (2) of this section occur, the boarding home must document in the resident's records:

(a) The date and time each individual was contacted; and

(b) The individual's relationship to the resident.

(4) In case of a resident's death, the boarding home must notify the coroner if required by RCW 68.50.010.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0630, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0635 Reporting fires and incidents.

The boarding home must immediately report to the department's aging and disability services administration:

(1) Any accidental or unintended fire, or any deliberately set but improper fire, such as arson, in the boarding home;

(2) Any unusual incident that could or did require implementation of the boarding home's disaster plan, including any evacuation of all or part of the residents to another area of the boarding home or to another address; and

(3) Circumstances which threaten the boarding home's ability to ensure continuation of services to residents.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0635, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0640 Resident rights. The boarding home must:

(1) Comply with chapter 70.129 RCW, Long-term care residents rights;

(2) Ensure all staff persons are knowledgeable of the requirements of chapter 70.129 RCW and provide care and services to each resident consistent with chapter 70.129 RCW;

(3) Not use restraints on any resident;

(4) Promote and protect the residents' exercise of all rights granted under chapter 70.129 RCW;

(5) Provide care and services to each resident in compliance with applicable state statutes related to substitute health care decision-making, including chapters 7.70, 70.122, 11.88, 11.92, and 11.94 RCW; and

(6) Reasonably accommodate residents consistent with applicable state and/or federal law.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0640, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0650 Services by resident for boarding home. If a resident performs services for the boarding home, the boarding home must ensure:

(1) The resident freely volunteers to perform the services without coercion or pressure from staff persons;

(2) Resident-care staff persons provide on-site supervision of the resident's performance of any services;

(3) The resident performing services does not supervise, or is not placed in charge of, other residents; and

(4) If the resident regularly performs voluntary services for the benefit of the boarding home, the volunteer activity is addressed in the resident's negotiated service agreement.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0650, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0660 Boarding home use of audio and video monitoring. (1) Except as provided for in WAC 388-78A-0670, the boarding home must not use:

(a) Any audio monitoring on the boarding home premises; or

(b) Any audio monitoring used in combination with video monitoring.

(2) The boarding home may video monitor and/or video record activity on the boarding home premises, without an audio component, only in the following areas:

(a) Boarding home entrances and exits if the camera(s) is:

(i) Focused only on the entrance/exit doorways, and
(ii) Not focused on areas where residents may congregate.

(b) Areas used exclusively by staff persons such as, but not limited to, medication storage areas or food preparation areas, if residents do not go into these areas;

(c) Outdoor areas not commonly used by residents, such as, but not limited to, delivery areas; and

(d) Designated smoking areas excluding resident rooms, subject to the following conditions:

(i) When the area is being used by residents assessed as needing supervision for smoking, a staff person must watch the video monitor at any time the area is being used by such residents for smoking;

(ii) The video camera must be placed in a clearly visible area;

(iii) The video monitor must be placed where it cannot be viewed by the general public; and

(iv) All residents in the facility must be notified of the use of the video monitoring.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0660, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0670 Resident use of electronic monitoring. (1) The boarding home must limit the use of resident-initiated video or audio monitoring to the sleeping room or apartment of the resident who requested the monitoring.

(2) If a resident requests video or audio monitoring in his/her sleeping room or apartment, before any monitoring occurs the boarding home must ensure:

(a) Appropriate actions are taken to ensure monitoring is consistent with and does not violate chapter 9.73 RCW;

(b) The resident has identified a threat to his or her safety or health, or the safety of his or her possessions, and has requested electronic monitoring;

(c) The resident's roommate has provided written consent to the monitoring, if the resident has a roommate; and

(d) The resident and the boarding home have agreed upon a specific duration for the use of the monitoring, and the boarding home has documented the agreement.

(3) The boarding home must reevaluate the need for resident-initiated electronic monitoring with the resident at least quarterly or more often as appropriate.

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(4) The boarding home must discontinue the use of resident-initiated electronic monitoring immediately if:

(a) The resident no longer desires it,

(b) The roommate objects to the use, or

(c) The resident becomes unable to give consent.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0670, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0680 Safety measures and disaster preparedness. (1) The boarding home must take necessary action to promote the safety of each resident whenever the resident is on the boarding home premises or under the supervision of staff persons, consistent with the resident's negotiated service agreement.

(2) The boarding home must:

(a) Maintain the premises free of hazards;

(b) Maintain any vehicles used for transporting residents in a safe condition;

(c) Investigate and document investigative actions and findings for any alleged or suspected neglect or abuse or exploitation, accident or incident jeopardizing or affecting a resident's health or life. The boarding home must:

(i) Determine the circumstances of the event;

(ii) Institute and document appropriate measures to prevent similar future situations if the alleged incident is substantiated; and

(iii) Protect other residents during the course of the investigation.

(d) Provide appropriate hardware on doors of storage rooms, closets and other rooms to prevent residents from being accidentally locked in;

(e) Provide, and advise staff persons of, a means of emergency access to resident-occupied bedrooms, toilet rooms, bathing rooms, and other rooms;

(f) Provide emergency lighting or flashlights in all areas of the boarding home. For all boarding homes first issued a project number by construction review services on or after September 1, 2004 the boarding home must provide emergency lighting in all areas of the boarding home;

(g) Make sure first-aid supplies are:

(i) Readily available and not locked;

(ii) Clearly marked;

(iii) Able to be moved to the location where needed; and

(iv) Stored in containers that protect them from damage, deterioration, or contamination.

(h) Make sure first-aid supplies are appropriate for:

(i) The size of the boarding home,

(ii) The services provided,

(iii) The residents served, and

(iv) The response time of emergency medical services.

(i) Develop and maintain a current disaster plan describing measures to take in the event of internal or external disasters, including but not limited to:

(i) On-duty staff persons' responsibilities;

(ii) Provisions for summoning emergency assistance;

(iii) Plans for evacuating residents from area or building;

(iv) Alternative resident accommodations;

(v) Provisions for essential resident needs, supplies and equipment including water, food, and medications; and

(vi) Emergency communication plan.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0680, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0690 Disclosure of services. (1) The boarding home must disclose to the public the information required on the department's approved disclosure forms available from the department.

(2) The boarding home must provide services in the boarding home consistent with the information the boarding home disclosed to the public on the department's approved disclosure forms.

(3) The boarding home must notify potential residents of their rights regarding health care decision making consistent with applicable state and federal laws and rules, before or at the time the individual moves into the boarding home.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0690, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-070 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-78A-0700 Timing of disclosure. (1) The boarding home must disclose the information regarding the operation of the boarding home:

(a) In response to a request by a prospective resident or his or her representative for written information about the boarding home's services and capabilities; or

(b) If no such request for written information was previously made by the resident or his or her representative, at the time the boarding home provides an application for residency at the boarding home and with any admission agreements or contracts, if not previously received by the prospective resident.

(2) The boarding home is not required to provide the detailed disclosure of services contained on the department's approved disclosure forms:

(a) In advertisements;

(b) In general marketing information to the public; or

(c) To persons seeking general information regarding residential care resources in the community.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0700, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0710 Licensee qualifications. The department must consider separately and jointly as applicants each person named in the application for a boarding home license.

(1) If the department finds any person unqualified as specified in WAC 388-78A-1190, the department must deny, terminate, or not renew the license.

(2) If the department finds any person unqualified as specified in WAC 388-78A-1160, the department may deny, terminate, or not renew the license.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0710, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0720 Necessary information. In making a determination whether to issue a boarding home license, the department may review the following information for each person named in the application:

(1) Information in the application; and

(2) Other documents and information the department deems relevant, including inspection and complaint investigation findings for each facility with which the applicant or any partner, officer, director, managerial employee, or owner of five percent or more of the entity applicant has been affiliated.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0720, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0730 Application process. To apply for a boarding home license, a person must:

(1) Submit to the department a complete license application on forms designated by the department at least ninety days prior to the proposed effective date of the license;

(2) Submit all relevant attachments specified in the application;

(3) Submit criminal history background requests as required in WAC 388-78A-0470;

(4) Sign the application;

(5) Submit the license fee as specified in WAC 388-78A-1240;

(6) Submit verification that construction plans have been approved by construction review services;

(7) Submit a revised application before the license is issued if any information has changed since the initial license application was submitted;

(8) Submit a revised application containing current information about the proposed licensee or any other persons or entities named in the application, if a license application is pending for more than one year; and

(9) If the licensee's agent prepares an application on the licensee's behalf, the licensee must review, sign and attest to the accuracy of the information contained in the application.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0730, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0740 Requirements to change boarding home licensee. In order to change the licensee of a boarding home, the licensee must:

(1) Ensure the person who wants to become the new licensee:

(a) Submits a completed license application on forms designated by the department, at least ninety days prior to the proposed effective date of a change in the licensee;

(b) Signs the application;

(c) Submits the annual license fee, if a licensing fee is due;

(d) Submits evidence of control of the real estate on which the boarding home is located, such as a purchase and sales agreement, lease contract, or other appropriate document;

(e) Submits a revised application if any information included on the original application is no longer accurate; and

(f) Completes and submits a revised application if requested by the department.

(2) Notify the department and all residents of the proposed change in licensee at least sixty days prior to the proposed date of transfer, including the following information:

(a) Name of the present licensee and prospective licensee;

(b) Name and address of the boarding home being transferred;

(c) Date of proposed transfer; and

(d) If the boarding home contracts with the department or other public agencies that may make payments for residential care on behalf of residents, the anticipated effect the change of licensee will have on residents whose care and services are supported through these contracts.

(3) Send a letter to the department stating the licensee's intent to relinquish the boarding home license on the effective date of change in licensee.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0740, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0750 Annual renewal. To renew a boarding home license, the boarding home must:

(1) Submit a completed license renewal application on forms designated by the department, at least thirty days prior to the license expiration date;

(2) Sign the application;

(3) Submit the annual renewal license fee as specified in WAC 388-78A-1240; and

(4) If the licensee's agent prepares a renewal application on the licensee's behalf, the licensee must review, sign and attest to the accuracy of the information contained on the renewal application.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0750, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0760 Licensee's responsibilities. (1) The boarding home licensee is responsible for:

(a) The operation of the boarding home;

(b) Complying with the requirements of this chapter, chapter 18.20 RCW, and other applicable laws and rules; and

(c) The care and services provided to the boarding home residents.

(2) The licensee must:

(a) Maintain the occupancy level at or below the licensed resident bed capacity of the boarding home;

(b) Maintain and post in a size and format that is easily read, in a conspicuous place on the boarding home premises:

(i) A current boarding home license, including any related conditions on the license;

(ii) The name, address and telephone number of:

(A) The department,

(B) Appropriate resident advocacy groups, and

(C) State and local long-term care ombudsman with a brief description of ombudsman services.

(iii) A copy of the report and plan of correction of the most recent full inspection conducted by the department.

(c) Ensure any party responsible for holding or managing residents' personal funds is bonded, or obtains insurance in sufficient amounts, to specifically cover losses of resident funds; and provides proof of bond or insurance to the department.

(3) The licensee must not delegate to any person responsibilities that are so extensive that the licensee is relieved of responsibility for the daily operations and provisions of services in the boarding home.

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(4) The licensee must act in accord with any department-approved management agreement, if the licensee has entered into a management agreement.

(5) The licensee must appoint the boarding home administrator consistent with WAC 388-78A-0520.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0760, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0770 Change in licensee. (1) The licensee of a boarding home must change whenever the following events occur, including, but not limited to:

(a) The licensee's form of legal organization is changed (e.g., a sole proprietor forms a partnership or corporation);

(b) The licensee transfers ownership of the boarding home business enterprise to another party regardless of whether ownership of some or all of the real property and/or personal property assets of the boarding home is also transferred;

(c) The licensee dissolves, or consolidates or merges with another legal organization and the licensee's legal organization does not survive;

(d) If, during any continuous twenty-four-month period, fifty percent or more of the "**licensed entity**" is transferred, whether by a single transaction or multiple transactions, to:

(i) A different party (e.g., new or former shareholders), or

(ii) A person that had less than a five percent ownership interest in the boarding home at the time of the first transaction.

(e) Any other event or combination of events that results in a substitution, elimination, or withdrawal of the licensee's control of the boarding home. "**Control**" as used in this section means the possession, directly or indirectly, of the power to direct the management, operation and/or policies of the licensee or boarding home, whether through ownership, voting control, by agreement, by contract or otherwise.

(2) The licensee is not required to change when the following, without more, occur:

(a) The licensee contracts with a party to manage the boarding home enterprise for the licensee pursuant to an agreement as specified in WAC 388-78A-0590; or

(b) The real property or personal property assets of the boarding home are sold or leased, or a lease of the real property or personal property assets is terminated, as long as there is not a substitution or substitution of control of the licensee or boarding home.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0770, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0780 Changes in licensed bed capacity. To change the licensed bed capacity in a boarding home, the boarding home must:

(1) Submit a completed request for approval to the department at least thirty days before the intended change;

(2) Submit the prorated fee required according to WAC 388-78A-1240; and

(3) Obtain an amended license indicating the new bed capacity.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0780, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0790 Criteria for increasing licensed bed capacity. Before the licensed bed capacity in a boarding home may be increased, the boarding home must:

- (1) Obtain construction review services' review and approval of the additional rooms or beds, and related auxiliary spaces, if not previously reviewed and approved; and
- (2) Ensure the increased licensed bed capacity does not exceed the maximum facility capacity as determined by the department.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0790, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-080 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-78A-0800 Building requirements and exemptions. (1) To get a building approved for licensing, a person must:

- (a) Design plans according to the building code, local codes and ordinances, and this chapter;
 - (b) Submit construction documents, including any change orders and addenda to:
 - (i) Construction review services per WAC 388-78A-0830, and
 - (ii) Local county or municipal building departments per local codes to obtain necessary building permits.
 - (c) Conform to the approved construction documents during construction in accordance with chapter 18.20 RCW;
 - (d) Obtain written approval from construction review services prior to deviating from approved construction documents;
 - (e) Provide construction review services with a:
 - (i) Written notice of completion date,
 - (ii) Copy of reduced floor plan(s), and
 - (iii) Copy of certificate of occupancy issued by the local building department.
 - (f) Obtain authorization from department prior to providing domiciliary care in the new construction area.
- (2) The department may exempt the boarding home from meeting a specific requirement related to the physical environment if the department determines the exemption will not:
- (a) Jeopardize the health or safety of residents;
 - (b) Adversely affect the residents' quality of life; or
 - (c) Change the fundamental nature of the boarding home operation into something other than a boarding home.
- (3) A boarding home wishing to request an exemption must submit a written request to the department, including:
- (a) A description of the requested exemption; and
 - (b) The specific WAC requirement for which the exemption is sought.
- (4) The boarding home may not appeal the department's denial or a request for an exemption.
- (5) The boarding home must retain a copy of each approved exemption in the boarding home.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0800, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0810 Conversion of licensed nursing homes. (1) If a person intends to convert a licensed nursing home building into a licensed boarding home, the building must meet all boarding home licensing requirements speci-

fied in this chapter and chapter 18.20 RCW unless the licensee has a contract with the department to provide enhanced adult residential care services in the boarding home per RCW 18.20.220.

(2) If the licensee provides contracted enhanced adult residential care services in the building converted from a licensed nursing home into a licensed boarding home, the boarding home licensing requirements for the physical structure are considered to be met if the most recent nursing home inspection report for the nursing home building demonstrates compliance, and compliance is maintained, with safety standards and fire regulations:

- (a) As required by RCW 18.51.140; and
- (b) Specified in the applicable building code, as required by RCW 18.51.145, including any waivers that may have been granted, except that the licensee must ensure the building meets the licensed boarding home standards, or their functional equivalency, for:
 - (i) Resident to bathing fixture ratio required per WAC 388-78A-1010,
 - (ii) Resident to toilet ratio required per WAC 388-78A-1010,
 - (iii) Corridor call system required per WAC 388-78A-0910,
 - (iv) Resident room door closures, and
 - (v) Resident room windows required per WAC 388-78A-0990.

(3) If the licensee does not continue to provide contracted enhanced adult residential care services in the boarding home converted from a licensed nursing home, the licensee must meet all boarding home licensing requirements specified in this chapter and chapter 18.20 RCW.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0810, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0820 Licenses for multiple buildings.

(1) The licensee may have multiple buildings operating under a single boarding home license if:

- (a) All of the buildings are located on the same property with the same legal description; or
 - (b) All of the buildings are located on contiguous properties undivided by:
 - (i) Public streets, not including alleyways used primarily for delivery services or parking, or
 - (ii) Other land that is not owned and maintained by the owners of the property on which the boarding home is located.
- (2) The licensee must have separate boarding home licenses for buildings that are not located on the same or contiguous properties.

(3) Buildings that construction review services reviewed only as an addition to, or a remodel of, an existing boarding home must not have separate boarding home licenses.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0820, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0830 Required reviews of building plans. (1) A person or boarding home must notify construction review services of all planned construction regarding boarding homes prior to beginning work on any of the following:

(a) A new building or portion thereof to be used as a boarding home;

(b) An addition of, or modification or alteration to an existing boarding home, including but not limited to, the boarding home's:

- (i) Physical structure;
- (ii) Electrical fixtures or systems;
- (iii) Mechanical equipment or systems;
- (iv) Fire alarm fixtures or systems;
- (v) Fire sprinkler fixtures or systems; and
- (vi) Kitchen or laundry equipment.

(c) A change in the department approved use of an existing boarding home or portion of a boarding home; and

(d) An existing building or portion thereof to be converted for use as a boarding home.

(2) A person or boarding home does not need to notify construction review services of the following:

(a) Repair or maintenance of equipment, furnishings or fixtures;

(b) Replacement of equipment, furnishings or fixtures with equivalent equipment, furnishings or fixtures;

(c) Repair or replacement of damaged construction if the repair or replacement is performed according to construction documents approved by construction review services within eight years preceding the current repair or replacement;

(d) Painting, wall papering, and carpeting; or

(e) Cosmetic changes that do not affect resident activities, services, or care and are performed in accordance with the current edition of the building code dealing with interior finishes.

(3) The boarding home must include in its notification to construction review services, the likely adverse impacts of the construction process on current boarding home residents.

(4) The boarding home must submit plans to construction review services as directed by construction review services prior to beginning any construction. The plans must provide an analysis of likely adverse impacts on current boarding home residents and plans to eliminate or mitigate such adverse impacts.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0830, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0840 Relocation of residents during construction. (1) Prior to moving residents out of the boarding home during construction, the boarding home must:

(a) Notify the department at least thirty days prior to the anticipated move date, of the boarding home's plans for relocating residents, including:

- (i) How the residents will be informed of the required move and their options consistent with chapter 70.129 RCW;
- (ii) The location to which the residents will be relocated;
- (iii) The boarding home's plans for providing care and services during the relocation;
- (iv) The boarding home's plans for returning residents to the building; and
- (v) The projected time frame for completing the construction.

(b) Obtain the department's approval for the relocation plans prior to relocating residents.

(2) If the boarding home moves out all of the residents from the boarding home without first obtaining the depart-

ment's approval of the relocation plans, the boarding home is closed for business and the department may revoke the licensee's boarding home license.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0840, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0850 Vacant buildings. Whenever a boarding home moves out all residents and ceases operation for reasons other than construction, as specified in WAC 388-78A-0840, the licensee must relinquish the boarding home license or the department may revoke the boarding home license.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0850, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0860 Changing use of rooms. Prior to using a room for a purpose other than what was approved by construction review services, the boarding home must:

(1) Notify construction review services:

(a) In writing,

(b) Thirty days or more before the intended change in use,

(c) Describe the current and proposed use of the room, and

(d) Provide all additional documentation as requested by construction review services.

(2) Obtain the written approval of construction review services for the new use of the room.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0860, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0870 Time frame for approval. (1) A person or the licensee must:

(a) Obtain approval by construction review services, of final construction documents prior to starting any construction, except for fire alarm plans, fire sprinkler plans, and landscaping plans.

(b) Obtain approval by construction review services, of landscaping, fire alarm and fire sprinkler plans prior to their installation.

(2) The department will not issue a boarding home license unless construction review services:

(a) Notifies the department that construction has been completed;

(b) Provides the department:

(i) A copy of the certificate of occupancy granted by the local building official;

(ii) A copy of the functional program; and

(iii) A reduced copy of the approved floor plan indicating room numbers or names and the approved use.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0870, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0880 Retention of approved construction documents. The boarding home must retain on the boarding home premises:

(1) Specification data on materials used in construction, for the life of the product;

(2) Stamped "approved" set of construction documents.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0880, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0890 Applicable building codes. (1) Newly licensed boarding homes and construction in existing boarding homes must meet all the current building codes and this chapter.

(2) Existing licensed boarding homes must continue to meet the building codes in force at the time of their initial licensing.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0890, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-090 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-78A-0900 Area for nursing supplies and equipment. (1) If the boarding home provides nursing services, the boarding home must provide on the boarding home premises for the safe and sanitary:

(a) Storage and handling of clean and sterile nursing equipment and supplies; and

(b) Cleaning and disinfecting of soiled nursing equipment.

(2) For all boarding homes first issued a project number by Construction Review Services on or after September 1, 2004 in which nursing services are provided, or upon initiating nursing services within an existing boarding home, the boarding home must provide the following two separate rooms in each boarding home building, accessible only by staff persons:

(a) A "clean" utility room for the purposes of storing and preparing clean and sterile nursing supplies, equipped with:

(i) A work counter or table;

(ii) Hand washing sink, with soap and paper towels or other approved hand-drying device; and

(iii) Locked medication storage, if medications are stored in this area, that is separate from all other stored items consistent with WAC 388-78A-0230.

(b) A "soiled" utility room for the purposes of storing soiled linen, cleaning and disinfecting soiled nursing care equipment, and disposing of refuse and infectious waste, equipped with:

(i) A work counter or table;

(ii) A two-compartment sink for hand washing and equipment cleaning and sanitizing;

(iii) A clinical service sink or equivalent for rinsing and disposing of waste material;

(iv) Soap and paper towels or other approved hand-drying device; and

(v) Locked storage for cleaning supplies, if stored in the area.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0900, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0910 Communication system. (1) The licensee must ensure the boarding home:

(a) Provides residents and staff with the means to summon on-duty staff assistance from:

(i) Resident units;

(ii) Common areas accessible to residents;

(iii) Corridors accessible to residents; and

(iv) All bathrooms and all toilet rooms in boarding homes issued a project number by construction review services on or after September 1, 2004.

(b) Provides residents, families, and other visitors with the means to contact staff inside the building from outside the building after hours.

(2) The boarding home must provide one or more non-pay telephones:

(a) In each building located for ready access by staff; and

(b) On the premises for reasonable access and privacy by residents.

(3) In boarding homes issued a project number by construction review services on or after September 1, 2004, the boarding home must equip each resident room with:

(a) An intercom system with a mechanism that allows a resident to control:

(i) Whether or not announcements are broadcast into the resident's room, and

(ii) Whether or not voices or conversations within the resident's room can be monitored or listened to by persons outside the resident's room.

(b) Two telephone lines that are compatible with:

(i) Telecommunication devices for the deaf equipment, and

(ii) Telephones that have:

(A) Visual signals for ringing, and

(B) Voice amplification.

(c) Television cable access where available in the community.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0910, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0920 Two-way intercom systems. The boarding home may use a two-way intercom system between staff persons and residents in other rooms only when:

(1) A resident initiates the contact; or

(2) Staff persons announce to the resident that the intercom has been activated at the time it is activated, and:

(a) The resident and any others in the room agree to continue the contact,

(b) A visible signal is activated in the resident's room at all times the intercom is in operation, and

(c) The boarding home deactivates the intercom when the conversation is complete.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0920, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0930 Water supply. The boarding home must:

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

(2) Maintain the boarding home water systems free of cross-connections as specified in *Cross-Connection Control Manual, 6th Edition*, published by the Pacific Northwest Section of the American Water Works Association;

(3) Provide hot and cold water under adequate pressure readily available throughout the boarding home;

(4) Provide all sinks and bathing fixtures used by residents with hot water between 105 and 120°F at all times;

(5) Label or color code nonpotable water supplies "**unsafe for domestic use**"; and

(6) Meet laundry and dishwashing water temperature requirements consistent with WAC 388-78A-1020 and 388-78A-0270.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0930, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0940 Sewage and liquid waste disposal. The boarding home must:

(1) Ensure all sewage and waste water drain into a municipal sewage disposal system in accordance with chapter 246-271 WAC, if available; or

(2) Provide on-site sewage disposal systems designed, constructed, and maintained as required by chapters 246-272 and 173-240 WAC, and local ordinances; and

(3) Provide a grease interceptor when the boarding home has an on-site commercial kitchen or septic system in accordance with chapter 246-272 WAC.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0940, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0950 Garbage and refuse disposal. The boarding home must:

(1) Provide an adequate number of garbage containers to store refuse generated by the boarding home:

(a) Located in a storage area convenient for resident and staff use;

(b) Constructed of nonabsorbent material;

(c) Cleaned and maintained to prevent:

(i) Entrance of insects, rodents, birds, or other pests;

(ii) Odors; and

(iii) Other nuisances.

(2) Assure garbage and waste containers are emptied frequently to prevent hazards and nuisances; and

(3) Provide for safe and sanitary collection and disposal of:

(a) Garbage and refuse,

(b) Infectious waste, and

(c) Waste grease from the kitchen.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0950, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0960 Lighting. (1) The boarding home must maintain electric light fixtures and lighting necessary for the comfort and safety of residents and for the activities of residents and staff.

(2) The boarding home must maintain lighting in common areas that meets Illuminating Engineering Society (IES) recommendations as follows:

AVERAGE MAINTAINED FOOTCANDLES

Area	Ambient Light	Task Light
Toilet, bathing and laundry facilities	30	50
Dining/day rooms	50	N/A
Corridors, hallways, and stairways	30	N/A
Janitor's closet and utility rooms	30	N/A
Reading rooms	100	N/A

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(3) The boarding home must provide enough lighting in each resident's room to meet the resident's needs, preferences and choices.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0960, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0970 Heating-cooling—Temperature. The boarding home must:

(1) Equip each resident-occupied building with an approved heating system capable of maintaining a minimum temperature of 70°F per the building code.

(2) Equip each resident-occupied building with a mechanical air cooling system or equivalent capable of maintaining a temperature of 75°F in communities where the design dry bulb temperature exceeds 85°F for one hundred seventy-five hours per year or two percent of the time, as specified in the latest edition of "*Recommended Outdoor Design Temperatures—Washington State*," published by Puget Sound chapter of American Society of Heating, Refrigeration, and Air-Conditioning Engineers;

(3) Equip each boarding home issued a project number by construction review services on or after September 1, 2004 with a backup source of heat in enough common areas to keep all residents adequately warm during interruptions of normal heating operations;

(4) Prohibit the use of portable space heaters unless approved in writing by the Washington state director of fire protection; and

(5) Equip each resident sleeping room and resident living room in boarding homes issued a project number by construction review services on or after September 1, 2004 with individual temperature controls located between thirty and forty-eight inches above the floor capable of maintaining room temperature plus or minus 3°F from setting, within a range of minimum 60° to maximum 85°F.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0970, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0980 Ventilation. The boarding home must:

(1) Ventilate rooms to:

(a) Prevent excessive odors or moisture, and

(b) Remove smoke.

(2) Designate and ventilate smoking areas, if smoking is permitted in the boarding home, to prevent air contamination throughout the boarding home;

(3) Provide intact sixteen mesh screens on operable windows and openings used for ventilation; and

(4) Prohibit screens that may restrict or hinder escape or rescue through emergency exit openings.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0980, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-0990 Resident room—Room furnishings-storage. (1) The boarding home must ensure each resident has a sleeping room that has:

(a) Eighty or more square feet of usable floor space in a one-person sleeping room;

(b) Seventy or more square feet of usable floor space per individual in a sleeping room occupied by two or more individuals, except:

(i) When a resident sleeping room is located within a private apartment; and

(ii) The private apartment includes a resident sleeping room, a resident living room, and a private bathroom; and

(iii) The total square footage in the private apartment equals or exceeds two hundred twenty square feet excluding the bathroom; and

(iv) There are no more than two residents living in the apartment; and

(v) Both residents mutually agree to share the resident sleeping room; and

(vi) All other requirements of this section are met, then the two residents may share a sleeping room with less than one hundred forty square feet.

(c) A maximum sleeping room occupancy of:

(i) Four individuals if the boarding home was licensed before July 1, 1989, and licensed continuously thereafter; and

(ii) Two individuals if the boarding home, after June 30, 1989:

(A) Applied for initial licensure, or

(B) Applied to increase the number of resident sleeping rooms, or

(C) Applied to change the use of rooms into sleeping rooms.

(d) Unrestricted direct access to a hallway, living room, outside, or other common-use area;

(e) One or more outside windows with:

(i) Window sills at or above grade, with grade extending horizontally ten or more feet from the building; and

(ii) Adjustable curtains, shades, blinds, or equivalent for visual privacy.

(f) One or more duplex electrical outlets per bed if the boarding home was initially licensed after July 1, 1983;

(g) A light control switch located by the entrance for a light fixture in the room;

(h) An individual towel and washcloth rack or equivalent, except when there is a private bathroom attached to the resident sleeping or living room, the individual towel and washcloth rack may be located in the attached private bathroom;

(i) In all boarding homes issued a project number by construction review services on or after September 1, 2004, and when requested by a resident in a boarding home licensed on or prior to September 1, 2004, provide a lockable drawer, cupboard or other secure space measuring at least one-half cubic foot with a minimum dimension of four inches;

(j) Separate storage facilities for each resident in or immediately adjacent to the resident's sleeping room to adequately store a reasonable quantity of clothing and personal possessions;

(k) A configuration to permit all beds in the resident sleeping room to be spaced at least three feet from other beds unless otherwise requested by all affected residents.

(2) The boarding home must ensure each resident sleeping room contains:

(a) A comfortable bed for each resident, except when two residents mutually agree to share a bed. The bed must be thirty-six or more inches wide for a single resident and fifty-

four or more inches wide for two residents, appropriate for size, age and physical condition of the resident and room dimensions, including but not limited to:

(i) Standard household bed,

(ii) Studio couch,

(iii) Hide-a-bed,

(iv) Day bed, or

(v) Water bed, if structurally and electrically safe.

(b) A mattress for each bed which:

(i) Fits the bed frame,

(ii) Is in good condition, and

(iii) Is at least four inches thick unless otherwise requested or necessary for resident health or safety.

(c) One or more comfortable pillows for each resident;

(d) Bedding for each bed, in good repair; and

(e) Lighting at the resident's bedside when requested by the resident.

(3) The boarding home must not allow a resident sleeping room to be used as a passageway or corridor.

(4) The boarding home may use or allow use of carpets and other floor coverings only when the carpet is:

(a) Securely fastened to the floor or provided with non-skid backing; and

(b) Kept clean and free of hazards, such as curling edges or tattered sections.

(5) The boarding home must ensure each resident has either a sleeping room or resident living room that contains a sturdy, comfortable chair appropriate for the age and physical condition of the resident. This requirement does not mean a boarding home is responsible for supplying specially designed orthotic or therapeutic chairs, including those with mechanical lifts or adjustments.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-0990, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-100 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-78A-1000 Calculating floor space. Usable floor space in a resident's sleeping room is calculated by measuring from interior wall surface to interior wall surface:

(1) Including:

(a) Areas under moveable furniture; and

(b) Areas of door swings and entry ways into the sleeping room.

(2) Excluding:

(a) Areas under ceilings less than seven feet six inches high;

(b) Closet space and built-in storage;

(c) Areas under counters, sinks, or appliances; and

(d) Bathrooms and toilet rooms.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-1000, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-1010 Toilet rooms and bathrooms. (1) The boarding home must provide private or common-use toilet rooms and bathrooms to meet the needs of each resident.

(2) The boarding home must provide each toilet room and bathroom with:

- (a) Water resistant, smooth, low gloss, nonslip and easily cleanable materials;
- (b) Washable walls to the height of splash or spray;
- (c) Grab bars installed and located to minimize accidental falls including one or more grab bars at each:
 - (i) Bathing fixture, and
 - (ii) Toilet.
- (d) Plumbing fixtures designed for easy use and cleaning and kept in good repair; and
- (e) Adequate mechanical ventilation to the outside of the boarding home.

(3) The boarding home must provide each toilet room with a:

- (a) Toilet with a clean, nonabsorbent seat free of cracks;
 - (b) Hand washing sink in or adjacent to the toilet room.
- For boarding homes issued a project number by Construction Review Services on or after September 1, 2004, the hand washing sink must be in the toilet room or in an adjacent private area that is not part of a common use area of the boarding home; and

(c) Suitable mirror with adequate lighting for general illumination.

(4) For boarding homes approved for construction or initially licensed after August 1, 1994, the boarding home must provide a toilet and hand washing sink in, or adjoining, each bathroom.

(5) When providing common-use toilet rooms and bathrooms, the boarding home must provide toilets and hand washing sinks for residents in the ratios of one toilet and one hand washing sink for every eight residents or fraction as listed in the following table:

Number of Residents	Number of Toilets*	Number of Hand Washing Sinks
1-8	1	1
9-16	2	2
17-24	3	3
25-32	4	4
33-40	5	5
41-48	6	6
49-56	7	7
57-64	8	8
65-72	9	9
73-80	10	10
81-88	11	11
89-96	12	12
97-104	13	13
105-112	14	14
113-120	15	15
121-128	16	16
129-136	17	17
137-144	18	18
145-152	19	19
153-160	20	20
161-168	21	21
169-176	22	22
177-184	23	23

*When two or more toilets are contained in a single bathroom, they are counted as one toilet.

(6) When providing common-use toilet rooms and bathrooms, the boarding home must provide bathing fixtures for residents in the ratio of one bathing fixture for every twelve residents or fraction thereof as listed in the following table:

Number of Residents	Number of Bathing Fixtures
1-12	1
13-24	2
25-36	3
37-48	4
49-60	5
61-72	6
73-84	7
85-96	8
97-108	9
109-120	10
121-132	11
133-144	12
145-160	13
161-172	14
173-184	15
185-196	16

(7) When providing common-use toilet rooms and bathrooms, the boarding home must:

(a) Designate toilet rooms containing more than one toilet for use by men or women;

(b) Designate bathrooms containing more than one bathing fixture for use by men or women;

(c) Equip each toilet room and bathroom designed for use by, or used by, more than one person at a time, in a manner to ensure visual privacy for each person using the room. The boarding home is not required to provide additional privacy features in private bathrooms with a single toilet and a single bathing fixture located within a private apartment;

(d) Provide a hand-washing sink with soap and single use or disposable towels, blower or equivalent hand-drying device in each toilet room, except that single use or disposable towels or blowers are not required in toilet rooms or bathrooms that are located within a private apartment;

(e) Provide reasonable access to bathrooms and toilet rooms for each resident by:

(i) Locating a toilet room on the same floor or level as the sleeping room of the resident served;

(ii) Locating a bathroom on the same floor or level, or adjacent floor or level, as the sleeping room of the resident served; and

(iii) Providing access without passage through any kitchen, pantry, food preparation, food storage, or dishwashing area, or from one bedroom through another bedroom.

(8) In boarding homes issued a project number by Construction Review Services on or after September 1, 2004, the boarding home must ensure fifty percent of all the bathing fixtures in the boarding home are roll-in type showers that have:

(a) One half inch or less threshold;

(b) A minimum size of thirty-six inches by forty-eight inches; and

(c) Single lever faucets located within thirty-six inches of the seat so the faucets are within reach of persons seated in the shower.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-1010, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-1020 Laundry. (1) The boarding home must provide laundry and linen services on the premises, or by commercial laundry.

(2) The boarding home must handle, clean, and store linen according to acceptable methods of infection control. The boarding home must:

(a) Provide separate areas for handling clean laundry and soiled laundry;

(b) Ensure clean laundry is not processed in, and does not pass through, areas where soiled laundry is handled;

(c) Ensure areas where clean laundry is stored are not exposed to contamination from other sources; and

(d) Ensure all staff wears gloves and use other appropriate infection control practices when handling soiled laundry.

(3) The boarding home must use washing machines that have a continuous supply of hot water with a temperature of 140°F measured at the washing machine intake, or that automatically dispense a chemical sanitizer as specified by the manufacturer, whenever the boarding home washes:

(a) Boarding home laundry;

(b) Boarding home laundry combined with residents' laundry into a single load; or

(c) More than one resident's laundry combined into a single load.

(4) The boarding home or a resident washing an individual resident's personal laundry, separate from other laundry, may wash the laundry at temperatures below 140°F and without the use of a chemical sanitizer.

(5) The boarding home must ventilate laundry rooms and areas to the outside of the boarding home, including areas or rooms where soiled laundry is held for processing by off-site commercial laundry services.

(6) The boarding home must locate laundry equipment in rooms other than those used for open food storage, food preparation or food service.

(7) For all boarding homes issued a project number by construction review services on or after September 1, 2004, the boarding home must provide a laundry area where residents' may do their personal laundry that is:

(a) Equipped with:

(i) A utility sink;

(ii) A table or counter for folding clean laundry;

(iii) At least one washing machine and one clothes dryer;

and

(iv) Mechanical ventilation to the outside of the boarding home.

(b) Is arranged to reduce the chances of soiled laundry contaminating clean laundry.

(8) The boarding home may combine areas for soiled laundry with other areas when consistent with WAC 388-78A-1090.

(9) The boarding home may combine areas for handling and storing clean laundry with other areas when consistent with WAC 388-78A-1100.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-1020, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-1030 Day rooms. (1) The boarding home must provide one or more day room areas in which residents may participate in social and recreational activities. Day room areas include, but are not limited to:

(a) Solariums;

(b) Enclosed sun porches;

(c) Recreation rooms;

(d) Dining rooms; and

(e) Living rooms.

(2) The boarding home must provide a total minimum floor space for day room areas of:

(a) One hundred fifty square feet, or ten square feet per resident, whichever is larger, in boarding homes licensed on or before December 31, 1988; or

(b) One hundred fifty square feet, or twenty square feet per resident, whichever is larger, in boarding homes licensed after December 31, 1988.

(3) The boarding home must provide day room areas with comfortable furniture and furnishings that meet the residents' needs.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-1030, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-1040 Storage space. The boarding home must:

(1) Provide adequate storage space for supplies, equipment and linens;

(2) Provide separate, locked storage for disinfectants and poisonous compounds; and

(3) Maintain storage space to prevent fire or safety hazards.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-1040, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-1050 Stairs—Ramps. The boarding home must maintain nonskid surfaces on all stairways and ramps used by residents.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-1050, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-1060 Guardrails—Handrails. (1) The boarding home must install and maintain sturdy handrails according to building code requirements, located:

(a) In halls and corridors, if necessary for resident safety;

(b) On each side of interior and exterior stairways with more than one step riser, unless the department approves in writing having a handrail on one side only; and

(c) On each side of interior and exterior ramps with slopes greater than one to twenty.

(2) The boarding home must install guardrails if the department determines guardrails are necessary for resident safety.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-1060, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-1070 Maintenance and housekeeping.

(1) The boarding home must:

(a) Provide a safe, sanitary and well maintained environment for residents;

(b) Keep exterior grounds, boarding home structure, and component parts safe, sanitary and in good repair;

(c) Keep facilities, equipment and furnishings clean and in good repair;

(d) Ensure each resident or staff person maintains the resident's quarters in a safe and sanitary condition; and

(e) Equip a housekeeping supply area on the premises with:

(i) A utility sink or equivalent means of obtaining and disposing of mop water, separate from food preparation and service areas;

(ii) Storage for wet mops, ventilated to the outside of the boarding home; and

(iii) Locked storage for cleaning supplies.

(2) For boarding homes issued a project number by Construction Review Services on or after September 1, 2004, the boarding home must provide housekeeping supply room(s):

(a) Located on each floor of the boarding home;

(b) In proximity to laundry and kitchen areas; and

(c) Equipped with:

(i) A utility sink or equivalent means of obtaining and disposing of mop water, away from food preparation and service areas;

(ii) Storage for wet mops;

(iii) Locked storage for cleaning supplies; and

(iv) Mechanical ventilation to the outside of the boarding home.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-1070, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-1080 Safe storage of supplies and equipment. The boarding home must secure potentially hazardous supplies and equipment commensurate with the assessed needs of residents and their functional and cognitive abilities. In determining what supplies and equipment may be accessible to residents, the boarding home must consider at a minimum:

(1) The residents' characteristics and needs;

(2) The degree of hazardousness or toxicity posed by the supplies or equipment;

(3) Whether or not the supplies and equipment are commonly found in a private home, such as hand soap or laundry detergent; and

(4) How residents with special needs are individually protected without unnecessary restrictions on the general population.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-1080, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-1090 Areas for cleaning and storing soiled equipment, supplies and laundry. (1) The boarding home may combine areas used for storing, handling and cleaning soiled laundry and linens, areas used for cleaning and disinfecting soiled nursing care equipment, areas for disposing of refuse and infectious waste, and/or areas for storing housekeeping and cleaning supplies, into a single area on the premises only when the boarding home equips the area with:

(a) A two-compartment sink for hand washing and sanitizing;

(b) A clinical service sink or equivalent for rinsing and disposing of waste material;

(c) A work counter or table;

(d) Mechanical ventilation to the outside of the boarding home; and

(e) Locked storage for cleaning supplies, if stored in the area.

(2) The boarding home must ensure that any work or function performed in or around a combined utility area as described in subsection (1) of this section is performed without significant risk of contamination to:

(a) Storing or handling clean or sterile nursing supplies or equipment;

(b) Storing or handling clean laundry;

(c) Providing resident care;

(d) Food storage, preparation, or service; or

(e) Other operations, services or functions in the boarding home sensitive to infection control practices.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-1090, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-110 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-78A-1100 Areas for handling and storing clean supplies and equipment. The boarding home may combine areas used for handling and storing clean laundry, and areas used for storing, preparing and handling clean and sterile nursing supplies, equipment and medications, into a single area on the premises only when the boarding home:

(1) Equips the area with:

(a) A handwashing sink, and

(b) A work counter or table.

(2) Ensures that any work or function performed in the area is performed without significant risk of contamination from other sources; and

(3) Stores medications separate from all other stored items consistent with WAC 388-78A-0230.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-1100, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-1110 Plant restrictions. The boarding home must not use poisonous or toxic plants in areas of the boarding home premises accessible to residents who, based on their diagnosed condition or cognitive disabilities, may ingest or have harmful contact with such plants.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-1110, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-1120 Responsibilities during inspections. (1) During any on-site inspection or complaint investigation conducted by the department, the licensee must cooperate with the department by providing to authorized representatives of the department:

(a) All records and information related to the operation of the boarding home that is requested, consistent with RCW 18.20.110;

(b) Staff personnel records directly related to licensing requirements consistent with WAC 388-78A-0460, including but not limited to:

(i) Staff hiring and training;

(ii) Criminal history background checks;

(iii) Staff job descriptions;

(iv) Staff schedules as planned and as worked for the past six months;

(v) TB testing for staff;

(vi) Verification of contacting work references for newly hired staff; and

(vii) Verification of professional credentials.

(c) A current roster of all residents receiving domiciliary care and their roommates and the rooms in which they reside/sleep consistent with WAC 388-78A-0450;

(d) Facilitated access to:

(i) The boarding home premises; and

(ii) The boarding home residents and the rooms in which they reside.

(2) The licensee must ensure the boarding home administrator or the administrator's designee is available during any inspection or complaint investigation to respond to questions or issues identified by department staff.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-1120, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-1130 Communication during inspections. (1) To the fullest extent reasonably possible, the department will hold a daily communication meeting with the boarding home during any inspection that lasts more than one day.

(a) The department is not required to disclose information to boarding homes when doing so would compromise the inspection process or complaint investigation.

(b) Department staff shall make every effort to schedule such meeting if desired by the licensee. However, failure to hold a daily communication meeting is not grounds for nullifying or voiding any citation, statement of deficiencies, or enforcement remedies imposed by the department.

(2) The boarding home may designate a staff person to accompany department licensers or complaint investigators during inspections of the boarding home, except that boarding home staff persons may not be present:

(a) During interviews with residents unless requested by the resident; or

(b) When their presence may inhibit other staff persons, residents, residents' representatives or family members or others from providing information to department licensers or complaint investigators;

(c) When their presence may compromise the investigation by department staff of a complaint or licensing issue.

(3) The department will make every effort to hold an exit conference when the department staff has finished collecting data on site, if such a meeting is desired by the licensee. However, failure to hold an exit conference is not grounds for nullifying or voiding any citation, statement of deficiencies, or enforcement remedies imposed by the department. During the exit conference:

(a) The department will present to the boarding home the preliminary factual findings representing violations that may be cited on a statement of deficiencies;

(b) The department will identify the rules that may have been violated:

(i) Department staff will identify the relevant section(s) of rule that address the potential violations.

(ii) Department staff is not required to identify the specific subsection of the rule that may be cited in a statement of deficiencies.

(c) The boarding home should be given an opportunity to:

(i) Question department staff regarding their findings, and

(ii) Provide the department additional factual information that may refute the presented facts or affect the determination of a deficiency.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-1130, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-1140 Communication following inspections. Following an exit conference, if the department obtains additional information that may substantially alter the preliminary conclusions or issues identified during the exit conference, the department will to the fullest extent reasonably possible:

(1) Notify the boarding home of the additional issues or amended conclusions; and

(2) Provide the boarding home an opportunity to respond to the additional information:

(a) By telephone,

(b) In writing, or

(c) By facsimile transmission.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-1140, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-1150 Statements of deficiencies and plans of correction. (1) The department must give the administrator or the administrator's designee a written statement of deficiencies specifying any violations of chapters 18.20 or 70.129 RCW or this chapter that the department found during on-site inspections and complaint investigations.

(2) The licensee must respond to a statement of deficiencies by submitting to the department within a time acceptable to the department, a signed written plan of correction for each deficiency stated in the report. The licensee must include in the plan of correction, for each cited deficiency:

(a) A specific plan of what will be or was done to correct the violation,

(b) A description of what will be done to prevent future violations of this type,

(c) Who will be responsible for monitoring the corrections to ensure the violations do not recur, and

(d) The date by which lasting correction will be achieved.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-1150, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-1160 Authorized enforcement remedies. (1) Whenever the circumstances in WAC 388-78A-1170(1) are present, the department may impose any enforcement remedy authorized by RCW 18.20.185(7) and 18.20-190 on a boarding home, including, without limitation:

(a) Denying a boarding home license;

(b) Suspending a boarding home license;

(c) Revoking a boarding home license;

- (d) Refusing to renew a boarding home license;
- (e) Suspending admissions to a boarding home;
- (f) Suspending admissions to a boarding home of a specific category or categories of residents as related to cited violations;
- (g) Imposing conditions on the boarding home license; and/or
- (h) Imposing civil penalties of not more than one hundred dollars per day per violation per resident.

(2) Notwithstanding subsection (1) of this section, the department may impose a civil penalty on a boarding home of up to three thousand dollars per day per violation for interference, coercion, discrimination and/or reprisal by a boarding home as set forth in RCW 18.20.185(7).

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-1160, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-1170 Statutory circumstances resulting in discretionary enforcement remedies. (1) Enforcement remedies described in WAC 388-78A-1160 may be imposed if any person or entity described in subsection (2) of this section is found by the department to have:

(a) A history of significant noncompliance with federal or state regulations in providing care or services to frail elders, vulnerable adults or children, whether as a licensee, contractor, managerial employee or otherwise. Evidence of significant noncompliance may include, without limitation:

- (i) Citations for violation of regulations imposed by regulating entities;
- (ii) Sanctions for violation of regulations imposed by regulating entities;
- (iii) Involuntary termination, cancellation, suspension, or nonrenewal of a Medicaid contract or Medicare provider agreement, or any other agreement with a public agency for the care or treatment of children, frail elders or vulnerable adults;
- (iv) Being denied a license relating to the care of frail elders, vulnerable adults or children; or
- (v) Relinquishing or failing to renew a license relating to care of frail elders, vulnerable adults or children following written notification of the licensing agency's initiation of denial, suspension, cancellation or revocation of a license.

(b) Failed to provide appropriate care to frail elders, vulnerable adults or children under a contract, or having such contract terminated or not renewed by the contracting agency due to such failure;

(c) Been convicted of a felony or a crime against a person if the conviction reasonably relates to the competency of the person to operate a boarding home;

(d) Failed or refused to comply with the requirements of chapter 18.20 RCW, applicable provisions of chapter 70.129 RCW or this chapter;

(e) Retaliated against a staff person, resident or other individual for:

- (i) Reporting suspected abuse or other alleged improprieties;
- (ii) Providing information to the department during the course of the department conducting an inspection of the boarding home; or

(iii) Providing information to the department during the course of the department conducting a complaint investigation in the boarding home.

(f) Operated a facility for the care of children or adults without a current, valid license or under a defunct or revoked license;

(g) Been convicted of a crime, knowingly permitted, aided or abetted an illegal act on a boarding home premises, or engaged in the illegal use of drugs or the excessive use of alcohol;

(h) Abused, neglected or exploited a vulnerable adult or knowingly failed to report alleged abuse, neglect or exploitation of a vulnerable adult as required by chapter 74.34 RCW;

(i) Failed to exercise fiscal accountability and responsibility involving a resident, the department, public agencies, or the business community; or has insufficient financial resources or unencumbered income to sustain the operation of the boarding home;

(j) Knowingly or with reason to know, made false statements of material fact in the application for the license or the renewal of the license or any data attached thereto, or in any matter under investigation by the department;

(k) Interfered with any inspection or investigation by the department or refused to allow department representatives to examine any part of the licensed premises including records required under this chapter;

(l) Moved all residents out of the boarding home without the department's approval and is no longer operating as a boarding home; or

(m) Demonstrated any other factors that give evidence the applicant lacks the appropriate character, suitability and competence to provide care or services to vulnerable adults.

(2) This section applies to any boarding home:

- (a) Applicant;
- (b) Partner, officer or director;
- (c) Manager or managerial employee; or
- (d) Owner of five percent or more of the entity applicant:
 - (i) Who is involved in the management or operation of the boarding home;
 - (ii) Who may have direct access to boarding home residents;
 - (iii) Who controls or supervises the provision of care or services to boarding home residents; or
 - (iv) Who exercises control over daily operations of the boarding home.

(3) For other circumstances resulting in discretionary enforcement remedies, see WAC 388-78A-1200.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-1170, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-1180 Circumstances resulting in required enforcement remedies. The department must impose an appropriate remedy consistent with RCW 18.20-125 and as otherwise authorized by RCW 18.20.185 or 18.20.190 whenever the department finds a boarding home has:

- (1) A serious problem, a recurring problem, or an uncorrected problem;
- (2) Created a hazard that causes or is likely to cause death or serious harm to one or more residents;

(3) Discriminated or retaliated in any manner against a resident, employee, or any other person because that person or any other person made a complaint or provided information to the department, the attorney general, a law enforcement agency, or the long-term care ombudsman; or

(4) Willfully interfered with the performance of official duties by a long-term care ombudsman.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-1180, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-1190 Statutorily required enforcement remedies; denial, suspension, revocation, or nonrenewal of license. (1) The department must deny, suspend, revoke or refuse to renew a boarding home license if any person or entity described in subsection (2) below is:

(a) Convicted of a crime against a person or a crime related to financial exploitation as defined under RCW 43.43.830 or 43.43.842; or

(b) Found by a court in a protection proceeding or in a civil damages lawsuit under chapter 74.34 RCW to have abused, neglected, abandoned or exploited a vulnerable adult; or

(c) Found in any dependency action under chapter 13.34 RCW to have sexually assaulted, neglected, exploited, or physically abused any minor; or

(d) Found by a court in a domestic relations proceeding under Title 26 RCW to have sexually abused, exploited, or physically abused any minor; or

(e) Found in any final decision issued by a disciplinary board to have sexually or physically abused or neglected or exploited any minor or any vulnerable adult, or has a stipulated finding of fact, conclusion of law, an agreed order, or finding of fact, conclusion of law, or final order issued by a disciplining authority, a court of law, or entered into a state registry finding him or her guilty of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW.

(2) This section applies to any boarding home:

(a) Applicant;

(b) Partner, officer or director;

(c) Manager or managerial employee; or

(d) Owner of five percent or more of the entity applicant:

(i) Who is involved in the operation of the boarding home, or

(ii) Who may have direct access to the boarding home residents, or

(iii) Who controls or supervises the provision of care or services to the boarding home residents, or

(iv) Who exercises control over daily operations.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-1190, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-120 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-78A-1200 Other circumstances resulting in discretionary enforcement remedies. (1) When the department cites a boarding home for an initial violation that does not represent a recurring problem, serious problem or

uncorrected problem, and that results in minimal or moderate harm that is limited in scope, the department may:

(a) Require a plan of correction from the boarding home;

(b) Impose conditions on the boarding home license; and/or

(c) Impose a civil penalty.

(2) The department may take any of the actions specified in subsection (1) of this section and/or impose a stop-placement or limited stop-placement on a boarding home when:

(a) There is a reasonable probability, at the time the stop-placement or limited stop-placement is imposed, least a moderate degree of harm will occur or recur as a result of a single problem or by a combination of problems; and

(b) The threatening problem is more than an isolated event or occurrence.

(3) The department may take any of the actions specified in subsections (1) and (2) of this section and/or summarily suspend a boarding home's license when:

(a) There is an imminent threat that a serious degree of harm may occur to residents as a result of a single problem or a combination of problems; and

(b) The threatening problem is more than an isolated event or occurrence.

(4) The department may take any of the actions specified in subsections (1), (2) and (3) of this section and/or revoke a boarding home's license when:

(a) The department has cause to summarily suspend the boarding home's license;

(b) There is a current problem with the boarding home and the boarding home has a history of having enforcement remedies imposed by the department;

(c) There is a current problem with the boarding home and the boarding home has a history of noncompliance representing problems that were at least moderate in nature and moderate in scope;

(d) The boarding home has moved all residents out of the boarding home without the department's approval and is no longer operating as a boarding home; or

(e) There is a serious current problem, which may not warrant a summary suspension, with the boarding home that does not have a history of noncompliance. Examples of the types of serious current problems that may warrant license revocation include, but are not limited to:

(i) The licensee has been found or convicted by a court of competent jurisdiction to have engaged in fraudulent activity, or

(ii) The licensee is experiencing significant financial problems resulting in poor care or jeopardizing the care and services that can be provided to residents, and possible business failure; or

(f) The boarding home fails to cooperate with the department during any inspection or complaint investigation.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-1200, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-1210 Informal dispute resolution.

The boarding home has a right to an informal dispute resolution meeting according to department procedure. The boarding home must make a request for an informal dispute resolution meeting in writing within ten days of the receipt of the written notice of deficiency.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-1210, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-1220 Appeal rights. (1) An applicant or boarding home may contest an enforcement remedy imposed by the department pursuant to RCW 18.20.190 according to the provisions of chapter 34.05 RCW and chapters 10-08 and 388-02 WAC.

(2) Orders of the department imposing licensing suspension, stop placement, or conditions for continuation of a license are effective immediately upon notice and shall continue pending any hearing.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-1220, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-1230 Fees. The boarding home must:

(1) Submit an annual license fee of seventy-nine dollars per bed of the licensed resident bed capacity;

(2) Submit an additional one hundred fifty dollars when billed by the department for:

(a) A third on-site visit required by the boarding home's failure to adequately correct violations identified in a statement of deficiencies; and

(b) A full out-of-sequence inspection resulting from information gathered during a complaint investigation.

(3) Submit an additional late fee in the amount of ten dollars per day from the license renewal date until the date of mailing the fee, as evidenced by the postmark; and

(4) Submit to construction review services a fee for the review of the construction documents per the review fee schedule that is based on the project cost.

[Statutory Authority: RCW 18.20.090 and chapter 18.20 RCW. 03-16-047, § 388-78A-1230, filed 7/31/03, effective 9/1/04.]

WAC 388-78A-130 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-78A-140 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-78A-150 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-78A-160 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-78A-170 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-78A-180 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-78A-190 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-78A-200 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-78A-210 Repealed. See Disposition Table at beginning of this chapter.

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WAC 388-78A-220 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-78A-230 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-78A-240 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-78A-250 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-78A-260 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-78A-265 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-78A-268 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-78A-280 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-78A-290 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-78A-300 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-78A-310 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-78A-320 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-78A-330 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-78A-335 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-78A-340 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-78A-990 Repealed. See Disposition Table at beginning of this chapter.

Chapter 388-79 WAC

GUARDIANSHIP FEES FOR CLIENTS OF THE DEPARTMENT

WAC

388-79-010	Purpose.
388-79-020	Definitions.
388-79-030	Maximum fees and costs.
388-79-040	Procedure to revise award letter after June 15, 1998, but before September 1, 2003.
388-79-050	Procedure for allowing fees and costs from client participation after September 1, 2003.

WAC 388-79-010 Purpose. These rules implement RCW 11.92.180 and 43.20B.460 to the extent that those statutes require the department to establish by rule the maximum amount of guardianship fees and additional compensation for administrative costs that may be allowed by the court for a guardian or limited guardian of an incapacitated person who is a Medicaid client of the department and is thus required by federal law to contribute to the cost of the client's long-term care.

[Statutory Authority: RCW 11.92.180, 43.20B.460, 03-16-022, § 388-79-010, filed 7/28/03, effective 8/28/03; 98-10-055, § 388-79-010, filed 4/30/98, effective 5/31/98.]

WAC 388-79-020 Definitions. "Administrative costs" or "costs" means necessary costs paid by the guardian including attorney fees.

"Client" means a person who is eligible for and is receiving Medicaid-funded long-term care.

"Guardianship fees" or "fees" means necessary fees charged by a guardian for services rendered on behalf of a client.

"Participation" means the amount the client pays from current monthly income toward the cost of the client's long-term care.

[Statutory Authority: RCW 11.92.180, 43.20B.460, 03-16-022, § 388-79-020, filed 7/28/03, effective 8/28/03; 98-10-055, § 388-79-020, filed 4/30/98, effective 5/31/98.]

WAC 388-79-030 Maximum fees and costs. The superior court may allow guardianship fees and administrative costs in an amount set out in an order. For orders entered after June 15, 1998, where the order establishes or continues a legal guardianship for a department client, and requires a future review or accounting; then unless otherwise modified by the process described in WAC 388-79-040:

(1) The amount of guardianship fees shall not exceed one hundred seventy-five dollars per month;

(2) The amount of administrative costs directly related to establishing a guardianship for a department client shall not exceed seven hundred dollars; and

(3) The amount of administrative costs shall not exceed a total of six hundred dollars during any three-year period.

[Statutory Authority: RCW 11.92.180, 43.20B.460, 03-16-022, § 388-79-030, filed 7/28/03, effective 8/28/03; 98-10-055, § 388-79-030, filed 4/30/98, effective 5/31/98.]

WAC 388-79-040 Procedure to revise award letter after June 15, 1998, but before September 1, 2003. After June 15, 1998, but before September 1, 2003, where a department client is subject to a guardianship then the department shall be entitled to notice of proceedings as described in RCW 11.92.150.

(1) The notice shall be given to the appropriate regional administrator of the program serving the department client. A list of the regional administrators will be available upon request.

(2) If the fees and costs requested and established by the order are equal to or lower than the maximum amount set by this rule then the award letter or document setting the department's client's participation shall be adjusted to reflect that

amount upon receipt by the department of the court order setting a monthly amount.

(3) Should fees and costs above those requested in WAC 388-79-030 be requested:

(a) The appropriate regional administrator will be given notice of the hearing as described in RCW 11.92.150, and provided with copies of all supporting documents filed with the court.

(b) Should the court determine after consideration of the facts, law and evidence of the case, that fees and costs higher than normally allowed in WAC 388-79-030 are just and reasonable and should be allowed then the award letter or document setting the department client's participation shall be adjusted to reflect that amount upon receipt by the department of the court order setting a monthly amount.

[Statutory Authority: RCW 11.92.180, 43.20B.460, 03-16-022, § 388-79-040, filed 7/28/03, effective 8/28/03; 98-10-055, § 388-79-040, filed 4/30/98, effective 5/31/98.]

WAC 388-79-050 Procedure for allowing fees and costs from client participation after September 1, 2003.

(1) After September 1, 2003, where a client is subject to a guardianship the department shall be entitled to notice of proceedings as described in RCW 11.92.150.

(2) The notice must be served to the department's regional administrator of the program that is providing services to the client. A list of the regional administrators will be furnished upon request.

(3) If the fees and costs requested and established by the order are equal to or less than the maximum amounts allowed under WAC 388-79-030, then the department will adjust the client's current participation to reflect the amounts allowed upon receipt by the department of the court order setting the monthly amounts.

(4) Should fees and costs in excess of the amounts allowed in WAC 388-79-030 be requested:

(a) At least ten days before filing the request with the court, the guardian must present the request in writing to the appropriate regional administrator to allow the department an opportunity to consider whether the request should be granted on an exceptional basis.

(b) In considering a request for extraordinary fees or costs, the department must consider the following factors:

(i) The department's obligation under federal and state law to ensure that federal Medicaid funding is not jeopardized by noncompliance with federal regulations limiting deductions from the client's participation amount;

(ii) The usual and customary guardianship services for which the maximum fees and costs under WAC 388-79-030 must be deemed adequate for a Medicaid client, including but not limited to:

- (A) Acting as a representative payee;
- (B) Managing the client's financial affairs;
- (C) Preserving and/or disposing of property;
- (D) Making health care decisions;
- (E) Visiting and/or maintaining contact with the client;
- (F) Accessing public assistance programs on behalf of the client;
- (G) Communicating with the client's service providers; and

(H) Preparing any reports or accountings required by the court.

(iii) Extraordinary services provided by the guardian, such as:

- (A) Unusually complicated property transactions;
- (B) Substantial interactions with adult protective services or criminal justice agencies;
- (C) Extensive medical services setup needs and/or emergency hospitalizations; and
- (D) Litigation other than litigating an award of guardianship fees or costs.

(c) Should the court determine after consideration of the facts and law that fees and costs in excess of the amounts allowed in WAC 388-79-030 are just and reasonable and should be allowed, then the department will adjust the client's current participation to reflect the amounts allowed upon receipt by the department of the court order setting the monthly amounts.

(5) In no event may a client's participation be prospectively or retrospectively reduced to pay fees and costs incurred before the effective date of the client's Medicaid eligibility; or during any subsequent time period when the client was not eligible for, or did not receive long-term care services; or after the client has died. There is no client participation towards DDD certified and contracted supported living services under chapter 388-820 WAC, so the department has no responsibility to reimburse the client for guardianship fees when those fees result in the client having insufficient income to pay their living expenses.

(6) If the court at a prior accounting has allowed the guardian to receive fees and costs from the client's monthly income in advance of services rendered by the guardian, and the client dies before the next accounting, the fees and costs allowed by the court at the final accounting may be less than, but may not exceed, the amounts advanced and paid to the guardian from the client's income.

(7) Guardians must furnish the regional administrator with complete packets to include all documents filed with the court and with formal notice clearly identifying the amount requested.

[Statutory Authority: RCW 11.92.180, 43.20B.460, 03-16-022, § 388-79-050, filed 7/28/03, effective 8/28/03.]

Chapter 388-97 WAC NURSING HOMES

WAC

388-97-076

Prevention of abuse.

WAC 388-97-076 Prevention of abuse. (1) Each resident has the right to be free from verbal, sexual, physical and mental abuse, corporal punishment, and involuntary seclusion.

(2) The nursing home must develop and implement written policies and procedures that:

- (a) Prohibit abandonment, abuse, and neglect of residents, financial exploitation, and misappropriation of resident property; and
- (b) Require staff to report possible abuse, and other related incidents, as required by chapter 74.34 RCW, and for

skilled nursing facilities and nursing facilities as required by 42 C.F.R. § 483.13.

(3) The nursing home must not allow staff to:

- (a) Engage in verbal, mental, sexual, or physical abuse;
- (b) Use corporal punishment;
- (c) Involuntarily seclude, abandon, neglect, or financially exploit residents; or
- (d) Misappropriate resident property.

(4) The nursing home must report any information it has about an action taken by a court of law against an employee to the department's complaint resolution unit and the appropriate department of health licensing authority, if that action would disqualify the individual from employment as described in RCW 43.43.842.

(5) The nursing home must ensure that all allegations involving abandonment, abuse, neglect, financial exploitation, or misappropriation of resident property, including injuries of unknown origin, are reported immediately to the department, other applicable officials, and the administrator of the facility. The nursing home must:

(a) Ensure that the reports are made through established procedures in accordance with state law including chapter 74.34 RCW, and guidelines developed by the department; and

(b) Not have any policy or procedure that interferes with the requirement of chapter 74.34 RCW that employees and other mandatory reporters file reports directly with the department, and also with law enforcement, if they suspect sexual or physical assault has occurred.

(6) The nursing home must:

(a) Have evidence that all alleged violations are thoroughly investigated;

(b) Prevent further potential abandonment, abuse, neglect, financial exploitation, or misappropriation of resident property while the investigation is in progress; and

(c) Report the results of all investigations to the administrator or his designated representative and to other officials in accordance with state law and established procedures (including the state survey and certification agency) within five working days of the incident, and if the alleged violation is verified appropriate action must be taken.

(7) When a mandated reporter has:

(a) Reasonable cause to believe that a vulnerable adult has been abandoned, abused, neglected, financially exploited, or a resident's property has been misappropriated, the individual mandatory reporter must immediately report the incident to the department's aging and disability services administration ADSA;

(b) Reason to suspect that a vulnerable adult has been sexually or physically assaulted, the individual mandatory reporter must:

(i) Immediately report the incident to the department's aging and disability services administration (ADSA);

(ii) Notify local law enforcement in accordance with the provisions of chapter 74.34 RCW.

(8) Under RCW 74.34.053, it is:

(a) A gross misdemeanor for a mandated reporter knowingly to fail to report as required under this section; and

(b) A misdemeanor for a person to intentionally, maliciously, or in bad faith make a false report of alleged aban-

donment, abuse, financial exploitation, or neglect of a vulnerable adult.

(9) The nursing home must not employ individuals who are disqualified under the requirements of WAC 388-97-203.

[Statutory Authority: RCW 74.34.165, 74.34.020, 74.34.035, 2003 c 230. 03-23-021, § 388-97-076, filed 11/10/03, effective 12/11/03. Statutory Authority: RCW 18.51.070, 74.42.620. 02-14-063, § 388-97-076, filed 6/27/02, effective 7/28/02; 00-06-028, § 388-97-076, filed 2/24/00, effective 3/26/00.]

Chapter 388-145 WAC EMERGENCY RESPITE CENTERS

WAC

388-145-0010	What is the purpose of this chapter?	388-145-0430	What are the requirements for emergency aid vehicle access to my center?
388-145-0020	What definitions apply to this chapter?	388-145-0440	What steps must I take to ensure children's safety around outdoor bodies of water?
388-145-0030	What is an emergency respite center?	388-145-0450	What measures must I take for pest control?
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		388-145-0880	What are the requirements for an outdoor play area?
		388-145-0890	What are the size requirements for an outdoor play area?
		388-145-0900	What are the requirements for playground equipment?
		388-145-0910	Are there requirements to follow when I transport children?
		388-145-0920	What does the department require for keeping client records?
		388-145-0930	What written information is needed before a child is admitted to a center?
		388-145-0940	What are the requirements for protecting a child under my care from abuse or neglect?
		388-145-0950	What are the nondiscrimination requirements?
		388-145-0960	Do I have to admit or retain all children at the center?
		388-145-0970	Do I have responsibility for a child's personal hygiene?
		388-145-0980	Do I have responsibility for a child's personal items at the center?
		388-145-0990	What requirements must I follow when disciplining children?
		388-145-1000	What types of disciplinary practices are forbidden?
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		388-145-1020	What types of physical restraint are acceptable?
		388-145-1030	What types of physical restraint are not acceptable for children?
		388-145-1040	What must I do following an incident that involved using physical restraint?
		388-145-1050	What incidents involving children must I report?

388-145-1060	What is the ratio of child care staff to children at a center?
388-145-1070	What are the requirements for supervision of children at a center?
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388-145-1110	May one person hold two positions at a center?
388-145-1120	Who must be on the premises while children are in care at a center?
388-145-1130	Are child care assistants allowed to provide care to a group of children without supervision?
388-145-1140	Are volunteers allowed to provide child care to children without supervision?
388-145-1150	Do volunteers count in the staff-to-child ratio respite center?
388-145-1160	Are professional consultants and case managers needed?
388-145-1170	What clerical, accounting and administrative services do I need?
388-145-1180	What support and maintenance staff do I need?
388-145-1190	Is in-service training required for staff?
388-145-1200	What are the requirements for an activity program?
388-145-1210	What activities must I provide to children?
388-145-1220	What types of toys must I provide?

WAC 388-145-0010 What is the purpose of this chapter? The department issues or denies a license on the basis of compliance with licensing requirements. This chapter defines general and specific licensing requirements for emergency respite centers. Unless noted otherwise, these requirements apply to people who want to be licensed or relicensed to provide facility-based emergency respite care.

The department is committed to ensuring that children who receive emergency respite care experience health, safety, and well-being. We want these children's experiences to be beneficial to them not only in the short term, but also in the long term. Our licensing requirements reflect our commitment to children.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0010, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0020 What definitions apply to this chapter? The following definitions are important to understand these rules:

"Abuse or neglect" means injury, sexual abuse, sexual exploitation, negligent treatment or mistreatment of a child where the child's health, welfare and safety are harmed.

"Capacity" means the maximum number of children that a facility is licensed to care for at a given time.

"Children" or "youth," means individuals who are:

- (1) Under eighteen years old, including expectant mothers under eighteen years old; or
- (2) Up to twenty-one years of age with developmental disabilities.

"Child-placing agency" means an agency licensed to place children for temporary care, continued care, or adoption.

"Compliance agreement" means a written licensing improvement plan to address specific skills, abilities, or other issues of a fully licensed facility to maintain and/or increase the safety and well-being of children in their care.

"DCCCEL" means the division of child care and early learning. DCCCEL licenses child care homes and child care centers.

"DCFS" means the division of children and family services.

"DDD" means the division of developmental disabilities.

"DSHS" or "department" means the department of social and health services (DSHS).

"DLR" means the division of licensed resources.

"DOH" means the department of health.

"ERC" or "emergency respite center" is an agency that may be commonly known as a crisis nursery that provides emergency or crisis care for children to prevent child abuse or neglect.

"Firearms" means guns or weapons, including but not limited to the following: BB guns, pellet guns, air rifles, stun guns, antique guns, bows and arrows, handguns, rifles, and shotguns.

"Hearing" means the department's administrative review process.

"I" refers to anyone who operates or owns emergency respite center.

"Individual with developmental disabilities" means an individual who meets the eligibility requirements in RCW 71A.10.020 and WAC 388-825-030 for services. A developmental disability is any of the following: Mental retardation, cerebral palsy, epilepsy, autism, or another neurological condition described in WAC 388-825-030. These conditions must originate before the age of eighteen years; be expected to continue indefinitely; and result in a substantial handicap.

"Infants" means children under one year of age.

"License" means a permit issued by the department affirming that a facility meets the licensing requirements.

"Licensor" means a division of licensed resources (DLR) employee at DSHS who:

- (1) Approves licenses or certifications for group facilities; and
- (2) Monitors facilities to ensure that they continue to meet health and safety requirements.

"Nonambulatory" means not able to walk.

"Nonmobile" refers to children who are not yet walking, are unable to walk, or unable to use a wheelchair or other device to move about freely.

"Premises" means a facility's buildings and adjoining grounds that are managed by a person or agency in charge.

"Probationary license" means a license issued as a disciplinary measure to an individual or agency that has previously been issued a full license but is out of compliance with licensing standards.

"Respite" means brief, relief care provided to parents or legal guardians with the child care provider fulfilling some or all of the functions of the care-taking responsibilities of the parent or guardian.

"Severe developmental disabilities" means significant disabling, physical and/or mental condition(s) that cause a child to need external support for self-direction, self-support and social participation.

"Universal precautions" is a term relating to procedures designed to prevent transmission of bloodborne pathogens in health care and other settings. Under universal precautions (sometimes call standard precautions), blood or other potentially infectious materials of all patients should always be considered potentially infectious for HIV and other

pathogens. Individuals should take appropriate precautions using personal protective equipment like gloves to prevent contact with blood.

"Washington state patrol fire protection bureau" is the name of the state agency commonly called the **"state fire marshal"** with authority and responsibility for the inspection of life and fire safety of facilities caring for six or more children.

"We" or **"our"** refers to the department of social and health services, including DLR licensors and DCFS social workers.

"You" refers to anyone who operates an emergency respite center.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0020, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0030 What is an emergency respite center? An emergency respite center is an agency that may be commonly known as a crisis nursery, which provides emergency or crisis care for nondependent children to prevent abuse and/or neglect for up to seventy-two hours.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0030, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0040 What services may be provided or arranged for by the emergency respite center? An emergency respite center may provide the following:

- (1) The provision of direct child care;
- (2) A family assessment;
- (3) Appropriate community service referrals; and/or
- (4) Family support services.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0040, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0050 Are there services an emergency respite center may not provide? The services provided by an emergency respite center may not substitute for those provided by:

- (1) Crisis residential centers;
- (2) HOPE centers; or
- (3) Any other services required under chapter 13.32A (Family reconciliation services) or 13.34 RCW (Child welfare).

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0050, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0060 What age children may a center serve? (1) Emergency respite centers may provide care for children from birth through seventeen years.

(2) There is one situation when an emergency respite center may provide care for a person eighteen through twenty years of age. That situation is when an eighteen through twenty-year old person is developmentally disabled and admitted with a sibling who is under eighteen.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0060, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0070 Who may place children at a center? A parent or legal guardian of a child may voluntarily

place a child in an emergency respite center for up to seventy-two hours.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0070, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0080 Is a license required? (1) In most situations, a license is required to provide child care at an emergency respite center.

(2) The department does not require licenses for people providing care in any of the situations defined in RCW 74.15.020(2). Examples are relatives, school nurseries, and hospitals.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0080, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0090 How old do I have to be to apply for a license? You must be at least twenty-one years old to apply for a license to provide care to children at an emergency respite center.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0090, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0100 What personal characteristics must I have to provide care to children at a center? If you are requesting a license or a position as an employee, volunteer, intern, or contractor in an emergency respite center, you must:

(1) Demonstrate an understanding, ability, physical health, emotional stability and personality suited to meet the physical, mental, emotional, and social needs of the children under your care.

(2) Be able to furnish the child with a nurturing, respectful, supportive, and responsive environment.

(3) Not have been disqualified by our background check (chapter 388-06 WAC) before having unsupervised access to children.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0100, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0110 What personal information may I be required to provide to be licensed? (1) The department may request additional information at any time and it may include, but is not limited to:

(a) Substance and alcohol abuse evaluations and/or documentation of treatment;

(b) Psychiatric evaluations;

(c) Psycho-sexual evaluations; and

(d) Medical evaluations and/or medical records.

(2) The applicant/licensees pays for any evaluation requested by the department.

(3) The applicant/licensee must give permission for the licensor to speak with the evaluator/provider before and after the evaluation.

(4) If an applicant or licensee refuses to comply with subsections (1), (2), or (3) of this section, then DLR may deny the application or revoke the license.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0110, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0120 How do I apply for a license? (1)

To apply for an emergency respite center license, the person or legal entity responsible for the center must send the application form to your licenser at DLR.

(2) With the application form, you must send the following information:

(a) Written verification for each applicant and staff person of completion of:

(i) A tuberculosis test or X ray unless you can demonstrate medical reasons prohibiting the test;

(ii) First-aid and cardio-pulmonary resuscitation (CPR) training appropriate to the age of the children in care; and

(iii) HIV/AIDS and blood borne pathogens training including infection control standards.

(b) A completed background check form for each applicant, staff person, board member, intern or volunteer on the premises who:

(i) Is at least sixteen years old; and

(ii) Has unsupervised access to children (emergency respite centers must comply with chapter 388-06 WAC regarding background checks).

(3) If you, any staff person, board member, intern, or volunteer has lived in Washington state less than three years and will have unsupervised access to children, you must provide us with a completed FBI fingerprint form.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0120, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0130 What is required to document completed background checks on staff? The licensee of an emergency respite center must keep a log of all background check results of employees, volunteers, and interns on the premises of the center.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0130, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0140 What first aid and cardiopulmonary resuscitation (CPR) training is required? (1) You and your staff at an emergency respite center must have the following current first-aid and CPR training:

(a) Basic standard first aid; and

(b) Age-appropriate cardiopulmonary resuscitation (CPR).

(2) Approved first aid and CPR training must be in accordance with a nationally recognized standard.

(3) A person with first aid and CPR training must be on the premises of an emergency respite center at all times, when children are present.

(4) The requirement for CPR training may be waived for persons with a statement from their physician that the training is not advised for medical reasons. This person must not be the only person on the premises when children are present.

(5) You must keep records in your center showing who has completed current first aid and CPR training. This includes copies of the certificate of completion for the training for each staff person.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0140, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0150 What HIV/AIDS and blood-borne pathogens training is required? (1) You must pro-

vide or arrange for training for yourself and your staff at an emergency respite center on infection control, prevention, transmission, and treatment of HIV and AIDS and blood-borne pathogens.

(2) You must use infection control requirements and educational material consistent with the approved current curriculum "*Know - HIV/AIDS Prevention Education for Health Care Facility Employees*," published by the department of health, office on HIV/AIDS.

(3) Child care workers and anyone else providing direct care to children at an emergency respite center must use universal precautions (see definitions) when coming in contact with the bodily fluids or secretions of a child.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0150, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0160 How long do I have to complete the licensing application packet? (1) You must complete your licensing application with supporting documents, such as training certificates, within ninety days of first applying for your emergency respite center license.

(2) If you fail to meet this deadline and have not contacted your licenser, your licenser may consider your application withdrawn.

(3) If you are applying for a license renewal, you must send the application form to your licenser at least ninety days prior to the expiration of your current license.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0160, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0170 Does the department need to approve the program I offer? (1) The department must approve the program that you have developed for children under your care at an emergency respite center.

(2) You must send to DLR a detailed written program description outlining educational, recreational, and any therapeutic services you will provide to children and their families.

(3) A sample of the schedule of daily activities for children under care must be included with the program description.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0170, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0180 May a facility have more than one type of license? (1) A facility-based emergency respite center licensed by the division of licensed resources may also be licensed as a child care center by the division of child care and early learning.

(2) The licensee must meet the requirements for both licenses and the have written approval for both licenses from each division.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0180, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0190 What hours may a center be open? An emergency respite center may choose to be open up to twenty-four hours a day, seven days a week.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0190, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0200 How does the department decide how many children a center may serve? (1) The department approves the number of children that an emergency respite center may serve based on an evaluation of these factors:

- (a) Physical accommodations in the center;
- (b) The number of staff, family members and volunteers available for providing care;
- (c) Your skills and the skills of your staff;
- (d) The ages and characteristics of the children you are serving;
- (e) The evaluation of fire safety by the Washington state patrol fire protection bureau; and
- (f) The evaluation of health and safety by the department of health.

(2) Based on the evaluation, the department may license you for the care of fewer children than your facility could house.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0200, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0210 Will the department grant exceptions to the licensing requirements? (1) At its discretion, the department may make exceptions to the licensing requirements for emergency respite centers. The exceptions:

- (a) Must regard only nonsafety requirements.
 - (b) Must not compromise the safety and well being of the children receiving care.
- (2) You must make a written request for an exception to the licensing requirements.
- (3) After granting an exception to a licensing requirement, the department may:
- (a) Limit or restrict your license; and/or
 - (b) Require you to enter into a compliance agreement to ensure the safety and well being of the children in your care.
 - (4) You must keep a copy of the approved exception and any compliance agreement to the licensing requirements for your files.
 - (5) You do not have appeal rights if the department denies your request for an exception to our requirements.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0210, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0220 Does the department issue probationary licenses? (1) The department may issue an emergency respite center a probationary license as part of a corrective action plan with a licensed provider.

(2) The department must base its decision about whether to issue a probationary license on the following:

- (a) Intentional or negligent noncompliance with the licensing rules;
 - (b) A history of noncompliance with the rules;
 - (c) Current noncompliance with the rules;
 - (d) Evidence of a good faith effort to comply; and
 - (e) Any other factors relevant to the specific situation.
- (3) A probationary license may be issued for up to six months. At its discretion, the department may extend the probationary license for an additional six months.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0220, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0230 When is a license denied, suspended or revoked? (1) An emergency respite center license must be denied, suspended or revoked if the department decides that you cannot provide care for children in a way that ensures their safety, health and well-being.

(2) The department must disqualify you for any of the reasons that follow:

(a) Your facility fails to meet the health and safety requirements to receive a certificate of compliance as required by the department of health and/or Washington state patrol fire protection bureau.

(b) You have been disqualified by your background check (see chapter 388-06 WAC).

(c) You have been found to have committed child abuse or neglect, or you treat, permit or assist in treating children in your care with cruelty, indifference, abuse, neglect, or exploitation, unless the department determines that you do not pose a risk to a child's safety, well-being, and long-term stability.

(d) You or anyone on the premises had a license denied or revoked from an agency that provided care to children or vulnerable adults.

(e) You try to get a license deceitfully, such as making false statements or leaving out important information on the application.

(f) You commit, permit or assist in an illegal act on the premises of an emergency respite center providing care to children.

(g) You are using illegal drugs, or excessively using alcohol and/or prescription drugs.

(h) You knowingly allowed employees or volunteers with false statements on their applications to work at your agency.

(i) You repeatedly lack qualified or an adequate number of staff to care for the number and types of children under your care.

(j) You have refused to allow our authorized staff and inspectors to have requested information or access to your facility, child and program files, and/or your staff and clients.

(k) You are unable to manage the property, fiscal responsibilities, or staff in your agency.

(l) You have failed to comply with the federal and state laws for any Native American children that you have under care.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0230, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0240 Are there any other reasons that could potentially cause me to lose my license? (1) The department may suspend or revoke your emergency respite center license if you go beyond the conditions of your license by:

- (a) Having more children than your license allows; or
- (b) Having children with ages different than your license allows.

(2) The department also may suspend or revoke your license if you:

- (a) Fail to provide a safe, healthy and nurturing environment for children under your care; or
- (b) Fail to comply with any of our other licensing requirements.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0240, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0250 What happens when a licensor is notified that a licensee has received a noncompliance support order from the division of child support? (1) The department must suspend an emergency respite care license, if the licensor receives a notice from the division of child support that the licensee is not in compliance with a support order under authority of RCW 43.20A.205 and 74.20A.320.

(2) In this situation, the suspension of a center license, for noncompliance of a support order, would be effective on the date the licensee receives a notice from the licensor.

(3) The license remains suspended until the licensee provides proof that he or she is in compliance with the child support order.

(4) The licensee does not have a right to an administrative hearing based on a suspension of the center license due to noncompliance of a child support order.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0250, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0260 How will the department notify me if my license is denied, suspended, or revoked? (1) The department sends you a certified letter informing you of any decision to deny, suspend or revoke your emergency respite center license.

(2) In the letter, the department also informs you what you may do if you disagree with the decision of the department to deny, suspend or revoke your emergency respite center license.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0260, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0270 What may I do if I disagree with the department's decision to deny, suspend or revoke my license? (1) You have the right to appeal any decision the department makes to deny, suspend, or revoke your emergency respite center license. The exception is outlined in WAC 388-145-0250 and deals with noncompliance of a child support order.

(2) Your right to appeal and the procedures for that process are outlined in RCW 43.20A.205 and 74.14.130, chapter 34.05 RCW, and chapter 388-02 WAC.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0270, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0280 Where do I post my license? You must post your emergency respite center license where the public can easily view it.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0280, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0290 What changes to my center must I report to my licensor? (1) You must report to your licensor immediately any changes in the original emergency respite center licensing application. This includes changes in:

- (a) Your location or designated space, including address;
- (b) Your phone number;
- (c) The maximum number, age ranges, and sex of children you wish to serve; or

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(d) The structure of your facility or on the premises from events causing damage, such as a fire, or from remodeling.

(2) A license is valid only for the person or organization named on the license at a specific address. If you operate an emergency respite center, you must also report any of the following changes to your licensor:

- (a) A change of your agency's executive director;
- (b) The death, retirement, or incapacity of the person who holds the license;
- (c) A change in the name of a licensed corporation, or the name by which your center is commonly known; or
- (d) Changes in an agency's articles of incorporation and bylaws that apply to the operation or the license of the facility.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0290, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0300 Must I comply with the requirements of the Washington state patrol fire protection bureau to receive a license? (1) An emergency respite center must comply with the requirements for fire safety of the Washington state patrol fire protection bureau under WAC 212-12-210.

(2) The Washington state patrol fire protection bureau will issue a notice of approval for licensing to the licensing agency when you have met their requirements for fire safety.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0300, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0310 Do I need to notify the local fire department of the location of my center? You must notify the local fire authority of the location of your emergency respite center.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0310, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0320 Are local ordinances part of the licensing requirements? (1) Local ordinances (laws), such as zoning regulations and local building codes, are outside the scope of the licensing requirements for an emergency respite center.

(2) The department may require you to provide proof that you have met local ordinances.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0320, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0330 Are there other fire safety requirements for inside a center? An emergency respite center must comply with the fire safety requirements that follow.

(1) Every sleeping room used by children under care must have at least one operable window or door approved for emergency escape or rescue that must open directly into a public street, public alley, yard, or exit court.

(2) Centers with floors located more than four feet above or below grade (one-half story) must not be used for care of nonambulatory children.

(3) Emergency windows must:

(a) Be operable from the inside to provide a full, clear opening without the use of separate tools;

(b) Have a minimum net clear open area of 5.7 square feet;

(c) Have a minimum net clear open height dimension of twenty-four inches;

(d) Minimum net clear open width dimension of twenty inches;

(e) Have a finished sill height of not more than forty-four inches above the floor.

(4) No child may occupy a space that is accessible only by a ladder, folding stairs, or a trap door.

(5) Every bathroom door lock must be designed to permit the opening of the locked door from the outside.

(6) Every closet door latch must be designed to open from the inside.

(7) Open-flame devices and fireplaces, heating and cooking appliances, and products capable of igniting clothing must not be left unattended or used incorrectly.

(8) Fireplaces, wood stoves and other heating systems that have a surface hot enough to cause a burn must have a barrier to prevent access by children under age six years.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0330, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0340 What are the requirements for smoke detectors? (1) Emergency respite centers licensed for sixteen or more residents must have an approved automatic and manual fire alarm system.

(2) Operation of any fire alarm activating device must automatically, without delay, activate off-site monitoring and signal a general alarm indication and sound an audible alarm throughout the building or affected part of the building.

(3) Emergency respite centers licensed for fewer than sixteen persons must have smoke detectors installed in all sleeping room, corridors, and in areas separating use areas from sleeping areas.

(4) Smoke detectors must be installed following the approved manufacturer's instructions.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0340, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0350 What are the requirements for a fire evacuation plan? (1) You must develop a written fire evacuation plan for your emergency respite center.

(2) The evacuation plan must include:

(a) An evacuation floor plan, identifying exit doors and windows;

(b) Action that the person discovering a fire must take;

(c) Methods for sounding an alarm on the premises;

(d) Ways to evacuate the building that ensures responsibility for children; and

(e) Action that staff must take while waiting for the fire department.

(3) The plan must be posted at each exit door.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0350, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0360 What fire prevention measures must I take? The department requires that you must take the following fire prevention measures for your emergency respite center:

(1) You must assure that furnace rooms are:

(a) Maintained free of lint, grease, and rubbish; and

(b) Suitably isolated, enclosed, or protected.

(2) Flammable or combustible materials must be stored away from exits and in areas that are not accessible to children. Combustible rubbish must not be allowed to collect and must be removed from the building or stored in closed, metal containers away from building exits.

(3) All trash must be removed daily from the building and thrown away in a safe manner outside the building. All containers used for the disposal of waste material must consist of noncombustible materials and have tops.

(4) All electrical motors must be kept free of dust.

(5) Open-flame devices capable of igniting clothing must not be left on, unattended or used in a manner that could result in an accidental ignition of children's clothing.

(6) Candles must not be used.

(7) All electrical circuits, devices and appliances must be properly maintained. Circuits must not be overloaded. Extension cords and multiplug adapters must not be used in place of permanent wiring and proper outlets.

(8) Fireplaces, woodstoves, and similar devices must be installed and approved according to the rules that were in effect at the time of installation (see the local building permit). These devices must be properly maintained and must be cleaned and certified at least once a year or maintained according to the manufacturer's recommendations.

(9) Separate hazardous areas by at least a "one-hour" fire-resistant wall. Hazardous areas include rooms or spaces containing:

(a) A commercial-type cooking kitchen;

(b) A boiler;

(c) A maintenance shop;

(d) A janitor closet;

(e) A woodworking shop;

(f) A vehicle garage;

(g) Flammable or combustible materials; or

(h) Painting operations.

(10) The department does not require a fire-resistant wall when:

(a) A kitchen contains only a domestic cooking range; and

(b) Food preparation does not produce smoke or grease-laden vapors.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0360, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0370 What are the requirements for fire drills? (1) You must conduct monthly fire drills to test and practice the evacuation procedures.

(2) The monthly fire drill must be conducted on each shift, so that each person providing care to children participates in the drill.

(3) You must consult with and follow the Washington state patrol fire protection bureau protocol for "mock" fire drills, if you care for nonambulatory children.

(4) You must maintain a written record on the premises that indicates the date and time that drill practices were completed at your emergency respite center.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0370, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0380 What fire safety procedures do center staff need to know? You and your staff at an emergency respite center must be familiar with:

- (1) Safety procedures related to fire prevention; and
- (2) All aspects of a fire drill.
- (3) Your and your staff must be able to:
 - (a) Operate all fire extinguishers installed on the premises;
 - (b) Test smoke detectors (single station types);
 - (c) Conduct frequent inspections of the facility to identify fire hazards; and
 - (d) Correct any hazards noted during the inspection.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0380, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0390 What are the requirements for fire sprinkler systems? (1) Where a sprinkler system is required, a system complying with the uniform building code standards must be installed.

(2) A Washington state licensed fire sprinkler contractor must annually test and certify sprinkler systems installed in an emergency respite center for fire prevention.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0390, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0400 Does an ERC need approval from the department of health to operate? (1) An emergency respite center must receive a certificate of compliance from the department of health before the department (DSHS) will issue an emergency respite center license.

(2) The department of health (DOH) conducts the health and safety survey. A registered nurse (RN) and/or a public health sanitarian may complete the survey.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0400, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0410 What are the physical structure safety requirements for a center? You must keep the equipment and the physical structures in your emergency respite center safe and clean for the children you serve. You must:

- (1) Maintain your buildings, premises, and equipment in a clean and sanitary condition, free of hazards, and in good repair.
- (2) Provide handrails for steps, stairways, and ramps, if required by the department.
- (3) Have emergency lighting devices available and in operational condition.
- (4) Furnish your center appropriately, based on the age and activities of the children under care.
- (5) Have washable, water-resistant floors in your center bathrooms, kitchens, and any other rooms exposed to moisture. The department may approve washable, short-pile carpeting that is kept clean and sanitary for your facility's kitchens.
- (6) Provide tamper proof or tamper resistant electrical outlets or blank covers installed in areas accessible to children under the age of six or other persons with limited mental capacity or who might be endangered by access to them.
- (7) Have easy access to rooms occupied by children in case an emergency arises. Some examples are bedrooms, toilet rooms, shower rooms, and bathrooms.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0410, filed 3/26/03, effective 4/26/03.]

(8) Have a written disaster plan for emergencies such as fire and earthquakes.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0410, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0420 What are the requirements for the location of a center? (1) Your center must be located on a well-drained site, free from hazardous conditions. Some examples of hazards are natural or man-made water hazards such as lakes or streams, steep banks, ravines, and busy streets.

(2) The safety of the children in care is paramount. You must discuss with the licensor any potential hazardous conditions, considering the children's ages, behaviors, and abilities.

(3) If the department decides that hazardous conditions are present at the emergency respite center, a supervision plan must be written for the children in care.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0420, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0430 What are the requirements for emergency aid vehicle access to my center? (1) Your emergency respite center must be accessible to emergency vehicles.

(2) Your address must be clearly visible on the facility or mailbox so that firefighters or medics can easily find your center location.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0430, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0440 What steps must I take to ensure children's safety around outdoor bodies of water? (1) You must ensure children in your care at an emergency respite center are safe around bodies of water.

(2) On a daily basis, you must empty and clean any portable wading pool that children use.

(3) When they are swimming, wading, or near a body of water, children under twelve must be in continuous visual or auditory range at all times by an adult with current first aid and age appropriate CPR.

(4) You must ensure age and developmentally appropriate supervision of any child that uses hot tubs, swimming pools, spas, and other man-made and natural bodies of water.

(5) You must lock hot tubs and spas when they are not in use.

(6) You must place a fence designed to discourage climbing and have a locking gate around a pool. The pool must be inaccessible to children when not in use.

(7) A certified lifeguard must be on duty when children are using a public or private swimming pool.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0440, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0450 What measures must I take for pest control? You must make reasonable attempts, using the least toxic methods, to keep the premises of the emergency respite center free from pests. This includes rodents, flies, cockroaches, fleas, and other insects.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0450, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0460 What are the requirements regarding pets and animals at a center? (1) In an emergency respite center, you must not have any common household pets, exotic pets, other animals, birds, insects, reptiles, or fish that are dangerous or provide a risk to the children in care.

(2) Common household pets, exotic pets, animals, birds, insects, reptiles, and fish must:

(a) Be cared for in compliance with state regulations and local ordinances; and

(b) Be free from disease and cared for in a safe and sanitary manner.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0460, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0470 Are alcoholic beverages allowed at a center? You can not have alcohol on the premises of an emergency respite center. The staff of the center may not consume alcohol on the premises or during breaks.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0470, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0480 Is smoking permitted around children? (1) You must prohibit smoking in the emergency respite center and in motor vehicles while transporting children.

(2) You may permit adults to smoke outdoors away from children.

(3) Nothing in this section is meant to interfere with traditional or spiritual Native American ceremonies involving the use of tobacco.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0480, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0490 May I have firearms at a center? The department prohibits firearms, ammunition, and other weapons on the premises of an emergency respite center.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0490, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0500 May I use wheeled baby walkers? The department prohibits the use of wheeled baby walkers in an emergency respite center.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0500, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0510 Are there requirements for the storage of medications? At an emergency respite center:

(1) You must keep all medications, including pet medications, vitamins and herbal remedies, in locked storage.

(2) You must store external medications separately from internal medications.

(3) You must store medications according to the manufacturer or pharmacy instructions.

(4) Pet and human medications must be stored in separate places.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0510, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0520 Are there requirements for storing dangerous chemicals or other substances? (1) At an emergency respite center, you must store the following items in a place that is not accessible to children, persons with limited mental capacity, or anyone who might be endangered by access to the following products:

(a) Cleaning supplies;

(b) Toxic or poisonous substances;

(c) Aerosols; and

(d) Items with warning labels.

(2) When containers are filled with toxic substances from a stock supply, you must label the containers filled from a stock supply.

(3) Toxic substances must be stored separately from food items.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0520, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0530 Are first-aid supplies required?

(1) At an emergency respite center, first-aid supplies must be kept on hand for immediate use, including nonexpired syrup of ipecac that is to be used only when following the instruction of the poison control center.

(2) The following first-aid supplies must be kept on hand:

(a) Barrier gloves and one-way resuscitation mask;

(b) Bandages;

(c) Scissors and tweezers;

(d) Ace bandage;

(e) Gauze;

(f) Thermometer; and

(g) A first-aid manual.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0530, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0540 What are the requirements for medical policies and procedures for a center? (1) Emergency respite centers must have written policies and procedures about the control of infections. These policies must include, but are not limited to, the following areas:

(a) Isolation;

(b) Aseptic procedures;

(c) Reporting communicable diseases;

(d) Hygiene, including hand washing, using the toilet, diapering, and laundering.

(2) Emergency respite centers must maintain current written medical policies and procedures to be followed on:

(a) Prevention of the transmission of communicable diseases including:

(i) Handwashing for staff and children;

(ii) Management and reporting of communicable diseases.

(b) Medication management, including steps to be taken if medication is incorrectly administered;

(c) First aid;

(d) Care of minor illnesses;

(e) Actions to be taken for medical emergencies;

(f) Infant care procedures when infants are under care; and

(g) General health practices.

(3) You must arrange to have one of the following help you develop and periodically review your medical policies and procedures:

- (a) An advisory physician,
- (b) A physician's assistant, or
- (c) A registered nurse.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0540, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0550 Must all children accepted for care have current immunizations? Emergency respite centers may accept a child who is not current with immunizations for care at an emergency respite center.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0550, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0560 What must I do to prevent the spread of infections and communicable diseases? (1) You must take precautions to guard against infections and communicable diseases infecting the children under care in an emergency respite center.

(2) Staff with a reportable communicable disease in an infectious stage, as defined by the department of health, must not be on duty until they have a physician's approval for returning to work.

(3) Each center that cares for medically fragile children must have an infection control program supervised by a registered nurse.

(4) Applicants for a license or adults authorized to have unsupervised access to children in a center must have a tuberculin (TB) skin test by the Mantoux method of testing. They must have this skin test upon being employed or licensed unless:

- (a) The person has evidence of testing within the previous twelve months;
- (b) The person has evidence that they have a negative chest X ray since previously having a positive skin test;
- (c) The person has evidence of having completed adequate preventive therapy or adequate therapy for active tuberculosis.

(5) The department does not require a tuberculin skin test if:

- (a) A person has a tuberculosis skin test that has been documented as negative within the past twelve months; or
- (b) A physician indicates that the test is medically inadvisable.

(6) Persons whose tuberculosis skin test is positive must have a chest X ray within thirty days following the skin test.

(7) The department does not require retesting at the time of license renewal, unless the licensee or staff person believes they have been exposed to someone with tuberculosis or if testing is recommended by their health care provider.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0560, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0570 How do I manage medications for children? You must meet specific requirements for managing prescription and nonprescription medication for children under your care. The requirements are:

(1) Only you or another authorized care provider may give or have access to medications for the child under your care.

(2) Only you or another authorized care provider may give prescription and nonprescription medications. Written approval of the child's parent or legal guardian is required to give the child any medication.

(3) You must keep a record of all medications you give a child.

(4) You or another authorized care provider must contact a pharmacist or the department of health regarding the proper disposal of medications that are not returned to the parent or legal guardian of the child.

(5) You must give certain classifications of nonprescribed medications, only with the dose and directions on the manufacturer's label for the age and /or weight of the child needing the medication. These nonprescribed medications include but are not limited to:

- (a) Nonaspirin antipyretics/analgesics, fever reducers/pain relievers;
- (b) Nonnarcotic cough suppressants;
- (c) Decongestants;
- (d) Antacids and anti-diarrhea medication;
- (e) Anti-itching ointments or lotions intended specifically to relieve itching;
- (f) Shampoo for the removal of lice;
- (g) Diaper ointments and powders intended specifically for use in the diaper area of children; and
- (h) Sun screen (for children over six months of age).

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0570, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0580 May I accept medicine from a child's parent or guardian? The only medicine you may accept from the child's parent or legal guardian is medicine in the original container labeled with:

- (1) The child's first and last names;
- (2) The date the prescription was filled;
- (3) The medication's expiration date; and
- (4) Legible instructions for the administration of the drug (manufacturer's instructions or prescription label).

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0580, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0590 When may children take their own medicine? (1) You may permit children under your care to take their own medicine as long as:

- (a) They are physically and mentally capable of properly taking the medicine; and
- (b) The child's parent or legal guardian approves in writing.

(2) You must keep the written approval by the child's parent or legal guardian in your records.

(3) When children take their own medication, the medication and medical supplies must be kept locked or inaccessible to other children and unauthorized persons.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0590, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0600 Are there general menu requirements? The department has menu requirements for emergency respite centers.

(1) Your program must be in compliance with the department of health standards in chapter 246-215 WAC on food service sanitation.

(2) You must prepare and date daily menus, including snacks, at least one week in advance.

(3) You must provide for the proper storage, preparation, and service of food to meet the needs of the program.

(4) A menu must specify a variety of foods for adequate nutrition and meal enjoyment.

(5) You must keep the menus on file for a minimum of six months so that we can review your menus.

(6) You must post each person's dietary restrictions, if any, for staff to follow.

(7) You must post a schedule of mealtimes.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0600, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0610 How often must I feed children at a center? (1) You must provide all children a minimum of three meals in each twenty-four hour period. You may vary from this guideline only if you write to your licenser requesting a change and the request is approved by DLR.

(2) The time interval between the evening meal or snack and breakfast must not be more than fourteen hours.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0610, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0620 How do I handle a child's special diet? Unless a child is admitted to an emergency respite center with a written physician's order as medically necessary for the child, the following must not be served:

(1) Nutrient concentrates, supplements, or amino acids;

(2) Vitamins; or

(3) Modified diets.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0620, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0630 Do you have special requirements for serving milk? (1) You must serve only pasteurized milk or a pasteurized milk product.

(2) You may not serve the following types of milk to any child under twenty-four months of age unless you have written permission by a physician, or parent or legal guardian:

(a) Skim milk;

(b) Reconstituted nonfat dry milk; and

(c) One and two percent butterfat milk.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0630, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0640 What home canned foods may I use? You may not serve home canned foods to children at an emergency respite center.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0640, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0650 What requirements must I meet for feeding babies? You must meet the following requirements for feeding babies:

(1) If more than one child is bottle-fed, all formulas must be in sanitized bottles with nipples and labeled with the child's name and date prepared.

(2) You must refrigerate filled bottles if the bottles are not used immediately. Contents must be discarded if not used within twenty-four hours.

(3) If you reuse bottles and nipples, you must sanitize them.

(4) Infants who are six months of age or over may hold their own bottles as long as an adult remains in the room, within eyesight. You must take bottles from the child when the child finishes feeding, or when the bottle is empty.

(5) You must not prop a bottle when feeding an infant.

(6) To prevent uneven heating, formula must not be warmed in a bottle used for feeding in a microwave oven.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0650, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0660 Are there room requirements?

(1) You must provide rooms that are ample in size and properly furnished for the number of children you serve at an emergency respite center.

(2) With more than twelve children, you must provide at least one separate indoor recreation area. Its size and location must be sufficient for the age and number of the children using it to engage in recreational and informal education activities.

(3) You must provide a room or area that is used as an administrative office. In addition, suitable offices must be provided for social service staff. In facilities caring for fewer than thirteen children, these offices may be combined with the administrative office.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0660, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0670 What does the room temperature at a center need to be? (1) You must maintain the temperature within your emergency respite center facility at a reasonable level while occupied. This would normally be a minimum of sixty-eight degrees Fahrenheit during awake hours and a minimum of sixty-five degrees Fahrenheit during sleeping hours.

(2) You must consider the age and needs of the children under your care in determining appropriate temperature.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0670, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0680 What are the kitchen requirements? (1) You must provide facilities to properly store, prepare, and serve food to meet the needs of the children under your care at your emergency respite center.

(2) All food service facilities and food handling practices must comply with rules and regulations of the state board of health governing food service sanitation (see chapter 246-215 WAC). This includes food handler's permit for all staff.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0680, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0690 May I use the kitchen for activities for children? Children are not allowed in the kitchen of an emergency respite center.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0690, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0700 May a room be used for more than one purpose? At your emergency respite center you may use a room for multiple purposes such as playing, dining, napping, and learning activities, provided that:

- (1) The room is of sufficient size; and
- (2) The room's usage for one purpose does not interfere with usage of the room for another purpose.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0700, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0710 What are the general requirements for bedrooms? You must meet all the following requirements for bedrooms if you provide full-time care at an emergency respite center.

(1) An adult must be on the same floor or within easy hearing distance and accessibility to where children under six years of age are sleeping.

(2) Any room used for sleeping must be at least thirty-five square feet per child.

(3) Bedrooms must have both:

(a) Adequate ceiling height for the safety and comfort of the occupants (normally, seven and a half feet); and

(b) At least one window of not less than one-tenth of the required floor space that opens to the outside. This allows natural light into the bedroom and permits emergency access or exit.

(4) The number of beds allowed at an emergency respite center is established in consultation with the DOH surveyor for each facility.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0710, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0720 What are the requirements for beds? (1) Children in overnight care must have their own bed at an emergency respite center. The bed must be at least twenty-seven inches wide with a clean and comfortable mattress in good condition.

(2) For each child in care, you must provide a pillow and pillowcase, blankets, and sheets.

(3) Pillows must be covered with waterproof material or be washable.

(4) Bedding must be clean.

(5) You must provide waterproof mattress covers or moisture resistant mattresses, if needed.

(6) You may use toddler beds with a standard crib mattress that is sufficient in length and width for the comfort of children.

(7) You must not allow children to use the loft style beds or upper bunks of double-deck beds if using them due to age, development or condition could hurt them. Examples: Pre-school age children and children with disabilities.

(8) If a cot is used as the bed, the licensee must ensure the child's cot is of sufficient length and width, and constructed to provide adequate comfort for the child to sleep. The licensee must ensure that the cot surface is of a material

that can be cleaned with a detergent solution, disinfected, and allowed to air dry.

(9) You must not use canvas cots.

(10) A mat may be used for napping but not as a substitute for a bed.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0720, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0730 Are there requirements for the use of cribs? (1) You must provide an infant with a crib that ensures the safety of the infant and complies with chapter 70.111 RCW, Infant Crib Safety Act.

(2) Cribs must have no more than two and three-eighths inches space between vertical slats when used for infants less than six months of age.

(3) Cribs, infant beds, bassinets, and playpens must:

(a) Have clean, firm, snug fitting mattresses covered with waterproof material that is easily sanitized; and

(b) Be made of wood, metal, or approved plastic with secure latching devices

(4) Crib bumpers, stuffed toys, and pillows must not be used in cribs, infant beds, bassinets, or playpens.

(5) You must follow the recommendation of the American Academy of Pediatrics, 1-800-505-CRIB, placing infants on their backs each time for sleep.

(6) The distance between each crib/bed must provide enough space for exiting and allow staff access to children. Normally, this would be thirty inches.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0730, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0740 What are the requirements for diapers and diaper-changing areas? At an emergency respite center, you must follow the requirements for diapers, diaper-changing rooms, and potty-chairs.

(1) You must separate diaper-changing areas from food preparation areas.

(2) You must sanitize diaper-changing areas between each use or you must use a nonabsorbent, disposable covering that is discarded after each use.

(3) For cleaning children, you must use either disposable towels or clean cloth towels that have been laundered between each use.

(4) You and any caregiver must wash hands before and after diapering each child.

(5) You must use disposable diapers, a commercial diaper service, or reusable diapers supplied by the child's family.

(6) Diaper-changing procedures must be posted at the changing areas.

(7) Diaper-changing areas must be adjacent to a hand-washing sink.

(8) The staff must be within arms-length of the child being diapered at all times while changing diapers. The use of safety belts is prohibited.

(9) Diaper-changing tables or surfaces must have a barrier or edge that is a minimum of four inches above the pad or six inches above the top of the table.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0740, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0750 What are the requirements for bathing facilities? Emergency respite centers must comply with the requirements that follow.

- (1) Bathing facilities must be inaccessible to children when not in use.
- (2) Preschool age and younger children must be supervised while using bathing facilities.
- (3) Bathing facilities must be equipped with a conveniently located grab bar or other safety device such as a non-skid pad.
- (4) The ratio of bathing facilities to children in care must be 1:8.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0750, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0760 Do I need a telephone? (1) You must have at least one telephone on the premises for incoming and outgoing calls. The telephone must be accessible for emergency use at all times.

- (2) You must post emergency phone numbers next to the phone.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0760, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0770 What are the lighting requirements? (1) You must locate light fixtures and provide lighting that promotes good visibility and comfort for the children under your care at your emergency respite center.

- (2) Emergency respite centers must have nonhazardous light fixture covers or shatter resistant (or otherwise made safe) light bulbs or tubes.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0770, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0780 What are the requirements for ventilation? (1) You must ensure that your physical facility is ventilated for the health and comfort of the persons under your care at the emergency respite center.

- (2) A mechanical exhaust fan to the outside must ventilate toilets and bathrooms, and utility rooms with mop sinks that do not have windows opening to the outside.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0780, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0790 What are the requirements about drinking water? (1) You must provide the following:

- (a) A public water supply or a private water supply approved by the local health authority at the time of licensing or relicensing; and
 - (b) Disposable paper cups, individual drinking cups or glasses, or angled jet type drinking fountains.
- (2) You must not use bubbler type fountains or common drinking cups.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0790, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0800 What are the requirements for sewage and liquid wastes? Emergency respite centers must discharge sewage and liquid wastes into a public sewer system or into a functioning septic system.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0800, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0810 What are the requirements for laundry facilities? The department has specific requirements for laundry facilities at an emergency respite center.

- (1) You must have separate and adequate facilities for storing soiled and clean linen.
- (2) You must provide adequate laundry and drying equipment, or make other arrangements for getting laundry done on a regular basis.
- (3) You must locate laundry equipment in an area separate from the kitchen and child care areas.
- (4) Laundry equipment must be vented to the outdoors.
- (5) You must make laundry equipment inaccessible to young children.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0810, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0820 What are the requirements for washing clothes? You must use an effective way to sanitize laundry contaminated with urine, feces, lice, scabies, or other potentially infectious materials at your emergency respite center. You must sanitize laundry through temperature control or the use of chemicals.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0820, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0830 Do I need a housekeeping sink? Facilities licensed to provide emergency respite care must have and use a housekeeping sink or DOH-approved method of drawing clean mop water and disposing of the wastewater.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0830, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0840 What are the requirements for handwashing sinks? (1) An emergency respite center must supply children with warm running water for handwashing. The water must be kept at a temperature range of not less than eighty-five degrees Fahrenheit and not more than one hundred and twenty degrees Fahrenheit.

- (2) The children's handwashing facilities must be located in or adjacent to rooms used for toileting.
- (3) The center must provide the child with soap and individual towels or other appropriate devices for washing and drying the child's hands and face.
- (4) Handwashing sinks must be of appropriate height and size for children in care or your center must furnish safe, easily cleanable platforms impervious to moisture.
- (5) An emergency respite center must provide a minimum of one handwashing sink:
 - (a) For every fifteen children normally on site during the day; and
 - (b) For every eight children normally on site overnight.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0840, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0850 What are the requirements for toilets? (1) An emergency respite center must provide a minimum of one indoor flush-type toilet:

(a) For every fifteen children normally on site during the day; and

(b) For every eight children normally on site overnight.

(2) Children eighteen months of age or younger and other children using toilet training equipment need not be included when determining the number of required flush-type toilet.

(3) If urinals are provided, the number of urinals must not replace more than one-third of the total required toilets.

(4) Privacy for toileting must be provided for children of the opposite sex who are six years of age and older and for other children demonstrating a need for privacy.

(5) A mounted toilet paper dispenser for each toilet must be provided.

(6) Toilets and urinals must be of appropriate height and size for children in care or your center must furnish safe, easily cleanable platforms impervious to moisture.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0850, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0860 Must a center have toilet training equipment for children? (1) An emergency respite center must have developmentally appropriate toilet-training equipment, when the center serves children who are not toilet trained.

(2) The equipment must be sanitized after each child's use.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0860, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0870 What are the requirements for indoor play areas? (1) The emergency respite center's indoor premises must contain adequate area for child play and sufficient space to house a developmentally appropriate program for the number and age range of children served.

(2) You must provide a minimum of thirty-five square feet of usable floor space per child, not counting bathrooms, hallways, and closets.

(3) You may use and consider the napping area as child care space, if there are not beds or cots on the floor space.

(4) Any room used for napping or sleeping must have a window to allow natural light into the room.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0870, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0880 What are the requirements for an outdoor play area? (1) You must provide a safe and securely-fenced or department-approved, enclosed outdoor play area at an emergency respite center.

(2) The fenced or approved enclosed outdoor play area must prevent child access to roadways and other dangers.

(3) The fence or enclosure must protect the play area from unauthorized exit or entry. Any fence or enclosure must be designed to discourage climbing.

(4) The outdoor play area must adjoin directly the indoor premises or be reachable by a safe route and method.

(5) The outdoor play area must promote the child's active play, physical development, and coordination.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0880, filed 3/26/03, effective 4/26/03.]

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WAC 388-145-0890 What are the size requirements for an outdoor play area? (1) You must ensure the play area at an emergency respite center contains a minimum of seventy-five usable square feet per child.

(2) If not all of the children are using the outdoor play area at the same time, you may reduce the outdoor play area size by the number of children normally using the play area at one time.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0890, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0900 What are the requirements for playground equipment? (1) You must provide a variety of age appropriate play equipment for climbing, pulling, pushing, riding, and balancing activities at an emergency respite center.

(2) You must arrange, design, construct, and maintain equipment and ground cover to prevent child injury.

(3) The quantity of outdoor play equipment must offer the child a range of outdoor play options.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0900, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0910 Are there requirements to follow when I transport children? When you transport children under your care, you must follow these requirements.

(1) The vehicle must be kept in a safe operating condition.

(2) The driver must have a valid driver's license.

(3) There must be at least one adult other than the driver in a vehicle when:

(a) There are more than five preschool-aged children in the vehicle;

(b) Staff-to-child ratio guidelines or your contract require a second staff person; or

(c) The child's specific needs require a second adult person.

(4) The driver or owner of the vehicle must be covered under an automobile liability and insurance policy.

(5) Your vehicles must be equipped with seat belts, car seats and booster seats, and/or other appropriate safety devices for all passengers as required by law.

(6) The number of passengers must not exceed the vehicle's seat belts.

(7) All persons in the vehicle must use seat belts or approved child passenger restraint systems, as appropriate for age, whenever the vehicle is in motion.

(8) Buses approved by the state patrol are not required to have seat belts.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0910, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0920 What does the department require for keeping client records? (1) Your records must be kept at your emergency respite center and contain, at a minimum, the following information:

(a) The child's name and birthdate;

(b) Daily attendance logs;

(c) A copy of any suspected child abuse and/or neglect referrals made to children's administration;

(d) Names, address and home and business telephone numbers of parents or persons to be contacted in case of emergency;

(e) Dates and illnesses or accidents while at the center;

(f) Medications and treatments given at the center;

(g) Facility and/or daily logs must have the signature of the person making the written entry;

(h) Health screening information including any allergy information; and

(i) Other information determined relevant by the department.

(2) Identifying and personal information about the child and their family must be kept confidential, unless permission has been given for release by the parent.

(3) You must keep information about the child and their families in a secure place.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0920, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0930 What written information is needed before a child is admitted to a center? Before accepting a child for care at an emergency respite center you must obtain the following written consent and information from the parent or guardian:

(1) Permission from the child's parent or guardian authorizing the placement of their child;

(2) Permission to seek emergency medical care or surgery on behalf of their child;

(3) Basic family information, including address, telephone numbers, and emergency contact; and

(4) Basic medical information, including current medication, known allergies, and at-risk behaviors of the child.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0930, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0940 What are the requirements for protecting a child under my care from abuse or neglect? As part of ensuring a child's health, welfare and safety, you must protect children under your care from all forms of child abuse or neglect (see RCW 26.44.020(12) and chapter 388-15 WAC for more details).

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0940, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0950 What are the nondiscrimination requirements? You must follow all state and federal laws regarding nondiscrimination while providing services to children in your care.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0950, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0960 Do I have to admit or retain all children at the center? An emergency respite center has the right to refuse to admit or retain a child who can not be served safely or who may pose a risk to other children.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0960, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0970 Do I have responsibility for a child's personal hygiene? (1) You must provide or arrange

for children under your care to have items needed for grooming and personal hygiene.

(2) You must assist these children in using these items, based on the child's developmental needs.

(3) Clothing must be clean and age-appropriate.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0970, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0980 Do I have responsibility for a child's personal items at the center? You must provide separate space for the storage of personal items such as clothing and toys, for each child at your emergency respite center.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0980, filed 3/26/03, effective 4/26/03.]

WAC 388-145-0990 What requirements must I follow when disciplining children? (1) You are responsible for disciplining children in your care. This responsibility may not be delegated to a child.

(2) Discipline must be based on an understanding of the child's needs and stage of development.

(3) Discipline must be designed to help the child under your care to develop inner control, acceptable behavior and respect for the rights of others.

(4) Discipline must be fair, reasonable, consistent, and related to the child's behavior.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-0990, filed 3/26/03, effective 4/26/03.]

WAC 388-145-1000 What types of disciplinary practices are forbidden? (1) You must not use cruel, unusual, frightening, unsafe or humiliating discipline practices, including but not limited to:

(a) Spanking children with a hand or object;

(b) Biting, jerking, kicking, hitting, or shaking the child;

(c) Pulling the child's hair;

(d) Throwing the child;

(e) Purposely inflicting pain as a punishment;

(f) Name calling or using derogatory comments;

(g) Threatening the child with physical harm;

(h) Threatening or intimidating the child; or

(i) Placing or requiring a child to stand under a cold water shower.

(2) You must not use methods that interfere with a child's basic needs. These include, but are not limited to:

(a) Depriving the child of sleep;

(b) Providing inadequate food, clothing or shelter;

(c) Restricting a child's breathing;

(d) Interfering with a child's ability to take care of their own hygiene and toilet needs; or

(e) Providing inadequate medical or emergency dental care.

(3) You must not use medication in an amount or frequency other than that prescribed by a physician or psychiatrist.

(4) You must not give one child's medications to another child.

(5) You must not use medication for behavior management unless a physician to control that child's behavior prescribes the medication.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-1000, filed 3/26/03, effective 4/26/03.]

WAC 388-145-1010 Does the department require a written statement describing my discipline methods? (1) You must provide a written statement describing the discipline methods you use with your application and reapplication for licensure.

(2) If your discipline methods change, you must immediately provide a new statement to your licensor describing your current practice.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-1010, filed 3/26/03, effective 4/26/03.]

WAC 388-145-1020 What types of physical restraint are acceptable? (1) You must use efforts other than physical restraint to redirect or deescalate a situation.

(2) If a child's behavior poses an immediate risk to physical safety, you may use a physical restraint on a child. The restraint must be reasonable and necessary to:

(a) Prevent a child on the premises from harming himself/herself or others; or

(b) Protect property from serious damage.

(3) You and the staff may use restraining techniques:

(a) If your emergency respite center provides care to school-age children only; and

(b) Is approved by DLR for the use of physical restraint. You and your staff must be trained in accordance with the DLR behavior management policy before restraining a child in a nonemergency situation.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-1020, filed 3/26/03, effective 4/26/03.]

WAC 388-145-1030 What types of physical restraint are not acceptable for children? You must not use:

(1) Physical restraint as a form of punishment or discipline;

(2) Mechanical restraints, such as handcuffs and belt restraints;

(3) Locked time-out rooms; or

(4) Physical restraint techniques that restrict breathing, or inflict pain as a strategy for behavior control, or that might injure a child. These include, but are not limited to:

(a) Restriction of body movement by placing pressure on joints, chest, heart, or vital organs;

(b) Sleeper holds, which are holds used by law enforcement officers to subdue a person;

(c) Arm twisting;

(d) Hair holds;

(e) Choking or putting arms around the throat; or

(f) Chemical restraints, including but not limited to pepper spray.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-1030, filed 3/26/03, effective 4/26/03.]

WAC 388-145-1040 What must I do following an incident that involved using physical restraint? The director or program supervisor of an emergency respite center must review any incident with the staff who used physical restraint to ensure that the decision to use physical restraint and its application were appropriate.

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[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-1040, filed 3/26/03, effective 4/26/03.]

WAC 388-145-1050 What incidents involving children must I report? (1) You or your staff at an emergency respite center must report any of the following incidents immediately to your local children's administration intake staff and the child's parent or legal guardian:

(a) Any reasonable cause to believe that a child has suffered child abuse or neglect;

(b) Any violations of the licensing or certification requirements;

(c) Death of a child;

(d) Any child's suicide attempt that results in injury requiring medical treatment or hospitalization;

(e) Any use of physical restraint that is alleged to be improper, excessive, or results in injury;

(f) Sexual contact between two or more children that is not considered typical play between preschool age children;

(g) Any disclosures of sexual or physical abuse by a child in care;

(h) Physical assaults between two or more children that result in injury requiring off-site medical treatment or hospitalization;

(i) Unexpected or emergent health problems that require off-site medical treatment;

(j) Any medication that is given incorrectly and requires off-site medical treatment; or

(k) Serious property damage that is a safety hazard and is not immediately corrected.

(2) You or your staff must report immediately, any of the following incidents to the child's parent or legal guardian:

(a) Suicidal/homicidal ideation, gestures, or attempts that do not require professional medical treatment;

(b) Unexpected health problems that do not require professional medical treatment;

(c) Any incident of medication administered incorrectly;

(d) Physical assaults between two or more children that resulted in injury but did not require professional medical treatment;

(e) Runaways; and

(f) Use of physical restraints for routine behavior management.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-1050, filed 3/26/03, effective 4/26/03.]

WAC 388-145-1060 What is the ratio of child care staff to children at a center? At all times, emergency respite centers must have the following minimum staffing ratios:

(1) At least two staff on duty when children are present; and

(2) One child care staff providing visual or auditory supervision for every four children in care.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-1060, filed 3/26/03, effective 4/26/03.]

WAC 388-145-1070 What are the requirements for supervision of children at a center? (1) Emergency respite centers must provide or arrange for care and supervision that is appropriate for the child's age, developmental level, and condition.

(2) In emergency respite centers, children must be within visual and auditory range at all times.

(3) Emergency respite centers must supervise children who help with activities involving food preparation, based on their age and skills.

(4) Preschool children and children with severe developmental disabilities must not be left unattended in a bathtub or shower at an emergency respite center.

(5) Staff, volunteers, and others caring for children at an emergency respite center must provide the children with:

- (a) Appropriate adult supervision;
- (b) Emotional support;
- (c) Personal attention; and
- (d) Structured daily routines and living experiences.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-1070, filed 3/26/03, effective 4/26/03.]

WAC 388-145-1080 What are the responsibilities of the director? (1) The director of an emergency respite center

is responsible for the overall management of the center's facility and operation.

(2) The director serves as the administrator of the center.

(3) The director must ensure the emergency respite center complies with the licensing requirements contained in this chapter.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-1080, filed 3/26/03, effective 4/26/03.]

WAC 388-145-1090 Are there general qualifications for all staff in an emergency respite center? You, your staff, and other persons at an emergency respite center who have access to the children must be able to demonstrate the understanding, ability, personality, emotional stability, and physical health suited to meet the cultural, emotional, mental, physical, and social needs of the children in care.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-1090, filed 3/26/03, effective 4/26/03.]

WAC 388-145-1100 What are the minimum qualifications and training requirements for center staff?

Position	Qualifications	Background Check	TB Test	Food Handlers Permit	First Aid and CPR	HIV/AIDS and Bloodborne Pathogens Training
Director or program supervisor	<ul style="list-style-type: none"> •Twenty-one years of age; •Bachelor's degree; or •Five years of experience in child development, social service or related field. 	X	X	X	X	X
Primary child care worker	<ul style="list-style-type: none"> •Twenty-one years of age; •High school diploma or GED; •Two years of experience caring for children; or •Twenty hours training child development. 	X	X	X	X	X
Child care assistant	<ul style="list-style-type: none"> •Eighteen years of age; •High school diploma or GED; •One year of experience caring for children; or •Twenty hours training if obtained within first year of employment. 	X	X	X	X	X
Work study students	<ul style="list-style-type: none"> •Sixteen years of age; •Involved in an education-related program; and •Supervised by primary or child care assistant. 	X	X	X	X	X
Case manager	Bachelor's degree in social services, child development, or related field; recommended position, not required.	X	X	X	X	X
Volunteers	<ul style="list-style-type: none"> •Sixteen years of age. •Supervised at all times. 	X	X	X	Recommended training	X

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-1100, filed 3/26/03, effective 4/26/03.]

WAC 388-145-1110 May one person hold two positions at a center? (1) The director and program supervisor may be one and the same person when qualified for both positions.

(2) The director and program supervisor may also serve as child care staff when the role does not interfere with the director's or program supervisor's management and supervisory responsibilities.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-1110, filed 3/26/03, effective 4/26/03.]

WAC 388-145-1120 Who must be on the premises while children are in care at a center? (1) The director, program supervisor, or case manager at an emergency respite center must normally be on the premises during daytime hours when children are in care.

(2) If temporarily absent (for two hours or less) from the center, the director and program supervisor must leave a competent, designated staff person in charge. This person must meet the qualifications of primary child care staff person.

(3) During evening, overnight, and weekend shifts, at least one of the staff on the premises must be a primary child care worker when children are present. The other staff may be a child care assistant. The director, program supervisor, or case manager must be on-call and able to respond by telephone within fifteen minutes.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-1120, filed 3/26/03, effective 4/26/03.]

WAC 388-145-1130 Are child care assistants allowed to provide care to a group of children without supervision? (1) You may assign a child care assistant to support lead child care staff at an emergency respite center.

(2) No person under eighteen years of age may be assigned sole responsibility for a group of children at an emergency respite center.

(3) Any child care assistant under twenty-one years old may care for a child or group of children without direct supervision for up to fifteen minutes.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-1130, filed 3/26/03, effective 4/26/03.]

WAC 388-145-1140 Are volunteers allowed to provide child care to children without supervision? The volunteer at an emergency respite center must care for a child only under the direct supervision of the primary child care staff person or program director.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-1140, filed 3/26/03, effective 4/26/03.]

WAC 388-145-1150 Do volunteers count in the staff-to-child ratio respite center? You may count the volunteer in the staff-to-child ratio when the volunteer meets the required staff qualifications at an emergency respite center.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-1150, filed 3/26/03, effective 4/26/03.]

WAC 388-145-1160 Are professional consultants and case managers needed? (1) Emergency respite centers may have consultants and case managers available, as needed, to

work with the staff, the children you serve, and the children's families. Any consultants or case managers must meet the full professional competency requirements in their respective fields. The consultants and case managers must have:

(a) The training, experience, knowledge and demonstrated skills in each area that he or she will be advising;

(b) The ability to ensure that your staff develop their skills and understanding needed to effectively manage their cases;

(c) Knowledge of mandatory child abuse and neglect reporting requirements; and

(d) Training and experience in early childhood education.

(2) Consultants and case managers may be hired as staff or operate under a contract with an emergency respite center.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-1160, filed 3/26/03, effective 4/26/03.]

WAC 388-145-1170 What clerical, accounting and administrative services do I need? You must have sufficient clerical, accounting and administrative services to maintain proper records and carry out your program at an emergency respite center.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-1170, filed 3/26/03, effective 4/26/03.]

WAC 388-145-1180 What support and maintenance staff do I need? You must have sufficient support and maintenance services to maintain and repair your facility and prepare and serve meals at an emergency respite center.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-1180, filed 3/26/03, effective 4/26/03.]

WAC 388-145-1190 Is in-service training required for staff? (1) You must offer in-service training programs for developing and upgrading staff skills.

(2) If you have five or more employees or volunteers, your training plan must be in writing.

(3) You must discuss with the staff your policies and procedures as well as the rules contained in this chapter.

(4) You must provide or arrange for your staff to have training for the services that you provide to children under your care.

(5) Your training on behavioral management must be approved by DLR and must include nonphysical age-appropriate methods of redirecting and controlling behavior, as described in the department's behavior management policy.

(6) Your training must include monthly practice of fire drills and disaster training for each staff.

(7) You must record the amount of time and type of training provided to staff.

(8) This information must be kept in each employee's file or in a separate training file.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-1190, filed 3/26/03, effective 4/26/03.]

WAC 388-145-1200 What are the requirements for an activity program? (1) You must provide an activity program at an emergency respite center that is designed to meet

the developmental, cultural, and individual needs of the children served at an emergency respite center.

(2) You must ensure the emergency respite center's activity program allows time for children to have daily opportunities for small and large muscle activities and outdoor play.

(3) You must provide a written outline of planned activities, allowing flexibility for special events and specific child circumstances.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-1200, filed 3/26/03, effective 4/26/03.]

WAC 388-145-1210 What activities must I provide to children? (1) Activities must be designed for the developmental stages of the children you serve at an emergency respite center, allowing a balance between:

- (a) Child-initiated and staff-initiated activities;
- (b) Free play and organized events;
- (c) Individual and group activities; and
- (d) Quiet and active experiences.

(2) You must ensure that children at an emergency respite center are grouped to ensure the safety of children.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-1210, filed 3/26/03, effective 4/26/03.]

WAC 388-145-1220 What types of toys must I provide? (1) You must provide safe and suitable toys and equipment for all children in your care at an emergency respite center.

(2) You must have toys that relate to the different developmental stages of the children you serve at an emergency respite center.

[Statutory Authority: RCW 74.15.280, 74.15.020 and 2001 c 230. 03-08-026, § 388-145-1220, filed 3/26/03, effective 4/26/03.]

**Chapter 388-150 WAC
MINIMUM LICENSING REQUIREMENTS FOR
CHILD DAY CARE CENTERS**

WAC

388-150-005 through 388-150-993 Repealed.

**DISPOSITION OF SECTIONS FORMERLY
CODIFIED IN THIS CHAPTER**

388-150-005 Authority. [Statutory Authority: RCW 74.12.340, 94-13-201 (Order 3745), § 388-150-005, filed 6/22/94, effective 7/23/94. Statutory Authority: RCW 74.15.030, 91-07-013 (Order 3151), § 388-150-005, filed 3/12/91, effective 4/12/91; 90-23-078 (Order 3103), § 388-150-005, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-0001.

388-150-010 Definitions. [Statutory Authority: Chapter 74.15 RCW, RCW 74.08.090, 02-16-062, § 388-150-010, filed 8/2/02, effective 10/1/02. Statutory Authority: RCW 74.15.030, 98-24-052, § 388-150-010, filed 11/25/98, effective 12/26/98. Statutory Authority: RCW 74.15.020 and 74.15.030, 93-18-001 (Order 3623), § 388-150-010, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030, 90-23-078 (Order 3103), § 388-150-010, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-0010.

388-150-020 Scope of licensing. [Statutory Authority: RCW 74.12.340, 94-13-201 (Order 3745), § 388-150-020, filed 6/22/94, effective 7/23/94. Statutory Authority: RCW 74.15.020 and 74.15.030, 93-18-001 (Order 3623), § 388-150-020, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030, 91-15-084 and 91-21-070 (Orders 3205 and 3205A), § 388-150-020, filed 7/23/91 and 10/17/91, effective 8/23/91 and 11/17/91; 90-23-078 (Order 3103), § 388-150-020, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-0020.

388-150-040 Local ordinances and codes. [Statutory Authority: RCW 74.15.030, 90-23-078 (Order 3103), § 388-150-040, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-0040.

388-150-050 Waivers. [Statutory Authority: RCW 74.15.030, 90-23-078 (Order 3103), § 388-150-050, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-0050.

388-150-060 Dual licensure. [Statutory Authority: RCW 74.15.020 and 74.15.030, 93-18-001 (Order 3623), § 388-150-060, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030, 90-23-078 (Order 3103), § 388-150-060, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-0055.

388-150-070 Application and reapplication for licensing—Investigation. [Statutory Authority: RCW 43.20B.110, 01-02-032, § 388-150-070, filed 12/22/00, effective 1/22/01. Statutory Authority: RCW 74.15.020 and 74.15.030, 93-18-001 (Order 3623), § 388-150-070, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030, 90-23-078 (Order 3103), § 388-150-070, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-0060; 388-295-0070.

388-150-080 Licensed capacity. [Statutory Authority: RCW 74.15.030, 90-23-078 (Order 3103), § 388-150-080, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-0080.

388-150-085 Initial license. [Statutory Authority: RCW 74.15.030, 96-20-095, § 388-150-085, filed 10/1/96, effective 11/1/96.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-0090.

388-150-090 When can my license application be denied and when can my license be suspended or revoked? [Statutory Authority: Chapter 74.120 RCW, RCW 74.12.340, and 74.15.030, 02-14-085, § 388-150-090, filed 6/28/02, effective 7/29/02. Statutory Authority: RCW 74.15.030, 96-10-043 (Order 3974), § 388-150-090, filed 4/26/96, effective 5/27/96. Statutory Authority: RCW 74.12.340, 94-13-201 (Order 3745), § 388-150-090, filed 6/22/94, effective 7/23/94. Statutory Authority: RCW 74.15.030, 90-23-078 (Order 3103), § 388-150-090, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-0100.

388-150-092 Civil penalties. [Statutory Authority: RCW 74.15.030, 96-20-095, § 388-150-092, filed 10/1/96, effective 11/1/96.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-0110.

388-150-093 Civil penalties—Amount of penalty. [Statutory Authority: RCW 74.15.030, 96-20-095, § 388-150-093, filed 10/1/96, effective 11/1/96.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-0120.

388-150-094 Civil penalties—Posting of notice of penalty. [Statutory Authority: RCW 74.15.030, 96-20-095, § 388-150-094,

	filed 10/1/96, effective 11/1/96.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-0110.		Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-2070.
388-150-095	Civil penalties—Unlicensed programs. [Statutory Authority: RCW 74.15.030. 96-20-095, § 388-150-095, filed 10/1/96, effective 11/1/96.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-0130.	388-150-170	Parent communication. [Statutory Authority: RCW 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-170, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-170, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-2080.
388-150-096	Civil penalties—Separate violations. [Statutory Authority: RCW 74.15.030. 96-20-095, § 388-150-096, filed 10/1/96, effective 11/1/96.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-0110.	388-150-180	Staff pattern and qualifications. [Statutory Authority: RCW 74.15.030. 98-24-052, § 388-150-180, filed 11/25/98, effective 12/26/98. Statutory Authority: RCW 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-180, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030. 91-07-013 (Order 3151), § 388-150-180, filed 3/12/91, effective 4/12/91; 90-23-078 (Order 3103), § 388-150-180, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see chapter 388-295 WAC.
388-150-097	Civil penalties—Penalty for nonpayment. [Statutory Authority: RCW 74.15.030. 96-20-095, § 388-150-097, filed 10/1/96, effective 11/1/96.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-0110.		
388-150-098	Probationary license. [Statutory Authority: RCW 74.15.030. 96-20-095, § 388-150-098, filed 10/1/96, effective 11/1/96.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-0140.	388-150-190	Group size and staff-child ratios. [Statutory Authority: RCW 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-190, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-190, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-2090.
388-150-100	Activity program. [Statutory Authority: RCW 74.15.030. 91-07-013 (Order 3151), § 388-150-100, filed 3/12/91, effective 4/12/91; 90-23-078 (Order 3103), § 388-150-100, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-2110.	388-150-200	Staff development and training. [Statutory Authority: RCW 74.15.030. 98-24-052, § 388-150-200, filed 11/25/98, effective 12/26/98. Statutory Authority: RCW 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-200, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-200, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see chapter 388-295 WAC.
388-150-110	Learning and play materials. [Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-110, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-2020.		
388-150-120	Staff-child interactions. [Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-120, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-2030.	388-150-210	Health care plan. [Statutory Authority: RCW 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-210, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030. 91-07-013 (Order 3151), § 388-150-210, filed 3/12/91, effective 4/12/91; 90-23-078 (Order 3103), § 388-150-210, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-3010.
388-150-130	Behavior management and discipline. [Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-130, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-2040.		
388-150-140	Rest periods. [Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-140, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-2050.	388-150-220	Health supervision and infectious disease prevention. [Statutory Authority: RCW 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-220, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-220, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-7010; 388-295-7020; 388-295-3030.
388-150-150	Evening and nighttime care. [Statutory Authority: RCW 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-150, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-150, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-2060.	388-150-230	Medication management. [Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-230, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see chapter 388-295 WAC.
388-150-160	Off-site trips. [Statutory Authority: RCW 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-160, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-160, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-2070.	388-150-240	Nutrition. [Statutory Authority: RCW 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-240, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-240, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-3140; 388-295-3150; 388-295-3160.
388-150-165	Transportation. [Statutory Authority: RCW 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-165, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-165, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory	388-150-250	Kitchen and food service. [Statutory Authority: RCW 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-250, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-250, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see chapter 388-295 WAC.

388-150-260	Drinking and eating equipment. [Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-260, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-3230.	388-150-380	Program atmosphere. [Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-380, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-5150 (part).
388-150-270	Care of young children. [Statutory Authority: RCW 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-270, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-270, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see chapter 388-295 WAC.	388-150-390	Discrimination prohibited. [Statutory Authority: RCW 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-390, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030. 91-07-013 (Order 3151), § 388-150-390, filed 3/12/91, effective 4/12/91; 90-23-078 (Order 3103), § 388-150-390, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-6010.
388-150-280	General safety, maintenance, and site. [Statutory Authority: RCW 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-280, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030. 91-07-013 (Order 3151), § 388-150-280, filed 3/12/91, effective 4/12/91; 90-23-078 (Order 3103), § 388-150-280, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see chapter 388-295 WAC.	388-150-400	Religious activities. [Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-400, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-6020.
388-150-290	Water safety. [Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-290, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-5070.	388-150-410	Special requirements regarding American Indian children. [Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-410, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-6030.
388-150-295	Water supply, sewage, and liquid wastes. [Statutory Authority: RCW 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-295, filed 8/18/93, effective 9/18/93.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-5070; 388-295-5080.	388-150-420	Child abuse, neglect, and exploitation. [Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-420, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-6040.
388-150-310	First-aid supplies. [Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-310, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-5010.	388-150-430	Prohibited substances. [Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-430, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-6050.
388-150-320	Outdoor play area. [Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-320, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-5090; 388-295-5100.	388-150-440	Limitations to persons on premises. [Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-440, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-6060.
388-150-330	Indoor play area. [Statutory Authority: RCW 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-330, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-330, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-0080.	388-150-450	Child records and information. [Statutory Authority: RCW 74.15.030. 91-07-013 (Order 3151), § 388-150-450, filed 3/12/91, effective 4/12/91; 90-23-078 (Order 3103), § 388-150-450, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-7010.
388-150-340	Toilets, handwashing sinks, and bathing facilities. [Statutory Authority: RCW 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-340, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-340, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-5100; 388-295-3040.	388-150-460	Program records. [Statutory Authority: RCW 74.12.340. 94-13-201 (Order 3745), § 388-150-460, filed 6/22/94, effective 7/23/94. Statutory Authority: RCW 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-460, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-460, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see chapter 388-295 WAC.
388-150-350	Laundry. [Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-350, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-5110.	388-150-470	Personnel policies and records. [Statutory Authority: RCW 74.15.030. 98-24-052, § 388-150-470, filed 11/25/98, effective 12/26/98. Statutory Authority: RCW 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-470, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-470, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-7010; 388-295-7050.
388-150-360	Nap and sleep equipment. [Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-360, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-4100; 388-295-5120.	388-150-480	Reporting of death, injury, illness, epidemic, or child abuse. [Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-480, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-7160; 388-295-7060.
388-150-370	Storage. [Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-370, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-5060; 388-295-5140.		

- 388-150-490 Reporting of circumstantial changes. [Statutory Authority: RCW 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-490, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-490, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-7070.
- 388-150-500 Posting requirements. [Statutory Authority: RCW 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-500, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-500, filed 11/20/90, effective 12/21/90.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-7080.
- 388-150-990 Purpose and authority. [00-23-088, recodified as § 388-150-990, filed 11/20/00, effective 11/20/00. Statutory Authority: 1982 c 201. 82-13-011 (Order 1825), § 440-44-001, filed 6/4/82.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-0001.
- 388-150-991 Waiver of fees. [00-23-088, recodified as § 388-150-991, filed 11/20/00, effective 11/20/00. Statutory Authority: 1982 c 201. 82-13-011 (Order 1825), § 440-44-002, filed 6/4/82.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-0050.
- 388-150-992 Fee payment and refunds. [00-23-088, recodified as § 388-150-992, filed 11/20/00, effective 11/20/00. Statutory Authority: 1982 c 201. 82-13-011 (Order 1825), § 440-44-010, filed 6/4/82.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-0090.
- 388-150-993 Denial, revocation, suspension, and reinstatement. [00-23-088, recodified as § 388-150-993, filed 11/20/00, effective 11/20/00. Statutory Authority: 1982 c 201. 82-13-011 (Order 1825), § 440-44-015, filed 6/4/82.] Repealed by 03-14-110, filed 6/30/03, effective 8/1/03. Statutory Authority: Chapters 74.12 and 74.15 RCW. Later promulgation, see WAC 388-295-0100.

WAC 388-150-005 through 388-150-993 Repealed.

See Disposition Table at beginning of this chapter.

Chapter 388-155 WAC

MINIMUM LICENSING REQUIREMENTS FOR FAMILY CHILD DAY CARE HOMES

WAC

- 388-155-070 How do I apply for a license and what is required?
388-155-090 When can my license application be denied and when can my license be suspended or revoked?

WAC 388-155-070 How do I apply for a license and what is required? (1) To apply for a license to provide family home child care you must:

- (a) Be eighteen years of age or older;
- (b) Attend an orientation provided by the department;
- (c) Submit to the department a completed and signed family child care home license application form, including the following attachments:
 - (i) The twenty-four dollars per year license fee. The license fee may be paid for one, two or three years;
 - (ii) A completed criminal history and background inquiry form for each person sixteen years of age or older who will have unsupervised or regular access to the children in care. This includes you, any other applicants, assistants, volunteers and members of your household;

(iii) A copy of your picture identification issued by a government entity (could include but is not limited to: Driver's license, passport, state identification); and

(iv) A copy of your social security card or verification of your employer identification number (EIN).

(d) Submit to the department these additional documents either with your application or within the ninety-day licensing period:

(i) An employment and education resume for you and any assistants along with your school transcript, if you request:

(A) A waiver of the STARS training requirement; or

(B) A capacity higher than six children.

(ii) Three references for you;

(iii) Documentation of current TB exam by the Mantoux method for you, any assistants, volunteers and adult members of the household;

(iv) Documentation of current, standard first aid and infant/child CPR training for you and any assistant who will be left alone to care for the children;

(v) Documentation of your HIV/AIDS training;

(vi) Documentation of the local health jurisdiction approval of your private water supply and independent sewage system, if applicable;

(vii) A copy of your policies and procedures that you give to parents.

(e) Provide to the department any additional reports or information regarding you, any assistants, volunteers, members of your household or any other person having access to the child in care if any of those individuals may be unable to meet the requirements in chapter 388-155 WAC. This could include:

(i) Sexual deviancy evaluations;

(ii) Substance abuse evaluations;

(iii) Psychiatric evaluations; and

(iv) Medical evaluations.

(2) If we decide it is necessary, we will investigate you, other applicants, assistants, volunteers, members of your household, and other persons having access to the children in care. This investigation could include, but is not limited to, accessing criminal histories and law enforcement files and records.

[Statutory Authority: RCW 74.12.340, 74.15.030, and 26 U.S.C. 6109. 03-09-074, § 388-155-070, filed 4/15/03, effective 5/16/03. Statutory Authority: RCW 74.15.030. 00-06-040, § 388-155-070, filed 2/28/00, effective 3/30/00. Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 96-10-042 (Order 9373), § 388-155-070, filed 4/26/96, effective 5/27/96. Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-070, filed 2/1/91, effective 3/4/91.]

WAC 388-155-090 When can my license application be denied and when can my license be suspended or revoked?

(1) We must deny your license application, or suspend or revoke your license if you do not meet the requirements in this chapter.

(2) If more than one person applies for a license or is licensed under this chapter to provide child care at the same facility, we consider qualifications separately and together. We may deny your license application, or suspend or revoke your license if one person fails to meet the minimum licensing requirements.

(3) We must deny, suspend, or revoke your license if you:

(a) Have been found to have abused, neglected, sexually exploited, or abandoned a child as defined in chapter 26.44 RCW and chapter 388-15 WAC or allow a person who has committed any of these acts onto the premises;

(b) Have a disqualifying criminal history as listed in chapter 388-06 WAC or allow a person with such a disqualifying criminal history on the premises;

(c) Have had a license denied, suspended, or revoked for the care of adults or children in this state or any other state. The exception: If you can demonstrate by clear and convincing evidence that you have taken enough correction action or rehabilitation to justify the public trust and to operate the home according to the rules of this chapter, we may issue you a license;

(d) Commit or allow an illegal act on the licensed premises;

(e) Allow a child in your care to be abused, neglected, exploited, or treated with cruelty or indifference;

(f) Use illegal drugs, or use alcohol excessively;

(g) Refuse to permit an authorized representative of the department, state fire marshal, or state auditor's office to inspect the premises;

(h) Refuse to permit an authorized representative of the department, state fire marshal, or state auditor's office access to records related to the home's operation or to interview staff or a child in care; or

(i) Refuse to provide to us a copy of your:

(A) Picture identification issued by a government entity; and

(B) Social Security card or verification of your employer identification number (EIN).

(4) We may deny, suspend, or revoke your license if you:

(a) Try to get or keep a license by deceitful means, such as making false statements or leaving out important information on your application;

(b) Do not provide enough staff in relation to the numbers, ages, or characteristics of children in care;

(c) Allow a person who is not qualified by training, experience or temperament to care for or be in contact with a child in care;

(d) Fail to provide adequate supervision to a child in care;

(e) Are not able to exercise fiscal responsibility and accountability while operating the home;

(f) Knowingly allow an employee or volunteer on the premises who has made false statements on an application for employment or volunteer service;

(g) Refuse to supply additional information reasonably requested by the department; or

(h) Fail to comply with the minimum licensing requirements set forth in this chapter or any provision of chapter 74.15 RCW.

[Statutory Authority: RCW 74.12.340, 74.15.030, and 26 U.S.C. 6109. 03-09-074, § 388-155-090, filed 4/15/03, effective 5/16/03. Statutory Authority: RCW 74.15.030. 02-24-022, § 388-155-090, filed 11/26/02, effective 12/27/02. Statutory Authority: Chapter 74.120 RCW, RCW 74.12.340, and 74.15.030. 02-14-085, § 388-155-090, filed 6/28/02, effective 7/29/02. Statutory Authority: RCW 74.15.030. 01-17-084, § 388-155-090, filed 8/16/01, effective 9/16/01; 96-10-043 (Order 3974), § 388-155-090, filed 4/26/96, effective 5/27/96. Statutory Authority: RCW 74.12.340. 94-13-201 (Order

3745), § 388-155-090, filed 6/22/94, effective 7/23/94. Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-090, filed 2/1/91, effective 3/4/91.]

Chapter 388-165 WAC

CHILDREN'S ADMINISTRATION CHILD CARE SUBSIDY PROGRAMS

WAC

388-165-130 Repealed.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

388-165-130 Subsidized child care for seasonal workers. [99-19-087, recodified as § 388-165-130, filed 9/17/99, effective 9/17/99. Statutory Authority: RCW 74.12.340, 74.04.050, 74.04.055, 74.08.090 and 74.13.0903. 98-22-008, § 388-15-174, filed 10/22/98, effective 11/22/98.] Repealed by 03-14-109, filed 6/30/03, effective 8/1/03. Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW.

WAC 388-165-130 Repealed. See Disposition Table at beginning of this chapter.

Chapter 388-180 WAC

STANDARDS FOR HEALTH AND SAFETY REVIEWS OF THE WASHINGTON STATE SCHOOL FOR THE DEAF

WAC

388-180-0100 What is the purpose of this chapter?
 388-180-0110 What are the definitions for this chapter?
 388-180-0120 Is CPS required to investigate allegations of CA/N of students at the school?
 388-180-0130 What is included in the CPS investigation?
 388-180-0140 What health and safety reviews are required?
 388-180-0150 Who receives a copy of the completed health and safety reports?
 388-180-0160 What health and safety standards and written policies will the monitors be looking for when conducting their health and safety reviews of the school?
 388-180-0170 What specific areas must be included in the comprehensive health and safety review?
 388-180-0180 What health and safety areas must be included in the monitoring review?
 388-180-0190 Must WSD allow the department access to the records of the school?
 388-180-0200 Must WSD allow the department access to all students and staff for the reviews?
 388-180-0210 What must be included in the incident documentation?
 388-180-0220 What are the staffing requirements for the residential portion of the school?
 388-180-0230 What are the physical environment safety requirements for the residential facilities?

WAC 388-180-0100 What is the purpose of this chapter? The purpose of this chapter is to outline the process of investigating child abuse or neglect at Washington state school for the deaf and establish rules for completing health and safety monitoring reviews of the school.

[Statutory Authority: RCW 74.15.030 and 74.20.280. 03-04-013, § 388-180-0100, filed 1/24/03, effective 3/1/03.]

WAC 388-180-0110 What are the definitions for this chapter? The following definitions apply to this chapter:

"CA/N" means child abuse or neglect as defined in chapter 26.44 WAC.

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

"DLR" means the division of licensed resources, a division of children's administration, department of social and health services.

"Residential staff" means individuals in charge of supervising the day-to-day living situation of the children in the residential portion of the school.

"School" means the Washington State School for the Deaf.

"Superintendent" means the superintendent of the Washington state school for the deaf.

"WSD" means the Washington state school for the deaf.

[Statutory Authority: RCW 74.15.030 and 74.20.280. 03-04-013, § 388-180-0110, filed 1/24/03, effective 3/1/03.]

WAC 388-180-0120 Is CPS required to investigate allegations of CA/N of students at the school? The department's child protective services (CPS) must investigate referrals of alleged child abuse or neglect occurring at the Washington state school for the deaf. This includes alleged incidents of students abusing other students.

[Statutory Authority: RCW 74.15.030 and 74.20.280. 03-04-013, § 388-180-0120, filed 1/24/03, effective 3/1/03.]

WAC 388-180-0130 What is included in the CPS investigation? (1) A CPS investigation at the school must determine if:

- (a) Abuse or neglect is substantiated or "founded"; and
- (b) A referral to law enforcement is appropriate.

(2) CPS must send a copy of the investigative report for incidents of alleged abuse or neglect to the school's superintendent.

(3) CPS may include recommendations for increasing student safety to the superintendent and the board of trustees or its successor board.

[Statutory Authority: RCW 74.15.030 and 74.20.280. 03-04-013, § 388-180-0130, filed 1/24/03, effective 3/1/03.]

WAC 388-180-0140 What health and safety reviews are required? The department must complete health and safety reviews of the school as follows.

(1) A comprehensive health and safety review of WSD must be completed every three years; and

(2) Monitoring health and safety reviews must be completed at least quarterly until December 1, 2006.

[Statutory Authority: RCW 74.15.030 and 74.20.280. 03-04-013, § 388-180-0140, filed 1/24/03, effective 3/1/03.]

WAC 388-180-0150 Who receives a copy of the completed health and safety reports? (1) The department must provide a copy of the comprehensive health and safety review report of the school to:

- (a) The governor;
- (b) The legislature;
- (c) The superintendent; and
- (d) The school's board of trustees or its successor board.

(2) The department provides a copy of the periodic monitoring health and safety review reports of the school to the superintendent and to the governor.

[Statutory Authority: RCW 74.15.030 and 74.20.280. 03-04-013, § 388-180-0150, filed 1/24/03, effective 3/1/03.]

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WAC 388-180-0160 What health and safety standards and written policies will the monitors be looking for when conducting their health and safety reviews of the school? Reporting requirements

The health and safety standards that apply to WSD are as follows:

(1) All residential program personnel and volunteer staff at the school must comply with the mandatory reporting requirements of child abuse or neglect, RCW 26.44.020.

(2) The school must comply with all applicable fire marshal and department of health requirements.

Written policies and procedures

(3) The department will be reviewing the written policies and procedures of the school that:

(a) Promote a program aimed at providing personal safety and protection of all students residing at the school;

(b) Provide sufficient staffing levels on all shifts to meet the physical, emotional, and safety needs of all students, as required under RCW 72.40.240;

(c) Implement and maintain effective admission and retention policies that protect all students from sexual victimization, as required under RCW 72.40.270;

(d) Implement and maintain an effective communication system between educational staff and residential staff and parents and/or legal guardians;

(e) Ensure that the residential facility meets all applicable fire and health requirements and promote environmental safety against physical risk or harm to students;

(f) Minimize student-to-student conflict or harm when transporting students;

(g) Conduct and document background and CA/N checks on all staff to determine each employee's suitability for employment at the school (see chapter 388-06 WAC);

(h) Provide all students with training on self-protection from abuse or neglect, as required under RCW 72.40.230 and 72.40.260;

(i) Implement and maintain effective child protection policies that include proper reporting of incidents, notification, documentation, and cooperation with the department and law enforcement;

(j) Describe what procedures staff must follow when they have reason to believe a student may have been abused or neglected, as defined under RCW 26.44.020; and

(k) Maintain adequate documentation of all abuse or neglect incidents.

[Statutory Authority: RCW 74.15.030 and 74.20.280. 03-04-013, § 388-180-0160, filed 1/24/03, effective 3/1/03.]

WAC 388-180-0170 What specific areas must be included in the comprehensive health and safety review?

(1) In conducting a comprehensive health and safety review of the school, the department must review the children's administration's case and management information system (CAMIS) records for any child abuse or neglect referrals and the disposition of the investigations.

(2) The reviewers must:

(a) Examine the residential facilities for health and safety (a specific list of elements for review are outlined in WAC 388-180-0230);

(b) Develop appropriate questionnaires or survey tools for interviews;

(c) Conduct interviews of staff, students, parent, teacher, and community stakeholders for concerns of student health and safety at the school.

(d) Review facility logs, including incident reports and daily shift logs;

(e) Review medication policies, including documentation of medicine disbursement when and by whom;

(f) Review admissions and expulsion policies for compliance with RCW 72.40.040;

(g) Review staff coverage policies for compliance with RCW 72.40.240 and 72.40.270;

(h) Review behavior management policy for compliance with RCW 72.40.220, including a description of the de-escalation techniques used with different ages or developmental levels of students;

(i) Review employee/volunteer supervision policies for compliance with RCW 72.40.250;

(j) Review policies for protecting students from abuse or neglect policies for compliance with RCW 72.40.250;

(k) Review any corrective action plans including implementing the written plan of action to assure health and safety and prevention of abuse or neglect incidents as directed in RCW 72.40.250;

(l) Review the documentation of awareness and prevention training of staff for compliance with RCW 72.40.230 and 72.40.260; and

(m) Sample criminal history and CA/N checks of school employees for compliance with the school's criminal history inquiry and FBI fingerprinting process.

[Statutory Authority: RCW 74.15.030 and 74.20.280. 03-04-013, § 388-180-0170, filed 1/24/03, effective 3/1/03.]

WAC 388-180-0180 What health and safety areas must be included in the monitoring review? (1) The health and safety areas covered in the monitoring review must include, but are not limited to, the following:

(a) Inspection and evaluation of the school's incident log;

(b) Child protective services investigation documentation;

(c) Residential program policies and procedures;

(d) Residential facilities, cafeteria, nurse's station, and all other venues where residential students frequent;

(e) Staff, student, and parent interviews; and

(f) Review any corrective action plans including implementing the written plan of action to assure health and safety and prevention of abuse or neglect incidents.

(2) The monitoring review may include, but is not limited to, the following:

(a) Written personnel policies and procedures;

(b) Personnel records including background check results; and

(c) Job descriptions and history of personnel training.

[Statutory Authority: RCW 74.15.030 and 74.20.280. 03-04-013, § 388-180-0180, filed 1/24/03, effective 3/1/03.]

WAC 388-180-0190 Must WSD allow the department access to the records of the school? Consistent with federal law, the school must give the department complete access to all records and documents requested by the reviewers in monitoring and conducting the reviews of the school.

[Statutory Authority: RCW 74.15.030 and 74.20.280. 03-04-013, § 388-180-0190, filed 1/24/03, effective 3/1/03.]

WAC 388-180-0200 Must WSD allow the department access to all students and staff for the reviews? Consistent with federal law, the school must give the department complete access to students and staff requested by the reviewers in monitoring and conducting the reviews of the school.

[Statutory Authority: RCW 74.15.030 and 74.20.280. 03-04-013, § 388-180-0200, filed 1/24/03, effective 3/1/03.]

WAC 388-180-0210 What must be included in the incident documentation? The incident log documentation must include:

(1) The students involved (not identified to the reviewers);

(2) The date and time of the incident;

(3) A description of what occurred, any injury and severity of injury;

(4) Any other persons present at the time of the incident; and

(5) Any action taken by WSD staff, including notification of the child's parents.

[Statutory Authority: RCW 74.15.030 and 74.20.280. 03-04-013, § 388-180-0210, filed 1/24/03, effective 3/1/03.]

WAC 388-180-0220 What are the staffing requirements for the residential portion of the school? (1) A staffing ratio of 1:7 must be maintained for residential students while students are in dorms or cottages and when they are participating in elective activities.

(2) A staffing ratio of 1:9 must be maintained for visiting and day students while they are in the residential settings.

[Statutory Authority: RCW 74.15.030 and 74.20.280. 03-04-013, § 388-180-0220, filed 1/24/03, effective 3/1/03.]

WAC 388-180-0230 What are the physical environment safety requirements for the residential facilities? The school must ensure that the residential facilities comply with the applicable state fire marshal and department of health regulations, including the following:

(1) The grounds, office, living areas, kitchen, bedrooms, bathrooms, shops, recreational areas, and laundry areas are clean and free of hazardous conditions.

(2) Furnishings are clean, comfortable, durable, and safe.

(3) Cleaning products and toxic chemicals are securely stored.

(4) Medications are securely stored.

(5) First-aid supplies are readily available.

(6) Emergency lighting devices are available.

(7) Kitchen and bathrooms are ventilated.

(8) The facilities regularly conduct and document fire drills.

(9) Smoke detectors are regularly inspected and the results of the inspections are documented.

(10) Procedures for evacuation and other emergencies are posted, reviewed, and tested at regular intervals.

[Statutory Authority: RCW 74.15.030 and 74.20.280. 03-04-013, § 388-180-0230, filed 1/24/03, effective 3/1/03.]

Chapter 388-292 WAC
SEASONAL CHILD CARE PROGRAM

WAC

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WAC 388-292-0001 Introduction. The seasonal child care program helps eligible families who are seasonally employed in agriculturally related work to access licensed, culturally and developmentally appropriate child care. Families access this child care subsidy program through contracted community agencies. To be eligible, families must meet income and program guidelines and must not be currently receiving temporary assistance to needy families

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(TANF). The seasonal child care program prioritizes services for families who are not eligible for working connections child care.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 03-14-109, § 388-292-0001, filed 6/30/03, effective 8/1/03.]

WAC 388-292-0003 What is the purpose of the seasonal child care program? The purpose of the seasonal child care (SCC) program is to protect children, whose eligible parents are involved in an approved activity, from potential harm due to:

- (1) Agricultural work hazards; or
- (2) Lack of appropriate supervision.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 03-14-109, § 388-292-0003, filed 6/30/03, effective 8/1/03.]

WAC 388-292-0005 Am I eligible for the SCC program? You may be eligible for the SCC program, if you are not currently receiving temporary aid for needy families (TANF) and:

- (1) You have parental control of one or more children, and you are the child's:
 - (a) Parent;
 - (b) Stepparent;
 - (c) Guardian;
 - (d) Adult sibling or step sibling;
 - (e) Aunt;
 - (f) Uncle;
 - (g) Niece or nephew;
 - (h) Grandparent; or
 - (i) Any of the above relatives with the prefix "great," such as great aunt.
- (2) Your family is described under WAC 388-292-0010;
- (3) You are participating in an approved activity under WAC 388-292-0020;
- (4) You and your children are eligible under WAC 388-292-0015;
- (5) Your countable income as calculated in WAC 388-292-0050 is at or below the federal poverty level (FPL) described in WAC 388-290-0065; and
- (6) Your share of the child care cost, called a copayment (under WAC 388-290-0075(3)) is lower than the total DSHS maximum monthly payment for all children in the family who are eligible for SCC subsidized care.
- (7) You agree to participate in the cost of child care by making monthly copayments to the authorized child care provider, as calculated under WAC 388-290-0075(3).

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 03-14-109, § 388-292-0005, filed 6/30/03, effective 8/1/03.]

WAC 388-292-0010 How is my family size defined for SCC program eligibility purposes? For SCC program eligibility purposes, your family size is defined by reviewing the individuals who live together in the same household as follows:

(1) If you are:	We count the following individuals as part of the family for SCC program eligibility:
(a) A single parent, including a minor parent, living independently or residing in her/his parent's home with her/his children;	You and your children.
(b) Unmarried parents living together who have at least one mutual child;	Both parents and all their children living in the household.
(c) Unmarried parents living together with no mutual children;	Each parent and their own children, as separate families.
(d) Married parents living together;	Both parents and all their children living in the household.
(e) A person with parental control as defined in WAC 388-292-0005 (1)(c) through (i);	Only the children and their income.
(f) A parental figure who is out of the household because of employment requirements.	The parents and the children. All other family rules in this section apply.

(2) If your household includes siblings of the children requiring care who are:	All family rules in this section apply. In addition, we count the sibling as part of the family for SCC program eligibility (unless they are a parent themselves), as follows:
(a) Eighteen year olds who are enrolled in secondary education or general equivalency diploma (GED) program.	The eighteen year olds until they turn nineteen or complete high school/GED, whichever comes first.
(b) Twenty year olds, or less, who are participating in a program through the school district's special education department under RCW 28A.155.0202.	The sibling participating in the approved program up to twenty-one years of age.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 03-14-109, § 388-292-0010, filed 6/30/03, effective 8/1/03.]

WAC 388-292-0015 Are there special circumstances when I might be eligible for the SCC program? You might be eligible for the SCC program if you are part of a two-parent family and one parent is not able or available to provide care for your children while the other is working or traveling to and from work.

(1) **"Able"** means without a verifiable physical or mental disability that prevents you from caring for your child in a responsible manner.

(2) **"Available"** means not participating in an approved work activity under WAC 388-292-0020.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 03-14-109, § 388-292-0015, filed 6/30/03, effective 8/1/03.]

WAC 388-292-0020 What activities must I be involved in to be eligible for the SCC program? You may be eligible for SCC program subsidies for up to sixteen hours per day for the time you are involved in:

(1) Active employment in seasonally available agriculturally related work (in a two parent family, both parents must be so employed) in Washington state or in a bordering state within forty miles of the Washington state border;

(a) The agriculturally related work must be one of the following:

(i) Seasonally available labor directly related to the cultivation, production, or processing of crops;

(ii) Seasonally available labor directly related to the cultivation or harvesting of fruit trees.

(b) **"Seasonally available labor"** means labor that depends upon, and is available only during, a specific season that is identified with certain activities or crops, and occurs only during a portion of the calendar year.

(2) Travel time between the child care location and the work site only;

(3) Job search, of no more than five days, if your seasonally available agricultural job ends and you are still eligible and continue to need child care; or

(4) Sleep time, up to eight hours per day when needed, if you work nights and sleep days.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 03-14-109, § 388-292-0020, filed 6/30/03, effective 8/1/03.]

WAC 388-292-0025 What additional criteria does my family need to meet to be eligible for SCC program subsidies? Additional eligibility criteria for SCC program subsidies requires that your family:

(1) Live in Washington state;

(2) Not be receiving TANF;

(3) Have a child age twelve or younger, or a child with verified special needs age eighteen or younger;

(4) Have a primary wage earner who was employed in seasonally available agricultural related work for eleven months or less with any one employer in the previous twelve months; and

(5) Fifty percent or more of a family's earned income for the previous twelve months is derived from seasonally available agricultural work as defined in WAC 388-292-0020.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 03-14-109, § 388-292-0025, filed 6/30/03, effective 8/1/03.]

WAC 388-292-0030 When might my on-going eligibility for SCC subsidies stop, and when might I be eligible again? (1) Your continued eligibility for SCC program subsidies stops when you:

(a) Are not participating in an approved activity as defined in WAC 388-292-0020;

(b) Are found at your review to no longer meet eligibility criteria;

(c) Do not complete the requested review information before the deadline noted in WAC 388-292-0140; or

(d) Do not pay the copayment fees to your child care provider or do not make mutually acceptable arrangements with your child care provider for their payment.

(e) Refuse to cooperate with investigations conducted by quality assurance staff or the division of fraud investigations.

(2) You might be eligible for SCC program subsidies again when:

(a) You meet all SCC program eligibility requirements; and

(b) Copayment fees are paid to your child care provider or mutually acceptable arrangements for their payment are made with your child care provider.

(c) Cooperate with investigations conducted by quality assurance or division of fraud.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 03-14-109, § 388-292-0030, filed 6/30/03, effective 8/1/03.]

WAC 388-292-0035 What income is counted when determining eligibility and copayment for the SCC program? To determine income eligibility and copayment for the SCC program, the following income is counted:

- (1) Wages and commissions earned from employment;
- (2) Unemployment compensation;
- (3) A TANF or other welfare grant;
- (4) Child support payments received;
- (5) Supplemental Security Income (SSI);
- (6) Other Social Security payments, such as SSA and SSDI;
- (7) Refugee assistance payments;
- (8) Payments from the Veterans' Administration;
- (9) Pensions or retirement income;
- (10) Payments from labor and industries (L&I), or disability payments;
- (11) Inheritance;
- (12) Reportable gambling winnings; and
- (13) Other types of income not listed in WAC 388-292-0045.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 03-14-109, § 388-292-0035, filed 6/30/03, effective 8/1/03.]

WAC 388-292-0040 How is my family's average monthly income calculated for the SCC program? For the SCC program, your average monthly income is calculated by totaling all income earned in the past twelve months, as listed in WAC 388-292-0035, and dividing by twelve.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 03-14-109, § 388-292-0040, filed 6/30/03, effective 8/1/03.]

WAC 388-292-0045 What is not counted, or is deducted, when figuring income eligibility for the SCC program? (1) For the SCC program the following is not counted when figuring income eligibility and copayment:

- (a) Savings accounts;
- (b) Money received from sale of personal property such as a house or car;
- (c) Tax refunds;
- (d) Earned income credits;
- (e) One-time insurance settlement payments;
- (f) Capital gains;
- (g) Basic Food program;
- (h) Income earned by children as described in WAC 388-292-0010(2).

(2) For the SCC program the amount you pay for child support is deducted from your countable income.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 03-14-109, § 388-292-0045, filed 6/30/03, effective 8/1/03.]

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WAC 388-292-0050 How is my family's income eligibility and copayment amount determined for the SCC program? For the SCC program, your family's income eligibility and copayment is determined by:

(1) Your family size as defined under WAC 388-292-0010;

(2) Your average monthly income as calculated under WAC 388-292-0040;

(3) Your family's average monthly income as compared to the Federal Poverty Level (FPL); and

(4) Your family's average monthly income as compared to the copay chart defined in WAC 388-290-0075(3).

(5) If your family's income is above the FPL as defined in WAC 388-290-0075(3), your family is not eligible for the SCC program.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 03-14-109, § 388-292-0050, filed 6/30/03, effective 8/1/03.]

WAC 388-292-0055 When might my SCC program copayment change? Your SCC program copayment could change when:

- (1) Your family size increases or decreases; or
- (2) You are reauthorized for the SCC program and your new average monthly income places you in a different copayment category.

(3) There is a mass change in subsidy benefits due to a change in law or program funding.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 03-14-109, § 388-292-0055, filed 6/30/03, effective 8/1/03.]

WAC 388-292-0060 What rights do I have when I apply for or receive SCC program subsidies? When you apply for or receive SCC program subsidies, you have the right to:

- (1) Be treated politely and fairly - without regard to race, color, age, gender, sexual orientation, religion, creed, political affiliation, national origin, or disability (physical, mental or sensory);

(2) Have an application accepted and acted upon within thirty days;

(3) Be informed, in writing, of your legal rights and responsibilities related to SCC program subsidies, in your language;

(4) Have your information held confidentially as required by chapter 42.17 RCW, chapter 388-01 WAC and other applicable state and federal laws;

(5) Get a written notice, at least ten days before changes are made to lower or stop SCC program subsidy payments except in WAC 388-292-0150;

(6) Ask for a fair hearing if you do not agree with your eligibility decision;

(7) Ask a supervisor or administrator to review a decision or action affecting your SCC program subsidies without affecting the right to a fair hearing;

(8) Have interpreter or translator service for SCC program matters within a reasonable amount of time and at no cost to you;

(9) Be allowed to choose your provider as long as the provider meets the requirements in WAC 388-292-0085; and

(10) Refuse to speak to a fraud early detection (FRED) investigator from the division of fraud investigations. You do

not have to let an investigator into your home at that time. You may ask the investigator to come back. This request will not affect your eligibility for SCC program subsidies.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 03-14-109, § 388-292-0060, filed 6/30/03, effective 8/1/03.]

WAC 388-292-0065 What responsibilities do I have when I apply for or receive SCC program subsidies?

When you apply for or receive SCC program subsidies you have a responsibility to:

(1) Give the SCC program authorizing worker the information necessary to determine your eligibility and authorize child care subsidies correctly;

(2) Choose a provider who meets requirements of WAC 388-292-0085 and make your own child care arrangements;

(3) Pay, or make arrangements to have someone pay, your SCC program copayment directly to your child care provider;

(4) Sign your child in and out of care each day with your full legal signature if the care is provided by a child care center;

(5) Notify the SCC program authorizing worker before changing providers;

(6) Notify the SCC program authorizing worker within ten days if:

(a) Your work status, work hours, or employer changes;

(b) You need to change the hours of child care;

(c) You receive TANF assistance;

(d) Your children become eligible for a migrant headstart program;

(e) Your household size changes, such as any family member moves in or out of your home;

(f) Your home address or telephone number changes; or

(g) Your amount of child support paid out or received changes

(7) Cooperate with auditors from quality assurance and the division of fraud investigations.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 03-14-109, § 388-292-0065, filed 6/30/03, effective 8/1/03.]

WAC 388-292-0070 Who are the SCC program staff and what responsibilities do they have? The SCC program staff work for community agencies who contract with DSHS to perform SCC program authorizations. They are responsible to:

(1) Authorize SCC program subsidies for your children based on eligibility criteria established by DSHS, as defined in this chapter;

(2) Ask if you have received, or are currently receiving, child care services from another subsidy program; and if you have, receive a copy of your termination letter from that program;

(3) Ask if you have applied, and been denied, for working connections child care; and if you have, verify your denial from that program;

(4) Complete intake documents in your presence, based on information you provide;

(5) Authorize payments only to a child care provider of your choice who meets the requirements in WAC 388-292-0085 and who allows you to see your children whenever they are in care;

(6) Authorize payments only when no adult in your family is "able or available" to care for your children as defined in WAC 388-292-0015;

(7) Give you an SCC program approved child care plan in order to enroll your children in licensed or certified child care;

(8) Inform you of:

(a) Your copayment amount as determined in WAC 388-292-0050 and defined in WAC 388-290-0075(3);

(b) Your rights and responsibilities under the SCC program when you apply or reapply;

(c) The types of child care providers the SCC program can pay;

(d) The community resources that can help you select child care when needed;

(e) Other options for child care subsidies, if you do not qualify for SCC program subsidies; and

(f) Your rights to a fair hearing under the SCC program;

(9) Respond to you within ten days if you report a change of circumstance that affects your SCC program eligibility or subsidies; and

(10) Authorize child care payments promptly.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 03-14-109, § 388-292-0070, filed 6/30/03, effective 8/1/03.]

WAC 388-292-0075 Do I have the right to ask for a hearing regarding SCC program subsidy payments, and how do I request one? You have the right to request a hearing regarding your SCC program subsidy payments under chapter 388-02 WAC:

(1) On any action affecting your SCC program subsidy payments, except for mass changes that result from a change in policy or law.

(2) By writing to the Office of Administrative Hearings, at the address in WAC 388-02-0025(1) within ninety days of the date any decision of an action is received.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 03-14-109, § 388-292-0075, filed 6/30/03, effective 8/1/03.]

WAC 388-292-0080 Can I use SCC programs subsidies while waiting for the outcome of a hearing, and when might it need to be repaid? (1) You can use SCC program subsidies while waiting for the outcome of a hearing, if you are currently authorized for the SCC program and:

(a) You request a hearing:

(i) On or before the effective date of an action; or

(ii) No more than ten days after you are sent a notice of adverse action.

"Adverse action" means an action to reduce or terminate your SCC subsidies.

(b) You request payments for child care payable to an eligible provider (under WAC 388-292-0100 and 388-292-0085).

(2) If you lose a hearing, any SCC program subsidies you use between the date of the adverse action and the date of the hearing or hearing decision is an overpayment to you and will need to be repaid to DSHS.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 03-14-109, § 388-292-0080, filed 6/30/03, effective 8/1/03.]

WAC 388-292-0085 What child care providers can I choose under the SCC program? To receive payment under the SCC program, the child care provider you choose must be:

- (1) Licensed as required by chapter 74.15 RCW including:
 - (a) Family child care homes; and
 - (b) Child day care centers.
- (2) Exempt from licensing but certified by DSHS including:
 - (a) Tribal child care facilities that meet the requirements of tribal law;
 - (b) Child care facilities on a military installation; and
 - (c) Child care facilities operated on public school property by a school district.
- (3) Seasonal day camps that contract with DSHS to provide subsidized child care and are:
 - (a) Of a duration of three months or less;
 - (b) Engaged primarily in recreational or educational activities; and
 - (c) Accredited by the American Camping Association (ACA).

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 03-14-109, § 388-292-0085, filed 6/30/03, effective 8/1/03.]

WAC 388-292-0090 When are the DSHS child care subsidy rates, used by the SCC program in this chapter, effective? DSHS child care subsidy rates in this chapter are effective as of the date stated in WAC 388-290-0180, when your family:

- (1) Is newly authorized to receive child care subsidies;
- (2) Has a household change that requires your authorization to be updated; or
- (3) Is reauthorized to continue receiving child care subsidies.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 03-14-109, § 388-292-0090, filed 6/30/03, effective 8/1/03.]

WAC 388-292-0095 What DSHS child care subsidy rate does the SCC program use when my child is five years old? The DSHS child care subsidy rate paid by the SCC program for child care for a five year old child is:

- (1) The preschool rate for a child who has not entered kindergarten; or
- (2) The school-age rate for a child who has entered kindergarten.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 03-14-109, § 388-292-0095, filed 6/30/03, effective 8/1/03.]

WAC 388-292-0100 What services can be authorized for the SCC program, and at what rates? The SCC program authorizes payments to licensed/certified child care providers for:

- (1) Basic child care either full day or half day, at rates listed in WAC 388-290-0200 and 388-290-0205:
 - (a) A full day of child care is authorized when care is needed for five to ten hours per day;
 - (b) A half day of child care is authorized when care is needed for less than five hours per day;
- (2) A registration fee, according to WAC 388-290-0245 (1) and (2);

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- (3) An infant bonus, according to WAC 388-290-0250, providing an infant bonus for that infant has not previously been paid to the provider by another DSHS subsidy program; and

- (4) Special needs care when the child has a documented special need and a documented need for a higher level of care, according to WAC 388-290-0220, 388-290-0225, and 388-290-0230.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 03-14-109, § 388-292-0100, filed 6/30/03, effective 8/1/03.]

WAC 388-292-0102 When can my child care provider charge me more than the amount authorized by the SCC program? Your child care provider may charge you more than the amount authorized by the SCC program for child care services when:

- (1) You are late picking up your child at the customary time due to personal reasons (i.e., shopping, appointments, etc.);
- (2) You pick up your child after the provider's operating hours and the provider has a policy to charge all families an after hour charge;
- (3) You request an optional enrichment program for your child and all parents who want it have to pay extra (i.e., gymnastics, swimming, dancing, etc.); or
- (4) You pay the co-payment later than agreed upon and the provider has a late fee policy for all families.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 03-14-109, § 388-292-0102, filed 6/30/03, effective 8/1/03.]

WAC 388-292-0105 When can additional SCC program subsidy payments be authorized? Additional SCC program subsidy payments can be authorized for more than the basic DSHS child care subsidy daily rate when:

- (1) Needed to accommodate a family's work schedule;
- (2) Employer verification of work schedule is presented; and
- (3) The child care provider has a written policy to charge all clients additional money for child care provided more than ten hours per day; or
- (4) Child care is not available at the DSHS daily rate within a reasonable distance, in which case the provider's usual daily rate is authorized.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 03-14-109, § 388-292-0105, filed 6/30/03, effective 8/1/03.]

WAC 388-292-0110 What additional SCC program subsidy payments can be authorized? The following additional SCC program subsidy payments may be authorized for your approved activities, if justified by your employer verification:

- (1) "Extended hour child care" may be authorized, for families whose fluctuating overtime work schedules require more than ten hours per day, up to a maximum of one hundred twenty hours per month. Care is authorized at the provider's usual and customary rate for the time needed - or at the DSHS maximum hourly subsidy rate represented in the chart below, whichever is less.

CHILD CARE CENTER Centers in Benton, Walla Walla and Whitman Counties paid at Region 6 rates				
	Infants (under 12 months)	Toddler (12 to 29 months)	Preschool (30 to 5 years)	School- age (5 to 12 years)
Region 1	\$4.00	\$3.90	\$3.22	\$3.22
Region 2	\$4.25	\$3.60	\$3.48	\$2.75
Region 3	\$4.30	\$4.39	\$3.75	\$4.50
Region 6	\$4.64	\$3.75	\$3.27	\$3.25
FAMILY HOMES				
Region 1	\$2.67	\$2.50	\$2.38	\$2.50
Region 2	\$3.00	\$2.78	\$2.50	\$2.88
Region 3	\$3.50	\$3.00	\$2.89	\$3.33

(2) "Additional hour child care" may be authorized, for families whose nonfluctuating work schedules require more than ten hours of care per day, at the provider's usual and customary rate for the time needed - or at the DSHS maximum half-day subsidy rate, whichever is less (under WAC 388-290-0200 and 388-290-0205).

(3) "Weekend child care" may be authorized at rates under WAC 388-290-0200 and 388-290-0205 if child care is needed more than five days a week.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 03-14-109, § 388-292-0110, filed 6/30/03, effective 8/1/03.]

WAC 388-292-0115 If I am determined eligible for the SCC program, when does my child care subsidy begin? Your SCC program subsidy will begin according to the following situations:

(1) If you are determined eligible before your employment starts, your subsidy begins on the first day of your job that your children are in approved child care;

(2) If you are determined eligible after your job begins because:

(a) You requested an appointment before your job started but were denied one, your subsidy begins on the first day of your job that your children were in approvable child care;

(b) You did not provide all necessary documents when requested, your subsidy begins on the first day after you are determined eligible for the program, that you work and your children are in authorized child care.

(c) You did not request an appointment until after your job began, your subsidy begins on the first day after you are determined eligible for the program, that you work and your children are in authorized child care.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 03-14-109, § 388-292-0115, filed 6/30/03, effective 8/1/03.]

WAC 388-292-0120 Can I be authorized for the SCC program before I start a job? You may be preauthorized for the SCC program, before your job starts, if:

(1) You are meet all eligibility criteria for the SCC program; and

(2) You have employment verification that shows a future start date.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 03-14-109, § 388-292-0120, filed 6/30/03, effective 8/1/03.]

WAC 388-292-0125 I am preauthorized for the SCC program, when do my SCC program child care subsidies begin? If you are preauthorized for the SCC program, your SCC program child care subsidies begin according to the following conditions:

(1) If you are preauthorized, AND you present verification of the date your employment starts to the SCC program authorizing worker within thirty days of your intake interview, your subsidy payments can begin:

(a) The day you present your documentation; or
 (b) A maximum of fourteen days prior to the day you present the documentation, if you were working and your children were in approvable child care.

(2) If you are preauthorized but no verification of an employment start date is provided to the SCC program authorizing worker within thirty days of the preauthorization, no subsidy payments can be made. Your preauthorization is closed and you must reapply to the SCC program.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 03-14-109, § 388-292-0125, filed 6/30/03, effective 8/1/03.]

WAC 388-292-0130 If I am reauthorized for the SCC program, when do my SCC program subsidies begin? If you are reauthorized for the SCC program:

(1) Your SCC program child care subsidies will:
 (a) Continue without a break if your review eligibility information is received no later than ten days after your previous eligibility period ends; or

(b) Begin the date your review eligibility information is stamped as received, if received more than ten days after your previous eligibility period ends.

(2) You will be informed of your eligibility for continued SCC program subsidies based on your review information.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 03-14-109, § 388-292-0130, filed 6/30/03, effective 8/1/03.]

WAC 388-292-0135 When are my eligibility and co-payment information for the SCC program looked at? Your eligibility and co-payment information for the SCC program are looked at:

(1) When you apply for the SCC program; and
 (2) At least every six months.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 03-14-109, § 388-292-0135, filed 6/30/03, effective 8/1/03.]

WAC 388-292-0140 How are my SCC program subsidies reauthorized and when may they continue? (1) Your SCC program subsidies are reauthorized by the SCC program authorizing worker who reviews your SCC program eligibility and will:

(a) Request information related to your continued eligibility, prior to the end date of your current SCC program eligibility period;

(b) Review the requested information; and
 (c) Determine if you are still eligible, according to DSHS established criteria.

(2) Your SCC program subsidies may continue if:

(a) You meet all program, income and work criteria for the SCC program as described in chapter 388-292 WAC;

(b) Your provider is eligible for payment under WAC 388-292-0085.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 03-14-109, § 388-292-0140, filed 6/30/03, effective 8/1/03.]

WAC 388-292-0145 When might I receive advance and adequate notice of change in my SCC program subsidies? (1) You are given advance and adequate notice of changes in your SCC program subsidies when the change:

(a) Results in a suspension, reduction, or termination of child care subsidies; or

(b) Is not exempt from advance and adequate notice of payment changes as noted in WAC 388-292-0150.

(2) **"Advance and adequate notice,"** means a written notice from the SCC program authorizing agency mailed at least ten days before the date of the intended action begins. It includes the Washington Administrative Code (WAC) supporting the action, and your right to request a fair hearing.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 03-14-109, § 388-292-0145, filed 6/30/03, effective 8/1/03.]

WAC 388-292-0150 When won't I receive advance and adequate notice of changes in my SCC program subsidies? You will not receive advance and adequate notice of changes in your SCC program subsidies when:

(1) You tell the SCC program authorizing worker you no longer want SCC program subsidies;

(2) Your eligibility review results in a change to your child care subsidies;

(3) You are authorized for duplicate child care subsidies;

(4) Your whereabouts are unknown to the SCC program authorizing worker; or

(5) There is a mass change in subsidy benefits due to a change in law or program funding.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 03-14-109, § 388-292-0150, filed 6/30/03, effective 8/1/03.]

WAC 388-292-0155 What is an overpayment and when might I receive one? (1) An overpayment is payment for ineligible child care services;

(2) You may receive a client overpayment notice, regardless if you are a current or past recipient, if:

(a) You misrepresent your eligibility for the SCC program, or fail to report information that affects your eligibility; or

(b) You use child care when you are not involved in approved activities (under WAC 388-292-0020).

(3) Your overpayment is written by DSHS and you are expected to pay it back.

(a) Overpayments are written starting the date that child care subsidies were paid but were not eligible at that payment amount;

(b) DSHS reduces the overpayment by the amount of an underpayment when applicable.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 03-14-109, § 388-292-0155, filed 6/30/03, effective 8/1/03.]

WAC 388-292-0160 When might a child care provider receive an overpayment? (1) A child care provider may receive a vendor overpayment notice when they receive ineligible payments. This includes payments for:

(a) Child care that was not provided;

(b) Services that are not allowed; or

(c) Child care that is not supported by the provider's attendance records.

(2) The provider's overpayment is written by DSHS and the child care provider is expected to pay it back.

(a) Overpayments are written starting the date that child care subsidies were over paid.

(b) DSHS reduces the overpayment by the amount of an underpayment when applicable.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 03-14-109, § 388-292-0160, filed 6/30/03, effective 8/1/03.]

Chapter 388-295 WAC

MINIMUM LICENSING REQUIREMENTS FOR CHILD CARE CENTERS

(Formerly chapter 388-150 WAC)

WAC

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388-295-3050	Am I required to give medications to the children in my care?	388-295-7040	Am I required to keep licensing information available on-site for parents to review?
388-295-3060	Who can provide consent for me to give medication to the children in my care?	388-295-7050	What personnel records and policies must I have?
388-295-3070	How must I store medications?	388-295-7060	What injuries and illnesses or child abuse and neglect must I report?
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388-295-3220	What type of kitchen material and equipment is required?		
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388-295-5110	What are the requirements if I do laundry on the premises or off-site?		
388-295-5120	What kind of sleep and nap equipment do I need for children not in cribs, bassinets, infant beds or playpens?		
388-295-5140	Are there any requirements for storage space provided for children?		

WAC 388-295-0001 What gives the authority to the department of social and health services (DSHS) to license child care and charge licensing fees? (1) The rules for child care centers are governed under chapters 74.12 and 74.15 RCW.

(2) The rules establishing licensing fees are adopted under authority of RCW 43.20B.110.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-0001, filed 6/30/03, effective 8/1/03.]

WAC 388-295-0010 What definitions under this chapter apply to licensed child care providers? "American Indian child" means any unmarried person under the age of eighteen who is:

(1) A member or eligible for membership in a federally recognized Indian tribe, or who is Eskimo, Aleut, or other Alaska Native and a member of an Alaskan native regional corporation or Alaska Native Village;

(2) Determined or eligible to be found Indian by the Secretary of the Interior, including through issuance of a certificate of degree of Indian blood, or by the Indian health service;

(3) Considered to be Indian by a federally recognized or nonfederally recognized Indian Tribe; or

(4) A member or entitled to be a member of a Canadian tribe or band, Metis community, or nonstatus Indian community from Canada.

"**Anti-bias**" is an approach that works against biases and recognizes when others are treated unfairly or oppressively based on race, color, national origin, marital status, gender, sexual orientation, class, religion, creed, disability, or age.

"**Capacity that you are licensed for**" means the maximum number of children that you are authorized to have on the premises of the child care at any one time.

"**Center**" means the same as "**child care center.**"

"**Certification**" means department approval of a person, home, or facility that does not legally need to be licensed, but wants evidence that they meet the minimum licensing requirements (also see "**Tribal certification**").

"Child abuse or neglect" means the physical abuse, sexual abuse, sexual exploitation, abandonment or negligent treatment or maltreatment of a child by any person indicating the child's health, welfare, and safety is harmed.

"Child-accessible" means areas where children regularly have access such as: Entrances and exits to and from the center, classrooms or child care areas, playground area including equipment and fencing, parking areas, walkways, decks, platforms, stairs and any items available for children to use in these areas.

"Child care center" means the same as a **"child day care center"** or a facility providing regularly scheduled care for a group of children one month of age through twelve years of age for periods less than twenty four hours.

"Clean" means to remove dirt and debris from a surface by scrubbing and washing with a detergent solution and rinsing with water. This process must be accomplished before sanitizing a surface.

"CACFP" means child and adult care food program established by congress and funded by the United States Department of Agriculture (USDA).

"Commercial kitchen equipment" means equipment designed for business purposes such as restaurants.

"Communicable disease" means a disease caused by a microorganism (bacterium, virus, fungus, or parasite) that can be transmitted from person to person via an infected body fluid or respiratory spray, with or without an intermediary agent (such as a louse, or mosquito) or environmental object (such as a table surface).

"Cultural relevancy" creates an environment that reflects home cultures, communities and lives of children enrolled in the program.

"Department," "we," "us," or "our" refers to and means the state department of social and health services (DSHS), including but not limited to the division of child care and early learning (DCCEL) licensors and health specialists.

"Developmentally appropriate practice":

(1) Means that the provider should interact with each child in a way that recognizes and respects the child's chronological and developmental age;

(2) Is based on knowledge about how children grow and learn; and

(3) Reflects the developmental level of the individual child, and interactions and activities must be planned with the needs of the individual child in mind.

"Director" means the person responsible for the overall management of the center's facility and operation.

"Disinfect" means to eliminate virtually all germs from inanimate surfaces through the use of chemicals or physical agents.

"Domestic kitchen" means a kitchen equipped with residential appliances.

"External medication" means a medication that is not intended to be swallowed or injected but is to be applied to the external parts of the body, such as medicated ointments, lotions, or liquids applied to the skin or hair.

"I," "you," and "your" refer to and mean the licensee or applicant for a child care license.

"Inaccessible to children" means stored or maintained in a manner preventing children from reaching, entering, or

using potentially hazardous items or areas. Examples include but are not limited to: Quantities of water, sharp objects, medications, chemicals, electricity, fire, mechanical equipment, entrapment or fall areas.

"Individual plan of care" means that the center's health policies and procedures do not cover the needs of the individual child so an individual plan is needed. Examples may include children with allergies, asthma, Down syndrome, tube feeding, diabetes care such as blood glucose monitoring, or nebulizer treatments.

"Infant" means a child one-month through eleven months of age.

"Lead teacher" means the person who is the lead child care staff person in charge of a child or group of children and implementing the activity program.

"License" means a permit issued by the department authorizing you by law to operate a child care center and certifying that you meet the minimum requirements under licensure.

"Licensee" or "you" means the person, organization, or legal entity responsible for operating the center.

"Maximum potential capacity based on square footage" is the maximum number of children you can be licensed for based on the amount of useable space (square footage) in your center. You may be licensed for less than the maximum potential capacity. You may not be licensed for more than the maximum potential capacity.

"Moisture impervious" or "moisture resistant" means a surface incapable of being penetrated by water or liquids.

"Parent" means birth parent, custodial parent, foster parent, legal guardian, those authorized by the parent or other entity legally responsible for the welfare of the child.

"Pesticides" means chemicals that are used to kill weeds, pests, particularly insects.

"Potentially hazardous food" means any food or ingredient that requires temperature control because it supports rapid growth of infectious or toxin forming microorganisms.

"Potable water" means water suitable for drinking by the public as determined by the state department of health or local health jurisdiction.

"Premises" means the building where the center is located and the adjoining grounds over which you have control.

"Preschool age child" means a child thirty months through five years of age not attending kindergarten or elementary school.

"Program supervisor" means the person responsible for planning and supervising the center's learning and activity program.

"Sanitize" means a surface must be clean and the number of germs reduced to a level that disease transmissions by that surface are unlikely. This procedure is less vigorous than disinfection.

"Satellite kitchen" means a food service establishment approved by a local health jurisdiction where food is stored, prepared, portioned or packaged for service elsewhere.

"School-age child" means a child not less than five years through twelve years of age who has begun attending kindergarten or elementary school.

"Supervised access" refers to those individuals at a child care center who have no responsibility for the operation of the center and do not have unsupervised access to children. These individuals are not required to submit a criminal history authorization form. This includes those persons on the premises for "time limited" activities whose presence is supervised by a center employee and does not affect provider/child ratios or the normal activities or routine of the center. Examples include:

(1) A person hired to present an activity to the children in care such as a puppet show, cooking activity, and story telling;

(2) Parent participation as part of a special theme; or

(3) A relative visiting a child on the premises.

"Staff" means a child care giver or group of child care givers employed by the licensee to supervise children served at the center.

"The Washington state training and registry system (STARS)" means the entity approved by the department to determine the classes, courses, and workshops licensees and staff may take to satisfy training requirement.

"Toddler" means a child twelve months through twenty-nine months of age.

"Terminal room cleaning" means thorough cleaning of walls, ceiling, floor and all equipment, and disinfecting as necessary, in a room which has been used by a person having a communicable disease before it is occupied by another person.

"Tribal certification" means that the department has certified the tribe to receive state payment for children eligible to receive child care subsidies.

"Unsupervised access" refers to those individuals at a child care center who can be left alone with children in the child care center. These individuals must have received a full criminal history and background authorization clearance.

"Useable space" means the areas that are available at all times for use by the children that do not cause a health or safety hazard.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-0010, filed 6/30/03, effective 8/1/03.]

WAC 388-295-0020 Who needs to become licensed?

(1) The person or organization operating a child care center is subject to licensing by authority under chapter 74.15 RCW, unless specifically exempted by RCW 74.15.020(2). Exemptions include:

(a) Blood relatives;

(b) Adoptive parents;

(c) Stepparents or stepsiblings;

(d) "Extended family members" as defined by law or custom of the Indian child's tribe;

(e) Legal guardians;

(f) Nursery schools or kindergartens that are engaged primarily in educational work with preschool children and in which no child is enrolled on a regular basis for more than four hours a day;

(g) Seasonal day camps of three months' or less duration engaged primarily in recreational or educational activities;

(h) Private schools or kindergartens;

(i) An agency located on a military reservation;

(j) An agency operated by a unit of local, state, or federal government;

(k) An agency licensed by an Indian tribe, located within the boundaries of a federally recognized Indian reservation; and

(l) A facility where the parent remains on the premises for reasons other than employment.

(2) The person or organization operating a child care center and qualifying for an exemption to licensing under RCW 74.15.020(2) is not subject to licensure. The person or organization claiming an exemption must provide us with proof of right to the exemption if we request it.

(3) RCW 74.15.020 (2)(d) exempts facilities from licensing where parents on a mutually cooperative basis exchange care of one another's children. To qualify for this cooperative exemption:

(a) At least one parent or guardian of each child attending the facility regularly must be involved in the direct care of children at the facility;

(b) Parents or guardians must be involved in the direct care of children on a relatively equal basis; and

(c) A person other than a parent or guardian of a child at the facility must not be involved in the care of children or the operation of the facility.

(4) We do not license a center that is legally exempt from licensing per RCW 74.15.020(2). However, if the applicant requests it, we follow all licensing regulations to investigate and may certify the center as meeting licensing and other pertinent requirements. In such a case, all our licensing requirements and procedures apply equally to certification.

(5) We may certify a child care center for payment without further investigation if the center is:

(a) Licensed by an Indian tribe;

(b) Certified by the Federal Department of Defense; or

(c) Approved by the superintendent of public instruction's office.

(6) The center listed in subsection (5)(a), (b), or (c) of this section must be licensed, certified, or approved in accordance with national or state standards, or standards approved by us. It must be operated on the premises where the entity operating the center has jurisdiction.

(7) We must not license a department employee or a member of their household when the employee is involved directly, or in an administrative or supervisory capacity, in the:

(a) Licensing or certification process;

(b) Placement of a child in a licensed or certified center; or

(c) Authorization of payment for the child in care.

(8) We may license a center located in a private family residence when the portion of the residence accessible to the child is:

(a) Used exclusively for the child during the center's operating hours or while the child is in care; or

(b) Separate from the family living quarters.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-0020, filed 6/30/03, effective 8/1/03.]

WAC 388-295-0030 What must I do to be eligible to receive state child care subsidies? To be eligible to receive state child care subsidies for children in your care you must:

- (1) Be licensed or certified;
- (2) Be a seasonal camp that has a contract with us and is certified by the American Camping Association;
- (3) Follow billing policies and procedure in *Child Care Subsidies: A Booklet for Licensed and Certified Child Care Providers, DSHS 22-877(X)*;
- (4) Bill us at your customary rate or the DSHS rate, whichever is less; and
- (5) Keep the attendance records as described in WAC 388-295-7030 and the invoices for state-paid children on-site for at least five years.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-0030, filed 6/30/03, effective 8/1/03.]

WAC 388-295-0040 Do I have to follow any other regulations or have any other inspections? (1) Prior to becoming licensed by us to operate a child care center, you must:

- (a) Have a certificate of occupancy issued by your local building department; and
 - (b) Be inspected by the state fire marshal.
- (2) In addition to the requirements of this chapter, you are also responsible for complying with any local building ordinances. Local officials are responsible for enforcing city ordinances and county codes, such as zoning and building regulations. You must contact your local building jurisdiction to determine if local ordinances are different than our standards. If you encounter conflicts or differing interpretations, contact us immediately.

(3) We must notify the local planning office of your intention to operate a child care center within the local jurisdiction.

(4) Other state agencies such as labor and industries, the Fire Marshal and the department of health have regulations that apply to child care centers. You are responsible to contact those agencies to obtain their regulations. The other agencies are responsible to monitor and enforce their regulations.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-0040, filed 6/30/03, effective 8/1/03.]

WAC 388-295-0050 Can I get a waiver (exception) to the minimum licensing requirements or to licensing fees?

(1) In an individual case we can, if we decide you have a good reason, waive a specific requirement and can approve an alternate method for you to achieve the specific requirement if you:

- (a) Submit the request in writing to us;
 - (b) Explain in detail the reason you need the waiver; and
 - (c) Can demonstrate that you have an alternative method of meeting the intent of the requirement.
- (2) If the waiver is approved, you must retain a copy of the written waiver approval on the child care premises.
- (3) We approve a waiver request if:
- (a) You have a good reason;
 - (b) We determine that approval of the waiver request will not endanger the safety or welfare of the child or take away from the quality of your service;
 - (c) The request and approval is for a specific purpose or child; and

(d) The waiver request is for a specific period of time, which must not go beyond the date the license expires.

(4) We can limit or restrict a license issued to you in combination with a waiver.

(5) Any person or agency can submit a request for a waiver of licensing fees. We may waive fees when collection of the fee would:

- (a) Not be in the best interest of public health and safety;
 - (b) Be to the financial disadvantage of the state.
- (6) To request a waiver to the requirements to pay a licensing fees, you must:
- (a) Submit a sworn, notarized petition requesting a waiver of fees;
 - (b) Mail or deliver the petition to your local child care licensing office; and
 - (c) Submit any additional documentation that we may consider relevant to your request for a waiver.
- (7) You have no appeal rights to the denial of a waiver request under chapter 34.05 RCW.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-0050, filed 6/30/03, effective 8/1/03.]

WAC 388-295-0055 Can I get a dual license? We may either:

- (1) Issue a child care center license to you having a license involving full-time care; or
- (2) Permit simultaneous care for the child and adolescent or adult on the same premises if you:
 - (a) Demonstrate evidence that care of one client category will not interfere with the quality of services provided to another category of clients;
 - (b) Maintain the most stringent maximum capacity limitation for the clients categories concerned;
 - (c) Request and obtain a waiver permitting dual licensure; and
 - (d) Request and obtain a waiver to subsection (2)(b) of this section, if applicable.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-0055, filed 6/30/03, effective 8/1/03.]

WAC 388-295-0060 What are the requirements for applying for a license to operate a child care center? (1)

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

- (a) Be twenty-one years of age or older;
 - (b) The applicant and director must attend the orientation programs we provide, arrange or approve;
 - (c) Submit to us a completed and signed application for a child care center license or certification using our forms (with required attachments).
- (2) The application package must include the following attachments:
- (a) The annual licensing fee. The fee is based on your licensed capacity, and is forty-eight dollars for the first twelve children plus four dollars for each additional child;
 - (b) A completed criminal history and background inquiry form for yourself and for each staff person or volunteer who has regular or unsupervised access to the children in care; and
 - (c) A copy of your:

- (i) Photo identification issued by a government entity; and
 - (ii) Social Security card that is valid for employment or verification of your employer identification number.
 - (d) An employment and education resume for:
 - (i) The person responsible for the active management of the center; and
 - (ii) The program supervisor.
 - (e) Diploma or education transcript copies of the program supervisor;
 - (f) Three professional references each, for yourself, the director, and the program supervisor;
 - (g) Articles of incorporation if you choose to be incorporated;
 - (h) List of staff (form is provided in the application);
 - (i) Written parent communication (child care handbook);
 - (j) Copy of transportation insurance policy (liability and medical);
 - (k) In-service training program (for agencies employing more than five persons);
 - (l) A floor plan of the facility drawn to scale;
 - (m) A copy of your health care plan reviewed and signed by an advisory physician, physician's assistant, or registered nurse;
 - (n) A copy of your policies and procedures that you give to parents; and
 - (o) A copy of your occupancy permit.
- (3) You must submit your application and reapplication ninety or more calendar days before:
- (a) The date you expect to open your new center;
 - (b) The expiration date of your current license;
 - (c) The date you expect to relocate your center;
 - (d) The date you expect to change licensee; or
 - (e) The date you expect a change in your license category.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-0060, filed 6/30/03, effective 8/1/03.]

WAC 388-295-0070 What personal characteristics do my volunteers, all staff and I need to provide care to children? (1) You must have the following personal characteristics in order to operate or work in a child care facility:

- (a) The understanding, ability, physical health, emotional stability, good judgment and personality suited to meet the physical, intellectual, mental, emotional, and social needs of the children under your care;
- (b) Be qualified by our background inquiry check (chapter 388-06 WAC) prior to having unsupervised access to children. This includes your not having committed or been convicted of child abuse or any crime involving harm to another person; and
- (c) Be able to furnish the child in your care with a healthy, safe, nurturing, respectful, supportive, and responsive environment.

(2) If we decide it is necessary, you must provide to us any additional reports or information regarding you, any assistants, volunteers, members of your household or any other person having access to the child in care if any of those individuals may be unable to meet the requirements in chapter 388-295 WAC. This could include:

- (a) Sexual deviancy evaluations;

- (b) Substance abuse evaluations;
 - (c) Psychiatric evaluations; and
 - (d) Medical evaluations.
- (3) Any evaluation requested under WAC 388-295-0070 (2)(a) through (d) will be at the expense of the person being evaluated.
- (4) You must give us permission to speak with the evaluator in WAC 388-295-0070 (2)(a) through (d) prior to and after the evaluation.
- (5) We investigate staff and volunteers, including accessing criminal histories and law enforcement files.
- (6) We can also investigate members of your household and members of your staffs and volunteers households. This includes accessing criminal histories and law enforcement files.
- (7) We can investigate any other person who has access to a child in care, including accessing criminal history and law enforcement files.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-0070, filed 6/30/03, effective 8/1/03.]

WAC 388-295-0080 How is my licensed capacity determined? (1) Maximum allowable capacity of your center is determined based on useable square footage and available toilets and sinks. The licensed capacity (the number of children you are allowed to have in your center at any one time) may be less than the maximum capacity, but not exceed it. The licensed capacity is based on our evaluation of the program, the ages and characteristics of the children, the experience of the staff, and usable floor space. You must have:

- (a) Fifty square feet of useable floor space per infant (includes crib, playpen, infant bed and bassinets);
- (b) Thirty-five square feet of useable floor space for each toddler or older child that is dedicated to the children during child care hours; and
- (c) Fifteen additional square feet must be provided for each toddler using a crib or playpen when cribs are located in the sleeping and play area.

(2) The areas included in your square footage must be available at all times for the children. The following areas will not be included in determining the useable square footage for each child:

- (a) Food preparation areas of the kitchen;
- (b) Laundry areas;
- (c) All bath, toilet rooms and hand washing areas;
- (d) Hallways, diaper changing areas (includes the changing table, sink and twenty-four inches of floor space around the changing table and sink), stairways, closets, offices, staff rooms, lockers and custodial areas;
- (e) Furnace rooms, hot water heater rooms, storage rooms, or mop sink rooms; and
- (f) Cabinets, storage, and fixed shelving spaces unless accessible to and used by children (for example, cubbies, shelves for storing toys and puzzles, bookshelves, etc.). If the children do not have access to their cubbies or toy storage areas, it is not included in the square footage.

(3) You can use a multipurpose room and gymnasium for multiple purposes such as playing, dining, napping, and learning activities, and before and after school programs when the room:

(a) Meets the square footage requirements for the purpose and number of children to be served; and

(b) Is being used for one purpose and does not interfere with usage of the room for another purpose.

(4) You may use and consider the napping area as child care space if staff remove mats and cots when they are not in use and the children then have free access to the area.

(5) We will not issue you a license to care for more children than the rules in this chapter permit.

(6) We may issue you a license to care for fewer children than the center's maximum capacity.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-0080, filed 6/30/03, effective 8/1/03.]

WAC 388-295-0090 When will the department issue me an initial license and when are licensing fees due? We may issue an initial license to centers that have not yet begun providing care, but are accepting application for potential clients.

(1) We may issue an initial license when you can show that you are following the rules regarding the child's health and safety.

(2) We may issue an initial license if you have not yet opened for business, and so are not yet able to show that you are complying with the rules pertaining to:

- (a) Staff to child interactions;
- (b) Group size and staff to child ratios;
- (c) Behavior management and discipline;
- (d) Activity programs;
- (e) Child records and information; and
- (f) Other rules that require us to observe your facility's ability to comply with rules.

(3) You must provide us with a plan to comply with the rules listed in subsection (2)(a) through (f) of this section. We must approve of that plan.

(4) We may issue an initial license to an applicant for a period not to exceed six months, renewable for a period not to exceed two years.

(5) We evaluate your ability to comply with all rules contained in this chapter during the period of initial licensure prior to issuing a full license.

(6) We may issue a full license to you when you have demonstrated compliance with chapter 388-295 WAC at any time during the period of initial licensure.

(7) We do not issue a full license to you if you do not demonstrate the ability to comply with all rules contained in chapter 388-295 WAC during the initial licensure.

(8) You must pay licensing fees at the time you apply for an initial license and when your license is being renewed.

(9) We do not process your application until you have paid the required fee.

(10) You can pay licensing fees for:

- (a) A minimum of one year; or
- (b) The entire length of your license.

(11) You pay your fee by mailing a check or money order for the required amount to the department of social and health services, according to instructions on the licensing application.

(12) If you pay your fee one time per year, you pay the annual rate each time. The annual fee is due thirty days before each annual anniversary date of the license.

(13) If you pay for more than one year, the total fee you pay is based on the annual fee rate. For example, if you are licensed for three years and want to pay the licensing fee for the entire period at once, you multiply the annual fee by three years, and pay that amount at the time of your license application or renewal.

(14) If there is a change in your facility that places your facility in a higher fee category, we prorate the additional fee amount over the remainder of the license period.

(15) If you withdraw your application before we deny or issue a license, we refund one-half of the fee.

(16) If there is a change that requires a new license, we refund any fee that remains after your next licensing date. A new license requires a new application and fee.

(17) If we deny, revoke, or suspend your license, we do not refund your licensing fee.

(18) If you reapply for a license after we revoke or suspend your license, you must pay a new license fee.

(19) If you do not pay licensing fees when they are due, we suspend or deny your license.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-0090, filed 6/30/03, effective 8/1/03.]

WAC 388-295-0100 When can my license application be denied and when can my license be suspended or revoked? (1) If you do not meet the requirements in chapter 388-295 WAC we will deny your license application or suspend or revoke your license.

(2) If more than one person applies for a license or is licensed under this chapter to provide child care at the same facility:

- (a) We consider qualifications separately and together.
- (b) We deny the license application, or suspend or revoke the license if one person fails to meet the minimum licensing requirements.

(3) We deny, suspend, or revoke your license if you:

(a) Have been found to have abused, neglected, sexually exploited, abandoned a child or allowed such persons on the premises as defined in chapter 26.44 RCW;

(b) Have a disqualifying criminal history as listed in chapter 388-06 WAC;

(c) Have had a license denied, suspended, or revoked for the care of adults or children in this state or any other state. However, if you demonstrate by clear and convincing evidence that you have taken enough corrective action and rehabilitation to justify the public trust to operate the center according to the rules of this chapter, we will consider issuing you a license;

(d) Commit or allow an illegal act to be committed on the licensed premises;

(e) Allow children in your care to be abused, neglected, exploited, or treated with cruelty or indifference;

(f) Use illegal drugs;

(g) Use alcohol to the extent that it interferes with your ability to provide care for the children as required by this chapter;

(h) Refuse to permit an authorized representative of the department, state fire marshal, or state auditor's office with official identification to:

- (i) Inspect the premises;

- (ii) Access your records related to the centers operation;
- or
- (iii) Interview staff or children in care.
- (i) Refuse to provide us a copy of your:
 - (i) Photo identification issued by a government entity;
 - and
 - (ii) Social Security card that is valid for employment or verification of your employer identification number.
- (4) We deny, suspend, or revoke your license if you:
 - (a) Try to get or keep a license by making false statements or leaving out important information on your application;
 - (b) Do not provide enough staff in relation to the numbers, ages, or characteristics of children in care;
 - (c) Allow a person who is not qualified by training, experience or temperament to care for or be in contact with children in care;
 - (d) Fail to provide adequate supervision to children in care;
 - (e) Do not exercise fiscal responsibility and accountability while operating the center;
 - (f) Knowingly allow an employee or volunteer on the premises that has made false statements on an application for employment or volunteer service;
 - (g) Refuse to supply additional information requested by us;
 - (h) Fail to pay fees when due;
 - (i) Fail to comply with the minimum licensing requirements set forth in this chapter or any provision of chapter 74.15 RCW; or
 - (j) Provide care on the premises for children of an age different from the ages for which the center is licensed.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-0100, filed 6/30/03, effective 8/1/03.]

WAC 388-295-0110 When can I be fined for not following the minimum licensing requirements? (1) We notify you in writing of our intention to impose a civil fine. We may use personal service, including by our licenser, or certified mail. The letter will include:

- (a) A description of the violation and a quote of the law or rule that you have failed to meet;
- (b) A statement of what you must do to come into compliance;
- (c) The date by which we require compliance;
- (d) Information about the maximum allowable penalty we can impose if you do not come into compliance by the given date;
- (e) How you can get technical assistance services provided by us or by others; and
- (f) Information about how you can to request an extension to the date you must be in compliance, if we decide you have a good reason.

(2) The length of time we establish for you to come into compliance depends on:

- (a) The seriousness of the violation;
- (b) The potential threat to the health, safety and welfare of children in your care; or
- (c) If you have had previous opportunities to correct the deficiency and have not done so.

(3) We use the following criteria to determine if we impose a civil fine based on, but not limited to, these reasons:

(a) The child care center has previously been subject to an enforcement action for the same or similar type of violation for the same statute or rule; or

(b) The child care center has previously been given notice of the same or similar type of violation of the same law or rule; or

(c) The violation represents a potential threat to the health, safety, and/or welfare of children in care.

(4) We can impose a civil fine in addition to or at the same time as other disciplinary actions against a child care center. These include probation, suspension, or other action.

(5) You must pay any civil fines no more than twenty-eight days after you receive the notice that you have a fine. We may specify a later date.

(6) We can waive the fine if your center comes into compliance during the notification period.

(7) You must post the final notice of a civil fine in a noticeable place in your center. The notice must remain posted until we notify you that we have received your payment.

(8) Each violation of a law or rule is a separate violation. We can penalize each violation. We can impose a penalty for each day the violation continues or as a flat amount of the maximum allowable penalty.

(9) If you fail to pay your fine within ten days after the assessment becomes final, we can suspend, revoke, or not renew your license.

(10) You have the right to a hearing when we assess a civil fine under RCW 43.20A.215.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-0110, filed 6/30/03, effective 8/1/03.]

WAC 388-295-0120 How much can I be fined? We can impose a civil fine for the following:

(1) If we determine that an agency or child care center is operating without a license we may assess a fine of two hundred fifty dollars per day for each day you provide unlicensed child care. A fine is effective and payable within thirty days of receipt of the notification.

(2) We may impose a civil monetary fine of two hundred fifty dollars per violation per day for violation of any rules in chapter 388-295 WAC. We can assess and collect the fine with interest for each day that you fail to come into compliance.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-0120, filed 6/30/03, effective 8/1/03.]

WAC 388-295-0130 When can I be fined for operating an unlicensed program? (1) If we receive information that you are operating a child care center without a license, we investigate the allegation.

(2) We contact you, send you a letter, or make an on-site visit to your center to determine whether you are operating without a license.

(3) If we determine that you personally or on behalf of another person are operating a child care center without a license, we send written notification by certified mail or other method showing proof of service to the owner of the unlicensed center. This notification must contain the following:

- (a) Notice to the center owner of our basis for determination that the owner is providing child care without a license and the need for us to license the center;
- (b) Citation of the applicable law;
- (c) The fine is effective and payable within thirty days of the agency's receipt of the notification;
- (d) Information about how to contact the division of child care and early learning;
- (e) The requirement that the unlicensed center owner submit an application for a license to the division of child care and early learning within thirty days of receipt of our notification;
- (f) That we can forgive the fine if the center submits an application within thirty days of the notification; and
- (g) The unlicensed center owner's right to an adjudicative proceeding (fair hearing) as a result of the assessment of a monetary fine and how to request an adjudicative proceeding.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-0130, filed 6/30/03, effective 8/1/03.]

WAC 388-295-0140 When can the department issue a probationary license to a child care center operator? (1) We can issue a probationary license to you based on the following factors:

- (a) Your willful or negligent failure to comply with the regulations;
 - (b) Your history of noncompliance with the regulations;
 - (c) How far you deviate from the regulations;
 - (d) Evidence of your good faith effort to comply with the regulations; and
 - (e) Any other factors relevant to your unique situation.
- (2) We can issue a probationary license to you when the willful or negligent violation of the licensing requirements does not present an immediate threat to the health and well being of the children, but would be likely to do so if allowed to continue. We can also issue civil fines or other sanctions in this case. Such situations can include:
- (a) Substantiation that a child was abused or neglected while in the care of the center;
 - (b) A fire safety inspection or health/sanitation inspection report that has been disapproved;
 - (c) Use of unauthorized space for child care;
 - (d) Inadequate supervision of children;
 - (e) Under staffing for the number of children in care; and
 - (f) Noncompliance with requirements addressing children's health, proper nutrition, discipline, emergency medical plan, sanitation and personal hygiene practices.

(3) You are required to notify parents when a probationary license is issued. You must:

- (a) Notify in writing the parents or guardians of all children in care that the center is in probationary status. This notification must be within five working days of your receiving notification of being placed on probationary status or being issued a probationary license. We must approve the notification before you send it; and
- (b) Provide documentation to us that parents or guardians of all children in care have been notified. You must provide this documentation within ten working days of being notified that you have been issued a probationary license.

- (4) A probationary license can be issued for up to six months and can be extended at our discretion for an additional six months.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-0140, filed 6/30/03, effective 8/1/03.]

WAC 388-295-0150 Where can I locate my child care center or facility? (1) You must locate your child care center:

- (a) On an environmentally safe site;
 - (b) In a neighborhood free of a condition detrimental to the child's welfare; and
 - (c) In a location accessible to other services to carry out the program.
- (2) Your child care must be located in an area that is serviced by emergency fire, medical and police during the hours the children are in care.
- (3) The location of your site must be approved by the local planning department, your state fire marshal, and us.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-0150, filed 6/30/03, effective 8/1/03.]

WAC 388-295-1010 Who can be the director of a child care center? If you apply for a license to operate a child care center, you may be the director yourself, or you can hire a director. The director is responsible for the overall management of the center's facility and operation and ensures that the center follows the minimum licensing requirements. The director must:

- (1) Be at least twenty-one years of age or older;
- (2) Have knowledge of child development as evidenced by professional reference, education, experience, and on-the-job performance;
- (3) Have written proof of education including:
 - (a) A current child development associate certificate (CDA); or
 - (b) The following minimum number of college quarter* credits or combination of college quarter credits and department-approved clock hours (ten clock hours equals one college credit) in early childhood education or child development:

If your center is licensed for this number of children:	Then the director must have completed at least this number of college quarter credits in early childhood education:	Of the total credits required, the minimum number that must be college quarter credits is:	And of the total credits required, the maximum number that can be department-approved clock hours is:
(i) Twelve or less	10	7	30 (replacing 3 college quarter hours)
(ii) Thirteen through 24	25	17	80 (replacing 8 college quarter hours)
(iii) Twenty-five or more	45	30	150 (replacing 15 college quarter hours)

*Note: One college semester credit equals one and one half (1.5) college quarter hours

- (4) Have at least two years experience working with children the same age level as the center serves;

(5) Not let the provision of child care interfere with management or supervisory responsibilities;

(6) Be on the premises for the majority of the hours that care is provided and designate a person to be in charge that meets the qualifications of a lead teacher when not present; and

(7) Meet the STARS requirement and be listed in the state training and registry system (STARS).

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-1010, filed 6/30/03, effective 8/1/03.]

WAC 388-295-1020 What if the director does not meet the minimum qualifications? (1) If the director does not meet the requirements in WAC 388-295-1010, you must have a program supervisor who:

(a) Meets all the qualifications of WAC 388-295-1010;

(b) Oversees the planning and supervising of the center's learning and activity program to ensure that practices meet the WAC, are varied and developmentally appropriate; and

(c) Performs on-site program supervisory duties twenty hours or more a week and is not included in the staff to child ratio. If we request it, you must provide documentation of the twenty hours or more a week on site supervisory duties for the program supervisor.

(2) If the director does not meet the minimum requirements in WAC 388-295-1010 the director must have had at least one three credit college class in early childhood education or development.

(3) One person may be both the director and the program supervisor when qualified for both positions. The director or program supervisor must be on the premises for the majority of the hours that care is provided. If temporarily absent from the center, the director or program supervisor must leave a competent, designated staff person in charge who meets the qualifications of a lead staff person.

(4) The director or program supervisor may also serve as child care staff when that role does not interfere with management and supervisory responsibilities.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-1020, filed 6/30/03, effective 8/1/03.]

WAC 388-295-1030 Who can be a lead teacher in a child care center? The lead teacher is a child care staff person who is in charge of a child or group of children and implements the activity program. The lead teacher must:

(1) Be at least eighteen years of age or older;

(2) Have completed a high school education or the equivalent; and

(3) Have documented child development education or work experience; **or**

(4) Complete STARS training within six months of becoming a lead teacher.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-1030, filed 6/30/03, effective 8/1/03.]

WAC 388-295-1040 Who can be an assistant or aide in a child care center? You may assign a child care assistant or aide to support the lead child care staff.

(1) The assistant or aide must be:

(a) At least sixteen years of age; and

(b) Under the direct supervision of a lead child care staff person.

(2) You may assign an assistant who is age eighteen or older to care for a child or a group of children under direct supervision of a lead staff person. This person may have sole responsibility for a group of children without direct supervision by a superior for a brief period of time.

(3) You must not assign a person under the age of eighteen years sole responsibility for a group of children.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-1040, filed 6/30/03, effective 8/1/03.]

WAC 388-295-1050 Who can be a volunteer in a child care center? (1) You may arrange for a volunteer to support lead child care staff. The volunteer must:

(a) Be at least sixteen years of age or older; and

(b) Care for children under the direct supervision of a lead child care staff person at all times.

(2) You may count the volunteer in the staff-child ratio when the volunteer meets staff qualification requirements and is sixteen years of age or older.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-1050, filed 6/30/03, effective 8/1/03.]

WAC 388-295-1060 What initial and ongoing state training and registry system (STARS) training is required for child care center staff? The director, program supervisor and lead teachers must register with the STARS registry and complete one of the following trainings within the first six months of employment or of being granted an initial license:

(1) Twenty clock hours or two college quarter credits of basic training approved by the Washington state training registry system (STARS);

(2) Current child development associate certificate (CDA) or equivalent credential, or twelve or more college credits in early childhood education or child development; or

(3) Associate of Arts (AA), Associate of Arts and Sciences or higher college degree in early childhood education or child development.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-1060, filed 6/30/03, effective 8/1/03.]

WAC 388-295-1070 What continuing state training and registry system (STARS) training is required for child care center staff? (1) The director, program supervisor and lead teachers must complete ten clock hours or one college credit of continuing education yearly after completing the initial training required in WAC 388-295-1010.

(2) The director and program supervisor must have five of the ten hours in program management and administration for the first two years in the director position. Each additional year, three of the ten hours required must be in program management and administration.

(3) Agencies or organizations that have been approved by the Washington State Training and Registry System (STARS) may offer up to six clock hours of continuing education each year to their employees. The remaining four hours must be obtained from other training offered in the community.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-1070, filed 6/30/03, effective 8/1/03.]

WAC 388-295-1080 What topics must my new staff orientation include? You must have an orientation system in place to train each new employee and volunteer about program policies, practices, philosophies and goals. This training must include, but is not limited to, the program policies and practices listed in this chapter such as:

- (1) Minimum licensing requirements;
- (2) Planned daily activities and routines;
- (3) Child guidance and behavior management methods;
- (4) Child abuse and neglect prevention, detection, and reporting policies and procedures;
- (5) Health policies and procedures;
- (6) Communicable disease recognition and prevention;
- (7) Bloodborne pathogens;
- (8) Fire prevention, disaster plan and safety procedures;
- (9) Special health and developmental needs of the individual child;
- (10) Personnel policies, when applicable;
- (11) Limited restraint techniques;
- (12) Cultural relevancy; and
- (13) Age and developmentally appropriate practices and expectations for the age group the staff will work with.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-1080, filed 6/30/03, effective 8/1/03.]

WAC 388-295-1090 What kind of meetings or on-going training must I provide my staff? (1) You must provide or arrange for staff meetings and training opportunities for the child care staff at least quarterly; and

- (2) At a minimum, your staff and volunteers must have on-going training when there are changes:
 - (a) In your policies and procedures;
 - (b) In the equipment that you use;
 - (c) In the types of services you provide; or
 - (d) To health care plans for specific children.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-1090, filed 6/30/03, effective 8/1/03.]

WAC 388-295-1100 What are the requirements regarding first aid and cardiopulmonary resuscitation (CPR) training? (1) You must ensure that at least one person of your staff with a current basic standard first aid and age appropriate CPR certificate is present with each group of children in your center at all times. For example, if you have six different classrooms with different groups of children, you must have a staff person in each room trained in first aid and CPR.

(2) The person providing the first aid and CPR training must be knowledgeable about current national first aid and CPR standards. The trainer must:

- (a) Be in the medical field;
- (b) Be in the emergency field such as an emergency medical technician or fire fighter;
- (c) Complete a "train the trainer" course from a reputable program such as the American Red Cross, American Heart Association, National Safety Council or labor and industries; or

(d) Work for a company that specializes in first aid and CPR training.

(3) First aid and CPR training must be updated as required on the card or certificate received by you or your staff person. The first aid and CPR cards or certificates must have a date of expiration.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-1100, filed 6/30/03, effective 8/1/03.]

WAC 388-295-1110 Who must have Human Immunodeficiency Virus (HIV), Acquired Immunodeficiency Syndrome (AIDS) and bloodborne pathogen training? (1) Every employee must have written proof of HIV/AIDS and bloodborne pathogen training that includes prevention, transmission, treatment and confidentiality issues.

(2) You must comply with applicable Washington Industrial Safety and Health Act (WISHA)/labor and industries safety and health regulations under chapter 296-823 WAC that apply to you.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-1110, filed 6/30/03, effective 8/1/03.]

WAC 388-295-1120 What are the Tuberculosis (TB) testing requirements for the staff? (1) Each employee and volunteer must have the results of a one step Mantoux TB skin test prior to starting work.

(2) New employees and volunteers do not need a TB skin test if they have written proof of:

- (a) A negative Mantoux TB test in the twelve months prior to you hiring them;
- (b) A previously positive Mantoux TB test with documented proof of treatment or a negative chest X ray; or
- (c) Medication therapy to treat TB.

(3) Your staff and volunteers must be retested for TB when you are notified that any of the staff or volunteers have been exposed to TB. They must comply with the direction of the local health jurisdictions.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-1120, filed 6/30/03, effective 8/1/03.]

WAC 388-295-2010 What types of play materials, equipment and activities must I provide for the children? You must:

(1) Provide a variety of easily accessible learning and play materials of sufficient quantity to implement the centers program and meet the developmental needs of children in care.

(2) Have a current daily schedule of activities and lesson plans that are designed to meet the children's developmental, cultural, and individual needs. The toys, equipment and schedule must be:

- (a) Specific for each age group of children; and
- (b) Include at least one activity daily for each of the following (you can combine several of the following for one activity):
 - (i) Child initiated activity (free play);
 - (ii) Staff initiated activity (organized play);
 - (iii) Individual choices for play;
 - (iv) Creative expression;
 - (v) Group activity;

- (vi) Quiet activity;
- (vii) Active activity;
- (viii) Large and small muscle activities; and
- (ix) Indoor and outdoor play.

(3) You must ensure the lesson plan, daily schedule of events, available toys and equipment contains a range of learning experiences to allow each child the opportunity to:

- (a) Gain self-esteem, self-awareness, self-control, and decision-making abilities;
 - (b) Develop socially, emotionally, intellectually, and physically;
 - (c) Learn about nutrition, health, and personal safety; and
 - (d) Experiment, create, and explore.
- (4) Post the daily schedule and lesson in each room for easy reference by parents and by caregivers;
- (5) Keep the daily schedule of events and lesson plans for the past six months on site for inspection;
- (6) Maintain staff-to-child ratios and group size during transitions from one activity to another during the day;
- (7) Plan for smooth transitions by:
- (a) Establishing familiar routines; and
 - (b) Using transitions as a learning experience.
- (8) Ensure the center's program affords the child daily opportunities for small and large muscle activities, outdoor play, and exposure to language development and books; and
- (9) Afford staff classroom planning time.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-2010, filed 6/30/03, effective 8/1/03.]

WAC 388-295-2020 How long can a child be at the center? The child may remain in care a maximum of ten hours or less each day. If needed, you may extend the time based upon the parent's typical work schedule and travel from and to the center.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-2020, filed 6/30/03, effective 8/1/03.]

WAC 388-295-2030 How should staff interact with children? To facilitate interactions between the staff and children that are nurturing, respectful, supportive and responsive, you must:

- (1) Ensure staff interact with children using positive communication (for example, giving children options of what to do rather than being told what not to do);
- (2) Support the child's development in understanding themselves and others by assisting the child to share ideas, experiences, and feelings;
- (3) Provide age-appropriate opportunities for the child to grow and develop intellectually. Examples include:
 - (a) Reading readiness skills;
 - (b) Language skills development;
 - (c) Encouraging the child to ask questions;
 - (d) Counting;
 - (e) Matching objects;
 - (f) Differentiating between large and small; and
 - (g) Sorting.
- (4) Help each child solve problems with intervention as necessary;
- (5) Encourage children to be creative in their projects;

- (6) Allow independence in selecting routine activities and projects;
- (7) Show tolerance for mistakes;
- (8) Encourage children to try new activities; and
- (9) Honor all children's race, religion, culture, gender, physical ability and family structure.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-2030, filed 6/30/03, effective 8/1/03.]

WAC 388-295-2040 What behavior management and guidance practices must I have in place? You must:

- (1) Develop and implement written behavior management and guidance practices for the center;
- (2) Guide the child's behavior based on an understanding of the individual child's needs and stage of development;
- (3) Promote the child's developmentally appropriate social behavior, self-control, and respect for the rights of others;
- (4) Ensure behavior management and guidance practices that are fair, reasonable, consistent, and related to the child's behavior;
- (5) Prevent and prohibit any person on the premises from using cruel, unusual, hazardous, frightening, or humiliating discipline, including but not limited to:
 - (a) Corporal punishment including biting, jerking, shaking, spanking, slapping, hitting, striking, kicking, pinching, flicking or any other means of inflicting physical pain or causing bodily harm to the child;
 - (b) Verbal abuse such as yelling, shouting, name calling, shaming, making derogatory remarks about a child or the child's family, or using language that threatens, humiliates or frightens a child;
 - (c) The use of a physical restraint method injurious to the child, locked time-out room, or closet for disciplinary purposes; and
 - (d) The using or withholding of food or liquids as punishment.

(6) In emergency situations, a staff person may use limited physical restraint when:

- (a) Protecting a person on the premises from serious injury;
 - (b) Obtaining possession of a weapon or other dangerous object; or
 - (c) Protecting property from serious damage.
- (7) Staff who use limited restraint must complete an incident report. A copy of the incident report must be:
- (a) Placed in the child's individual record; and
 - (b) Given to the parent.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-2040, filed 6/30/03, effective 8/1/03.]

WAC 388-295-2050 Must we provide rest periods? You must:

- (1) Offer a supervised rest period to the child who is:
 - (a) Five years of age or younger and in care for more than six hours; or
 - (b) Showing a need for rest.
- (2) Allow a child twenty-nine months of age or younger to follow an individual sleep schedule, and plan alternative quiet activities for the child who does not need rest.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-2050, filed 6/30/03, effective 8/1/03.]

WAC 388-295-2060 What are the requirements for evening and nighttime care? In addition to meeting the other requirements of chapter 388-295 WAC, if you offer child care during evening and nighttime hours, you must:

(1) Adapt the program, equipment, and staffing pattern to meet the physical and emotional needs of the child away from home at night such as:

(a) In centers operating past midnight, you must provide for each child a crib, mat or cot, or mattress pad, that is easily sanitized;

(b) Make arrangements for bathing as needed;

(c) Make arrangements for personal hygiene including tooth brushing;

(d) Have individual bedding appropriate for overnight sleeping; and

(e) Have separate dressing and sleeping areas for boys and girls ages six years and older or younger children demonstrating a need for privacy.

(2) Maintain the same staff-to-child ratio that is in effect during daytime care;

(3) Keep the child within continuous visual and auditory range at all times;

(4) Ensure that the staff in charge during evening and nighttime hours meets the requirements of a lead teacher; and

(5) Ensure all staff attending to children in care are awake.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-2060, filed 6/30/03, effective 8/1/03.]

WAC 388-295-2070 What do I need to transport the children on off-site trips? (1) You may transport a child or permit the child to travel off-site only with written parental consent. The purpose may be to attend school, participate in supervised field trips, or engage in other supervised off-site activities.

(2) The parent's consent may be:

(a) For a specific date or trip; or

(b) A blanket authorization describing the full range of trips the child may take. If you use a blanket authorization, you must notify the parent in writing at least twenty-four hours in advance about any specific trip.

(3) When transportation is provided by the center for children in care:

(a) The driver must have a valid Washington state driver's license to operate the type of vehicle being driven;

(b) The number of passengers cannot exceed the seating capacity of the vehicle;

(c) Either the center owner or the driver must have liability and medical insurance; and

(d) The driver, parent volunteer, or staff supervising the children being transported in each vehicle must have written documentation on file of current CPR and first-aid training.

(4) When you transport children, the vehicle used must:

(a) Have a current license and registration according to Washington state transportation laws;

(b) Be maintained in good repair and safe operating condition; and

(c) Be equipped with:

(i) At least one first-aid kit that meets the requirements of WAC 388-295-5010;

(ii) Vehicle emergency reflective triangles or other devices to alert other drivers of an emergency;

(iii) The health history and emergency information for each child in the vehicle; and

(iv) A method to call for emergency help.

(5) You must meet the child passenger restraint system requirements in RCW 46.61.687 when transporting children. Contact your local state patrol office for more information.

(6) When you transport children, you must maintain the staff-to-child ratio established for the youngest child in the group; and

(7) Staff or driver must not leave the children unattended in the motor vehicle.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-2070, filed 6/30/03, effective 8/1/03.]

WAC 388-295-2080 What must I communicate to parents? (1) You must have written documentation signed by the parent in each child's file that you have:

(a) Explained to the parent the centers policies and procedures;

(b) Discussed the centers philosophy, program and facilities;

(c) Advised the parent of the child's progress and issues relating to the child's care and individual practices concerning the child's special needs; and

(d) Encouraged parent participation in center activities.

(2) You must also give the parent the following written policy and procedure information:

(a) Enrollment and admission requirements;

(b) The fee and payment plan;

(c) A typical activity schedule, including hours of operation;

(d) Meals and snacks served, including guidelines on food brought from the child's home;

(e) Permission for free access by the child's parent to all center areas used by the child;

(f) Signing in and signing out requirements;

(g) Child abuse reporting law requirements;

(h) Behavior management and discipline;

(i) Nondiscrimination statement;

(j) Religious and cultural activities, if any;

(k) Transportation and field trip arrangements;

(l) Practices concerning an ill child;

(m) Medication management;

(n) Medical emergencies;

(o) Disaster preparedness plans; and

(p) If licensed for the care of an infant or toddler:

(i) Diapering;

(ii) Toilet training; and

(iii) Feeding.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-2080, filed 6/30/03, effective 8/1/03.]

WAC 388-295-2090 What are the required staff to child ratios and maximum group sizes for my center? (1) You must ensure the required staff to child ratios are met at all times when children are in your care. In centers licensed for thirteen or more children, the licensee must conduct group

activities within the group size and staff to child ratio requirements, according to the age of the children:

If the age of the children is:	Then the staff to child ratio is:	And the maximum group size is:
(a) One month, through 11 months (infant)	1:4	8
(b) Twelve months through 29 months (toddler)	1:7	14
(c) Thirty months through 5 years (preschooler)	1:10	20
(d) Five years and 12 years (school-age child)	1:15	30

(2) In centers licensed for twelve or fewer children, you may combine children of different age groups, provided you:

(a) Maintain the staff-to-child ratio designated for the youngest child in the mixed group; and

(b) Provide a separate care area when four or more infants are in care. In such case the maximum group size shall be eight infants.

(3) You must conduct activities for each group in a specific room or other defined space within a larger area.

(4) You must ensure each group is under the direct supervision of a qualified staff person or team of staff involved in directing the child's activities.

(5) We may approve reasonable variations to group size limitations if you maintain required staff-to-child ratios, dependent on:

(a) Staff qualifications;

(b) Program structure; and

(c) Useable square footage.

(6) After consulting with the child's parent, you may place the individual child in a different age group and serve the child within the different age group's required staff-to-child ratio based on the child's:

(a) Developmental level; and

(b) Individual needs.

(7) You may combine children of different age groups for no more than one hour, provided you maintain the staff-to-child ratio and group size designated for the youngest child in the mixed group.

(8) In centers licensed for thirteen or more children, you may group ambulatory children between one year and two years of age with older children, provided:

(a) The total number of children in the group does not exceed twelve; and

(b) Two staff are assigned to the group.

(9) You must ensure the staff person providing direct care and supervision of the child is free of other duties at the time of care.

(10) You must maintain required staff-to-child ratios indoors, outdoors, on field trips, and during rest periods. During rest periods, staff may be involved in other activities if:

(a) Staff remain on the premises; and

(b) Each child is within continuous visual and auditory range of a staff person.

(11) You must ensure staff:

(a) Attend to the group of children at all times; and

(b) Keep each child (including school age children) within continuous visual and auditory range of center staff.

Toilet trained children using the toilet must be within auditory range of a center staff member.

(12) When only one staff person is present, you must ensure a second staff person is readily available in case of emergency.

(13) When only one caregiver is required to meet the staff to child ratio, you must be sure there is coverage for emergencies to meet both ratios and worker qualifications by either:

(a) Posting the name, address, and telephone number of a person who meets the qualifications of at least a lead teacher, who has agreed in writing to be available to provide emergency relief and who can respond immediately; or

(b) Having a second person that meets the qualifications of at least a lead teacher on the premises who is not needed for the staff to child ratio, but is available to provide emergency relief.

(14) Service staff, such as cooks, janitors, or bus drivers, must not be counted in the required staff to child ratio unless they:

(a) Meet child care worker qualifications; and

(b) Are acting as a child care provider and are giving full attention to the children.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-2090, filed 6/30/03, effective 8/1/03.]

WAC 388-295-2100 What are the exceptions to group sizes and staff to child ratios? (1) If the center is licensed for twelve or fewer children, you may combine children (excluding infants) of different age groups if you:

(a) Maintain the staff to child ratio for the youngest child in the mixed group; and

(b) Provide a separate area when infants are in care.

(2) You must conduct activities for each group in a specific room or other specifically defined space within a larger area;

(3) Excluding infants, you may place an individual child in a different age group and serve the child within the different age group's required staff to child ratio, based on the child's individual needs and developmental level. You must consult with the child's parent prior to making the change;

(4) You may combine children of different age groups for periods of no more than one hours at the beginning and end of the day provided you maintain the staff to child ratio and group size designated for the youngest child in the mixed group;

(5) You may have nine infants in a classroom with appropriate square footage if you maintain a ratio of one staff to three infants; and

(6) You can request a waiver to group size limitations. If we approve variations to group size limitations, you must maintain the required staff-to-child ratios. Our approval will depend on but is not limited to:

(a) Staff qualifications;

(b) Program structure;

(c) Square footage; and

(d) Lower staff to child ratios.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-2100, filed 6/30/03, effective 8/1/03.]

WAC 388-295-2110 Are children allowed in the kitchen when they are doing supervised activities? (1) You must be sure that children are not in the kitchen except during supervised activities.

(2) When children are in the kitchen, you must:

(a) Supervise food preparation activities involving children; and

(b) Make the kitchen environmentally safe for children to participate in planned kitchen activities.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-2110, filed 6/30/03, effective 8/1/03.]

WAC 388-295-2120 Are there special program requirements for infants and toddlers? (1) When you care for infants and toddlers you must:

(a) Encourage them to handle and manipulate a variety of objects;

(b) Provide a safe environment for climbing, moving and exploring;

(c) Provide materials and opportunities for large and small muscle development;

(d) Read and talk to them daily;

(e) Provide daily indoor opportunities for freedom of movement outside their cribs, in an open, uncluttered space;

(f) Place them in a prone (lying on the tummy) position part of the time when they are awake and staff are observing them;

(g) Not leave them in car seats once they arrive at the center even if they are asleep; and

(h) Not be left in playpens for extended periods of time excluding sleep time.

(i) Talk to and interact with each infant and toddler often and encourage them to respond. Naming objects and describing care encourages language development;

(j) Hold and cuddle infants and toddlers to encourage strong relationships; and

(k) Respond to and investigate cries or other signs of distress immediately.

(2) You must provide toys, objects and other play materials that:

(a) Are cleanable;

(b) Are nontoxic; and

(c) Cannot cause a choking hazard for infants or toddlers.

(3) You must not use baby walkers.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-2120, filed 6/30/03, effective 8/1/03.]

WAC 388-295-2130 Do I need an outdoor play area?

(1) You must provide an outdoor program that promotes the child's coordination, active play, and physical, mental, emotional, and social development based on their age. The play area must:

(a) Adjoin the indoor premises directly or be reachable by a safe route or method;

(b) Have adequate drainage and be free from health and safety hazards;

(c) Contain a minimum of seventy-five usable square feet per child using the play area at any one time. If the center uses a rotational schedule of outdoor play periods so only a portion of the child population uses the play area at one time, you may reduce correspondingly the child's play area size.

(2) If you provide full-time care, the activity schedule must provide the child daily morning and afternoon outdoor play;

(3) If you provide drop-in care only, at our discretion we may approve equivalent, separate, indoor space for the child's large muscle play;

(4) You must ensure appropriate child grouping by developmental or age levels, staff-to-child ratio adherence, and maintain group size;

(5) Staff must be outdoors with the children in continuous visual and auditory range;

(6) You must provide a variety of age-appropriate play equipment for climbing, pulling, pushing, riding and balancing activities; and

(7) You must arrange, design, construct, and maintain equipment and ground cover to prevent child injury.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-2130, filed 6/30/03, effective 8/1/03.]

WAC 388-295-3010 What kind of health policies and procedures must I have? (1) You must have written health policies and procedures that are:

(a) Written in a clear and easily understood manner;

(b) Shared with all new staff during orientation;

(c) Posted for staff and families to review; and

(d) Reviewed and signed by a physician, a physician's assistant or registered nurse when you change your policies and procedures or type of care that you provide, or at least every three years when you are due for re-licensor. (For example, if you go from caring for children from twelve months and older to caring for infants, you must update your health policies and procedures and have them reviewed and signed.)

(2) Your health policies and procedures must have information on how you plan to:

(a) Provide general cleaning of areas including but not limited to bathrooms, floors, walls, and doorknobs;

(b) Clean and sanitize areas including but not limited to food contact surfaces, kitchen equipment, diapering areas, toys, toileting equipment and areas, equipment that might be shared with several children such as sleep mats, cribs or high chairs;

(c) Prevent, manage and report communicable diseases;

(d) Handle minor injuries such as nosebleeds, scrapes and bruises;

(e) Provide first aid;

(f) Screen children daily for illnesses;

(g) Notify parents that children have been exposed to infectious diseases and parasites;

(h) Handle minor illnesses;

(i) Handle major injuries and medical emergencies that require emergency medical treatment or hospitalization;

(j) Manage medication;

(k) Assist with handwashing and general hygiene including diapering and toileting;

(l) Handle food;

(m) Provide nutritious meals and snacks;

(n) Respond during any disasters;

(o) Care for children that may have special needs;

(p) Care for infants and obtain infant nurse consultation (if licensed for four or more infants); and

(q) Place infants to sleep on their backs to reduce the risk of Sudden Infant Death Syndrome (SIDS).

(3) Your health policies and procedures must have information on when you plan to:

- (a) Require ill children to stay home and for how long;
- (b) Allow the ill child to return; and
- (c) Call a parent to pick up their child and how you will care for the child until the parent arrives.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-3010, filed 6/30/03, effective 8/1/03.]

WAC 388-295-3020 How often must staff wash their hands? Staff and volunteers must wash their hands with soap and warm water:

- (1) When arriving at work;
 - (2) After toileting a child;
 - (3) Before, during (may use wet wipe) and after diapering a child;
 - (4) After personal toileting;
 - (5) After attending to an ill child;
 - (6) Before and after preparing, serving, or eating food;
 - (7) Before and after giving medication;
 - (8) After handling, feeding or cleaning up after animals;
 - (9) After handling bodily fluids;
 - (10) After smoking;
 - (11) After being outdoors or involved in outdoor play;
- and
- (12) As needed.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-3020, filed 6/30/03, effective 8/1/03.]

WAC 388-295-3030 When is a child or staff member too ill to be at child care? (1) Your staff must check all children for signs of illness when they arrive at the center and throughout the day.

(2) You must exclude children and staff with the following symptoms from care:

- (a) Diarrhea (three or more watery stools or one bloody stool within twenty-four hours);
- (b) Vomiting (two or more times within twenty-four hours);
- (c) Open or oozing sores, unless properly covered with cloths or with bandages;
- (d) For suspected communicable skin infection such as impetigo, pinkeye, and scabies: The child may return twenty-four hours after starting antibiotic treatment;
- (e) Lice or nits; and
- (f) Fever of 100 degrees Fahrenheit or higher and who also have one or more of the following:
 - (i) Earache;
 - (ii) Headache;
 - (iii) Sore throat;
 - (iv) Rash; or
 - (v) Fatigue that prevents participation in regular activities.

(3) Children and staff who have a reportable disease may not be in attendance at the child care center unless approved by the local health authority.

(4) You must not take ear or rectal temperatures. Oral temperatures can be taken for preschool through school age if single use disposable covers are used over the thermometer.

(5) When a child becomes ill or injured while in your care, you must:

(a) Keep a confidential, individualized, written record in the child's file that includes the:

- (i) Date of an illness or injury;
- (ii) Treatment provided while in care; and
- (iii) Names of the staff providing the treatment.

(b) Provide a copy of the illness or injury report to the parent; and

(c) Keep a current, written incident log listing date of illness or injury, the child's name, names of staff involved, and a brief description of the incident for tracking and analysis.

(6) You must notify parents in writing when their children have been exposed to infectious diseases or parasites. The notification may consist of either a letter to parents or posting a notification for parents in a visible location.

(7) You are a mandated disease reporter to the health department per WAC 246-101-415. You can obtain a list of reportable diseases, timeframes for reporting and reporting phone numbers from your local health department.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-3030, filed 6/30/03, effective 8/1/03.]

WAC 388-295-3040 How often must children wash their hands? Children must wash their hands with soap and warm water:

- (1) On arrival at the center;
- (2) After using the toilet;
- (3) After the child is diapered;
- (4) After outdoor play;
- (5) After playing with animals;
- (6) After touching body fluids (such as blood or after nose blowing or sneezing); and
- (7) Before and after the child eats or participates in food activities.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-3040, filed 6/30/03, effective 8/1/03.]

WAC 388-295-3050 Am I required to give medications to the children in my care? If a child has a condition where the Americans with Disabilities Act (ADA) would apply you must make reasonable accommodation and give the medication.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-3050, filed 6/30/03, effective 8/1/03.]

WAC 388-295-3060 Who can provide consent for me to give medication to the children in my care? (1) Parents must give written consent before you give any child any medication. The parent's written consent must include:

- (a) Child's first and last name;
- (b) Name of medication;
- (c) Reason for giving medication;
- (d) Amount of medication to give;
- (e) How to give the medication (route);
- (f) How often to give the medication;
- (g) Start and stop dates;
- (h) Expected side effects; and
- (i) How to store the medication consistent with directions on the medication label.

(2) The parent consent form is good for the number of days stated on the medication bottle for prescriptions. You may not give medication past the days prescribed on the medication bottle even if there is medication left.

(3) You may give the following medications with written parent consent if the medication bottle label tells you how much medication to give based on the child's age and weight:

- (a) Antihistamines;
- (b) Nonaspirin fever reducers/pain relievers;
- (c) Nonnarcotic cough suppressants;
- (d) Decongestants;
- (e) Ointments or lotions intended to reduce or stop itching or dry skin;
- (f) Diaper ointments and nontalc powders, intended only for use in the diaper area; and
- (g) Sun screen for children over six months of age.

(4) All other over the counter medications must have written directions from a health care provider with prescriptive authority before giving the medication.

(5) You may not mix medications in formula or food unless you have written directions to do so from a health care provider with prescriptive authority.

(6) You may not give the medication differently than the age and weight appropriate directions or the prescription directions on the medication label unless you have written directions from a health care provider with prescriptive authority before you give the medication.

(7) If the medication label does not give the dosage directions for the child's age or weight, you must have written instructions from a health care provider with prescriptive authority in addition to the parent consent prior to giving the medication.

(8) You must have written consent from a health care provider with prescriptive authority prior to providing:

- (a) Vitamins;
- (b) Herbal supplements; and
- (c) Fluoride.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-3060, filed 6/30/03, effective 8/1/03.]

WAC 388-295-3070 How must I store medications?

(1) You must store medications in the original container labeled with:

- (a) The child's first and last names;
- (b) If a prescription, the date the prescription was filled;
- (c) The expiration date; and
- (d) Easy to read instructions on how to give the medication (i.e., the bottle is in the original package or container with a clean and readable label).

(2) You must store medications:

- (a) In a container inaccessible to children (including staff medications);
- (b) Away from sources of moisture;
- (c) Away from heat or light;
- (d) Protected from sources of contamination;
- (e) According to specific manufacturers or pharmacists directions;
- (f) Separate from food (medications that must be refrigerated must be in a container to keep them separate from food); and

(g) In a manner to keep external medications that go on the skin separate from internal medications that go in the mouth or are injected into the body.

(3) All controlled substances must be in a locked container.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-3070, filed 6/30/03, effective 8/1/03.]

WAC 388-295-3080 Can I use bulk medications (use one container for all the children such as with diaper ointments)? You can keep bulk containers of diaper ointments and nontalc type powders intended for use in the diaper area and sun screen if you:

- (1) Obtain written parental consent prior to use;
- (2) Use for no longer than six months; and
- (3) Notify the parents of the:
 - (a) Name of the product used;
 - (b) Active ingredients in the product; and
 - (c) Sun protective factor (SPF) in sun screen.
- (4) Apply the ointments in a manner to prevent contaminating the bulk container.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-3080, filed 6/30/03, effective 8/1/03.]

WAC 388-295-3090 How do I handle left over medication? You must not keep old medications on site. When a child is finished with a medication, you must either:

- (1) Give it back to the parent; or
- (2) Dispose of it by flushing medication(s) down the toilet.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-3090, filed 6/30/03, effective 8/1/03.]

WAC 388-295-3100 When can children take their own medication? (1) Children can take their own medication if they:

- (a) Have a written statement from the parent requesting the child take their own medication;
- (b) Have a written statement from a health care provider with prescriptive authority stating that the child is physically and mentally capable of taking their own medication; and
- (c) Meet all other criteria in this chapter 388-295 WAC including storage of medications.

(2) A staff member must observe and document that the child took the medication.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-3100, filed 6/30/03, effective 8/1/03.]

WAC 388-295-3110 Do I need special equipment to give medication? To give liquid medication you must use a measuring device designed specifically for oral or liquid medications. Parents should provide the measuring devices for individual use.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-3110, filed 6/30/03, effective 8/1/03.]

WAC 388-295-3120 What documentation is required when giving children medication? You must keep a confidential, written record in the child's file of:

(1) Child's full name, date, time, name of medication and amount given (indicate if self-administered);

(2) Initial of staff person giving medication or observing the child taking the medication with a corresponding signature on the medication record to validate the initials; and

(3) Provide a written explanation why a medication that should have been given was not given.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-3120, filed 6/30/03, effective 8/1/03.]

WAC 388-295-3130 Can anyone else give medication to children in my care? (1) Only staff persons who have been oriented to your center's medication policies and procedures can give medications.

(2) You must have documentation that the staff person has been oriented.

(3) Before a staff may administer medications they must ask parents to provide instruction on specialized medication administration procedures or observations, i.e., how to use the nebulizer, epi-pens or individual child's preference for swallowing pills.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-3130, filed 6/30/03, effective 8/1/03.]

WAC 388-295-3140 What kind of milk can I serve? (1) Only pasteurized milk or pasteurized milk products can be served to children in your care.

(2) Nondairy milk substitutes may be served only with written permission of the child's parent for children over the age of twelve months.

(3) The amount of required milk fat in the milk product is determined by the child's age:

If the age of the child is:	Then the fat content of the milk must be:
(a) Under 12 months	Full strength formula or full strength breast milk unless there is specific written instructions from a licensed health care provider.
(b) Between 12 months and 24 months	Full strength whole milk or breast milk unless there is specific written instruction from a licensed health care provider.
(c) Over 24 months	With or without fat content of providers or parents choice.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-3140, filed 6/30/03, effective 8/1/03.]

WAC 388-295-3150 How many meals and snacks must I serve? (1) The number of meals or snacks you must serve is based on the number of hours you are open.

If you are open:	You must serve at least:
(a) Nine hours or less	(i) Two snacks and one meal; or (ii) One snack and two meals.
(b) Over nine hours	(i) Two snacks and two meals; or (ii) Three snacks and one meal.

(2) You must also offer:

(a) Food at intervals not less than two hours and not more than three and one-half hours apart;

(b) Breakfast or snack to children in morning care whether or not the child ate before arriving at the center;

(c) Breakfast to the child in nighttime care if the child remains at the center after the child's usual breakfast time;

(d) A snack or meal for children arriving after school;

(e) Dinner to children in nighttime care if the children are at the center after their usual dinnertime or have not had dinner; and

(f) An evening snack to children in nighttime care.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-3150, filed 6/30/03, effective 8/1/03.]

WAC 388-295-3160 What kind of food and menus must I have? (1) You must:

(a) Prepare, date, and conspicuously post menus one week or more in advance, containing the meals and snacks to be served;

(b) Provide two weeks or more of meal and snack menu variety before repeating the menu;

(c) Keep six months of past menus on-site for inspection by the department;

(d) Make substitutions of comparable nutrient value and record changes on the menu, when needed;

(e) Provide daily a minimum of one serving of Vitamin C fruit, vegetable, or juice;

(f) Provide three or more times weekly foods high in Vitamin A; and

(g) Maintain at least a three day supply of food and water for emergency purposes based on the number of children in child care.

(2) Meals eaten at the center must contain the following:

(a) Each breakfast meal the child eats at the center must contain:

(i) A fruit or vegetable or one hundred percent fruit or vegetable juice.

(ii) A dairy product (such as milk, cheese, yogurt, or cottage cheese).

(iii) A grain product (such as bread, cereal, rice cake or bagel).

(b) Each lunch and dinner meal the child eats at the center must contain:

(i) A dairy product (such as milk, cottage cheese, yogurt, cheese);

(ii) Meat or meat alternative (such as beef, fish, poultry, legumes, tofu, or beans);

(iii) A grain product (such as bread, cereal, bagel, or rice cake);

(iv) Fruits or vegetables (two fruits or two vegetables or one fruit and one vegetable to equal the total portion size required). When juice is served in place of a fruit or vegetable it must be one hundred percent fruit or vegetable juice.

(3) When meals are not provided by the center you must:

(a) Notify parents in writing that meals they provide for their children must meet the daily nutritional requirements;

(b) Provide adequate refrigeration for keeping potentially hazardous foods (such as meats of any type, cooked potato, cooked legumes, cooked rice, sprouts, cut melons or cantaloupes, milk, cheese);

(c) Refrigerate foods requiring refrigeration at 45 degrees Fahrenheit or less and keep frozen foods at 10 degrees Fahrenheit or less until they are cooked or consumed.

(4) Each snack the child eats at the center must include at least two of the following four components:

(a) A milk product (such as milk, cottage cheese, yogurt, cheese);

(b) A meat or meat alternative (such as meat, legumes, beans, egg);

(c) A grain product (such as cereal, bagel, rice cake or bread); and

(d) Fruit or vegetable.

(5) Each snack or meal must include a liquid to drink. The drink could be water or one of the required components such as milk, fruit or vegetable juice.

(6) You may allow parents to bring in snacks for all the children that may not meet the nutritional requirements on special occasions such as birthdays. The snacks provided by parents must be limited to store purchased:

(a) Uncut fruits and vegetables; and

(b) Foods prepackaged in original manufacturer's containers.

(7) If a child has a food allergy or special menu requirements due to a health condition, you must:

(a) Receive written directions from the child's health care provider and parent to provide nutritional supplements (such as iron), a medically modified diet (such as a diabetic or an allergy diet). For allergy diets, the parent and child's health care provider must identify the foods the child is allergic to;

(b) Post each child's food allergies in locations where food is prepared and served;

(c) Include the allergies on the individual health care plan;

(d) Specify an alternative food with comparable nutritive value; and

(e) Notify staff of the allergies and reactions. NOTE: You can require parents to supply food for supplements and special diets.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-3160, filed 6/30/03, effective 8/1/03.]

WAC 388-295-3170 What are the food service standards I am required to meet? You must maintain on site at least one person with a Washington state department of health food handler's permit to:

(1) Monitor and oversee food handling and service at the center; and

(2) Provide orientation and on going training as needed for all staff involved in food handling. Anyone cooking full meals must have a food handlers permit.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-3170, filed 6/30/03, effective 8/1/03.]

WAC 388-295-3180 What are approved food sources? You must:

(1) Prepare or serve food that is not tampered with or spoiled and is obtained from an approved source including, but not limited to, a licensed caterer, a food service company or a grocery store. Food sources that are not approved include:

(a) Left over food that was previously served from outside your center;

(b) Home canned, frozen or prepared food unless it is for the person's own children;

(c) Donated food from restaurants or caterers that was previously served;

(d) Game meat that has not been inspected by the USDA; and

(e) Donated meat, fish, poultry or milk that is not from a source inspected for sale.

(2) Prepare all food on site unless it is provided by a:

(a) Licensed satellite kitchen, catering kitchen or other source licensed by the local health jurisdiction; or

(b) Parent for individual children.

(3) Have a signed contract or agreement with any satellite kitchen or the catering service that you use. Your contract must include written proof that the caterer and the method of transporting the food are approved by the local health jurisdiction as meeting the requirements of the department of health, chapter 246-215 WAC.

(4) Have a written policy if you use a satellite kitchen that describes:

(a) A description of how food will be handled once it is on-site; and

(b) What back up system you will use if the food does not arrive, not enough food arrives, or the food cannot be served.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-3180, filed 6/30/03, effective 8/1/03.]

WAC 388-295-3190 How can we be sure that the food we serve is safe? (1) You need to develop and implement a system to monitor the temperature of potentially hazardous foods during cooking, reheating, cooling, storing, and hot and cold holding temperatures to be sure that:

(a) Food will be cooked to at least the minimum correct internal temperature:

(i) Ground beef and pork sausage 155 degrees Fahrenheit;

(ii) Pork 150 degrees Fahrenheit;

(iii) Fish and seafood 140 degrees Fahrenheit;

(iv) Poultry and stuffing 165 degrees Fahrenheit;

(v) Eggs 140 degrees Fahrenheit;

(vi) Beef (not ground) and lamb 140 degrees Fahrenheit.

(b) Previously prepared food is reheated one time only to an internal temperature of 165 degrees Fahrenheit within sixty minutes;

(c) Hot food is kept at a temperature of 140 degrees Fahrenheit or above until served;

(d) Cold food is kept at a temperature of 45 degrees Fahrenheit or less;

(e) Refrigerators have a thermometer in or near the door and are kept at 45 degrees Fahrenheit or less; and

(f) Freezers have a thermometer in or near the door and are kept at 10 degrees Fahrenheit or less.

(2) You must develop a system to record the temperature of each perishable food once it arrives from a satellite kitchen or a catering service. The system must include keeping records on site for six months with the following information:

(a) The name and the temperature of the food;

(b) The date and time the temperature was checked; and

(c) The name and signature or recognized initials of the person who is checking and recording the food temperatures.

(3) You may serve previously prepared food that has not been previously served if it was stored at the proper temperature for less than forty-eight hours after preparation. Leftover foods or open foods in the refrigerator must be labeled with the date that they were opened or cooked.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-3190, filed 6/30/03, effective 8/1/03.]

WAC 388-295-3200 How do we safely store food?

You must store food:

- (1) In the original containers or in clean, labeled containers that are airtight and off the floor;
- (2) In a manner that prevents contamination from other sources;
- (3) In an area separate from toxic materials such as cleaning supplies, paint, or pesticides;
- (4) That is not past the manufacturer's expiration or freshness date;
- (5) In a refrigerator or freezer if cooling is required;
- (6) Raw meat, poultry or fish in the refrigerator, below cooked or ready to eat foods;
- (7) Foods not requiring refrigeration at least six inches above the floor in a clean, dry, ventilated storeroom or other areas; and
- (8) Dry bulk foods not in their original containers, in containers with tight fitting covers. Containers must be labeled and dated.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-3200, filed 6/30/03, effective 8/1/03.]

WAC 388-295-3210 How do we safely thaw foods?

You must thaw food by one of the following methods:

- (1) In a refrigerator;
- (2) Under cool running water, in a pan placed in a sink with the stopper removed;
- (3) In a microwave, if the food is to be cooked immediately; or
- (4) As part of the continuous cooking process.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-3210, filed 6/30/03, effective 8/1/03.]

WAC 388-295-3220 What type of kitchen material and equipment is required? You need the following equipment to cook and serve meals without restrictions on the type of menus or foods that you can cook, serve or store:

- (1) Kitchen walls, counter tops, floors, cabinets and shelves that are:
 - (a) Maintained in good repair to include being properly sealed without chips or cracks;
 - (b) Moisture resistant; and
 - (c) Maintained in a clean and sanitary condition.
- (2) A range with a properly vented hood or exhaust fan, except when serving only snacks;
- (3) A refrigerator, freezer or a combination refrigerator with sufficient space for proper storage and cooling of food;
- (4) Handwashing facilities located in or adjacent to the food preparation area with handwashing procedures posted at each sink used for handwashing and followed by all persons who participate in food preparation.
- (5) A method to clean and sanitize equipment using:
 - (a) A two compartment sink and an automatic dishwasher capable of reaching a temperature of 140 degrees Fahrenheit; or
 - (b) The means to appropriately clean and sanitize dishes and utensils through the use of a three compartment sink

method where sink one is used to wash, sink two is used to rinse, and sink three contains a sanitizing ingredient;

- (6) You may use a microwave oven to reheat foods if the food is:
 - (a) Rotated or stirred during heating;
 - (b) Covered to retain moisture; and
 - (c) Held for two minutes prior to serving to allow the temperature to spread evenly throughout the food.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-3220, filed 6/30/03, effective 8/1/03.]

WAC 388-295-3230 What type of eating and drinking equipment must I provide? (1) You must provide eating and drinking equipment that is:

- (a) Cleaned and sanitized between use by different children;
 - (b) Free from cracks or chips;
 - (c) Individual; and
 - (d) Developmentally appropriate.
- (2) You must not directly serve food on the table without a plate or paper napkin;
- (3) You must use gloves, tongs, or spoons to serve food;
 - (4) You may have inclined jet-type drinking fountains. Bubble-type drinking fountains and drinking fountains attached to or part of sinks used for any purpose other than the drinking fountain cannot be used; and
 - (5) You must not have drinking fountains in restrooms.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-3230, filed 6/30/03, effective 8/1/03.]

WAC 388-295-4010 At what age can we accept infants into care? You must not accept an infant into care that is less than one month of age.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-4010, filed 6/30/03, effective 8/1/03.]

WAC 388-295-4020 How do we meet the nutritional needs of the infants in our care? You must:

- (1) Have written policies on providing, preparing, storing and sanitizing infant formula, food and utensils; and
- (2) Work with the infant's parent to develop a plan for the infant's feedings that is acceptable to the parent and incorporates the following guidelines:

Developmental Stage/Age of Infant	Type of Feeding
(a) Under 4 months of age	Serve only formula or breast milk unless you have a written order from the child's health care provider.
(b) When baby can: (At about 4-6 months of age) Sit with support Hold head steady Close lips over the spoon Keep food in mouth and swallow it.	Serve only formula or breast milk unless you have a written order from the child's health care provider. Begin iron fortified baby cereal and plain pureed fruits and vegetables upon consultation with parents.

Developmental Stage/Age of Infant	Type of Feeding
(c) When baby can: (At about 6-8 months) Sit without support Begin to chew Sip from a cup with help Grasp and hold onto things	Serve only formula or breast milk unless you have a written order from the child's health care provider. Start small amounts of juice, or water in a cup. Let baby begin to feed self. Start semisolid foods such as cottage cheese, mashed tofu, mashed soft vegetables or fruits.
(d) When baby can: (At about 8-10 months) Take a bite of food Pick up finger foods and get them into the mouth Begin to hold a cup while sipping from it	Serve only formula or breast milk unless you have a written order from the child's health care provider. Small pieces of cheese, tofu, chicken, turkey, fish or ground meat. Small pieces of soft cooked vegetables, peeled soft fruits. Toasted bread squares, unsalted crackers or pieces of soft tortilla. Cooked plain rice or noodles. Only formula, breast milk, juice or water in the cup.
(e) When a baby can: (10-12 months) Finger Feed Chew and swallow soft, mashed and chopped foods Start to hold and use a spoon Drink from a cup	Serve only formula or breast milk unless you have a written order from the child's health care provider. Begin offering small sized, cooked foods. Variety of whole grain cereals, bread and crackers, tortillas. Cooked soft meats, mashed legumes (lentils, pinto beans, kidney beans, etc.), cooked egg yolks, soft casseroles.
(f) When a baby can eat a variety of foods from all food groups without signs of an allergic reaction	Fruit pieces and cooked vegetables. Yogurt, cheese slices. Offer small amounts of formula, breast milk or water in the cup during meals.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-4020, filed 6/30/03, effective 8/1/03.]

WAC 388-295-4030 What is a safe way to prepare bottles? (1) Parents may bring from home filled bottles labeled with the infant's name for daily use (see WAC 388-295-4040).

(2) To prepare bottles you must:

(a) Prepare and fill bottles by washing hands prior to bottle preparation;

(b) Use a sink that is only for bottle preparation, other food preparation or other approved source of water. Water from a handwashing sink may not be used for bottle preparation;

(c) Do not heat a bottle in a microwave or allow bottles to warm at room temperature for more than an hour, to limit bacterial growth; and

(d) Bottles must be warmed under running warm water or placed in a container of water that is not warmer than 120 degrees Fahrenheit.

(3) The bottle preparation area including the sink must:

(a) Be located at least eight feet from the outermost edge of diaper changing tables or counters and sinks used for diaper changing; or

(b) Have a barrier to prevent cross-contamination that is placed between the sink used for food or bottle preparation

and the diaper changing table, counter or sink. If a barrier is used, it must be:

(i) Solid (without cracks or breaks);

(ii) Sealed;

(iii) Moisture-resistant; and

(iv) At least twenty-four inches in height from the counter surface.

(4) If the infant room does not have a sink that is dedicated to bottle and food preparation, you must provide a clean source of water for preparing bottles such as getting water from the kitchen and keeping it in a container with an airtight cover that:

(a) Is located at least eight feet from the outermost edge of diaper changing tables or counters and sinks used for diaper changing; or

(b) Has a barrier that meets the requirements in WAC 388-295-4030 (3)(b) to prevent cross-contamination that is placed between the sink used for food or bottle preparation and the diaper changing table, counter or sink.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-4030, filed 6/30/03, effective 8/1/03.]

WAC 388-295-4040 What is a safe way to store infant formula and food? To store bottles, formula or infant food, you must:

(1) Label all bottles with the infant's full name and the date the bottle was filled to be sure the correct formula or breast milk is given to each infant;

(2) Have a refrigerator accessible to staff to store bottles and unserved, leftover infant food;

(3) Throw away the contents of any bottle not fully consumed within one hour. Do not put bottles that have been used back into the refrigerator;

(4) Throw away or return to the family any unused bottle contents within twelve hours of preparing or arriving at the center;

(5) Not serve infant formula past the expiration date on the manufacturers container; and

(6) Keep bottle nipples covered when not in use to reduce risk of cross contamination and exposure.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-4040, filed 6/30/03, effective 8/1/03.]

WAC 388-295-4050 What is a safe way to store breast milk? You can keep frozen breast milk if you:

(1) Label the contents with the child's name and date it was brought into the center;

(2) Store the frozen breast milk at 10 degrees Fahrenheit or less;

(3) Thaw the breast milk in the refrigerator, under warm running water or in a pan of warm water; and

(4) Keep frozen breast milk in the center for no more than two weeks.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-4050, filed 6/30/03, effective 8/1/03.]

WAC 388-295-4060 What is a correct way to clean bottles and nipples? Bottles, bottle caps, nipples and other equipment used for bottle feeding must not be reused without first being cleaned and sanitized by:

- (1) Washing in a dishwasher; or
- (2) Washing, rinsing and boiling for one minute.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-4060, filed 6/30/03, effective 8/1/03.]

WAC 388-295-4070 Are there specific rules for feeding infants and toddlers? (1) Infants must be fed according to their need rather than according to an adult prescribed time schedule.

- (2) While feeding infants:
 - (a) Hold infants for bottle feedings to prevent choking;
 - (b) Place infants who can sit in high chairs or at an appropriate child-sized table and chairs for feeding and sit facing the child during the feeding;
 - (c) Do not prop a bottle;
 - (d) To prevent tooth decay:
 - (i) Do not give a bottle to a reclining child unless the bottle contains only water; and
 - (ii) Offer juice only from a cup.
 - (e) Take the bottle from the child when the child finishes feeding.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-4070, filed 6/30/03, effective 8/1/03.]

WAC 388-295-4080 When should I begin toilet training a child? Toilet training is initiated with consultation with parents:

- (1) Using positive reinforcement;
- (2) Cultural sensitivity;
- (3) Not using foods as a reinforcement; and
- (4) Following a routine established between the parent and you.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-4080, filed 6/30/03, effective 8/1/03.]

WAC 388-295-4090 Can we use potty-chairs for toilet training? You may use potty-chairs that are:

- (1) Located in the toilet room or similar area that meets the requirements of WAC 388-295-5100 designed for toileting;
- (2) On a floor that is moisture resistant and washable;
- (3) Immediately emptied into a toilet; and
- (4) Cleaned in a designated sink or utility sink separate from classrooms and sanitized after each use. The sink must also be cleaned and sanitized after cleaning potty-chairs.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-4090, filed 6/30/03, effective 8/1/03.]

WAC 388-295-4100 What sleep equipment do I need for infants? (1) You must not sleep infants in infant or car seats.

(2) You must provide each infant with a single-level crib (stacking cribs must not be used), infant bed, bassinet or playpen for napping until you and the parent agree that the child can safely use a mat, cot or other approved sleeping equipment.

- (3) Cribs, if used, must:
 - (a) Be sturdy and made of wood, metal or plastic with a secure latching device;

(b) Be constructed with vertical slats that are no more than two and three-eighths inches apart or be solid plexiglas;

(c) Have corner posts that extend less than one-sixteenth of an inch above the sides and railing;

(d) Not have cutout designs on the end panels;

(e) Have a rail height and end panel as measured from the top of the rail or panel in its lowest position to the top of the mattress support in its highest position of at least nine inches;

(f) Have a rail height and end panel as measured from the top of the rail or panel in its highest position to the top of the mattress support in its lowest position of at least twenty-six inches; and

(g) Not use crib bumper pads, stuffed toys, quilts, lamb-skins, and pillows in cribs, infant beds, bassinets or playpens.

(4) You must provide a crib, infant bed, playpen or bassinet mattress that is:

(a) Snug fitting and touches each side of the crib to prevent the infant from becoming entrapped between the mattress and crib side rails;

(b) Waterproof; and

(c) Easily cleaned and sanitized, without tears or tape.

(5) To allow walking room between cribs and reduce the spread of germs you must:

(a) Space cribs a minimum of thirty inches apart. You may place cribs end to end if you provide a barrier. If you use barriers, staff must be able to observe and have immediate access to each child.

(b) Provide a moisture resistant and easily cleanable solid barrier on the side or end adjacent to another crib.

(6) You must provide:

(a) An appropriate fitting sheet or cover for the sleeping surface; and

(b) A clean light weight blanket or suitable cover for the child.

(7) You must launder bedding at least weekly and more often if becomes soiled.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-4100, filed 6/30/03, effective 8/1/03.]

WAC 388-295-4110 What additional sleeping arrangements must I make to reduce the risk of Sudden Infant Death Syndrome (SIDS)? (1) You must put infants to sleep on their backs to reduce the risk of SIDS unless you have a written note in the infant's file from both the parent and the infant's health care provider requesting another sleeping position.

(2) Once infants are able to turn over, continue to place them on their back to sleep. You do not need to wake the infants to return them to their back while sleeping.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-4110, filed 6/30/03, effective 8/1/03.]

WAC 388-295-4120 What must I do to be sure that diaper changing is safe and does not spread infections?

(1) Your diaper changing table and area must:

(a) Have a washable, moisture resistant diaper-changing surface that is cleaned and sanitized between children;

(b) Be a table or counter with a protective barrier on all sides that is at least three and one-half inches higher than the surface that the child lays on;

(c) Have a garbage can with a lid, plastic liner, and method for disposing of hand drying supplies so that a garbage can lid does not have to be opened with hands;

(d) Be on moisture impervious and washable flooring that extends at least two feet surrounding the diaper changing and handwashing area; and

(e) Be directly adjacent to a sink used for hand washing supplied with:

(i) Warm running water (between 85 degrees Fahrenheit and 120 degrees Fahrenheit);

(ii) Soap; and

(iii) A sanitary method for drying hands (single-use towels).

(2) You must have the diaper changing procedure posted and must follow the steps included.

(3) You must not leave the child unattended during the diaper change.

(4) You must not use the safety belts on diaper changing tables because they are neither cleanable nor safe.

(5) You must not place anything on the diaper-changing table, counter or sink except the child, changing pad and diaper changing supplies.

(6) Disposable diapers must be:

(a) Placed into a covered, plastic-lined, hands free covered container;

(b) Removed from the facility and the liner changed at least daily and more often if odor is present; and

(c) Disposed of according to local disposal requirements.

(7) Reuseable diapers must be:

(a) Individually bagged and placed without rinsing into a separate, cleanable, covered container equipped with a waterproof liner before transporting to the laundry, given to the commercial service or returned to parents for laundry; and

(b) Removed from the facility daily or more often if odor is present.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-4120, filed 6/30/03, effective 8/1/03.]

WAC 388-295-4130 Do I need a nurse consultant? (1)

If you are licensed to care for four or more infants you must have an infant nurse consultant. The nurse consultant's duties will depend upon the needs of the center. We, center management, teachers, and observations/assessments of the nurse consultant can identify the needs.

(2) If you are required to have an infant nurse consultant, you must:

(a) Have a written agreement with a nurse consultant who is a currently licensed registered nurse (RN) who has either worked in pediatrics (care of children) or public health in the past year or has taken or taught classes in pediatric nursing at the college level in the past five years;

(b) Have at least one monthly on-site visit from your nurse consultant when you have infants enrolled (you may skip the monthly visit if no infants are enrolled);

(c) Have the nurse or a designee that meets the requirements of a nurse consultant available by phone as needed; and

(d) Have written notes of the nurse consultant visit on-site that includes topics discussed, areas of concern, date and signature.

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[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-4130, filed 6/30/03, effective 8/1/03.]

WAC 388-295-4140 When are children required to have a change of clothing on-site? (1) You are required to have extra clothing available for the children who wet or soil their clothes.

(2) You may require the parent to provide the clothing, but you must have clothing available for use in case the parent forgets the change of clothing.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-4140, filed 6/30/03, effective 8/1/03.]

WAC 388-295-5010 What first-aid supplies are required in my center? (1) You must maintain on the premises adequate first-aid supplies conforming to the center's first-aid policies and procedures. The center's first-aid supplies must include:

(a) A supply for each vehicle used to transport children; and

(b) A portable supply, which can be taken on walks and field trips.

(2) You must store first aid supplies:

(a) Inaccessible to children;

(b) In an area easily accessible to staff;

(c) Separate from food; and

(d) In a clean and safe manner to prevent contamination such as in a tackle box or other container, away from chemicals and moisture.

(3) Your first aid kit must include at least:

(a) A current first-aid manual;

(b) Sterile gauze pads;

(c) Small scissors;

(d) Band-Aids of various sizes;

(e) Roller bandages;

(f) Large triangular bandage (sling);

(g) Nonsterile protective gloves;

(h) Adhesive tape;

(i) Tweezers;

(j) One-way CPR barrier or mask; and

(k) At least one unexpired bottle of Syrup of Ipecac that must be given only at the direction of a poison control center.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-5010, filed 6/30/03, effective 8/1/03.]

WAC 388-295-5020 How do I maintain a safe environment? (1) You must maintain the building, equipment and premises in a safe manner that protects the children from injury hazards including but not limited to:

(a) Burns (for example: Chemicals or other potentially flammable substances);

(b) Drowning;

(c) Choking (for example: Ropes, wires, blind cords, fences not meeting requirements);

(d) Cuts (for example: Broken glass, sharp objects, abrasive surfaces);

(e) Entrapments (for example: The following items must not have openings between three and one-half inches and nine inches wide: Deck and fence rails, stair rails or other equipment);

(f) Falls from excessive heights;

(g) Gunshots by ensuring no firearm or another weapon is on the premises;

(h) Hearing loss by keeping noise at a level where a normal conversation can be heard;

(i) Objects falling on the children (for example: Heavy items on open shelving that could fall in an earthquake or similar emergency);

(j) Pinches from equipment (for example: Broken or cracked areas);

(k) Poison (such as cleaning supplies or lead-based paint);

(l) Puncture (for example: Equipment, building edges or playground equipment with sharp points or jagged edges);

(m) Shear or crush (for example: Lawn and garden equipment used for yard maintenance);

(n) Shock by electricity;

(o) Trap (for example: Compost bins, old freezers, dryers or refrigerators); and

(p) Trip (for example: Cable wires, ropes, jagged or cracked walkways).

(2) To further prevent injuries, you must

(a) Provide child height handrails on at least one side of the steps, stairways, and ramps;

(b) Provide guardrails for elevated play areas and stairs;

(c) Use listed tamper resistant receptacles or use tamper resistant, nonmoveable, nonremovable cover plates in areas accessible to children preschool age and younger;

(d) Shield light bulbs and tubes by using a protective barrier to prevent shattering into child-accessible areas, food, and storage areas;

(e) Provide screens for windows or limit the opening capability of any windows within reach of children to less than three and one-half inches. Windows with limited opening capabilities cannot be the designated fire escape window. Windows protected with guards must not block outdoor light or air in areas used by children;

(f) Provide a barrier for glass areas such as windows or sliding glass doors that extend down to the child's eye level by placing a barrier between the child and glass or something placed on the glass at the child's eye level such as stickers or art work so that the child does not try to go through the solid glass;

(g) Not place cribs, play pens, bassinets, infant beds, indoor climbing structures next to windows unless of safety glass; and

(h) When using heaters capable of reaching 110 degrees Fahrenheit on the surface, you must protect children from burn hazards by making them inaccessible to children or locating them where children cannot reach them.

(3) You may not use portable heaters.

(4) You must implement a method to monitor entrance and exit doors to prevent children from exiting the buildings unsupervised. You may use:

(a) A door alarm;

(b) A bell that can be heard throughout the building;

(c) Adult supervision at the exits; or

(d) Other method to alert the staff (you may not lock the door to prevent an exit. It is against the fire code).

(5) You must maintain one or more telephones on the premises in working order that is accessible to staff at all times.

(6) You must maintain a flashlight or other emergency lighting device in working condition.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-5020, filed 6/30/03, effective 8/1/03.]

WAC 388-295-5030 What do I need to include in my disaster plan? (1) You must develop and implement a disaster plan designed for response to fire, natural disasters and other emergencies. The plan must address what you are going to do if there is a disaster and parents are not able to get to their children for two or three days.

(2) The fire plan must follow the requirements in chapter 212-12 WAC or the state fire marshal requirements.

(3) In areas where local emergency plans are in place, such as school district emergency plan, centers may follow those procedures and actions in developing their own plan.

(4) The disaster plan must be:

(a) Specific to the child care center;

(b) Relevant to the types of disasters that might occur in the location of your child care center;

(c) Able to be implemented during hours of operation; and

(d) Posted in every classroom for easy access by parents and staff.

(5) Your disaster plan must identify:

(a) The designated position of the person (example: director, lead teacher, program supervisor, etc.) who is responsible for each part of the plan;

(b) Procedures for accounting for all children and staff during and after the emergency;

(c) How you evacuate their premises, if necessary, and the meeting location after evacuation;

(d) How you care for children with special needs during and after the disaster;

(e) How you provide for children until parents are able to pick them up;

(f) How you contact parents or how parents can contact the child care center; and

(g) Transportation arrangements, if necessary.

(6) The director, staff and parents must read, review and sign the disaster plan annually. Your written records must include signatures and dates of persons completing the annual disaster plan review on-site.

(7) In addition to the requirements for fire drills and training set forth by the state fire marshal in chapter 212-12 WAC, you must:

(a) Document staff education and training of the disaster plan;

(b) Conduct and document quarterly disaster drills for children and staff (you do not have to conduct a drill quarterly for each potential disaster - just one drill per quarter);

(c) Keep written documentation of the drills on-site; and

(d) Debrief and evaluate the plan in writing after each disaster incident or drill.

(8) You must keep the twelve month record indicating the date and time you conducted the required monthly fire evacuation drills on-site for the current year plus the previous calendar year.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-5030, filed 6/30/03, effective 8/1/03.]

WAC 388-295-5040 How do I maintain a clean and sanitized environment? (1) Surfaces must be easily cleanable. A cleanable surface is one that is:

- (a) Designed to be cleaned frequently;
- (b) Moisture-resistant; and
- (c) Free from cracks, chips or tears.

(2) Examples of cleanable surfaces include linoleum, tile, sealed wood, and plastic.

(3) You must maintain the building, equipment and premises in a clean and sanitary manner that protects the children from illness including but not limited to:

(a) Ensure that floors around sinks, toilets, diaper change areas and potty chairs are moisture resistant and easily cleanable for at least twenty-four inches surrounding the surfaces; and

(b) Take measures to control rodents, fleas, cockroaches, and other pests in and around the center premises such as:

- (i) Keep all trash and garbage cans tightly sealed;
- (ii) Screen open windows and doors;
- (iii) Seal and store food properly; and
- (iv) Keep floors and other areas free from crumbs and food debris.

(4) Surfaces can be cleaned:

(a) With any cleaning solution such as soap and water, cleanser or cleaning spray;

(b) With a concentration according to label directions; and

(c) Rinsed as needed per label directions.

(5) You may use a bleach solution to sanitize in the following areas:

- (a) Diapering areas;
- (b) Surfaces exposed to body fluids;
- (c) Bathrooms and bathroom equipment;
- (d) Table tops;
- (e) High chairs;
- (f) Toys;
- (g) Dishes;
- (h) Floors; and
- (i) Sleeping mats.

(6) You may use any solution that is intended for sanitizing if the solution is approved by the department. When you use a product other than bleach to sanitize, you must:

(a) Follow the label directions for use including concentration, contact time and rinsing; and

(b) Be sure that if you use the product on food contact surfaces and items that children might put into their mouths, the label states the product is safe for food contact surfaces.

(7) The following are surfaces that need to be cleaned and sanitized and a minimum schedule for that cleaning:

(a) Tables and counters used for food serving and high chairs before and after each meal or snack;

(b) Sinks, counters and floors daily, or more often if necessary;

(c) Refrigerators monthly or more often as needed;

(d) Bathrooms (including sinks, toilets, counters and floors) daily and more often if necessary;

(e) Floors will be swept, cleaned and sanitized daily;

(f) Carpet vacuumed at least daily and shampooed as needed but at least every six months;

(g) Toys that children place in their mouth between use by different children;

(h) Infant and toddler toys daily; and

(i) Sleeping mats, cribs and other forms of bedding between use by different children and at least weekly.

(8) Your health policies and procedures must describe your frequency for general cleaning, dusting, cleaning toys, toy shelves, and equipment.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-5040, filed 6/30/03, effective 8/1/03.]

WAC 388-295-5050 How can I make sure water activities are as safe and sanitary as possible? (1) To ensure that the children are safe with a swimming pool on the premises, you must:

(a) Ensure that pools are inaccessible to children when not in use;

(b) Provide a certified lifeguard at all times in addition to required staff, when children use a swimming pool; and

(c) Follow any guidelines established by your local health jurisdiction or the state department of health.

(2) You must prohibit children from using or having access to a hot tub spa, small portable wading pools, whirlpool, or other similar equipment.

(3) If you have a water table you must empty and sanitize water tables or similar water play containers after each use and more often if necessary.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-5050, filed 6/30/03, effective 8/1/03.]

WAC 388-295-5060 How must I store maintenance and janitorial supplies? (1) You must provide safe storage for flammable and combustible liquids and chemicals used for maintenance purposes and operation of equipment. They must be in a location designed to prevent child access at all times. The liquids and chemicals must be:

(a) Stored in original containers or in department approved safety containers that identify contents;

(b) Stored to comply with fire safety regulations adopted by the state fire marshal's office; and

(c) Ventilated either by mechanical ventilation to the outdoors or through a window that opens on the exterior wall.

(2) Your janitorial or housekeeping storage must have:

(a) Floor surfaces that are moisture impervious and easily cleanable;

(b) A designated utility or service sink for disposing of wastewater; and

(c) A place for mop storage that is ventilated to the outside.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-5060, filed 6/30/03, effective 8/1/03.]

WAC 388-295-5070 How do I make sure my water is safe? (1) You must have hot and cold running water.

(2) Hot water that is accessible to children must be between 85 degrees Fahrenheit and 120 degrees Fahrenheit.

(3) To be sure your water is safe for drinking, cleaning, cooking and handwashing, you must:

(a) Receive drinking water from a public water system approved by and maintained in compliance with either the department of health or a local health jurisdiction under chap-

ter 246-290 WAC (Group A systems) or chapter 246-291 WAC (Group B systems); or

(b) Have a source of potable water approved for child care center use by the state department of health or the local health jurisdiction; and

(c) Take any other actions required or requested by the state department of health, the local health jurisdiction or the department of social and health services to ensure the safety and reliability of the water supply.

(4) If your water connection is interrupted or your water source becomes contaminated:

(a) A correction must be made within twenty-four hours or the facility must close until corrections can be made; or

(b) The facility must obtain an alternative source of potable water approved by the state department of health or local health jurisdiction in an amount adequate to ensure the requirements in this chapter for safe drinking water, handwashing, sanitizing, dishwashing, and cooking are met.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-5070, filed 6/30/03, effective 8/1/03.]

WAC 388-295-5080 How do I safely get rid of sewage and liquid wastes? (1) You must dispose of sewage and liquid waste into a public sewer system or approved on-site sewage disposal system (septic system) designed, constructed and maintained as required in chapters 246-272 and 173-240 WAC and local ordinances.

(2) If you have an on-site sewage system, you must:

(a) Have written verification that the system has been approved by the department of health or local health jurisdiction; and

(b) Locate your drain field and venting to be sure that:

(i) Playgrounds are not on and do not interfere with the access to or operation of the on-site sewage system including the drain field; and

(ii) That drain field venting does not vent onto the playground.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-5080, filed 6/30/03, effective 8/1/03.]

WAC 388-295-5090 What are the fence requirements? (1) You must fence the outdoor play area to:

(a) Prevent unauthorized people from entering; and

(b) Prevent children from escaping and having access to hazardous areas.

(2) At a minimum fences and gates must:

(a) Be safe, and maintained in good repair; and

(b) Be designed to discourage climbing and prevent entrapment.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-5090, filed 6/30/03, effective 8/1/03.]

WAC 388-295-5100 What are the requirements for toilets, handwashing sinks and bathing facilities? (1) You must provide:

(a) A toilet room that is vented to the outdoors;

(b) A room with flooring that is moisture resistant and washable;

(c) One flush-type toilet and one adjacent sink for handwashing within auditory (hearing) range of the child care classrooms for every fifteen children and staff;

(d) Toileting privacy for children of opposite genders who are six years of age and older, or when a younger child demonstrates a need for privacy; and

(e) A mounted toilet paper dispenser within arms reach of the user with a constant supply of toilet paper for each toilet.

(2) Children eighteen months of age or younger are not included when determining the number of required flush-type toilets.

(3) If urinals are provided, the number of urinals must not replace more than one-third of the total required toilets.

(4) Toilet fixture heights must be as follows:

If the age group is:	The toilet fixture height must be:
(a) Toddler: Eighteen months through 29 months	(i) Ten - 12 inches (child size); or (ii) Fourteen - 16 inches (adult size) with a safe, easily cleanable platform that is moisture impervious and slip resistant.
(b) Preschool or older: Thirty months of age through five years of age not enrolled in kindergarten or elementary school	(i) Ten - 12 inches (child size); or (ii) Fourteen - 16 inches (adult size) with a safe, easily cleanable platform that is moisture impervious and slip resistant.

(5) Handwashing sink heights must be as follows:

If the age group is:	The sink height must be:
(a) Toddler: Twelve months through 29 months	(i) Eighteen - 22 inches; or (ii) Provide a moisture and slip resistant platform for children to safely reach and use the sink.
(b) Preschool or older: Thirty months of age through five years of age not enrolled in kindergarten or elementary school	(i) Twenty-two - 26 inches; or (ii) Provide a moisture and slip resistant platform for children to safely reach and use the sink.
(c) School age: Over five years of age or enrolled in kindergarten or elementary school	(i) Twenty-six - 30 inches; or (ii) Provide a moisture and slip resistant platform for children to safely reach and use the sink.

(6) Infants are not included when determining the number of sinks required for handwashing.

(7) The sink for handwashing must:

(a) Be located in or immediately outside of each toilet room;

(b) Have water controls that are accessible by the intended user; and

(c) Not be used for food preparation, as a drinking water source or a storage area.

(8) You must have:

(a) Single-use paper towels and dispensers; or

(b) Heated air-drying devices.

(9) You must use soap from some type of dispenser to prevent the spread of bacteria from the soap.

(10) If the center is equipped with a bathing facility, you must:

(a) Have parent permission to bathe children;

(b) Equip the bathing facility with a conveniently located grab bar and a nonskid pad or surface; and

(c) Provide constant supervision for the child five years of age and younger and older children who require supervision.

(11) You must make the bathing facility inaccessible to children when not in use.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-5100, filed 6/30/03, effective 8/1/03.]

WAC 388-295-5110 What are the requirements if I do laundry on the premises or off-site? (1) If you choose to do laundry on the premises or off site you must be sure the laundry is:

- (a) Cleaned and rinsed;
 - (b) Sanitized with hot water that reaches at least 140 degrees Fahrenheit or use an alternative method such as chlorine bleach that has been approved by the department;
 - (c) Stored to keep soiled linen and laundry separate from clean linen;
 - (d) Separate from kitchen and food preparation areas; and
 - (e) Inaccessible to children.
- (2) You also must ensure the dryer is ventilated to outside the building.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-5110, filed 6/30/03, effective 8/1/03.]

WAC 388-295-5120 What kind of sleep and nap equipment do I need for children not in cribs, bassinets, infant beds or playpens? Sleeping and nap equipment must be available for each toddler and preschool age child not using a crib and remaining in care for at least six hours and any other child requiring a nap or rest period.

- (1) You must:
 - (a) Provide a separate, firm and waterproof mat or mattress, cot or bed for each child or have a system for cleaning the equipment between children;
 - (b) Place mats or cots at least thirty inches apart at the sides and arrange children head to toe or toe to toe;
 - (c) Be sure that the bedding consists of a clean sheet or cover for the sleeping surface and a clean blanket or suitable cover for the child;
 - (d) Launder the bedding weekly or more often if necessary and between uses by different children;
 - (e) Store each child's bedding separately from bedding used by other children. Once the bedding has been used, it is considered dirty. One child's bedding cannot touch another child's bedding during storage;
 - (f) Keep mats clean and in good repair. Once a mat is torn it is not cleanable. You may not use duct tape or fabric to repair sleeping mats or mattresses; and
 - (g) Use only cots with a surface that can be cleaned with a detergent solution, disinfected and allowed to air dry.
- (2) You may not use the upper bunk of a bunk bed for children under six years of age.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-5120, filed 6/30/03, effective 8/1/03.]

WAC 388-295-5140 Are there any requirements for storage space provided for children? You must provide accessible individual storage space for each child's belongings that prevents the spread of diseases or parasites such as scabies and lice.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-5140, filed 6/30/03, effective 8/1/03.]

[2004 WAC Supp—page 1666]

WAC 388-295-5150 Are there ventilation and temperature requirements for my facility? (1) You must maintain all rooms used by children at temperature of:

- (a) Sixty-eight degrees Fahrenheit to 75 degrees Fahrenheit during winter months; and
- (b) Sixty-eight degrees Fahrenheit to 82 degrees Fahrenheit during the summer months.

(2) In addition, you must:

- (a) Equip the room or building with a mechanical air cooling system or equivalent when the inside temperature of child-occupied areas exceeds 82 degrees Fahrenheit. This includes but is not limited to, swamp coolers, fans, air conditioners, or drip systems;
- (b) Not take children outdoors during extremes temperatures that put children at risk for physical harm.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-5150, filed 6/30/03, effective 8/1/03.]

WAC 388-295-5160 What do I need to know about pesticides? (1) To use pesticides, you must comply with licensing requirements of chapter 17.21 RCW (The Pesticide Application Act) which requires you to:

- (a) Establish a policy on the use of pesticides that includes your posting and notification requirements;
 - (b) Provide to parents a written copy of your pesticide policies that includes your posting and notification requirements annually or on enrollment;
 - (c) Notify parents, guardians, and any other interested parties forty-eight hours in advance of the application of pesticides; and
 - (d) Require the pesticide applicator to provide a copy of the records required within twenty-four hours of when the pesticide is applied.
- (2) Your notification must include a heading stating "Notice: Pesticide Application and..." at a minimum must state the:

- (a) Product name of the pesticide being used;
 - (b) Intended date and time of application;
 - (c) Location where the pesticide will be applied;
 - (d) Pest to be controlled; and
 - (e) Name and number of a contact person at the facility.
- (3) To notify people that a pesticide has been used, you must place a marker at each primary point of entry to the center grounds. The marker must be:
- (a) A minimum of four inches by five inches;
 - (b) Printed in colors contrasting to the background; and
 - (c) Left in place for at least twenty-four hours following the pesticide application or longer if a longer restricted period is stated on the label.
- (4) The marker must include:
- (a) A headline that states "This landscape has recently been sprayed or treated with pesticides";
 - (b) Who has treated the landscape; and
 - (c) Who to call for more information.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-5160, filed 6/30/03, effective 8/1/03.]

WAC 388-295-5170 Can we have animals at the center? (1) When animals are on the center premises you must:

- (a) Notify the parents in writing that animals are on the premises and the potential health risks associated with the

animals to include how to address the needs of children having allergies to animals;

(b) Have a signed document from each parent stating they understand the potential health risks;

(c) Not hang pet containers or cages in corridors, entryways or over where children eat, sleep, and play;

(d) Post handwashing signs in areas where pets are housed;

(e) Have containers or cages to prevent debris from spilling out of the container or cage. The container or cage must not be located in corridors, entrance ways, or where children eat, or play;

(f) Assign responsible staff to ensure pet containers, cages, and litter boxes are cleaned and disinfected at least weekly and more often if needed;

(g) Not allow animals in food preparation areas. If the sink is used for cleaning food or utensils it cannot be used to clean pet supplies;

(h) Not allow animals in rooms that typically are used by infants or toddlers;

(i) Keep on file proof of current rabies vaccinations for all dogs and cats;

(j) Meet local requirements in counties with immunization, vaccination and licensing requirements for animals; and

(k) Organize children into small groups for supervised activity for handling of pets.

(2) You must develop policies and procedures for management of pets to include:

(a) How the needs of children who have allergies to pets will be accommodated;

(b) How pet containers, cages, litter boxes will be cleaned and sanitized and who will do it;

(c) How pets will receive food and water, and be kept clean and who will do it;

(d) Curricula for teaching children and staff about safety and hygiene when handling pets; and

(e) Pets (excluding aquatic animals) showing signs of illness must be removed from the facility until they have been seen, treated and given approval to return to the center by a veterinarian. Written proof of veterinary visits must be maintained on file.

(3) Reptiles and amphibians must be in an aquarium or other totally self-contained area except during educational activities involving the reptile. Children five years of age or less must not physically handle reptiles and amphibians.

(4) Animals with a history of biting or other aggressive behaviors must not be on the premises of the child care center.

(5) You must ensure children wash their hands after handling animals.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-5170, filed 6/30/03, effective 8/1/03.]

WAC 388-295-6010 What are the regulations regarding discrimination? (1) Child care centers are defined by state and federal law as places of public accommodation and must not discriminate in employment practices and client services on the basis of race, creed, color, national origin, marital status, gender, sexual orientation, class, age, religion, or disability.

(2) You must:

(a) Post a nondiscrimination poster where families and staff can easily read it;

(b) Have a written nondiscrimination policy; and

(c) Comply with the requirements of the Americans with Disabilities Act.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-6010, filed 6/30/03, effective 8/1/03.]

WAC 388-295-6020 What are the regulations regarding religious activities? You must:

(1) Respect and facilitate the rights of the child in care to observe the tenets of the child's faith, consistent with state and federal laws;

(2) Not punish or discourage the child for exercising these rights; and

(3) Maintain a written description of the center's religious polices and practices that affect the child in care.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-6020, filed 6/30/03, effective 8/1/03.]

WAC 388-295-6030 What are the special requirements regarding American Indian children? When five percent or more of the center's child enrollment consists of American Indian children, you must develop social services resource and staff training programs designed to meet the special needs of such children through coordination with tribal, Indian health service, and Bureau of Indian Affairs social service staff, and appropriate urban Indian and Alaska native consultants.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-6030, filed 6/30/03, effective 8/1/03.]

WAC 388-295-6040 What are the requirements regarding child abuse and neglect? (1) You and your staff must protect the child in care from child abuse, neglect, or exploitation, as required under chapter 26.44 RCW.

(2) You must immediately report an instance when you or the staff have reason to suspect that child physical, sexual, or emotional abuse, child neglect, or child exploitation as defined in chapter 26.44 RCW has occurred. This report must be made to children's administration central intake.

(3) If there is immediate danger to a child you must also make a report to local law enforcement.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-6040, filed 6/30/03, effective 8/1/03.]

WAC 388-295-6050 What substances are prohibited in the child care center or on the premises? (1) You, your staff, parents, and volunteers must not be under the influence of, consume, or possess an alcoholic beverage or illegal drug while on the child care premises or during work hours while you are responsible for children in care.

(2) You, your staff, parents, and volunteers must not smoke:

(a) Inside the center building;

(b) While supervising children outdoors; or

(c) In a motor vehicle while transporting children.

(3) You, your staff, parents, and volunteers may smoke outdoors, off the premises and out of view of the children.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-6050, filed 6/30/03, effective 8/1/03.]

WAC 388-295-6060 Who is allowed to have unsupervised access to children in care? (1) During operating hours or while the child is in care, the only persons allowed to have regular or unsupervised access to the child in care are:

- (a) The child's parent;
- (b) You;
- (c) An employee or volunteer who has received a Washington state patrol background check clearance; and
- (d) A representative of a governmental agency who has specific, verifiable authority supported by documentation for the access.

(2) You must not allow anyone else unsupervised access to a child in care. A parent can only have unsupervised access to his or her own child unless the parent signs an authorization for an individual to have unsupervised access to their own child. (For example a therapist.)

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-6060, filed 6/30/03, effective 8/1/03.]

WAC 388-295-7010 What information must be kept in the child's individual file? (1) You must keep current organized confidential records and information about each child in care on the premises. You must make sure that each child's record contains, at a minimum:

- (a) Completed enrollment application signed by the parent;
- (b) Name, birth date, dates of enrollment and termination, and other identifying information;
- (c) Name, address, and home and business telephone number of the parent and other person to be contacted in case of an emergency;
- (d) Health history;
- (e) Individual plan of care when needed for chronic health conditions and life threatening medical conditions;
- (f) Written consent from the parent for you to seek and approve medical care in an emergency situation, a court order waiving the right of informed consent, or parent's alternate plans for emergency medical and surgical care if the parent can not be reached;
- (g) Information on how to contact the parents, especially in emergencies;
- (h) Instructions from parent or health care providers related to medications, specific food or feeding requirements, allergies, treatments, and special equipment or health care needs if necessary;
- (i) Written records of any illness or injury that occurs during child care hours and the treatment provided; and
- (j) Written records of any medications given while the child is at child care.

(2) You must include the following authorizations in each child's record:

- (a) Name, address, and telephone number of the person authorized to remove the child from the center;
- (b) Written parental consent for transportation to and from school; and
- (c) Written parental consent for transportation provided by the center to and from field trips, including field trip loca-

tion, date of trip, departure and arrival times and any other additional information the parent may need to be advised of.

(3) You can use any health history form you choose as long as it includes:

- (a) The date of the child's last physical exam or the date the child was last seen by a health care provider for reasons other than immunizations;
- (b) Allergies, expected symptoms, and method of treatment if necessary;
- (c) Health and developmental concerns or issues;
- (d) Any life threatening medical condition that requires an individual health plan;
- (e) A list of current medications used by the child;
- (f) Name, address and phone number of the child's health care provider; and
- (g) Name, address and phone number of the child's dentist, if the child has a dentist.

(4) The individual records, including the certificate of immunization status, must be kept on the premises:

- (a) For each child currently in care; and
 - (b) For one year after the child leaves your care.
- (5) Attendance records, sign in and out records and invoices for state-paid children must be kept for five years after the child leaves your care.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-7010, filed 6/30/03, effective 8/1/03.]

WAC 388-295-7020 Am I required to track immunizations? (1) You are required to track each child's immunization status. To be sure that the children have the required immunizations for their age, you or your staff must:

- (a) See that each child has a completed certificate of immunization status form submitted or on file before the first day of child care;
 - (b) Develop a system to audit and update as scheduled the information on the certificate of immunization status forms;
 - (c) Meet any requirement of the department of health WAC 246-100-166; and
 - (d) Have available on the premises the certificate of immunization status forms for review by the health specialist, licenser, the department of health, and nurse consultant.
- (2) You may accept a child whose immunizations are started but not up to date on a "conditional" basis if:
- (a) For children whose records are difficult to obtain (such as foster children), there is written proof that the case worker or health care provider is in the process of obtaining the child's immunization status prior to the child starting child care; or
 - (b) The required immunizations are started prior to children starting child care; and
 - (c) The immunizations are completed as rapidly as medically possible. You must work with the parent, health care provider, or local health department to obtain an immunization plan.

(3) If a parent or health care provider chooses not to immunize a child, they must sign the exempt portion of the certificate of immunization status form.

(4) You may have a policy that states you do not accept children who have been exempted from immunizations by

their parent or guardian, unless that exemption is due to an illness protected by the American With Disabilities Act (ADA).

(5) The certificate of immunization status forms for children who are currently enrolled must be accessible and maintained on the premises in a confidential manner.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-7020, filed 6/30/03, effective 8/1/03.]

WAC 388-295-7030 What type of attendance records do I have to keep? You must keep daily attendance records.

(1) The parent or other person authorized by the parent to take the child to or from the center must sign in the child on arrival and sign out the child at departure, using their full legal signature and writing the time of arrival and departure;

(2) When the child leaves the center to attend school or participate in off-site activities as authorized by the parent, you or your staff must sign out the child, and sign in the child on return to the center; and

(3) Attendance records and invoices for state paid children must be kept on the premises for at least five years after the child leaves your care.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-7030, filed 6/30/03, effective 8/1/03.]

WAC 388-295-7040 Am I required to keep licensing information available on-site for parents to review? You must keep a file on-site containing the following licensing information:

(1) Copies of the most recent child care center checklists for licensing renewal and facility licensing compliance agreement for any deficiencies noted; and

(2) Copies of the most recent child care centers monitoring checklist and facility licensing compliance agreement for and deficiencies noted.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-7040, filed 6/30/03, effective 8/1/03.]

WAC 388-295-7050 What personnel records and policies must I have? (1) Each employee and volunteer who has unsupervised access to a child in care must complete the following forms on or before their date of hire:

(a) An application for employment on a form prescribed by us, or on a comparable form approved by the department; and

(b) A criminal history and background inquiry form.

(2) You must submit the criminal history and background inquiry form to us within seven calendar days of the employee's first day of work. The form authorizes a criminal history background inquiry for that person.

(3) Until the criminal background inquiry results are returned and show the employee to not be disqualified, the employee is not to be unsupervised with the children.

(4) We discuss the information on the criminal history background inquiry form with you, the director, or other person responsible for the operation of the center, such as a human resources professional, if applicable.

(5) If you employ five or more people you must have written personnel policies. These policies must describe staff benefits, if any, and duties and qualifications of staff.

(6) You must maintain a system of record keeping for personnel. In addition to the other requirements in this chapter, you must keep the following information on file on the premises for yourself, each staff person and volunteer:

(a) An employment application, including work and education history;

(b) A photo copy of the Social Security card that is valid for employment or verification of your employer identification number (EIN);

(c) A photo copy of a photo identification issued by a government entity;

(d) Documentation that a criminal history and background inquiry form was submitted;

(e) Written documentation of trainings and meetings such as but not limited to:

(i) Orientation;

(ii) On-going trainings;

(iii) Bloodborne pathogen training (including HIV/AIDS);

(iv) CPR/first aid;

(v) Food handler's cards (if applicable);

(vi) STARS;

(vii) Staff meetings; and

(viii) Child abuse and neglect.

(f) Documentation of the results of Tuberculosis (TB) testing by the Mantoux skin test prior to starting work.

(7) Training documentation must include a certificate, card, or form with a copy placed in each individual employee's file that contains the:

(a) Topic presented;

(b) Number of clock hours;

(c) Date and names of persons attending; and

(d) Signature and organization of the person conducting the training.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-7050, filed 6/30/03, effective 8/1/03.]

WAC 388-295-7060 What injuries and illnesses or child abuse and neglect must I report? You or your staff must report immediately:

(1) A death or a serious injury or illness that requires medical treatment or hospitalization of a child in care must be reported by telephone and in writing to the parent, licensor, and child's social worker, if the child has a social worker;

(2) Any instance when you or your staff have reason to suspect the occurrence of any physical, sexual, or emotional child abuse or child neglect, child endangerment, or child exploitation as required under described in chapter 26.44 RCW. You may make a report by calling the statewide number at 1-800-562-5624 or 1-866-Endharm; and

(3) An occurrence of food poisoning or reportable communicable disease, as required by the state board of health to the local public health department and to the licensor, by telephone.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-7060, filed 6/30/03, effective 8/1/03.]

WAC 388-295-7070 What circumstantial changes must I report to my licensor? A child care center license is valid only for the address, person, and organization named on the license. You must promptly report to the licensor any

major changes in administrative staff, program, or premises affecting the center's classification, delivery of safe, developmentally appropriate services, or continued eligibility for licensur. A major change includes the following:

- (1) Center's address, location, space or phone number;
- (2) Maximum number and age ranges of children you wish to serve compared to the current license specifications;
- (3) Number and qualifications of the center's staffing pattern that may affect staff capability to carry out the specified program, including:
 - (a) Change of ownership, chief executive, director, or program supervisor; and
 - (b) Death, retirement, or incapacity of the person licensed;
- (4) Name of the licensed corporation, or name by which the center is commonly known, or changes in the center's articles of incorporation and bylaws;
- (5) A fire, major structural change, or damage to the premises; and
- (6) Plans for major remodeling of the center, including planned use of space not previously approved by the fire marshal's office or us.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-7070, filed 6/30/03, effective 8/1/03.]

WAC 388-295-7080 What am I required to post in the center? You must post the following items so that they are clearly visible to the parent and staff:

- (1) The center's child care license issued under this chapter;
- (2) A schedule of regular duty hours with the names of staff;
- (3) A typical activity schedule, including operating hours and scheduled mealtimes;
- (4) Meal and snack menus for the month;
- (5) Fire safety record and evacuation plans and procedures, including a diagram of exiting routes;
- (6) Emergency telephone numbers near the telephone;
- (7) Nondiscrimination poster;
- (8) For the staff, you must post:
 - (a) Dietary restrictions and nutrition requirements for particular children;
 - (b) Handwashing practices;
 - (c) Diaper changing procedures, if applicable;
 - (d) Disaster preparedness plan; and
 - (e) Center policies and procedures.
- (9) You must post a notification advising parents that you are required to keep the following licensing information available on site for their review:
 - (a) Copies of the most recent child care center checklist for licensing renewal and facility licensing compliance agreement for any deficiencies noted; and
 - (b) Copies of the most recent child care centers monitoring checklist and facility licensing compliance agreement for any deficiencies noted.

[Statutory Authority: Chapters 74.12 and 74.15 RCW. 03-14-110, § 388-295-7080, filed 6/30/03, effective 8/1/03.]

Chapter 388-310 WAC

WORKFIRST

WAC

388-310-0350	WorkFirst—Other exemptions from mandatory participation.
388-310-0800	WorkFirst—Support services.
388-310-1800	WorkFirst—Post employment services.

WAC 388-310-0350 WorkFirst—Other exemptions from mandatory participation. (1) When am I exempt from mandatory participation?

You are exempt from mandatory participation if you are:

- (a) An older needy caretaker relative:
 - (i) You are fifty-five years of age or older and caring for a child and you are not the child's parent; and
 - (ii) Your age is verified by any reliable documentation (such as a birth certificate or a driver's license).
- (b) An adult with a severe and chronic disability:
 - (i) The disability must be a severe and chronic mental, physical, emotional, or cognitive impairment that prevents you from participating in work activities and is expected to last at least twelve months; or
 - (ii) You have been assessed by a DSHS SSI facilitator as likely to be approved for SSI or other benefits and are applying for SSI or another type of federal disability benefit (such as Railroad Retirement or Social Security Disability); and
 - (iii) Your disability is verified by documentation from the division of developmental disabilities (DDD), division of vocational rehabilitation (DVR), home and community services division (HCS), division of mental health (MHD), and/or regional support network (RSN), or evidence from another medical or mental health professional; and
 - (iv) Your SSI application status may be verified through the SSI facilitator and/or state data exchange.
- (c) Required in the home to care for a child with special needs when:
 - (i) The child has a special medical, developmental, mental, or behavioral condition; and
 - (ii) The child is determined by a public health nurse, physician, mental health provider, school professional, other medical professional, HCS, MHD, and/or a RSN to require specialized care or treatment that significantly interferes with your ability to look for work or work.
- (d) Required to be in the home to care for another adult with disabilities when:
 - (i) The adult with disabilities cannot be left alone for significant periods of time; and
 - (ii) No adult other than yourself is available and able to provide the care; and
 - (iii) The adult with the disability is related to you; and
 - (iv) The disability is verified by documentation from DDD, DVR, HCS, MHD, and/or a RSN, or evidence from another medical or mental health professional.

(2) Who reviews and approves an exemption?

- (a) If it appears that you may qualify for an exemption or you ask for an exemption, your case manager or social worker will review the information and we will use the case staffing process to determine whether the exemption will be approved. Case staffing is a process to bring together a team of multidisciplinary experts including relevant professionals

and the client to identify participant issues, review case history and information, and recommend solutions.

(b) If additional medical or other documentation is needed to determine if you are exempt, your IRP will allow between thirty days and up to ninety if approved to gather the necessary documentation.

(c) Information needed to verify your exemption should meet the standards for verification described in WAC 388-490-0005. If you need help gathering information to verify your exemption, you can ask us for help. If you have been identified as needing NSA services, under chapter 388-472 WAC, your accommodation plan should include information on how we will assist you with getting the verification needed.

(d) After the case staffing, we will send you a notice that tells you whether your exemption was approved, how to request a fair hearing if you disagree with the decision, and any changes to your IRP that were made as a result of the case staffing.

(3) Can I participate in WorkFirst while I am exempt?

(a) You may choose to participate in WorkFirst while you are exempt.

(b) Your WorkFirst case manager may refer you to other service providers who may help you improve your skills and move into employment.

(c) If you decide later to stop participating, and you still qualify for an exemption, you will be put back into exempt status with no financial penalty.

(4) Does an exemption from participation affect my sixty-month time limit for receiving TANF/SFA benefits?

An exemption from participation does not affect your sixty-month time limit (described in WAC 388-484-0005) for receiving TANF/SFA benefits. Even if exempt from participation, each month you receive a TANF/SFA grant counts toward your sixty-month limit.

(5) How long will my exemption last?

Unless you are an older caretaker relative, your exemption will be reviewed at least every twelve months to make sure that you still meet the criteria for an exemption. Your exemption will continue as long as you continue to meet the criteria for an exemption.

(6) What happens when I am no longer exempt?

If you are no longer exempt, then:

(a) You will become a mandatory participant under WAC 388-310-0400; and

(b) If you have received sixty or more months of TANF/SFA, your case will be reviewed for an extension. (See WAC 388-484-0006 for a description of TANF/SFA time limit extensions.)

(7) For time-limited extensions, see WAC 388-484-0006.

[Statutory Authority: RCW 74.08.090, 74.04.050, and 74.08A.340. 03-24-057, § 388-310-0350, filed 12/1/03, effective 1/1/04. Statutory Authority: RCW 74.08A.010(4), 74.08A.340, 74.08.090, 74.04.050. 02-12-068, § 388-310-0350, filed 5/31/02, effective 6/1/02.]

WAC 388-310-0800 WorkFirst—Support services.

(1) Who can get support services?

People who can get support services include:

(a) WorkFirst participants who receive a TANF cash grant;

(b) Sanctioned WorkFirst participants during the required participation before the sanction is lifted (WAC 388-310-1600);

(c) Unmarried or pregnant minors who are income eligible to receive TANF and are:

(i) Living in a department approved living arrangement (WAC 388-486-0005) and are meeting the school requirements (WAC 388-486-0010); or

(ii) Are actively working with a social worker and need support services to remove the barriers that are preventing them from living in a department approved living arrangements and/or meeting the school requirements.

(d) Former WorkFirst recipients who are working at least twenty hours or more per week for up to six months after leaving TANF if they need support services to meet a temporary emergency. This can include up to four weeks of support services if they lose a job and are looking for another one (see also WAC 388-310-1800); or

(e) American Indians who receive a TANF cash grant and have identified specific needs due to location or employment.

(2) Why do I receive support services?

Although not an entitlement, you may receive support services for the following reasons:

(a) To help you participate in work and WorkFirst activities that lead to independence.

(b) To help you to participate in job search, accept a job, keep working, advance in your job, and/or increase your wages.

(c) You can also get help in paying your child care expenses through the working connections child care assistance program. (Chapter 388-290 WAC describes the rules for this child care assistance program.)

(3) What type of support services may I receive and what limits apply?

There is a limit of three thousand dollars per person per program year (July 1st to June 30th) for WorkFirst support services you may receive. Most types of support services have dollar limits.

The chart below shows the types of support services that are available for the different activities (as indicated by an "x") and the limits that apply.

Definitions:

- Work-related activities include looking for work or participating in workplace activities, such as community jobs or a work experience position.

- Safety-related activities include meeting significant or emergency family safety needs, such as dealing with family violence. When approved, safety-related support services can exceed the dollar or category limits listed below.

- Some support services are available if you need them for other required activities in your IRP.

Type of support service	Limit	• Work	•• Safety	••• Other
Reasonable accommodation for employment	\$1,000 for each request	x		
Clothing/uniforms	\$75 per adult per program year	x		
Diapers	\$50 per child per month	x		
Haircut	\$40 per each request	x		
Lunch	Same rate as established by OFM for state employees	x		
Personal hygiene	\$50 per adult per program year	x		
Professional, trade, association, union and bonds	\$300 for each fee	x		
Relocation related to employment (can include rent, housing, and deposits)	\$1,000 per program year	x		
Short-term lodging and meals in connection with job interviews/tests	Same rate as established by OFM for state employees	x		
Tools/equipment	\$500 per program year	x		
Car repair needed to restore car to operable condition	\$250 per program year	x	x	
License/fees	\$130 per program year	x	x	
Mileage, transportation, and/or public transportation	Same rate as established by OFM for state employees	x	x	
Transportation allotment	Up to: \$10 for immediate need, or \$20 twice a month if you live within 40 miles of your local WorkFirst office, or \$30 twice a month if you live more than 40 miles from your local WorkFirst office.	x	x	
Counseling	No limit	x	x	x
Educational expenses	\$300 for each request if it is an approved activity in your IRP and you do not qualify for sufficient student financial aid to meet the cost	x		x
Medical exams (not covered by Medicaid)	\$150 per exam	x	x	x
Public transportation	\$150 per month	x	x	x
Testing-diagnostic	\$200 each	x	x	x

(4) What are the other requirements to receive support services?

Other restrictions on receiving support services are determined by the department or its agents. They will decide what support services you receive, as follows:

- (a) It is within available funds; and
- (b) It does not assist, promote, or deter religious activity; and
- (c) There is no other way to meet the cost.

(5) What happens to my support services if I do not participate as required?

The department will give you ten days notice, following the rules in WAC 388-310-1600, then discontinue your support services until you participate as required.

[Statutory Authority: RCW 74.08.090, 74.04.050, 74.08A.340, and 2003 c 10 § 207. 03-21-154, § 388-310-0800, filed 10/22/03, effective 10/27/03. Statutory Authority: RCW 74.08.090, 74.04.050, 78.08A.340, and [WSR] 99-14-043. 02-11-130, § 388-310-0800, filed 5/21/02, effective 7/1/02; 01-17-053, § 388-310-0800, filed 8/13/01, effective 9/1/01. Statutory Authority: RCW 74.08.090, 74.04.050, and 78.08A.340. 00-13-106, § 388-310-0800, filed 6/21/00, effective 7/1/00. Statutory Authority: RCW 74.08.090 and 74.04.050. 99-14-043, § 388-310-0800, filed 6/30/99, effective 7/31/99; 97-20-129, § 388-310-0800, filed 10/1/97, effective 11/1/97.]

WAC 388-310-1800 WorkFirst—Post employment services. (1) What is the purpose of post employment services?

Post employment services help low-income parents who are working twenty hours or more a week keep and cope with their current jobs, look for better jobs, gain work skills for a career and become self sufficient.

(2) How do I obtain post employment services?

- (a) You can obtain post employment services by:
 - (i) Asking for a referral from the local community service office;
 - (ii) Contacting community or technical colleges; or
 - (iii) Contacting the employment security department. Employment security department staff may also telephone you if you got a job while you were on TANF or SFA to see if you are interested in receiving these services.

(b) You may qualify for different services (from various state or federal programs) depending on whether you:

- (i) Are a mandatory participant (that is, you currently receive TANF or SFA benefits);
- (ii) Used to receive TANF or SFA benefits; or
- (iii) Have never been on TANF or SFA.

(3) Who provides post employment services and what kind of services do they provide?

(a) The employment security department can help you increase your wages, increase your job skills or find a better job by providing you with:

- (i) Employment and career counseling;
- (ii) Labor market information;
- (iii) Job leads for a better job (sometimes called job development);
- (iv) On the job training;
- (v) Help with finding a job that matches your interests, abilities and skills (sometimes called job matching); and
- (vi) Help with finding a new job after job loss (sometimes called reemployment).

(b) Any Washington state technical and community college can approve a skill-training program for you that will help you advance up the career ladder. Their staff will talk to you, help you decide what training would work best for you and then help you get enrolled in these programs. The college may approve the following types of training for you at any certified institution:

- (i) High school/GED,
- (ii) Vocational education training,
- (iii) Job skills training,
- (iv) Adult basic education,
- (v) English as a second language training, or
- (vi) Preemployment training.

(4) What other services are available while you receive post employment services?

While you receive post employment services, you may qualify for:

- (a) Working connections childcare if you meet the criteria for this program (described in chapter 388-290 WAC).
- (b) Other support services, such as help in paying for transportation or work expenses.
- (c) Other types of assistance for low-income families such as food stamps, medical assistance or help with getting child support that is due to you and your children.

(5) Who is eligible for post employment service, support services and childcare?

You may qualify for post employment services, support services and child care if you are working twenty hours or more a week, and:

- (a) You are current TANF or SFA recipient. You qualify for:
 - (i) All types of post employment services, unless you are in sanction status;
 - (ii) Tuition assistance from the community and technical college system;
 - (iii) WorkFirst support services; and
 - (iv) Working connections childcare.
- (b) You are a former TANF or SFA recipient. You qualify for:
 - (i) Employment retention services (help with keeping a job) for up to twelve months after exiting TANF or SFA.
 - (ii) Wage and skill progression services (help with finding a better job and/or obtaining better wages) for up to twelve months after exiting TANF or SFA.
 - (iii) Tuition assistance or preemployment training from the community and technical college system;
 - (iv) Working connections childcare assistance; and/or
 - (v) WorkFirst support services for up to six months after exiting TANF or SFA.

(c) You are a low wage earner (that is, your family income does not exceed one hundred seventy-five percent of the federal poverty level) who has never received TANF or SFA benefits, and are in a community or technical college-approved skill training program. You may qualify for:

- (i) Tuition assistance or preemployment training from the community and technical college system; or
- (ii) Working connections child care while you are in training or school for up to a total of thirty six months.

(6) What if I lose my job while I am receiving post employment services?

If you now receive or used to receive TANF or SFA, help is available to you for up to four weeks so that you can find another job and continue in your approved post employment.

- (a) The employment security department will provide you with reemployment services.
- (b) At the same time, your case manager can approve up to four weeks of support services and childcare for you.

[Statutory Authority: RCW 74.08.090, 74.04.050, 74.08A.340, and 2003 c 10 § 207, 03-21-154, § 388-310-1800, filed 10/22/03, effective 10/27/03. Statutory Authority: RCW 74.08A.010(4), 74.08A.340, 74.08.090, 74.04.050, 02-15-067, § 388-310-1800, filed 7/11/02, effective 8/1/02. Statutory Authority: RCW 74.08A.340(2), 45 C.F.R. 260.31, RCW 74.08.090, and chapter 74.04 RCW. 00-16-055, § 388-310-1800, filed 7/26/00, effective 8/1/00. Statutory Authority: RCW 74.08.090 and 74.04.050, 99-10-027, § 388-310-1800, filed 4/28/99, effective 5/29/99; 97-20-129, § 388-310-1800, filed 10/1/97, effective 11/1/97.]

**Chapter 388-400 WAC
PROGRAM SUMMARY**

WAC

- 388-400-0040 Am I eligible for benefits through the Washington Basic Food program?
- 388-400-0045 If I am not eligible for federally-funded benefits through Washington Basic Food program because of my alien status, can I receive state-funded Basic Food?

WAC 388-400-0040 Am I eligible for benefits through the Washington Basic Food program? The Washington Basic Food program (Basic Food) is a nutrition program to help low-income individuals and families buy food. This rule is a summary of the rules for Basic Food.

- (1) When you apply for Basic Food, we decide who is in your assistance unit (AU) based on the requirements under WAC 388-408-0035.
- (2) To be eligible for Basic Food benefits, your AU must meet the eligibility requirements of the most current version of the Food Stamp Act of 1977.
- (3) To be eligible for **federal** Basic Food benefits, each AU member must:
 - (a) Be a U.S. citizen or national as described under WAC 388-424-0005; or
 - (b) Meet the alien status requirements for federal benefits described under WAC 388-424-0020.
- (4) An AU member who is not eligible for federal benefits may be eligible for **state-funded** Basic Food benefits if they meet the requirements described under WAC 388-400-0045.
- (5) To be eligible for **federal** or **state** Basic Food benefits, each AU member must:

(a) Be a resident of the state of Washington as required under WAC 388-468-0005;

(b) Meet the citizenship or alien status requirements of either WAC 388-424-0020 or 388-424-0025;

(c) Provide their Social Security number as required under WAC 388-476-0005;

(d) Provide proof of identity as required under WAC 388-490-0005;

(e) Participate in the food stamp employment and training program (FSE&T) as required under chapter 388-444 WAC; and

(f) Meet the eligibility criteria for strikers as described under WAC 388-480-0001.

(6) To be eligible for Basic Food, your AU must:

(a) Have countable income at or below gross and net income standards as described under WAC 388-478-0060; and

(b) Have countable resources at or below your AU's resource limit under WAC 388-470-0005.

(7) If your AU has income under the gross income standard, we deduct certain expenses from your income under WAC 388-450-0200 before we calculate your Basic Food benefits.

(8) If an eligible person in your AU is elderly or disabled, some rules may help your AU to be eligible for Basic Food or to get more Basic Food benefits. These include:

(a) Resources limits and excluding certain resources under chapter 388-470-WAC;

(b) An excess shelter deduction over the limit set for AUs without an elderly or disabled individual under WAC 388-450-0190;

(c) A deduction for out-of-pocket medical expenses for the elderly or disabled individual if they are over thirty-five dollars a month under WAC 388-450-0200; and

(d) Being exempt from the **gross** income standard under WAC 388-478-0060.

(9) For Basic Food, **elderly** means a person who is age sixty or older;

(10) For Basic Food, **disabled** means a person who:

(a) Gets SSI;

(b) Gets disability payments or blindness payments under Title I, II, XIV, or XVI of the Social Security Act;

(c) Gets disability retirement benefits from a state, local or federal government agency because of a disability considered permanent under section 221(i) of the Social Security Act;

(d) Gets disability benefits from the Railroad Retirement Act under sections 2 (a)(1)(iv) and (v) and:

(i) Meets Title XIX disability requirements; or

(ii) Is eligible for Medicare.

(e) Receives disability-related medical assistance under Title XIX of the Social Security Act;

(f) Is a veteran and receives disability payments based on one hundred percent disability;

(g) Is a spouse of a veteran and:

(i) Either needs an attendant or is permanently house-bound; or

(ii) Has a disability under section 221(i) of the Social Security Act and is eligible for death or pension payments under Title 38 of the USC.

(11) If a person in your AU attends an institution of higher education and does not meet the requirements to be an eligible student under WAC 388-482-0005, we do not consider this person as a member of your AU.

(12) If your AU lives on or near an Indian reservation and participates in a tribal food distribution program approved by Food and Nutrition Service (FNS), your AU is not eligible for Basic Food benefits.

(13) If an AU member is ineligible for any of the following reasons, we count the ineligible person's income as described under WAC 388-450-0140:

(a) Able-bodied adults without dependents who are no longer eligible under WAC 388-444-0030;

(b) Persons convicted of a drug-related felony or fleeing a felony prosecution, conviction, or confinement under WAC 388-442-0010;

(c) Persons who do not attest to citizenship or alien status under WAC 388-424-0005;

(d) Persons who are ineligible aliens under WAC 388-424-0020;

(e) Persons disqualified for an intentional program violation under WAC 388-446-0015;

(f) Persons who do not provide a Social Security number when required under WAC 388-476-0005; or

(g) Persons who failed to meet work requirements under chapter 388-444 WAC.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.04.510. 03-05-028, § 388-400-0040, filed 2/10/03, effective 4/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-400-0040, filed 7/31/98, effective 9/1/98.]

WAC 388-400-0045 If I am not eligible for federally-funded benefits through Washington Basic Food program because of my alien status, can I receive state-funded Basic Food?

(1) If you are not eligible for federally-funded Basic Food benefits because you do not meet the alien status requirements under WAC 388-424-0020, you may be eligible for state-funded Basic Food if you meet both of the following requirements:

(a) You are a Washington state resident; and

(b) You meet the immigrant eligibility requirements under WAC 388-424-0025.

(2) State-funded Basic Food follows the same eligibility rules as federally-funded Basic Food except for rules related to alien status. A summary of the rules for Basic Food is found in WAC 388-400-0040.

(3) Some assistance units (AUs) may receive a combined benefit of both state and federal Basic Food benefits. Your AU's maximum allotment of Basic Food benefits is found under WAC 388-478-0060.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.04.510. 03-05-028, § 388-400-0045, filed 2/10/03, effective 4/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-400-0045, filed 7/31/98, effective 9/1/98.]

Chapter 388-406 WAC APPLICATIONS

WAC

388-406-0005

Can I apply for cash, medical, or Basic Food?

388-406-0010

How do I apply for benefits?

388-406-0012	What is the date of my application and how does it affect my benefits?
388-406-0015	Can I get Basic Food right away?
388-406-0021	How does being a migrant or seasonal farmworker affect my application for Basic Food?
388-406-0035	How long does the department have to process my application?
388-406-0040	What happens if the processing of my application is delayed?
388-406-0055	When do my benefits start?
388-406-0060	What happens when my application is denied?
388-406-0065	Can I still get benefits even after my application is denied?

WAC 388-406-0005 Can I apply for cash, medical, or Basic Food? (1) You can apply for any benefit the department offers, including cash assistance, medical assistance, or Basic Food.

(2) You must meet certain eligibility requirements in order to receive a program benefit.

(3) You can apply for someone else if you are:

(a) A legal guardian, caretaker, or authorized representative applying for:

- (i) A dependent child;
- (ii) An incapacitated person; or
- (iii) Someone who is deceased.

(b) Applying for someone who cannot apply for some other reason. We may ask why the applicant is unable to apply on their own behalf.

(4) If you get Supplemental Security Income (SSI), you do not need to apply for medical benefits. We automatically open medical benefits for you.

(5) A person or agency may apply for GAU or medical assistance for you if:

- (a) You temporarily live out-of-state; and
- (b) You are a Washington state resident.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. 03-22-039, § 388-406-0005, filed 10/28/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. 02-11-137, § 388-406-0005, filed 5/21/02, effective 7/1/02. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-406-0005, filed 7/31/98, effective 9/1/98. Formerly WAC 388-504-0405 and 388-504-0410.]

WAC 388-406-0010 How do I apply for benefits? (1)

You can apply for cash assistance, medical assistance, or Basic Food by giving us an application form in person, by mail, by fax, or by completing an online application.

(2) If your entire assistance unit (AU) gets or is applying for Supplemental Security Income (SSI), your AU can file an application for Basic Food at the local Social Security Administration District Office (SSADO).

(3) If you are incapacitated, a dependent child, or cannot apply for benefits on your own for some other reason, a legal guardian, caretaker, or authorized representative can apply for you.

(4) You can apply for cash assistance, medical assistance, or Basic Food with just one application form.

(5) If you apply for benefits at a local office, we accept your application on the same day you come in. If you apply at an office that does not serve the area where you live, we send your application to the appropriate office by the next business day so that office receives your application on the same day we send it.

(6) We accept your application for benefits if it has at least:

(a) For cash or medical assistance, the name, address, and signatures of the responsible adult AU members or person applying for you. A minor child may sign if there is no adult in the AU. Signatures must be either handwritten, electronic or digital as defined by the department, or a mark if witnessed by another person; or

(b) For Basic Food, the name, address, and signature of a responsible member of your AU or person applying for you as an authorized representative under WAC 388-460-0005.

(7) As a part of the application process, we may require you to:

(a) Complete an interview if one is required under WAC 388-452-0005;

(b) Give us the information we need to decide if you are eligible as required under WAC 388-406-0030; and

(c) Give us proof of information as required under WAC 388-490-0005 so we can determine if you are eligible.

(8) If you are eligible for necessary supplemental accommodation (NSA) services under chapter 388-472 WAC, we help you meet the requirements of this section.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. 03-22-039, § 388-406-0010, filed 10/28/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. 02-11-137, § 388-406-0010, filed 5/21/02, effective 7/1/02. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-406-0010, filed 7/31/98, effective 9/1/98. Formerly WAC 388-504-0405.]

WAC 388-406-0012 What is the date of my application and how does it affect my benefits? The date of your application affects when your benefits start. The date of your application is the date any field office receives your application unless:

(1) Your entire assistance unit gets or applies for Supplemental Security Income (SSI) and applies for Basic Food at the local Social Security office. The date of application is the date Social Security gets your application; or

(2) You apply outside of normal business hours, including applications you submitted online, dropped off, or sent to us by fax. The date of your application is the next business day.

(3) You request Basic Food benefits when you have applied for benefits through another department program, but we have not made a decision on the application. We call this a "pending application." If you ask for Basic Food benefits when you have a pending application for another program:

(a) We use your application for the other program, but we use the date you requested food benefits as your date of application for Basic Food; and

(b) You must provide us the necessary information to determine if you are eligible for Basic Food, even if we did not need this information for the other program.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. 03-22-039, § 388-406-0012, filed 10/28/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. 02-11-137, § 388-406-0012, filed 5/21/02, effective 7/1/02.]

WAC 388-406-0015 Can I get Basic Food right away? (1) When the department gets your Basic Food application, we look at your circumstances to see if you can get

benefits within five calendar days. This is called "expedited service."

(2) To get expedited service, you must provide proof of who you are and meet one of the following conditions:

(a) Have gross monthly income (before taxes), minus exclusions as defined in WAC 388-450-0015, of under one hundred fifty dollars **and** have available cash of one hundred dollars or less; or

(b) Have gross monthly income (before taxes), minus exclusions as defined in WAC 388-450-0015, **plus** available cash of less than your total shelter costs (rent or mortgage and utilities); or

(c) Be a destitute migrant or seasonal farm worker household, under WAC 388-406-0021, **and** your household's available cash is one hundred dollars or less.

(3) To determine the amount of utilities we use to decide if you can get expedited services, we allow the utility allowance your AU is eligible for under WAC 388-450-0195.

(4) If you are eligible for expedited service and are not required to have an office interview under WAC 388-452-0005, you can:

(a) Have a telephone interview or a home visit; and

(b) Still get benefits within five days.

(5) If you are applying for Basic Food, "day one" of your five-day expedited service period starts on the:

(a) Day after the date you filed your application;

(b) Date you are released from a public institution; or

(c) Date of your interview if you:

(i) Waived your expedited interview and we decide you are eligible for expedited service during your rescheduled interview; or

(ii) Were screened as ineligible for expedited service and we later decide you are eligible for the service during your interview; or

(iii) Did not ask for expedited service on the application and we decide you are eligible for the service during your interview.

(6) If you get expedited service, we give you benefits for one or two months depending on when you applied. If we need additional information to decide if you are eligible for continued benefits and you applied:

(a) On or before the fifteenth of the month, you have up to thirty days from the date of application to give us the information; or

(b) On or after the sixteenth of the month, you have until the end of the second month to give us the information.

(7) If you have received expedited service in the past, you can get this service again if you meet the requirements listed in subsection (2) above and you:

(a) Gave us all the information we needed to prove eligibility for your last expedited service benefit period; or

(b) Were certified under normal processing standards after your last expedited certification.

(8) If you reapply before your certification period ends, you are not eligible for expedited service.

(9) If you reapply after your certification period ends your five-day expedited service period is the same as a new application.

(10) If you are denied expedited service, you can ask for a department review of our decision. We review the decision within two working days.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. 03-22-061, § 388-406-0015, filed 11/3/03, effective 12/4/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 20 C.F.R. 416.2130. 02-20-068, § 388-406-0015, filed 9/30/02, effective 10/31/02. Statutory Authority: RCW 74.04.510 and 74.08.090. 01-18-036, § 388-406-0015, filed 8/28/01, effective 10/1/01. Statutory Authority: RCW 74.04.510 and Section 11 (e)(9) of the Food Stamp Act. 00-06-015, § 388-406-0015, filed 2/22/00, effective 4/1/00. Statutory Authority: RCW 74.08.090 and 74.04.510. 99-16-024, § 388-406-0015, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-406-0015, filed 7/31/98, effective 9/1/98.]

WAC 388-406-0021 How does being a migrant or seasonal farmworker affect my application for Basic Food? The rules in this section apply to Basic Food assistance.

(1) A migrant farmworker is a person who travels away from home on a regular basis, usually with a group of other workers, to seek employment in an agriculturally related activity. A migrant assistance unit is an assistance unit that travels for this purpose.

(2) A migrant assistance unit (AU) is an AU that travels for this purpose.

(3) A seasonal farmworker is a person who:

(a) Does agricultural work on a farm for edible crops; and

(b) Is not required to be away from their permanent place of residence overnight in order to perform this work.

(4) Agricultural work is field work in either planting, cultivating, or harvesting a crop.

(5) We consider your AU a seasonal farmworker AU if it receives its only countable income from:

(a) Seasonal farmwork;

(b) Unemployment compensation between seasons; or

(c) Interest your AU earns on a checking or savings account.

(6) Your migrant or seasonal farmworker is destitute if:

(a) Your AU received your income for the month of application before the date you applied for benefits and the source of this income no longer provides income; or

(b) Your AU's income for the month of application is from a new source and your AU will not receive more than twenty-five dollars during the ten calendar days from the date you applied for benefits.

(7) If someone in your AU changes jobs but still works for the same employer, we consider them to be receiving income from the same source.

(8) If your AU is a migrant or seasonal farmworker AU, and your certification period ends, we do not prorate your benefits for the first month of your new certification period unless your certification period ended more than a month before you turned in your application to recertify your benefits.

(9) If your migrant or seasonal farmworker AU is destitute:

(a) We may exclude some of your income for the month you applied for benefits under WAC 488-450-0230; and

(b) We budget your AU's income for the month you applied for benefits using the anticipating monthly method under WAC 388-450-0215.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. 03-22-039, § 388-406-0021, filed 10/28/03, effective 12/1/03. Statutory Author-

ity: RCW 74.08.090 and 74.04.510. 99-24-008, § 388-406-0021, filed 11/19/99, effective 1/1/00.]

WAC 388-406-0035 How long does the department have to process my application? (1) We must process your application as quickly as possible. We must respond promptly to your application and to any information you give us. We cannot delay processing your request by using the time limits stated in this section as a waiting period for determining eligibility.

(2) Unless your application is delayed under WAC 388-406-0040, we process your application for benefits within thirty calendar days, except:

(a) If you are pregnant, we must process your application for medical within fifteen working days;

(b) If you are applying for general assistance (GA-U), alcohol or drug addiction treatment (ADATSA), or medical assistance, we must process your application within forty-five calendar days; and

(c) If you are applying for medical assistance that requires a disability decision, we must process your application within sixty calendar days.

(3) For calculating time limits, "day one" is the date following the date:

(a) The department received your application for benefits under WAC 388-406-0010;

(b) Social Security gets a request for food benefits from a Basic Food assistance unit in which all members either get or are applying for Supplemental Security Income (SSI);

(c) You are released from an institution if you get or are authorized to get SSI and request Basic Food through Social Security prior to your release.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. 03-22-039, § 388-406-0035, filed 10/28/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. 02-11-137, § 388-406-0035, filed 5/21/02, effective 7/1/02. Statutory Authority: RCW 74.08.090 and 74.04.510. 99-16-024, § 388-406-0035, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-406-0035, filed 7/31/98, effective 9/1/98. Formerly WAC 388-504-0470.]

WAC 388-406-0040 What happens if the processing of my application is delayed? (1) We process your application for benefits as soon as possible. We do not intentionally delay processing your application for benefits for any reason. If we have enough information to decide eligibility for:

(a) Basic Food, we promptly process your request for benefits even if we need more information to determine eligibility for cash or medical;

(b) Medical assistance, we promptly process your request for medical even if we need more information to determine eligibility for cash or Basic Food.

(2) If your application for Basic Food assistance is not processed within the first thirty days and we have enough information to determine eligibility, we promptly process your application. If additional information is needed to determine eligibility, we give you:

(a) A written request for the additional information; and

(b) An additional thirty days to provide the information.

(3) If we have not processed your application for Basic Food by the sixtieth day and you are responsible for the

delay, we deny your request for benefits. If we are responsible for the delay, we:

(a) Promptly process your request if we have the information needed to determine eligibility; or

(b) Deny your request if we don't have enough information to determine eligibility. If we deny your request we notify you of your right to file a new application and that you may be entitled to benefits lost. If you reapply by the sixtieth day of your first application and are eligible, we give you benefits lost from:

(i) The date of your first application if we caused the delay in the first thirty days; or

(ii) The month following the month of your first application if you caused the delay in the first thirty days.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. 03-22-039, § 388-406-0040, filed 10/28/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. 02-14-023, § 388-406-0040, filed 6/21/02, effective 7/1/02. Statutory Authority: RCW 74.08.090 and 74.04.510. 99-16-024, § 388-406-0040, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-406-0040, filed 7/31/98, effective 9/1/98. Formerly WAC 388-504-0480.]

WAC 388-406-0055 When do my benefits start? The date we approve your application affects the amount of benefits you get. If you are eligible for:

(1) Cash assistance, your benefits start:

(a) The date we have enough information to make an eligibility decision; or

(b) No later than the thirtieth day for TANF, SFA, or RCA; or

(c) No later than the forty-fifth day for general assistance (GAU).

(2) Basic Food, your benefits start from the date you applied unless:

(a) You are recertified for Basic Food. If you are recertified for Basic Food, we determine the date your benefits start under WAC 388-434-0010;

(b) You applied for Basic Food while living in an institution. If you apply for Basic Food while living in an institution, the date you are released from the institution determines your start date as follows. If you are expected to leave the institution:

(i) Within thirty days of the date we receive your application, your benefits start on the date you leave the institution; or

(ii) More than thirty days from the date we receive your application, we deny your application for Basic Food. You may apply for Basic Food again when your date of release from the institution is closer.

(c) We were unable to process your application within thirty days because of a delay on your part. If you caused the delay, but submit required verification by the end of the second thirty-day period, we approve your benefits starting the first day of the month following the month you applied for benefits. We start your benefits from this date even if we denied your application for Basic Food.

(d) We initially denied your application for Basic Food and your assistance unit (AU) becomes categorically eligible (CE) within sixty days from the date your applied. If your AU becoming CE under WAC 388-414-0001 makes you eligible

for Basic Food, the date we approve Basic Food is the date your AU became CE.

(3) Medical assistance, the date your benefits start is stated in chapter 388-416 WAC.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. 03-22-039, § 388-406-0055, filed 10/28/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. 02-14-023, § 388-406-0055, filed 6/21/02, effective 7/1/02. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-406-0055, filed 7/31/98, effective 9/1/98.]

WAC 388-406-0060 What happens when my application is denied? (1) We (the department) deny your application for cash, medical, or Basic Food benefits if:

(a) You do not show for your interview appointment for cash or Basic Food if required under WAC 388-452-0005, you have not rescheduled, and your application is over thirty days old; or

(b) We do not have the information we need to determine your eligibility within ten days of requesting the information from your assistance unit (AU) under WAC 388-414-0001, and you did not ask for additional time to give us the information; or

(c) Your entire AU does not meet certain eligibility criteria to get benefits; or

(d) For Basic Food, your application has not been processed by the sixtieth day because of a delay on your part.

(2) If we deny your application, you do not get benefits unless:

(a) You mistakenly apply for benefits you already get; or

(b) We reconsider your eligibility under WAC 388-406-0065 and you are eligible to get benefits.

(3) We can reconsider if you are eligible for benefits under the requirements of WAC 388-406-0065 even after your application is denied.

(4) We give or send a letter to you explaining why your application was denied as required under WAC 388-458-0011.

(5) If you disagree with our decision about your application, you can ask for a fair hearing. If we deny your application because we do not have enough information to decide that you are eligible, the hearing issue is whether you are eligible using:

(a) Information we already have; and

(b) Any more information you can give us.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. 03-22-039, § 388-406-0060, filed 10/28/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. 02-14-023, § 388-406-0060, filed 6/21/02, effective 7/1/02. Statutory Authority: RCW 74.08.090, 74.04.050, 74.04.055, 74.04.057 and C.F.R. 273.2(h1d), waiver October 10, 1984. 00-13-076, § 388-406-0060, filed 6/19/00, effective 7/20/00. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-406-0060, filed 7/31/98, effective 9/1/98. Formerly WAC 388-504-0485.]

WAC 388-406-0065 Can I still get benefits even after my application is denied? (1) If we (the department) deny your application for benefits, we can redetermine your eligibility for benefits without a new application if:

(a) For cash or medical assistance, you give us the information we need within thirty days from the date we denied your application;

(b) For Basic Food:

(i) You give us the information we need within sixty days of the date you applied for benefits; or

(ii) You become categorically eligible for Basic Food under WAC 388-414-0001 within sixty days of the date you applied for benefits.

(2) For medical assistance, if the thirty days to reconsider your application under subsection (1) of this section has ended you can still get benefits without a new application if:

(a) You request a fair hearing timely; and

(b) You give us the information needed to determine eligibility and you are eligible.

(3) If you are eligible for cash or Basic Food, we decide the date your benefits start according to WAC 388-406-0055. If you are eligible for medical assistance, we decide the date your benefits start according to chapter 388-416 WAC. For all programs the eligibility date is based on the date of your original application that was denied.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. 03-22-039, § 388-406-0065, filed 10/28/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. 02-14-023, § 388-406-0065, filed 6/21/02, effective 7/1/02. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-406-0065, filed 7/31/98, effective 9/1/98. Formerly WAC 388-504-0485.]

Chapter 388-408 WAC ASSISTANCE UNITS

WAC

388-408-0005	What is a cash assistance unit?
388-408-0034	What is an assistance unit for Basic Food?
388-408-0035	Who is in my assistance unit for Basic Food?
388-408-0040	How does living in an institution affect my eligibility for Basic Food?
388-408-0045	Am I eligible for Basic Food if I live in a shelter for battered women and children?
388-408-0050	Does the department consider me homeless for Basic Food benefits?

WAC 388-408-0005 What is a cash assistance unit?

(1) For all sections of this chapter:

(a) **"We"** means the department of social and health services.

(b) **"You"** means a person that is applying for or getting benefits from the department.

(c) **"Assistance unit"** or **"AU"** is the group of people who live together and whose income or resources we count to decide your eligibility for benefits and the amount of benefits you get.

(2) For GA-U, we decide who is in the AU under WAC 388-408-0010.

(3) For TANF or SFA, we decide who is in the AU by taking the following steps:

(a) We start with who must be in the AU under WAC 388-408-0015;

(b) We add those you choose to have in the AU under WAC 388-408-0025; and

(c) We remove those who are not allowed in the AU under WAC 388-408-0020.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. 03-17-066, § 388-408-0005, filed 8/18/03, effective 9/18/03. Statutory Authority: RCW 74.04.050, 74.04.057, 2000 2nd sp.s. c 1. 01-03-121, § 388-408-0005, filed 1/22/01, effective 3/1/01. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-408-0005, filed 7/31/98, effective 9/1/98.]

WAC 388-408-0034 What is an assistance unit for Basic Food? For all sections of this chapter:

"**We**" means the department of social and health services;

"**You**" means the person applying for or receiving benefits from the department;

"**Assistance unit**" or "**AU**" is the group of people who live together and whose income and resources we count to decide if you are eligible for benefits and the amount of benefits you get.

"**Boarder**" means a person who:

(1) We decide pays a reasonable amount for lodging and meals; or

(2) Is in foster care.

"**Live-in attendant**" means a person who lives in the home and provides medical, housekeeping, childcare, or similar personal services an AU member needs because:

(1) A member is aged, incapacitated, or disabled;

(2) A member of the AU is ill; or

(3) A minor child in the AU needs childcare.

"**Parent**" means a natural, step, or adoptive parent. A stepparent is not a parent to a child if the marriage to the child's natural parent ends due to divorce or death.

A person who lives with you pays a "**reasonable amount**" for meals if:

(1) You provide two or more meals a day and they pay at least the maximum allotment under WAC 388-478-0060 for their AU size; or

(2) You provide one meal a day and they pay at least two-thirds the maximum allotment under WAC 388-478-0060 for their AU size.

"**Roomer**" means a person who pays for lodging, but not meals;

A person has a "**separate residence**" from an AU if they have separate living, cooking, and sanitation facilities.

"**Spouse**" means your husband or wife through a legally recognized marriage.

[Statutory Authority: RCW 74.04.050, 74.04.055 [74.04.055], 74.04.057, 74.04.510. 03-19-118, § 388-408-0034, filed 9/16/03, effective 11/1/03. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510. 01-21-060, § 388-408-0034, filed 10/16/01, effective 12/1/01.]

WAC 388-408-0035 Who is in my assistance unit for Basic Food? (1) For Basic Food, a person must be in your assistance unit (AU) if they live in the same home as you and:

(a) Usually buy and fix food with you; or

(b) You provide meals for them and they pay less than a reasonable amount for meals.

(2) If the following people live with you, they must be in your AU even if you do not usually buy and fix food together:

(a) Your spouse;

(b) Your parents if you are under age twenty-two (even if you are married);

(c) Your children under age twenty-two;

(d) A child under age eighteen who doesn't live with their parent unless the child:

(i) Is emancipated;

(ii) Gets a TANF grant in their own name; or

(iii) Is not financially dependent on an adult in the AU because they get and have control of income of at least the

TANF payment standard under WAC 388-478-0020(2) before taxes or other withholdings.

(3) If you live in an institution where you may be eligible for Basic Food under WAC 388-408-0040, we decide who is in your AU as follows:

(a) If the facility is acting as your authorized representative under WAC 388-460-0015, we include you and anyone who must be in your AU under subsection (2) of this rule; or

(b) If you apply for benefits on your own, we include you, anyone who must be in your AU under subsection (2) of this rule, and other residents you choose to apply with.

(4) Anyone who must be in your AU under subsection (1) or (2) is an ineligible AU member if they:

(a) Are disqualified for an intentional program violation (IPV) under WAC 388-446-0015;

(b) Do not meet ABAWD work requirements under WAC 388-444-0030.

(c) Do not meet work requirements under WAC 388-444-0055;

(d) Do not provide a social security number under WAC 388-476-0005;

(e) Do not meet the citizenship or alien status requirements under chapter 388-424 WAC;

(f) Are fleeing a felony charge or violating a condition of parole or probation under WAC 388-442-0010;

(g) Are disqualified for a drug-related felony under WAC 388-442-0010.

(5) If your AU has an ineligible member:

(a) We count the ineligible member's income to your AU under WAC 388-450-0140;

(b) We count all the ineligible members resources to your AU; and

(c) We do not use the ineligible member to determine your AU's size for the maximum income amount or allotment under WAC 388-478-0060.

(6) If the following people live in the same home as you, you can choose if we include them in your AU:

(a) A permanently disabled person who is age sixty or over and cannot make their own meals if the total income of everyone else in the home (not counting the elderly and disabled person's spouse) is not more than the one hundred sixty-five percent standard under WAC 388-478-0060;

(b) A boarder. If you do not include a boarder in your AU, the boarder cannot get Basic Food benefits in a separate AU;

(c) A person placed in your home for foster care. If you do not include this person in your AU, they cannot get Basic Food benefits in a separate AU;

(d) Roomers; or

(e) Live-in attendants even if they buy and fix food with you.

(7) If someone in your AU is out of your home for a full issuance month, they are not eligible for benefits as a part of your AU.

(8) If someone received Basic Food or food stamps in another AU or another state, they cannot receive benefits in your AU for the same period of time with one exception. If you already received Basic Food or food stamp benefits:

(a) In another state, you are not eligible for Basic Food for the period of time covered by the benefits you received from the other state; or

(b) In another AU, you are not eligible for Basic Food in a different AU for the same period of time;

(c) In another AU, but you left the AU to live in a shelter for battered women and children under WAC 388-408-0045, you may be eligible to receive benefits in a separate AU.

(9) The following people who live in your home are not members of your AU. If they are eligible for Basic Food, they may be a separate AU:

(a) Someone who usually buys and fixes food separately from your AU if they are not required to be in your AU; or

(b) Someone who lives in a separate residence.

(10) A student who is ineligible for Basic Food under WAC 388-482-0005 is not a member of your AU.

[Statutory Authority: RCW 74.04.050, 74.04.055 [74.04.055], 74.04.057, 74.04.510. 03-19-118, § 388-408-0035, filed 9/16/03, effective 11/1/03. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510. 01-21-060, § 388-408-0035, filed 10/16/01, effective 12/1/01. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-408-0035, filed 7/31/98, effective 9/1/98.]

WAC 388-408-0040 How does living in an institution affect my eligibility for Basic Food? (1) For Basic Food, an "institution" means a place where people live that provides residents more than half of three meals daily as a part of their normal services.

(2) Most residents of institutions are not eligible for Basic Food.

(3) If you live in one of the following institutions, you may be eligible for Basic Food even if the institution provides the majority of your meals:

(a) Federally subsidized housing for the elderly;

(b) Qualified drug and alcohol treatment centers when an employee of the treatment center is the authorized representative;

(c) Qualified DDD group homes for persons with disabilities;

(d) A shelter for battered women and children when the resident left the home that included the abuser; or

(e) Nonprofit shelters for the homeless.

(4) A qualified DDD group home is a nonprofit residential facility that:

(a) Houses sixteen or fewer persons with disabilities as defined under WAC 388-400-0040(6); and

(b) Is certified by the division of developmental disabilities (DDD).

(5) A qualified drug and alcohol treatment center is a residential facility that is:

(a) A nonprofit residential facility; and

(b) Is certified by the division of alcohol and substance abuse (DASA).

(6) Elderly or disabled individuals and their spouses may use Basic Food benefits to buy meals from the following meal providers if FNS has approved them to accept Basic Food benefits:

(a) Communal dining facility; or

(b) Nonprofit meal delivery service.

(7) If you are homeless, you may use your Basic Food benefits to buy prepared meals from nonprofit organizations the department has certified as meal providers for the homeless.

[Statutory Authority: RCW 74.04.050, 74.04.055 [74.04.055], 74.04.057, 74.04.510. 03-19-118, § 388-408-0040, filed 9/16/03, effective 11/1/03. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510. 01-21-060, § 388-408-0040, filed 10/16/01, effective 12/1/01. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-408-0040, filed 7/31/98, effective 9/1/98.]

WAC 388-408-0045 Am I eligible for Basic Food if I live in a shelter for battered women and children? (1) You may be eligible for Basic Food benefits if you live in a shelter for battered women and children.

(2) If you live in a shelter for battered women and children and you left an assistance unit (AU) that included the abuser, as a separate AU for Basic Food:

(a) You may get additional amount of Basic Food benefits even if you received benefits with the abuser.

(b) The department will decide your eligibility and benefits based on:

(i) The income and resources you have access to; and

(ii) The expenses you are responsible for.

[Statutory Authority: RCW 74.04.050, 74.04.055 [74.04.055], 74.04.057, 74.04.510. 03-19-118, § 388-408-0045, filed 9/16/03, effective 11/1/03. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510. 01-21-060, § 388-408-0045, filed 10/16/01, effective 12/1/01. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-408-0045, filed 7/31/98, effective 9/1/98.]

WAC 388-408-0050 Does the department consider me homeless for Basic Food benefits? The department considers you as homeless if you do not have a regular nighttime residence or when you stay primarily in a:

(1) Supervised shelter that provides temporary living or sleeping quarters;

(2) Halfway house that provides a temporary residence for persons going into or coming out of an institution;

(3) Residence of another person that is temporary and the client has lived there for ninety days or less; or

(4) A place not usually used as sleeping quarters for humans.

[Statutory Authority: RCW 74.04.050, 74.04.055 [74.04.055], 74.04.057, 74.04.510. 03-19-118, § 388-408-0050, filed 9/16/03, effective 11/1/03. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510. 01-21-060, § 388-408-0050, filed 10/16/01, effective 12/1/01. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-408-0050, filed 7/31/98, effective 9/1/98.]

Chapter 388-410 WAC

BENEFIT ERROR

WAC

388-410-0030 How does the department calculate and set up my Basic Food overpayment?

WAC 388-410-0030 How does the department calculate and set up my Basic Food overpayment? (1) The department calculates the amount of your Basic Food overpayment by counting the difference between:

(a) The benefits your assistance unit (AU) received; and

(b) The benefits your AU should have received.

(2) To calculate the benefits your AU should have received, we determine what we would have authorized if we:

(a) Had correct and complete information; and

(b) Followed all the necessary procedures to determine your AU's eligibility and benefits.

(3) If you did not report your earned income as required under WAC 388-418-0007, you do not get the earned income disregard under WAC 388-450-0185 when we calculate your overpayment amount.

(4) If you were underpaid Basic Food benefits for a period of time, we will use these benefits to reduce your overpayment if:

(a) We have **not** already issued you benefits to replace what you were underpaid; and

(b) We have **not** used this amount to reduce another overpayment.

(5) We set up an inadvertent household error or administrative error overpayment if:

(a) We discovered the overpayment through the quality control process;

(b) You currently get Basic Food benefits; or

(c) The overpayment is over one hundred twenty-five dollars and you do not currently get Basic Food benefits.

(6) We do not set up inadvertent household error or administrative error overpayment if:

(a) We cannot find the responsible AU members; or

(b) We have referred your inadvertent household error for prosecution or an administrative disqualification hearing and collecting the overpayment could negatively impact this process.

(7) We set up an intentional program violation overpayment based on the results of an administrative hearing (chapter 388-02 WAC) unless:

(a) Your AU has repaid the overpayment;

(b) We cannot find the responsible AU members; or

(c) We have referred your inadvertent household error for prosecution and collecting the overpayment could negatively impact this process.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. 03-21-027, § 388-410-0030, filed 10/7/03, effective 12/1/03; 03-01-005, § 388-410-0030, filed 12/4/02, effective 2/1/03. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510, 7 C.F.R. 273.18. 02-06-090, § 388-410-0030, filed 3/1/02, effective 4/1/02. Statutory Authority: RCW 74.04.510. 01-14-032, § 388-410-0030, filed 6/28/01, effective 8/1/01. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-410-0030, filed 7/31/98, effective 9/1/98.]

Chapter 388-412 WAC BENEFIT ISSUANCES

WAC

388-412-0015	General information about your Basic Food allotments.
388-412-0020	When do I get my benefits?
388-412-0025	How do I get my benefits?
388-412-0040	Can I get my benefits replaced?

WAC 388-412-0015 General information about your Basic Food allotments. (1) Your monthly Basic Food benefits are called an allotment. An allotment is the total dollar value of benefits your eligible assistance unit (AU) gets for a calendar month.

(2) If your AU does not have any countable net income, you get the maximum allotment for the number of eligible people in your AU. See WAC 388-478-0060 for the maximum allotments.

(3) If your AU has countable net income under WAC 388-450-0162, we calculate, your allotment by:

(a) Multiplying your AU's countable net monthly income by thirty percent;

(b) Rounding this amount up to the next whole dollar; and

(c) Subtracting the result from the maximum allotment.

(4) If we determine you are eligible for Basic Food, your first month's benefits are from the date you applied for benefits through the end of the month of your application. If there was a delay in processing your application, we determine when your benefits start under WAC 388-406-0055. This is called proration and is based on a thirty-day month.

(5) If you apply for benefits on or after the sixteenth of the month, and we determine you are eligible for Basic Food, we issue both your first and second months benefits in one allotment if you are eligible for both months.

(6) If your prorated benefits for the first month are under ten dollars, you will not receive an allotment for the first month.

(7) If your AU has one or two members, your monthly allotment will be at least ten dollars unless:

(a) It is the first month of your certification period;

(b) Your AU is eligible for only a partial month; and

(c) We reduced your first month's allotment below ten dollars based on the date you became eligible for Basic Food under WAC 388-406-0055.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. 03-22-038, § 388-412-0015, filed 10/28/03, effective 12/1/03. Statutory Authority: RCW 74.04.510 and 74.08.090. 01-18-054, § 388-412-0015, filed 8/30/01, effective 9/30/01; 99-16-024, § 388-412-0015, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-412-0015, filed 7/31/98, effective 9/1/98.]

WAC 388-412-0020 When do I get my benefits? (1) If you get your cash benefits on an electronic benefits card (EBT), you get your cash benefits deposited on the first of each month.

(2) If you get your cash benefits deposited directly to your bank account, electronic funds transfer (EFT); your money is deposited on the first working day of the month. When the first of the month is a federal holiday or a Sunday, the benefits are deposited the following day.

(3) If you get Basic Food, your benefits are issued by the tenth day of each month. The day you get your benefits is the same as the last number of your assistance unit (AU) number for Basic Food. If the last number of your AU number is zero, you get your benefits on the tenth.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. 03-22-038, § 388-412-0020, filed 10/28/03, effective 12/1/03. Statutory Authority: RCW 74.04.510 and 74.08.090. 02-18-105, § 388-412-0020, filed 9/3/02, effective 10/4/02; 01-18-054, § 388-412-0020, filed 8/30/01, effective 9/30/01. Statutory Authority: RCW 74.04.510, 74.08.090, 74.04.055, 74.04.057 and S. 825, Public Law 104-193, Personal Responsibility and Work Opportunity Reconciliation Act of 1996. 99-02-039, § 388-412-0020, filed 12/31/98, effective 1/31/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-412-0020, filed 7/31/98, effective 9/1/98.]

WAC 388-412-0025 How do I get my benefits? (1) Your cash benefits are sent to you by either:

(a) Electronic benefit transfer (EBT), electronic benefits card which is a direct deposit into a DSHS account that you

access with a debit card called the Washington EBT Quest card;

(b) Electronic funds transfer (EFT), which is a direct deposit into your own bank account;

(c) A check to a payee who is not approved for direct deposit; or

(b) A check to you if you get:

(i) Diversion cash assistance (DCA) that cannot be paid directly to a vendor;

(ii) Additional requirements for emergent needs (AREN) that cannot be paid directly to a vendor;

(iii) Ongoing additional requirements (OAR) that cannot be paid directly to a vendor;

(iv) Clothing and personal incidentals (CPI) payments; or

(v) State supplemental payment (SSP) and you do not receive your benefit through EFT.

(2) You use a Quest debit card to access your benefits in your EBT account. You get a personal identification number (PIN) that you must enter when using this card.

(3) Your Basic Food benefits are deposited into your EBT account under time frames in WAC 388-412-0020.

(4) We establish an EBT account for each AU that receives their benefits by EBT.

(5) Your cash and Basic Food are canceled when you do not use your EBT benefits for three hundred sixty-five days.

(a) We cannot replace Basic Food benefits that were canceled because they were not used for three hundred sixty-five days.

(b) Cash benefits that were canceled because you did not use them for three hundred sixty-five days may be replaced. You have two years to contact the department of revenue in order to replace your cash benefits. You can contact department of revenue at 1-800-435-2429. After that time, you must contact the state treasurer to claim any canceled funds.

(6) You must use your cash and Basic Food benefits from your EBT account. We do not convert cash or Basic Food benefits to checks.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. 03-22-038, § 388-412-0025, filed 10/28/03, effective 12/1/03. Statutory Authority: RCW 74.04.510 and 74.08.090. 02-18-105, § 388-412-0025, filed 9/3/02, effective 10/4/02; 01-18-054, § 388-412-0025, filed 8/30/01, effective 9/30/01. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-412-0025, filed 7/31/98, effective 9/1/98.]

WAC 388-412-0040 Can I get my benefits replaced?

Under certain conditions, we may replace your benefits.

(1) You may get your EBT benefits replaced if:

(a) We make a mistake that causes you to lose benefits;

(b) Both your EBT card and personal identification number (PIN) are stolen from the mail; you never had the ability to use the benefits; and you lost benefits;

(c) You left a drug or alcohol treatment on or before the fifteenth of the month and the facility does not have enough Basic Food benefits in their EBT account for one-half of the allotment that they owe you;

(d) Your EBT benefits that were recently deposited into an inactive EBT account were canceled by mistake along with your state benefits; or

(e) Your food that was purchased with Basic Food benefits was destroyed in a disaster.

(2) If you want a replacement, you must:

(a) Report the loss to your local office within ten days from the date of the loss; and

(b) Sign a department affidavit form stating you had a loss of benefits.

(3) For Basic Food, we replace the loss up to a one-month benefit amount.

(4) We will not replace your benefits if your loss is for a reason other than those listed in subsection (1) above or:

(a) We decided that your request is fraudulent;

(b) Your Basic Food benefits were lost, stolen or misplaced after you received them;

(c) You already got two countable replacements of Basic Food benefits within the last five months; or

(d) You got disaster food stamp benefits for the same month you requested a replacement for Basic Food.

(5) Your replacement does not count if:

(a) Your benefits are returned to us; or

(b) We replaced your benefits because we made an error.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. 03-22-038, § 388-412-0040, filed 10/28/03, effective 12/1/03. Statutory Authority: RCW 74.04.510 and 74.08.090. 01-18-054, § 388-412-0040, filed 8/30/01, effective 9/30/01. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-412-0040, filed 7/31/98, effective 9/1/98.]

Chapter 388-416 WAC CERTIFICATION PERIODS

WAC

388-416-0005 How long can I get Basic Food?

WAC 388-416-0005 How long can I get Basic Food?

(1) The length of time the department determines your assistance unit (AU) is eligible to get Basic Food is called a certification period. The department (we) may certify your AU for up to:

(a) Twenty-four months if everyone in your AU is elderly and no one in your AU has earned income or cash assistance.

(b) Twelve months if everyone in your AU is disabled or elderly and no one in your AU has earned income.

(c) Six months if your AU has:

(i) Cash assistance; or

(ii) Earned income; or

(iii) Income, household circumstances, and deductions that are not likely to change.

(d) Three months for all other AUs, including when your AU has:

(i) A migrant or seasonal farmworker;

(ii) An able-bodied adult without dependents (ABAWD);

(iii) No income or cash assistance;

(iv) Expenses that are more than the income the AU gets;

(v) Homeless individuals or AU members staying in an emergency or family violence shelter;

(vi) A member who is staying in a non-ADATSA drug and alcohol treatment center.

(2) We may shorten or lengthen your certification period to match your cash or medical assistance end date unless you

have already received the maximum certification allowable for your AU.

(3) We terminate your certification period when:

(a) We get proof of a change that makes your AU ineligible; or

(b) We get information that your AU is ineligible; and

(c) You do not provide needed information to verify your AU's circumstances.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. 03-22-039, § 388-416-0005, filed 10/28/03, effective 12/1/03. Statutory Authority: RCW 74.08.090 and 74.04.510. 01-11-107, § 388-416-0005, filed 5/21/01, effective 7/1/01; 99-16-024, § 388-416-0005, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-416-0005, filed 7/31/98, effective 9/1/98.]

**Chapter 388-418 WAC
CHANGE OF CIRCUMSTANCE**

WAC

- 388-418-0005 What type of changes must I report for cash, Basic Food, and medical assistance?
- 388-418-0007 When do I have to report changes in my circumstances?
- 388-418-0020 How does the department determine the date a change affects my benefits?

WAC 388-418-0005 What type of changes must I report for cash, Basic Food, and medical assistance? For purposes of this section, an "assistance unit" or "AU" is a group of people who live together and whose income or resources we count to decide what benefits the AU gets. Even if someone in your AU is not eligible to get a benefit, we still count that person's income or resources if they are financially responsible for you or someone in your AU, such as a common child. If you are a parent of a child who gets long-term care benefits, you need only report changes in income or resources that are actually contributed to the child. Tables one, two and three below show the types of changes you must report based on the type of assistance you get. Use table one to see if you must report a change for cash or Basic Food. Use table two to see if you must report a change for children's, pregnant women's, or family medical assistance. Use table three to see if you must report a change for SSI-related medical or long-term care medical assistance.

Table 1 - Cash Assistance and Basic Food		
Type of change to report when you or anyone in your assistance unit AU):	Do I have to report this change for cash assistance?	Do I have to report this change for Basic Food?
(1) Starts to get money from a new source;	Yes	Yes
(2) Has unearned income that changed by more than fifty dollars from amount we budgeted;	Yes	Yes

Table 1 - Cash Assistance and Basic Food		
Type of change to report when you or anyone in your assistance unit AU):	Do I have to report this change for cash assistance?	Do I have to report this change for Basic Food?
(3) Moves into or out of your home, including new-borns or if an AU member dies. This also includes when someone temporarily moves in or out;	Yes	Yes
(4) Moves to a new residence;	Yes	Yes
(5) Has a change in shelter costs;	Yes, but only if you went from having no shelter costs to having a shelter cost, or from having shelter costs to not having to pay anything. You don't have to report a change in the amount you pay.	Yes, report the change at your recertification. If your shelter costs go up, you could get more benefits. Report the change sooner to see if you will get more benefits.
(6) Gets married, divorced, or separated;	Yes	Yes
(7) Gets a vehicle;	Yes	Yes
(8) Has a disability that ends;	Yes	Yes
(9) Has countable resources that are more than the resource limits under WAC 388-470-0005;	Yes	Yes
(10) Gets a job or changes employers;	Yes	Yes, but only if it causes a change in the person's income.
(11) Changes from part-time to full-time or full-time to part-time work. We use your employer's definition of part-time and full-time work;	Yes	Yes
(12) Has a change in hourly wage rate or salary;	Yes	Yes
(13) Stops working;	Yes	Yes

Table 1 - Cash Assistance and Basic Food		
Type of change to report when you or anyone in your assistance unit (AU):	Do I have to report this change for cash assistance?	Do I have to report this change for Basic Food?
(14) Has a pregnancy that begins or ends;	Yes	No
(15) Has a change in uncovered medical expenses;	No	Yes, report this change only at your next eligibility review. If you are elderly or disabled and you have an increase in uncovered medical expenses, report this change sooner as you may be eligible to get more benefits.

Table 2 - Medical Assistance		
Type of change to report when you or anyone in your assistance unit (AU):	Do I have to report this change for family medical assistance (i.e., TANF/SFA-related) or Children's Medical?	Do I have to report this change for Pregnancy Medical?
(22) Has a change in shelter costs;	No	No
(23) Gets married, divorced, or separated;	Yes	No
(24) Gets a vehicle;	No	No
(25) Has a disability that ends;	No	No
(26) Has countable resources that are more than the resource limits under WAC 388-470-0005;	No	No
(27) Gets a job or changes employers;	Yes	No
(28) Changes from part-time to full-time or full-time to part-time work. We use your employer's definition of part-time and full-time work;	Yes	No
(29) Has a change in hourly wage rate or salary;	Yes	No
(30) Stops working;	Yes	No
(31) Has a pregnancy that begins or ends;	Yes	Yes
(32) Has a change in uncovered medical expenses.	No	Yes, but only if an AU member has a spenddown.

Table 2 - Medical Assistance		
Type of change to report when you or anyone in your assistance unit (AU):	Do I have to report this change for family medical assistance (i.e., TANF/SFA-related) or Children's Medical?	Do I have to report this change for Pregnancy Medical?
(16) A change in work hours to below 20 hours per week averaged monthly.	No	Yes, but only if there are no children in your AU and the person is a nonexempt ABAWD under WAC 388-444-0030 and 388-444-0035.
(17) A change in legal obligation to pay child support.	No	Yes
(18) Starts to get money from a new source;	Yes	No
(19) Has unearned income that changed;	Yes	No
(20) Moves into or out of your home, including newborns or if an AU member dies. This also includes when someone temporarily moves in or out;	Yes	Yes
(21) Moves to a new residence;	Yes	Yes

Table 3 - SSI-Related Medical Assistance and Long-Term Care		
Type of change to report when you or anyone in your assistance unit (AU):	Do I have to report this change for SSI-related medical assistance?	Do I have to report this change for long-term care (i.e., COPES, CAP, or nursing home)
(33) Starts to get money from a new source;	Yes	Yes

Table 3 - SSI-Related Medical Assistance and Long-Term Care		
Type of change to report when you or anyone in your assistance unit (AU):	Do I have to report this change for SSI-related medical assistance?	Do I have to report this change for long-term care (i.e., COPEs, CAP, or nursing home)
(34) Has unearned income that changed;	Yes	Yes
(35) Has a change in earnings or stops working	Yes	Yes
(36) Moves into or out of your home, including newborns or if an AU member dies. This also includes when someone temporarily moves in or out;	Yes	Yes
(37) Moves to a new residence;	Yes	Yes
(38) Has a change in shelter costs;	No, unless you went from paying rent to not paying any rent. You do not need to report if your rent amount changes.	Yes, if client or community spouse live in their own home
(39) Gets married, divorced, or separated;	Yes	Yes
(40) Gets a vehicle;	Yes, but only if that person or their spouse gets SSI-related medical	Yes, but only if that person gets long-term care
(41) Has a disability that ends;	Yes	Yes
(42) Has countable resources that are more than the resource limits, under WAC 388-470-0005 or 388-513-1350;	Yes, but only if that person or their spouse get SSI-related medical	Yes, but only if that person gets long-term care
(43) Has a change in uncovered medical expenses.	Yes, but only if an AU member has a spenddown.	Yes.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. 03-21-028, § 388-418-0005, filed 10/7/03, effective 11/1/03. Statutory Authority: RCW 74.08.090 and 74.04.510. 01-11-109, § 388-418-0005, filed 5/21/01, effective 7/1/01; 99-23-034, § 388-418-0005, filed 11/10/99, effective 1/1/00. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-418-0005, filed 7/31/98, effective 9/1/98.]

WAC 388-418-0007 When do I have to report changes in my circumstances? (1) If you are applying for cash and/or Basic Food and have had a change:

(a) After the date you applied but before your interview, you must report the change at the time of your interview; or

(b) After you have been interviewed, you must report the change within ten days of the date of your approval notice.

(2) If you get TANF/SFA, you must report within five calendar days from the day you learn that a child in the AU will be gone from your home longer than ninety days. If you do not report this within five days:

(a) You are not eligible for cash benefits for one month; and

(b) All of your countable income as described in WAC 388-450-0162 is budgeted against the cash benefits for the remaining AU members.

(3) If you receive cash or Basic Food, you must report changes described in WAC 388-418-0005 within ten days from the day you become aware of the change.

(4) If you receive medical assistance you must report the changes described in WAC 388-418-0005 within twenty days from the day you become aware of the change.

(5) If you report changes late, you may get the wrong amount or wrong type of benefits. If you get more benefits than you are eligible for, you may have to pay them back as described in chapter 388-410 WAC.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. 03-21-028, § 388-418-0007, filed 10/7/03, effective 11/1/03. Statutory Authority: RCW 74.08.090 and 74.04.510. 01-11-109, § 388-418-0007, filed 5/21/01, effective 7/1/01.]

WAC 388-418-0020 How does the department determine the date a change affects my benefits? (1) Unless otherwise specified, the rules in this chapter refer to cash, medical assistance, and Basic Food benefits.

(2) If you report a change that happened between the date you applied for benefits and the date we interview you under WAC 388-452-0005, we take this change into consideration when we process your application for benefits.

(3) If you report a change in your income that we expect to continue at least a month beyond the month when you reported the change, we recalculate the income we estimated under WAC 388-450-0215 based on this change.

(4) When a change causes an increase in benefits, you must provide proof of the change before we adjust your benefits.

(a) If you give us the proof within ten days from the date we requested it, we increase your benefits starting the month after the month you reported the change.

(b) If you give us the proof more than ten days after the date we requested it, we increase your benefits starting the month after the month we got the proof.

(c) If you are eligible for more benefits and we have already sent you benefits for that month, we provide you the additional benefits within ten days of the day we got the proof.

(5) When a change causes a decrease in benefits, we change your benefit amount before we ask for proof:

(a) If you report the change within the time limits in WAC 388-418-0007, we decrease your benefits starting the

first month following the advance notice period. The advance notice period:

(i) Begins on the day we send you a letter about the change, and

(ii) Is determined according to the rules in WAC 388-458-0025.

(b) If you do not report the change within the time limits in WAC 388-418-0007:

(i) We figure out the effective date as if you had reported it on time. This includes:

(A) Ten days for you to report the change, and

(B) Ten days for the advance notice period to begin, if required under WAC 388-458-0030.

(ii) If the effective date should have been a past month:

(A) We establish an overpayment claim according to the rules in chapter 388-410 WAC for all the appropriate months; and

(B) Decrease your benefits starting the following month.

(iii) We establish an overpayment claim and decrease your benefits starting the month after next when:

(A) The effective date should have been next month; and

(B) It is less than ten days away; and

(C) We must give you ten days notice under WAC 388-458-0030.

(iv) If the effective date should have been next month or the following month and we have time to give you ten-days notice, we decrease your benefits starting that month.

(c) We have until your next recertification/eligibility review to ask for proof.

(6) If we are not sure how the change will affect your benefits, we send you a letter as described in WAC 388-458-0020 requesting information from you.

(a) We give you ten days to provide the information. If you need more time, you can ask for it.

(b) If you do not give us the information in time, we will stop your benefits after giving you advance notice, if required, as described in WAC 388-458-0030.

(7) Within ten days of the day we learn about a change, we:

(a) Send advance notice according to the rules in chapter 388-458 WAC; and

(b) Take necessary action to correct the benefit. We wait to take action on a change if you request a hearing about a proposed decrease in benefits before the effective date or within the advance notice period as described in WAC 388-458-0040.

(8) If you disagree with a decision we made to change your benefits, you may request a fair hearing under chapter 388-02 WAC. The fair hearing rules in chapter 388-02 WAC do not apply for a "mass change." A mass change is when we change the rules that impact all recipients and applicants.

(9) When you request a hearing and get continued benefits:

(a) We keep giving you the same benefits you got before the advance notice of reduction until the earliest of the following events occur:

(i) For Basic Food only, your certification period expires;

(ii) The end of the month the fair hearing decision is mailed;

(iii) You state in writing that you do not want continued benefits;

(iv) You withdraw your fair hearing request in writing; or

(v) You abandon your fair hearing request; or

(vi) An administrative law judge issues a written order that ends continued benefits prior to the fair hearing.

(b) We establish an overpayment claim according to the rules in chapter 388-410 WAC when the hearing decision agrees with the action we took.

(10) Some changes have a specific effective date as follows:

(a) When cash assistance benefits increase because a person is added to your assistance unit, we use the effective date rules for applications in WAC 388-406-0055.

(b) When cash assistance benefits increase because you start paying shelter costs, we use the date the change occurred.

(c) When a change in law or regulation changes the benefit amount, we use the date specified by the law or regulation.

(d) When institutional medical assistance participation changes, we calculate the new participation amount beginning with the month your income or allowable expense changes.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. 03-21-028, § 388-418-0020, filed 10/7/03, effective 11/1/03. Statutory Authority: RCW 74.08.090, 74.04.057, and 74.04.510. 02-14-086, § 388-418-0020, filed 6/28/02, effective 7/1/02. Statutory Authority: RCW 74.08.090 and 74.04.510. 99-23-034, § 388-418-0020, filed 11/10/99, effective 1/1/00. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-418-0020, filed 7/31/98, effective 9/1/98.]

Chapter 388-424 WAC

CITIZENSHIP/ALIEN STATUS

WAC

388-424-0020	How does my alien status impact my eligibility for the federally-funded Washington Basic Food program benefits?
388-424-0025	How does my alien status impact my eligibility for state-funded benefits under the Washington Basic Food program?

WAC 388-424-0020 How does my alien status impact my eligibility for the federally-funded Washington Basic Food program benefits? (1) If you are not a U.S. citizen or U.S. national, you must fall within one of the following three categories, and meet all other eligibility requirements, in order to receive federal Basic Food benefits:

(a) You are a member of one of the following groups of qualified aliens (as defined in WAC 388-424-0005): A refugee, or an asylee, or a victim of trafficking, or have deportation/removal withheld, or are a Cuban or Haitian entrant; or are a qualified alien (as defined in WAC 388-424-0005) and Amerasian;

(b) You are a lawful permanent resident, or paroled for one year or more, or a conditional entrant, or a victim of domestic violence or parent or child of a victim (as defined in WAC 388-424-0005), and one of the following also apply to you:

(i) You have worked or can get credit for forty Social Security Administration (SSA) work quarters - see subsections (2) through (5) below;

(ii) You are an active duty personnel or honorably discharged veteran of the U.S. military or you are the spouse, unmarried surviving spouse, or unmarried dependent child of someone who meets this requirement;

(iii) You receive cash or medical benefits based on Supplemental Security Income (SSI) criteria for blindness or disability;

(iv) You have lived in the U.S. as a "qualified" alien as described in WAC 388-424-0005 for at least five years;

(v) You are under age eighteen;

(vi) You were lawfully residing in the U.S. on August 22, 1996 and were born on or before August 22, 1931.

(c) You are not in one of the groups listed under (a) or (b) of this subsection but belong to one of the following groups:

(i) You are legally residing in the U.S. and are a Hmong or Highland Laotian tribal members (including the tribal members' spouse and dependent children) when the tribe assisted U.S. personnel by taking part in a military or rescue operation during the Vietnam era beginning August 5, 1964, and ending May 7, 1975; or

(ii) Canadian born American Indians who are fifty percent American Indian blood; or

(iii) American Indians who are noncitizens and members of an Indian tribe as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act.

(2) For those immigrants who must have credit for forty SSA work quarters to receive Basic Food benefits, you can receive credit for SSA work quarters, earned only in the U.S., by:

(a) Earning enough money to qualify for work quarters;

(b) Getting credit for quarters earned by a parent or step-parent while you are under age eighteen including before you were born; or

(c) Getting credit for quarters earned by your spouse while you are married if you are still married to them or they are deceased.

(3) You cannot receive credit for a SSA work quarter after January 1, 1997 if you received TANF, nonemergency Medicaid, food stamps, or federal Basic Food benefits during the quarter.

(4) If you apply for TANF, nonemergency Medicaid, or Basic Food benefits during your fortieth quarter and you earned enough money to qualify for the quarter **before** you applied for benefits, you get credit for that quarter.

(5) You can get federally-funded Basic Food benefits for up to six months while we wait for verification of your eligibility if you or the department:

(a) Asked SSA for proof of your work quarters, SSA responded that you have less than forty quarters, and you provide proof that SSA is making an investigation to decide if they can credit you with more quarters; or

(b) Turned in a request to a federal agency for proof that you meet immigrant eligibility requirements for federally-funded Basic Food benefits. If you requested this proof, you must provide proof that the agency has accepted this request.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.04.510. 03-05-029, § 388-424-0020, filed 2/10/03, effective 4/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and

H.R. 2646 Farm Security and Rural Investment Act of 2002. 02-22-046, § 388-424-0020, filed 10/30/02, effective 12/1/02. Statutory Authority: RCW 74.04.510, S. 1150, the Agricultural Research, Extension, and Education Reform Act of 1998. 99-01-058, § 388-424-0020, filed 12/11/98, effective 1/11/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-424-0020, filed 7/31/98, effective 9/1/98. Formerly WAC 388-518-1805.]

WAC 388-424-0025 How does my alien status impact my eligibility for state-funded benefits under the Washington Basic Food program? To receive state-funded benefits under Washington Basic Food program (Basic Food), you must be one of the following:

(1) A qualified alien, as defined in WAC 388-424-0005, who does not meet the eligibility requirements under WAC 388-424-0020 to receive federally-funded Basic Food benefits; or

(2) An alien who does not meet the definition of a qualified alien as defined in WAC 388-424-0005 but who is:

(a) Allowed to enter the U.S. for permanent residence by permission of the U.S. Attorney General under section 249 of the Immigration and Nationality Act (INA); or

(b) Admitted for temporary residence under section 245A of the INA and is aged, blind, or disabled as described in Title XVI of the Social Security Act; or

(c) Granted temporary resident status by the Immigration and Naturalization Service (INS) as a special agricultural worker under section 210 of the INA; or

(d) Granted Family Unity status by the INS and the alien's spouse or parent is eligible to receive federal- or state-funded Basic Food benefits; or

(e) Permanently Residing Under Color of Law (PRUCOL) in the United States as defined in WAC 388-424-0005(4).

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.04.510. 03-05-029, § 388-424-0025, filed 2/10/03, effective 4/1/03. Statutory Authority: RCW 74.08A.120. 00-13-036, § 388-424-0025, filed 6/13/00, effective 7/14/00. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-424-0025, filed 7/31/98, effective 9/1/98. Formerly WAC 388-518-1805.]

Chapter 388-438 WAC

EMERGENCY ASSISTANCE FOR MEDICAL NEEDS

WAC

388-438-0110 The alien emergency medical (AEM) program.

WAC 388-438-0110 The alien emergency medical (AEM) program. (1) The alien emergency medical (AEM) program is a required federally funded program. It is for aliens who are ineligible for other Medicaid programs, due to citizenship or alien status requirements described in WAC 388-424-0005 and 388-424-0010.

(2) Except for the Social Security number, citizenship, or alien status requirements, an alien must meet categorical Medicaid eligibility requirements as described in:

(a) WAC 388-505-0110, for an SSI-related person;

(b) WAC 388-505-0220, for family medical programs;

(c) WAC 388-505-0210, for a child under the age of nineteen; or

(d) WAC 388-523-0100, for medical extensions.

(3) When an alien has monthly income that exceeds the CN medical standards, the department will consider AEM

medically needy coverage for children or for adults who are age sixty-five or over or who meet SSI disability criteria. See WAC 388-519-0100.

(4) To qualify for the AEM program, the alien must meet one of the criteria described in subsection (2) of this section and have:

(a) A qualifying emergency medical condition as described in WAC 388-500-0005; or

(b) Been approved by the department for, and receiving, nursing facility or COPES level of care.

(5) The alien's date of arrival in the United States is not used when determining eligibility for the AEM program.

(6) The department does not deem a sponsor's income and resources as available to the client when determining eligibility for the AEM program. The department counts only the income and resources a sponsor makes available to the client.

(7) Under the AEM program, a person receives CN scope of care, as described in WAC 388-529-0100. Covered services are limited to those medical services necessary for treatment of the person's emergency medical condition. The following services are not covered:

(a) Organ transplants and related services;

(b) Prenatal care, except labor and delivery; and

(c) School-based services.

(8) When a person's income exceeds the CN income standard as described in subsection (3) of this section, the person has spend down liability and MN scope of care. MN scope of care is described in WAC 388-529-0100. The medical service limitations and exclusions described in subsection (7) are also excluded under the MN program.

(9) A person determined eligible for the AEM program is certified for three months. The number of three-month certification periods is not limited, but, the person must continue to meet eligibility criteria in subsection (2) and (4) of this section.

(10) A person is not eligible for the AEM program if they entered the state specifically to obtain medical care.

[Statutory Authority: RCW 74.08.090, 74.04.050, 74.04.057, 74.09.530, and Section 1903 (v)(2)(c) of the Social Security Act. 03-24-058, § 388-438-0110, filed 12/1/03, effective 1/1/04. Statutory Authority: RCW 74.08.090, 74.08A.100, 74.09.080, and 74.09.415. 02-17-030, § 388-438-0110, filed 8/12/02, effective 9/12/02. Statutory Authority: RCW 74.08.090 and C.F.R. 436.128, 436.406(c) and 440.255. 01-05-041, § 388-438-0110, filed 2/14/01, effective 3/17/01. Statutory Authority: RCW 74.08.090, 74.04.050, 74.04.057, 74.09.530, 42 C.F.R. 435.139 and 42 C.F.R. 440.255. 99-23-082, § 388-438-0110, filed 11/16/99, effective 12/17/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-438-0110, filed 7/31/98, effective 9/1/98.]

Chapter 388-444 WAC

FOOD STAMP EMPLOYMENT AND TRAINING

WAC

388-444-0035 When am I (able-bodied adult with no dependents) exempt from ABAWD provisions?

WAC 388-444-0035 When am I (able-bodied adult with no dependents) exempt from ABAWD provisions? Some food assistance household members are exempt from ABAWD provisions. You are exempt from the ABAWD rules provided in WAC 388-444-0030 if you are:

(1) Under eighteen or fifty years of age or older;

(2) Determined to be physically or mentally unable to work;

(3) A member of a household with responsibility for a person determined to be incapacitated;

(4) An adult in a household that has a member who is under the age of eighteen, even when the child is an ineligible household member;

(5) Pregnant;

(6) Living in an area approved as exempt by U.S. Department of Agriculture;

(7) Complying with the work requirements of an employment and training program under temporary assistance for needy families (TANF);

(8) Applying for or receiving unemployment compensation;

(9) Students enrolled at least half time as defined by the institution in:

(a) Any accredited school;

(b) Training program; or

(c) Institution of higher education. A student enrolled in higher education must follow the student criteria defined in chapter 388-482 WAC.

(10) Participating in a chemical dependency treatment program;

(11) Employed a minimum of thirty hours per week or receiving weekly earnings which equal the minimum hourly rate multiplied by thirty hours;

(12) Eligible for one of the annual federal-approved exemption slots under what is called the fifteen percent exemption rule.

[Statutory Authority: RCW 74.04.050 and 74.04.510. 03-05-031, § 388-444-0035, filed 2/10/03, effective 4/1/03; 00-04-006, § 388-444-0035, filed 1/20/00, effective 3/1/00. Statutory Authority: RCW 74.04.510. 99-07-024, § 388-444-0035, filed 3/10/99, effective 4/10/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-444-0035, filed 7/31/98, effective 9/1/98.]

Chapter 388-450 WAC INCOME

WAC

388-450-0045	How do we count income from employment and training programs?
388-450-0050	How are your cash assistance and Basic Food benefits determined when you are participating in the community jobs (CJ) program?
388-450-0080	What is self-employment income?
388-450-0085	How we count your self-employment income?
388-450-0156	When am I exempt from deeming?
388-450-0185	Does the department count all of my income to determine my eligibility and benefits for Basic Food?
388-450-0190	How does the department figure my shelter cost income deduction for Basic Food?
388-450-0195	Utility allowances for Basic Food programs.
388-450-0200	Will the medical expenses of an elderly or disabled person in my assistance unit be used as an income deduction for Basic Food?
388-450-0215	How does the department estimate my assistance unit's income to determine my eligibility and benefits?
388-450-0225	How are my assistance unit's benefits calculated for the first month I am eligible for cash assistance?
388-450-0230	What income does the department count in the month I apply for Basic Food when my assistance unit is destitute?
388-450-0245	When are my benefits suspended?

WAC 388-450-0045 How do we count income from employment and training programs? This section applies

to cash assistance, Basic Food, and medical programs for families, children, and pregnant women.

(1) We treat payments issued under the Workforce Investment Act (WIA) as follows:

(a) For cash assistance and medical programs for families, children, and pregnant women, we exclude all payments.

(b) For Basic Food:

(i) We exclude OJT earnings for children who are eighteen years of age or younger and under parental control as described in WAC 388-408-0035.

(ii) We count OJT earnings as earned income for people who are:

(A) Age nineteen and older; or

(B) Age eighteen or younger and not under parental control.

(iii) We exclude all other payments.

(2) We exclude **all** payments issued under the National and Community Service Trust Act of 1993. This includes payments made through the AmeriCorps and AmeriCorps VISTA programs.

(3) We treat payments issued under Title I of the Domestic Volunteer Act of 1973, such as university year for action, and urban crime prevention program as follows:

(a) For cash assistance and medical programs for families, children, and pregnant women, we exclude all payments.

(b) For Basic Food, we count most payments as earned income. We exclude the payments if you got:

(i) Basic Food or cash assistance at the time you joined the Title I program; or

(ii) You were participating in the Title I program and got an income disregard at the time of conversion to the Food Stamp Act of 1977. We will continue to exclude the payments you get even if you do not get Basic Food every month.

(4) We exclude **all** payments issued under Title II of the Domestic Volunteer Act of 1973. These include:

(a) Retired senior volunteer program (RSVP);

(b) Foster grandparents program; and

(c) Senior companion program.

(5) We count training allowances from vocational and rehabilitative programs as earned income when:

(a) The program is recognized by federal, state, or local governments; and

(b) The allowance is not a reimbursement.

(6) When GAU clients receive training allowances we allow:

(a) The earned income incentive and work expense deduction specified under WAC 388-450-0175, when applicable; and

(b) The actual cost of uniforms or special clothing required for the course as a deduction, if enrolled in a remedial education or vocational training course.

(7) We exclude support service payments received by or made on behalf of WorkFirst participants.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. 03-03-071, § 388-450-0045, filed 1/15/03, effective 3/1/03. Statutory Authority: RCW 74.08.090 and 74.04.510. 02-03-019, § 388-450-0045, filed 1/4/02, effective 2/1/02; 99-16-024, § 388-450-0045, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-450-0045, filed 7/31/98, effective 9/1/98.]

WAC 388-450-0050 How are your cash assistance and Basic Food benefits determined when you are participating in the community jobs (CJ) program? (1) There are two different kinds of community jobs. They are:

(a) Classic jobs where your wages are subsidized by TANF or SFA; and

(b) Career jump where your wages are paid entirely by your employer beginning with the fifth month of your employment.

(2) We figure your total monthly income you get from your classic jobs or career jump job by:

(a) Estimating the number of hours you, your case manager, and the CJ contractor expect you to work for the month; and

(b) Multiplying the number of hours by the federal or state minimum wage, whichever is higher.

(3) Because you are expected to participate and meet the requirements of CJ, once we determine what your total monthly income is expected to be, we do not change your TANF grant if your actual hours are more or less than anticipated.

(4) We treat the total income we expect you to get each month from your CJ position as:

(a) Earned income for cash assistance except we do not count any of the CJ income you get in the first month of your employment.

(b) Earned income for Basic Food if you are a career jump participant that has transferred to your employer's regular payroll and your wages are no longer being subsidized; or

(c) Unearned income for Basic Food while you are in subsidized employment.

(5) If your anticipated classic jobs income is more than your grant amount, your cash grant is suspended. This means that you are considered to be a TANF/SFA recipient, but you do not get a grant.

(a) The grant suspension can be up to a maximum of nine months.

(b) As long as you would be eligible for a grant if we did not count your classic jobs income, you can keep participating in CJ even though your grant is suspended.

(c) The months your grant is suspended do not count toward your sixty-month lifetime limit.

(6) If your income from career jump after we subtract half of what you have earned is greater than your grant, your TANF/SFA case will close. This happens because your income is over the maximum you are allowed. You will still be able to participate in the CJ program for up to nine months.

(7) If your income from other sources alone not counting CJ income makes you ineligible for a cash grant, we terminate your grant and end your participation in CJ.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. 03-06-095, § 388-450-0050, filed 3/4/03, effective 5/1/03. Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.510. 01-23-044, § 388-450-0050, filed 11/15/01, effective 1/1/02. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 99-09-054, § 388-450-0050, filed 4/19/99, effective 6/1/99; 98-16-044, § 388-450-0050, filed 7/31/98, effective 9/1/98.]

WAC 388-450-0080 What is self-employment income? This section applies to TANF/SFA, GA, RCA, Basic Food, and medical programs for children, pregnant women and families.

(1) Self-employment income is income you earn from operating a business, performing a service, selling items you make, or re-selling items to make a profit.

(2) You are self-employed if you earn income without having an employer/employee relationship with the person who pays you. Your self-employment does not have to be a licensed business for your business or activity to qualify as self-employment. Some examples of self-employment include:

- (a) Child care;
- (b) Driving a taxi cab;
- (c) Farming/fishing;
- (d) Odd jobs such as mowing lawns, house painting, gutter cleaning, or car maintenance;
- (e) Operating a lodging for roomers and/or boarders. Roomer income includes money paid to you for shelter costs by someone who lives with you if you:
 - (i) Own your residence; or
 - (ii) Rent all or a part of your residence and the total rent you charge all others in your home is more than your total rent.
- (f) Operating an adult family home;
- (g) Providing services such as a massage therapist or a professional escort;
- (h) Retainer fees to reserve a bed for a foster child;
- (i) Selling self-produced or supplied items;
- (j) Selling or donating your own biological products such as blood, plasma, eggs, sperm, or hair; and
- (k) Working as a subcontractor.

(3) If you are an employee of a company or individual who performs the activities listed in subsection (2) above as a part of your job, we do not count the activity as self-employment. If the person or company who pays you must report your income using IRS form W-2, you are an employee.

(4) Most self-employment income is considered earned income as described in WAC 388-450-0030.

(5) For TANF/SFA and Basic Food there are special rules about renting or leasing out property or real estate that you own.

(a) We count the income you get as unearned income unless you spend at least twenty hours per week managing the property.

(b) For TANF/SFA, we count the income as unearned income unless the use of the property is a part of your approved individual responsibility plan.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.04.510. 03-13-045, § 388-450-0080, filed 6/11/03, effective 8/1/03. Statutory Authority: RCW 74.08.090 and 74.04.510. 01-19-020, § 388-450-0080, filed 9/11/01, effective 10/1/01; 99-16-024, § 388-450-0080, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-450-0080, filed 7/31/98, effective 9/1/98.]

WAC 388-450-0085 How we count your self-employment income? This section applies to TANF/SFA, GA, RCA, Basic Food, and medical programs for children, pregnant women and families.

(1) We decide how much of your self-employment income to count by:

(a) Adding together your gross self-employment income and any profit you make from selling your business property or equipment;

(b) Subtracting your business expenses as described in subsection (2) below; and

(c) Dividing the remaining amount of self-employment income by the number of months over which the income will be averaged.

(2) We automatically subtract one hundred dollars as a business expense even if your costs are less than this. If you want to claim more than one hundred dollars, you must itemize and provide proof of your expenses in order for us to count them. We never allow the following expenses:

- (a) Federal, state, and local income taxes;
- (b) Money set aside for retirement purposes;
- (c) Personal work-related expenses (such as travel to and from work);
- (d) Net losses from previous periods;
- (e) Depreciation; or
- (f) Any amount that exceeds the payment you get from a boarder for lodging and meals.

(3) If you have worked at your business for less than a year, we figure your gross self-employment income by averaging:

- (a) The income over the period of time the business has been in operation; and
- (b) The monthly amount estimated for the coming year.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.04.510. 03-13-045, § 388-450-0085, filed 6/11/03, effective 8/1/03. Statutory Authority: RCW 74.08.090 and 74.04.510. 01-19-020, § 388-450-0085, filed 9/11/01, effective 10/1/01; 99-16-024, § 388-450-0085, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-450-0085, filed 7/31/98, effective 9/1/98.]

WAC 388-450-0156 When am I exempt from deeming? (1) If you meet any of the following conditions, you are

permanently exempt from deeming and we do not count your sponsor's income or resources against your benefits:

(a) The Immigration and Nationality Act (INA) does not require you to have a sponsor. Immigrants who are not required to have a sponsor include those with the following status with Immigration and Naturalization Service (INS):

- (i) Refugee;
- (ii) Parolee;
- (iii) Asylee;
- (iv) Cuban entrant; or
- (v) Haitian entrant.

(b) You were sponsored by an organization or group as opposed to an individual;

(c) You do not meet the alien status requirements to be eligible for benefits under chapter 388-424 WAC;

(d) You have worked or can get credit for forty qualifying quarters of work under Title II of the Social Security Act. We do not count a quarter of work toward this requirement if the person working received TANF, food stamps, Basic Food, SSI, CHIP, or nonemergency Medicaid benefits. We count a quarter of work by the following people toward your forty qualifying quarters:

- (i) Yourself;
- (ii) Each of your parents for the time they worked before you turned eighteen years old (including the time they worked before you were born); and
- (iii) Your spouse if you are still married or your spouse is deceased.

- (e) You become a United States (U.S.) Citizen;
- (f) Your sponsor is dead; or
- (g) If INS or a court decides that you, your child, or your parent was a victim of domestic violence from your sponsor and:
 - (i) You no longer live with your sponsor; and
 - (ii) Leaving your sponsor caused your need for benefits.
- (2) You are exempt from the deeming process while you are in the same AU as your sponsor;
- (3) For Basic Food, you are exempt from deeming while you are under age eighteen.
- (4) For state family assistance, general assistance, state-funded Basic Food benefits, and state-funded medical assistance for legal immigrants you are exempt from the deeming process if:
 - (a) Your sponsor signed the affidavit of support more than five years ago;
 - (b) Your sponsor becomes permanently incapacitated; or
 - (c) You are a qualified alien according to WAC 388-424-0005 and you:
 - (i) Are on active duty with the U.S. armed forces or you are the spouse or unmarried dependent child of someone on active duty;
 - (ii) Are an honorably-discharged veteran of the U.S. armed forces or you are the spouse or unmarried dependent child of a honorably-discharged veteran;
 - (iii) Were employed by an agency of the U.S. government or served in the armed forces of an allied country during a military conflict between the U.S. and a military opponent; or
 - (iv) Are a victim of domestic violence and you have petitioned for legal status under the Violence Against Women Act.
- (5) If you, your child, or your parent was a victim of domestic violence, you are exempt from the deeming process for twelve months if:
 - (a) You no longer live with the person who committed the violence; and
 - (b) Leaving this person caused your need for benefits.
- (6) If your AU has income at or below one hundred thirty percent of the Federal Poverty Level (FPL), you are exempt from the deeming process for twelve months. For this rule, we count the following as income to your AU:
 - (a) Earned and unearned income your AU receives from any source; and
 - (b) Any noncash items of value such as free rent, commodities, goods, or services you receive from an individual or organization.
- (7) If you are exempt from deeming because your AU does not have income over one hundred thirty percent of the FPL, we give the United States Attorney General the following information:
 - (a) The names of the sponsored people in your AU;
 - (b) That you are exempt from deeming due to your income; and
 - (c) Your sponsor's name.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.04.510. 03-05-030, § 388-450-0156, filed 2/10/03, effective 4/1/03. Statutory Authority: RCW 74.04.050, 74.04.057, 74.04.510 and Title 7, Chapter II, Part 273 of the Code of Federal Regulations. 01-21-026, § 388-450-0156, filed 10/9/01, effective 11/1/01.]

WAC 388-450-0185 Does the department count all of my income to determine my eligibility and benefits for Basic Food? We subtract the following amounts from your assistance unit's (AU's) countable income before we determine your Basic Food benefit amount:

(1) A standard deduction based on the number of people in your AU under WAC 388-408-0035:

Eligible and ineligible AU members	Standard deduction
1	\$134
2	\$134
3	\$134
4	\$134
5	\$149
6 or more	\$171

(2) Twenty percent of your AU's gross earned income (earned income deduction);

(3) Your AU's expected monthly dependent care expense as described below:

(a) The dependent care must be needed for AU member to:

- (i) Keep work, look for work, or accept work;
- (ii) Attend training or education to prepare for employment; or
- (iii) Meet employment and training requirements under chapter 388-444 WAC.

(b) We subtract allowable dependent care expenses that are payable to someone outside of your AU:

- (i) Up to two hundred dollars for each dependent under age two; and
- (ii) Up to one hundred seventy-five dollars for each dependent age two or older.

(4) Medical expenses over thirty-five dollars a month owed or anticipated by an elderly or disabled person in your AU as allowed under WAC 388-450-0200.

(5) Legally obligated current or back child support paid to someone outside of your AU:

- (a) For a person who is not in your AU; or
- (b) For a person who is in your AU to cover a period of time when they were not living with you.

(6) A portion of your shelter costs as described in WAC 388-450-0190.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. 03-21-030, § 388-450-0185, filed 10/7/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and H.R. 2646 Farm Security and Rural Investment Act of 2002. 02-22-044, § 388-450-0185, filed 10/30/02, effective 12/1/02. Statutory Authority: RCW 74.08.090 and 74.04.510. 99-16-024, § 388-450-0185, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-450-0185, filed 7/31/98, effective 9/1/98.]

WAC 388-450-0190 How does the department figure my shelter cost income deduction for Basic Food? The department calculates your shelter cost income deduction as follows:

(1) First, we add up the amounts your assistance unit (AU) must pay each month for shelter. We do not count any overdue amounts, late fees, penalties or any amount you pay ahead of time as an allowable cost. We count the following expenses as an allowable shelter cost:

- (a) Ongoing rent, lease, and mortgage payments;

- (b) Property taxes;
- (c) Homeowner's association or condo fees;
- (d) Homeowner's insurance for the building only;
- (e) Utility allowance your AU is eligible for under WAC 388-450-0195;

4	\$313
5	\$321
6 or more	\$330

(f) Out-of-pocket repairs for the home if it was substantially damaged or destroyed due to a natural disaster such as a fire or flood;

(g) Expense of a temporarily unoccupied home because of employment, training away from the home, illness, or abandonment caused by a natural disaster or casualty loss if your:

- (i) AU intends to return to the home;
- (ii) AU has current occupants who are not claiming the shelter costs for Basic Food purposes; and
- (iii) AU's home is not being leased or rented during your AU's absence.

(2) Second, we subtract all deductions your AU is eligible for under WAC 388-450-0185 (1) through (5) from your AU's gross income. The result is your AU's net income.

(3) Finally, we subtract one-half of your AU's net income from your AU's total shelter costs. The result is your excess shelter costs. Your AU's shelter cost deduction is the excess shelter costs:

(a) Up to a maximum of three hundred seventy-eight dollars if no one in your AU is elderly or disabled and you were found eligible for benefits or were recertified for benefits either on or after March 1, 2001; or

(b) The entire amount if someone in your AU is elderly or disabled, even if the amount is over three hundred seventy-eight dollars.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. 03-21-030, § 388-450-0190, filed 10/7/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. 02-22-045, § 388-450-0190, filed 10/30/02, effective 12/1/02. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510. 01-21-059, § 388-450-0190, filed 10/16/01, effective 12/1/01. Statutory Authority: RCW 74.08.090 and 74.04.510. 01-06-030, § 388-450-0190, filed 3/2/01, effective 4/2/01; 99-16-024, § 388-450-0190, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-450-0190, filed 7/31/98, effective 9/1/98.]

WAC 388-450-0195 Utility allowances for Basic Food programs. (1) For Basic Food, "utilities" include the following:

- (a) Heating and cooking fuel;
- (b) Cooling and electricity;
- (c) Water and sewer;
- (d) Garbage and trash collection; and
- (e) Basic telephone service.

(2) The department uses the amounts below if you have utility costs separate from your rent or mortgage payment. We add your utility allowance to your rent or mortgage payment to determine your total shelter costs. We use total shelter costs to determine your Basic Food benefits.

(a) If you have heating or cooling costs, you get a standard utility allowance (SUA) that depends on your assistance unit's size.

Assistance Unit (AU) Size	Utility Allowance
1	\$287
2	\$295
3	\$304

(b) If your AU does not qualify for the SUA and you have utility costs other than telephone costs, you get a limited utility allowance (LUA) of two hundred twenty-three dollars.

(c) If your AU has only telephone costs and no other utility costs, you get a telephone utility allowance (TUA) of thirty-six dollars.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. 03-21-030, § 388-450-0195, filed 10/7/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. 02-22-045, § 388-450-0195, filed 10/30/02, effective 12/1/02. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510. 01-21-059, § 388-450-0195, filed 10/16/01, effective 12/1/01. Statutory Authority: RCW 74.04.510. 00-22-065, § 388-450-0195, filed 10/27/00, effective 11/1/00. Statutory Authority: RCW 74.04.510 [74.04.510]. 99-24-052, § 388-450-0195, filed 11/29/99, effective 12/1/99. Statutory Authority: RCW 74.04.510. 99-09-055, § 388-450-0195, filed 4/19/99, effective 5/20/99. Statutory Authority: RCW 74.04.510 and 7 CFR 273.9 (d)(6). 99-01-069, § 388-450-0195, filed 12/14/98, effective 1/14/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-450-0195, filed 7/31/98, effective 9/1/98.]

WAC 388-450-0200 Will the medical expenses of an elderly or disabled person in my assistance unit be used as an income deduction for Basic Food? (1) If your Basic Food assistance unit (AU) includes an elderly or disabled person as defined in WAC 388-400-0040, your AU may be eligible for an income deduction for the elderly or disabled person's out-of-pocket medical expenses. We allow the deduction for medical expenses over thirty-five dollars each month.

(2) You can use a medical expense toward this deduction if the expense covers services, supplies, medication, or other medically needed items prescribed by a state-licensed practitioner or other state-certified, qualified, health professional. Examples of expenses you can use for this deduction include those for:

- (a) Medical, psychiatric, naturopathic physician, dental, or chiropractic care;
- (b) Prescribed alternative therapy such as massage or acupuncture;
- (c) Prescription drugs;
- (d) Over the counter drugs;
- (e) Eye glasses;
- (f) Medical supplies other than special diets;
- (g) Medical equipment or medically needed changes to your home;
- (h) Shipping and handling charges for an allowable medical item. This includes shipping and handling charges for items purchased through mail order or the internet;
- (i) Long distance calls to a medical provider;
- (j) Hospital and outpatient treatment including:

- (i) Nursing care; or
- (ii) Nursing home care including payments made for a person who was an assistance unit member at the time of placement.
- (k) Health insurance premiums paid by the client including:

- (i) Medicare premiums; and
- (ii) Insurance deductibles and co-payments.

(l) Out-of-pocket expenses used to meet a spenddown as defined in WAC 388-519-0010. We do not allow your entire spenddown obligation as a deduction. We allow the expense as a deduction as it is estimated to occur or as the expense becomes due;

(m) Dentures, hearing aids, and prosthetics;

(n) Cost to obtain and care for a seeing eye, hearing, or other specially trained service animal. This includes the cost of food and veterinarian bills. We do not allow the expense of food for a service animal as a deduction if you receive ongoing additional requirements under WAC 388-473-0040 to pay for this need;

(o) Reasonable costs of transportation and lodging to obtain medical treatment or services; and

(p) Attendant care necessary due to age, infirmity, or illness. If your AU provides most of the attendant's meals, we allow an additional deduction equal to a one-person allotment.

(3) There are two types of deductions:

(a) One-time expenses are expenses that cannot be estimated to occur on a regular basis. You can choose to have us:

(i) Allow the one-time expense as a deduction when it is billed or due;

(ii) Average the expense through the remainder of your certification period; or

(iii) If your AU has a twenty-four-month certification period, you can choose to use the expense as a one-time deduction, average the expense for the first twelve months of your certification period, or average it for the remainder of our certification period.

(b) Recurring expenses are expenses that happen on a regular basis. We estimate your monthly expenses for the certification period.

(4) We do not allow a medical expense as an income deduction if:

(a) The expense was paid before you applied for benefits or in a previous certification period;

(b) The expense was paid or will be paid by someone else;

(c) The expense was paid or will be paid by the department or another agency;

(d) The expense is covered by medical insurance;

(e) We previously allowed the expense, and you did not pay it. We do not allow the expense again even if it is part of a repayment agreement;

(f) You included the expense in a repayment agreement after failing to meet a previous agreement for the same expense;

(g) You claim the expense after you have been denied for presumptive SSI; and you are not considered disabled by any other criteria; or

(h) The provider considers the expense overdue.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. 04-02-025, § 388-450-0200, filed 12/30/03, effective 2/1/04. Statutory Authority: RCW 74.08.090 and 74.04.510. 99-23-083, § 388-450-0200, filed 11/16/99, effective 1/1/00; 99-16-024, § 388-450-0200, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-450-0200, filed 7/31/98, effective 9/1/98.]

WAC 388-450-0215 How does the department estimate my assistance unit's income to determine my eligibility and benefits? The department uses prospective budgeting to determine if your assistance unit (AU) is eligible and to calculate your benefits.

(1) We determine if your AU is eligible for benefits and calculate your monthly benefits based on an estimate of your AU's income and expenses for that month. This is known as prospective budgeting.

(2) We base this estimate on what can be reasonably expected based on your current, past and future circumstances.

(3) We determine if our estimate is reasonable by looking at documents, statements, and other verification.

(4) We use two methods to estimate your AU's income:

(a) **Anticipating monthly income:** We estimate the actual amount of income you expect to receive in the month; and

(b) **Averaging income:** We estimate your income based on adding the total income you expect to receive for a period of time and dividing by the number of months in the time period.

(5) When we use the anticipating monthly method, we estimate the actual amount of income your AU expects to receive in the month. Your benefits will vary based on the income that is expected for that month.

(6) In general, you can choose which method we use to estimate your income. However, we **must** use the anticipating monthly method:

(a) For all your AU's income in the following circumstances:

(i) If you receive SSI-related medical benefits under WAC 388-450-0150; or

(ii) If you are a destitute migrant or destitute seasonal farmworker under WAC 388-406-0021, we must use the anticipating monthly method for the month your AU applied for benefits.

(b) For the income of any member of your AU who has income allocated to someone receiving SSI-related medical benefits under WAC 388-450-0150;

(c) For the following sources of income to your AU:

(i) SSI;

(ii) Social Security benefits; or

(iii) Income your AU already received in the month that you applied for benefits. If we do not have to use the anticipating monthly method for any other reason, we may average this income for the remaining months of your certification or review period.

(7) When we use the averaging method, we take the expected changes in your AU's income into consideration so your benefits do not change as much:

(a) If you receive your income weekly or every other week, we convert this income converted to a monthly amount. If you are paid: If you are paid:

(i) Weekly, we multiply your expected pay by 4.3; or

(ii) Every other week, we multiply your expected pay by 2.15.

(b) In most cases if you receive your income other than weekly or every other week, we estimate your monthly income by:

(i) Adding the total amount of income we expect you to receive for your certification or review period; and

(ii) Dividing by the number of months in the period of time.

(c) If you receive your yearly income over less than a year because you are self employed or work under a contract, we average this income over the year unless you are:

(i) Paid on an hourly or piecework basis; or

(ii) A migrant or seasonal farmworker under WAC 388-406-0021.

(8) If you report a change in your AU's income, and we expect the change to last for at least a month beyond the month you reported the change, we recalculate your AU's income based on this change.

(9) If your actual income is different than the income we estimated, we do not make you repay an overpayment under chapter 388-410 WAC or increase your benefits unless:

(a) You provided incomplete or false information; or

(b) We made an error in calculating your benefits.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.04.510. 03-21-029, § 388-450-0215, filed 10/7/03, effective 11/1/03. Statutory Authority: RCW 74.08.090 and 74.04.510. 99-23-083, § 388-450-0215, filed 11/16/99, effective 1/1/00; 99-16-024, § 388-450-0215, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-450-0215, filed 7/31/98, effective 9/1/98. Formerly WAC 388-505-0590.]

WAC 388-450-0225 How are my assistance unit's benefits calculated for the first month I am eligible for cash assistance? (1) To calculate your AU's cash benefit for your first month's benefits, we compare your AU's countable income to the payment standard as described in WAC 388-450-0162.

(2) Even if your AU has countable income over the payment standard, you may still receive additional requirements.

(3) If your countable income is less than the payment standard, we prorate your grant amount based on the date you are eligible.

(4) We do not prorate any approved additional requirements.

(5) We prorate your grant by:

(a) Dividing your AU's grant amount by the number of days in the first month of eligibility; and

(b) Multiplying the result in (5)(a) of this section by the number of days from the date of eligibility to the last day of the month.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.04.510. 03-21-029, § 388-450-0225, filed 10/7/03, effective 11/1/03. Statutory Authority: RCW 74.08.090 and 74.04.510. 99-24-008, § 388-450-0225, filed 11/19/99, effective 1/1/00; 99-16-024, § 388-450-0225, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-450-0225, filed 7/31/98, effective 9/1/98.]

WAC 388-450-0230 What income does the department count in the month I apply for Basic Food when my assistance unit is destitute? (1) If your assistance unit (AU) meets the requirements of a destitute migrant or seasonal farmworker under WAC 388-406-0021, we may exclude some of your income in the month you apply for Basic Food.

(2) In the month of application, we:

(a) Count only income your AU received between the first of the month and the date you apply for Basic Food; and

(b) Disregard any income from a new source that you expect to receive after the date you apply for Basic Food.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.04.510. 03-21-029, § 388-450-0230, filed 10/7/03, effective 11/1/03. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510, and 7 C.F.R. 273.10. 02-17-028, § 388-450-0230, filed 8/12/02, effective 10/1/02. Statutory Authority: RCW 74.08.090 and 74.04.510. 99-24-008, § 388-450-0230, filed 11/19/99, effective 1/1/00. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-450-0230, filed 7/31/98, effective 9/1/98.]

WAC 388-450-0245 When are my benefits suspended? (1) For TANF/SFA, RCA, GA and Basic Food, "suspend" means the department stops your benefits for one month.

(2) We suspend your AU's benefits for one month when your expected total countable income under WAC 388-450-0162:

(a) Is more than the dollar limit for your AU; and

(b) If over these limits for only that one month.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.04.510. 03-21-029, § 388-450-0245, filed 10/7/03, effective 11/1/03. Statutory Authority: RCW 74.04.510. 00-01-012, § 388-450-0245, filed 12/3/99, effective 1/1/00. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-450-0245, filed 7/31/98, effective 9/1/98.]

Chapter 388-452 WAC INTERVIEW REQUIREMENTS

WAC

388-452-0005 Do I have to be interviewed in order to get benefits?

WAC 388-452-0005 Do I have to be interviewed in order to get benefits? (1) Unless you are applying for medical only, you or your authorized representative must have an interview with the department:

(a) At initial certification; and

(b) At least once every twelve months if your assistance unit (AU) is certified for twelve months or less.

(2) You do not have to attend an interview if you are applying for or recertifying medical benefits only. If we deny your application for cash or Basic Food because you did not have an interview, we continue to process your request for medical benefits.

(3) You will have just one interview even if you are applying for or have a review for benefits from more than one program.

(4) If we do not interview you on the same day that we get your application, we schedule an interview appointment for you. We schedule your appointment the day we get your application or on the next business day if we get your application outside of our scheduled business hours, on a holiday or a weekend.

(5) We schedule an interview so your AU has at least ten days after the interview to provide needed verification:

(a) Before the end of the thirty-day processing period for applications; or

(b) Before your certification period ends for eligibility reviews.

(6) If you miss your first interview and ask for another interview within thirty days of the date you applied for benefits, we schedule a second interview for you.

(7) If you must have an interview for benefits, you or someone who can give us the information we need about your AU must participate in the interview. You may bring any person you choose to your interview.

(8) You may choose someone to take your place in your interview:

(a) For cash assistance if you cannot come to the local office for us to decide if you are eligible for benefits; or

(b) For Basic Food if the person is your authorized representative as described in WAC 388-460-0005.

(9) We usually have interviews at the local office. You can have a scheduled telephone interview if there is any reason you cannot attend an interview at the local office. Examples of reasons you may be unable to attend an interview include include:

(a) Your work or training schedule make it inconvenient for you to attend an in-office interview during regular business hours;

(b) You are unable to take time off of work to attend an in-office interview, because you would not get paid for this time or you fear you could lose your job;

(c) Someone in your AU is ill, or you have to stay home to care for an AU member;

(d) You are having transportation problems;

(e) You can't safely get to the office because of severe weather;

(f) You live in a remote area and can't easily get to the local office;

(g) All the people in your AU are elderly, mentally disabled, or physically disabled;

(h) Someone in your AU is affected by family violence such as physical or mental abuse, harassment, or stalking by the abuser; or

(i) You have any other situation that makes it difficult for you to come into the office for an interview.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 7 C.F.R. 273.2(e). 03-18-113, § 388-452-0005, filed 9/2/03, effective 11/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. 02-14-023, § 388-452-0005, filed 6/21/02, effective 7/1/02. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.530. 01-14-060, § 388-452-0005, filed 6/29/01, effective 8/1/01; 00-22-087, § 388-452-0005, filed 10/31/00, effective 12/1/00. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530 and 42 C.F.R. 435.907. 99-11-075, § 388-452-0005, filed 5/18/99, effective 6/18/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-452-0005, filed 7/31/98, effective 9/1/98. Formerly WAC 388-504-0420.]

Chapter 388-460 WAC

PAYEES ON BENEFIT ISSUANCES

WAC

388-460-0001	Who may be issued cash, child care, medical and Basic Food benefits?
388-460-0005	Can I choose someone to apply for Basic Food for my assistance unit?
388-460-0010	Do I have an authorized representative for Basic Food if I live in a treatment center or group home?
388-460-0015	Who will the department not allow as an authorized representative for Basic Food?

WAC 388-460-0001 Who may be issued cash, child care, medical and Basic Food benefits? (1) Cash and child care assistance may be issued in the name of the following persons:

(a) A client who is the recipient of the benefits;
 (b) An ineligible parent or other relative getting benefits on behalf of an eligible child;

(c) A person, facility, organization, institution or agency acting as a protective payee or representative payee for a client;

(d) A guardian or agent acting on behalf of a client; or

(e) A vendor of goods or services supplied to an eligible client.

(2) When medical coverage accompanies cash assistance, the medical identification (MAID) card for the assistance unit members is issued in the name of the person listed as payee for the cash benefit.

(3) For other medical assistance units, the MAID card is issued to the person named as the head of the assistance unit.

(4) Basic Food benefits are issued to the person named as the head of the assistance unit for Basic Food.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. 03-22-038, § 388-460-0001, filed 10/28/03, effective 12/1/03. Statutory Authority: RCW 74.08A.010(4), 74.08A.340, 74.08.090, 74.04.050. 02-14-083, § 388-460-0001, filed 6/28/02, effective 7/1/02. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-460-0001, filed 7/31/98, effective 9/1/98.]

WAC 388-460-0005 Can I choose someone to apply for Basic Food for my assistance unit? Your Basic Food assistance unit (AU) can choose an adult who is not a member of the AU to act on their behalf. This is called an authorized representative.

(1) A responsible member of the AU can name, in writing, an authorized representative. A responsible member of the AU is either:

(a) The applicant;

(b) The applicant's spouse;

(c) Another member of the AU the applicant states is able to conduct business on behalf of all members in the AU.

(2) The AU's authorized representative has the authority to apply for Basic Food on the AU's behalf.

(3) If you receive Basic Food benefits in a qualified drug and alcohol treatment facility under WAC 388-408-0040, you **must** have an employee of the facility as your authorized representative for Basic Food.

(4) If the authorized representative provides information to the department that causes an AU to have an overpayment, the AU members are liable for the overpayment.

(5) An authorized representative may act on behalf of more than one Basic Food AU **only** if the community services office administrator approves.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. 03-22-038, § 388-460-0005, filed 10/28/03, effective 12/1/03; 03-03-072, § 388-460-0005, filed 1/15/03, effective 3/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-460-0005, filed 7/31/98, effective 9/1/98.]

WAC 388-460-0010 Do I have an authorized representative for Basic Food if I live in a treatment center or group home? (1) If you live in a qualified DDD group home under WAC 388-408-0040, you may choose to apply for Basic Food benefits:

(a) On your own behalf;

(b) Through an authorized representative of your choice;

or

(c) Through the DDD group home acting as your authorized representative.

(2) If you live in a qualified drug and alcohol treatment center under WAC 388-408-0040, you **must** have an employee of the facility as your authorized representative for Basic Food.

(3) The person acting as authorized representative for residents in a qualified drug and alcohol treatment facility or qualified DDD group home must:

- (a) Be aware of the resident's circumstances;
- (b) Notify the department of any changes in income, resources or circumstances within ten days of the change;
- (c) Use the resident's Basic Food benefits for meals served to the resident; and
- (d) Keep enough benefits in the facility's account to transfer one-half of a client's monthly allotment to the client's own account. If the client leaves the facility on or before the fifteenth of the month, the facility must return one half of the client's Basic Food allotment for that month.

(4) When a facility assigns an employee as the authorized representative for residents, the facility accepts responsibility for:

- (a) Any misrepresentation or intentional program violation; and
- (b) Liability for Basic Food benefits held at the facility on behalf of the resident.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. 03-22-038, § 388-460-0010, filed 10/28/03, effective 12/1/03. Statutory Authority: RCW 74.04.510, 74.08.090, 74.04.055, 74.04.057 and S. 825, Public Law 104-193, Personal Responsibility and Work Opportunity Reconciliation Act of 1996. 99-02-039, § 388-460-0010, filed 12/31/98, effective 1/31/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-460-0010, filed 7/31/98, effective 9/1/98.]

WAC 388-460-0015 Who will the department not allow as an authorized representative for Basic Food? (1) If you are acting as an authorized representative for Basic Food, we disqualify you from being an authorized representative for one year if we determine that you:

- (a) Knowingly provided false information to the department;
 - (b) Misrepresented the circumstances of the Basic Food assistance unit (AU); or
 - (c) Misused the Basic Food benefits.
- (2) If we disqualify you from being an authorized representative for Basic Food, we notify you and the head of the Basic Food AU thirty days before your disqualification starts.

(3) If you are a department employee, a retailer authorized to receive Basic Food benefits, or are disqualified from receiving Basic Food because of an intentional program violation under WAC 38-446-0015, you generally cannot be an authorized representative. If you are in any of these three categories and want to be an authorized representative for Basic Food:

- (a) The AU must have no one else available to be an authorized representative; and
 - (b) You must have written approval from the community services office administrator to be the AU's authorized representative.
- (4) A public or private nonprofit organization providing meals for homeless persons may not be an authorized representative under any conditions.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. 03-22-038, § 388-460-0015, filed 10/28/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-460-0015, filed 7/31/98, effective 9/1/98.]

Chapter 388-468 WAC RESIDENCY

WAC

388-468-0005 Residency.

WAC 388-468-0005 Residency. Subsections (1) through (4) applies to cash, the Basic Food program, and medical programs.

(1) A resident is a person who:

(a) Currently lives in Washington and intends to continue living here permanently or for an indefinite period of time; or

(b) Entered the state looking for a job; or

(c) Entered the state with a job commitment.

(2) A person does not need to live in the state for a specific period of time to be considered a resident.

(3) A child under age eighteen is a resident of the state where the child's primary custodian lives.

(4) With the exception of subsection (5) of this section, a client can temporarily be out of the state for more than one month. If so, the client must supply the department with adequate information to demonstrate the intent to continue to reside in the state of Washington.

(5) Basic Food program assistance units who are not categorically eligible do not meet residency requirements if they stay out of the state more than one calendar month.

(6) A client may not receive comparable benefits from another state for the cash and Basic Food programs.

(7) A former resident of the state can apply for the GA-U program while living in another state if:

(a) The person:

(i) Plans to return to this state;

(ii) Intends to maintain a residence in this state; and

(iii) Lives in the United States at the time of the application.

(b) In addition to the conditions in subsection (7)(a)(i)(ii), and (iii) being met, the absence must be:

(i) Enforced and beyond the person's control; or

(ii) Essential to the person's welfare and is due to physical or social needs.

(c) See WAC 388-406-0035, 388-406-0040, and 388-406-0045 for time limits on processing applications.

(8) Residency is not a requirement for detoxification services.

(9) A person is not a resident when the person enters Washington state only for medical care. This person is not eligible for any medical program. The only exception is described in subsection (10) of this section.

(10) It is not necessary for a person moving from another state directly to a nursing facility in Washington state to establish residency before entering the facility. The person is considered a resident if they intend to remain permanently or for an indefinite period unless placed in the nursing facility by another state.

(11) For purposes of medical programs, a client's residence is the state:

(a) Paying a state Supplemental Security Income (SSI) payment; or

(b) Paying federal payments for foster or adoption assistance; or

(c) Where the noninstitutionalized individual lives when Medicaid eligibility is based on blindness or disability; or

(d) Where the parent or legal guardian, if appointed, for an institutionalized:

(i) Minor child; or

(ii) Client twenty-one years of age or older, who became incapable of determining residential intent before reaching age twenty-one.

(e) Where a client is residing if the person becomes incapable of determining residential intent after reaching twenty-one years of age; or

(f) Making a placement in an out-of-state institution; or

(g) For any other institutionalized individual, the state of residence is the state where the individual is living with the intent to remain there permanently or for an indefinite period.

(12) In a dispute between states as to which is a person's state of residence, the state of residence is the state in which the person is physically located.

[Statutory Authority: RCW 74.08.090. 03-20-060, § 388-468-0005, filed 9/26/03, effective 10/27/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-468-0005, filed 7/31/98, effective 9/1/98.]

Chapter 388-470 WAC

RESOURCES

WAC

388-470-0005	How do resources affect my eligibility for cash assistance, medical assistance, and Basic Food?
388-470-0010	Repealed.
388-470-0012	Does the department look at the resources of people who are not getting benefits?
388-470-0015	Repealed.
388-470-0020	Repealed.
388-470-0025	Repealed.
388-470-0030	Repealed.
388-470-0035	Repealed.
388-470-0045	How do my resources count toward the resource limits for cash assistance and family medical programs?
388-470-0050	Repealed.
388-470-0055	How do my resources count toward the resource limit for Basic Food?
388-470-0065	Repealed.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

388-470-0010	How to determine who owns a resource. [Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-470-0010, filed 7/31/98, effective 9/1/98.] Repealed by 03-05-015, filed 2/7/03, effective 3/1/03. Statutory Authority: RCW 74.08.090 and 74.04.510.
388-470-0015	Availability of resources. [Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-470-0015, filed 7/31/98, effective 9/1/98. Formerly WAC 388-505-0580 and 388-507-0730.] Repealed by 03-05-015, filed 2/7/03, effective 3/1/03. Statutory Authority: RCW 74.08.090 and 74.04.510.
388-470-0020	Excluded resources. [Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-470-0020, filed 7/31/98, effective 9/1/98. Formerly WAC 388-505-0580.] Repealed by 03-05-015, filed 2/7/03, effective 3/1/03. Statutory Authority: RCW 74.08.090 and 74.04.510.

388-470-0025 Excluded resources for cash assistance. [Statutory Authority: RCW 74.08.090 and 74.04.510. 99-16-024, § 388-470-0025, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-470-0025, filed 7/31/98, effective 9/1/98.] Repealed by 03-05-015, filed 2/7/03, effective 3/1/03. Statutory Authority: RCW 74.08.090 and 74.04.510.

388-470-0030 Excluding a home as a resource. [Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-470-0030, filed 7/31/98, effective 9/1/98.] Repealed by 03-05-015, filed 2/7/03, effective 3/1/03. Statutory Authority: RCW 74.08.090 and 74.04.510.

388-470-0035 Excluded resources for food assistance. [Statutory Authority: RCW 74.08.090 and 74.04.510. 99-16-024, § 388-470-0035, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-470-0035, filed 7/31/98, effective 9/1/98.] Repealed by 03-05-015, filed 2/7/03, effective 3/1/03. Statutory Authority: RCW 74.08.090 and 74.04.510.

388-470-0050 Resources that count. [Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-470-0050, filed 7/31/98, effective 9/1/98.] Repealed by 03-05-015, filed 2/7/03, effective 3/1/03. Statutory Authority: RCW 74.08.090 and 74.04.510.

388-470-0065 Individual development accounts for TANF recipients. [Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-470-0065, filed 7/31/98, effective 9/1/98.] Repealed by 03-05-015, filed 2/7/03, effective 3/1/03. Statutory Authority: RCW 74.08.090 and 74.04.510.

WAC 388-470-0005 How do resources affect my eligibility for cash assistance, medical assistance, and Basic Food? (1) The following definitions apply to this chapter:

(a) **"We"** means the department of social and health services.

(b) **"You"** means a person applying for or getting benefits from the department.

(c) **"Fair market value (FMV)"** means the price at which you could reasonably sell the resource.

(d) **"Equity value"** means the FMV minus any amount you owe on the resource.

(e) **"Community property"** means a resource in the name of the husband, wife, or both.

(f) **"Separate property"** means a resource of a married person that one of the spouses:

(i) Had possession of and paid for before they were married;

(ii) Acquired and paid for entirely out of income from separate property; or

(iii) Received as a gift or inheritance.

(2) We count a resource to decide if your assistance unit (AU) is eligible for cash assistance, family medical programs, or Basic Food when:

(a) It is a resource we must count under WAC 388-470-0045 and 388-470-0055;

(b) You own the resource. We consider you to own a resource if:

(i) Your name is on the title to the property; or

(ii) You have property that doesn't have a title; and

(c) You have control over the resource, which means the resource is actually available to you; and

(d) You could legally sell the resource or convert it into cash within twenty days.

(3) For cash assistance and family medical programs, you must try to make your resources available even if it will take you more than twenty days to do so, unless:

(a) There is a legal barrier; or
 (b) You must petition the court to release part or all of a resource.

(4) When you apply for assistance, we count your resources as of:

(a) The date of your interview, if you are required to have an interview; or

(b) The date of your application, if you are not required to have an interview; or

(c) The first day of the month of application, for medical assistance.

(5) If your total countable resources are over the resource limit in subsection (6) through (13) of this section, you are not eligible for benefits.

(6) For cash assistance and applicants for family medical programs, we use the equity value as the value of your resources.

(a) Applicants can have countable resources up to one thousand dollars.

(b) Recipients of cash assistance can have an additional three thousand dollars in a savings account.

(7) Recipients of family medical programs do not have a resource limit.

(8) We do not count your resources for children's medical or pregnancy medical benefits.

(9) For SSI-related medical assistance, see chapter 388-475 WAC.

(10) For clients receiving institutional or waived services, see chapters 388-513 and 388-515 WAC.

(11) If your household consists of more than one medical assistance unit (MAU), as described in WAC 388-408-0055, we look at the resources for each MAU separately.

(12) If your AU is categorically eligible (CE) as described in WAC 388-414-0001, you do not have a resource limit for Basic Food.

(13) If your AU is not CE under WAC 388-414-0001, your AU may have countable resources up to the following amount and be eligible for Basic Food:

(a) Three thousand dollars if your AU has either an elderly or disabled individual; or

(b) Two thousand dollars for all other AUs.

(14) If you own a countable resource with someone who is not in your AU, we count the portion of the resource that you own. If we cannot determine how much of the resource is yours:

(a) For cash assistance, we count an equal portion of the resource that belongs to each person who owns it.

(b) For medical assistance and Basic Food, we count the entire amount unless you can prove that the entire amount is not available to you.

(15) We assume that you have control of community property and you can legally sell the property or convert it to cash unless you can show that you do not.

(16) We may not consider an item to be separate property if you used both separate and community funds to buy or improve it.

(17) We do not count the resources of victims of family violence when:

(a) The resource is owned jointly with members of the former household; or

(b) Availability of the resource depends on an agreement of the joint owner; or

(c) Making the resource available would place the client at risk of harm.

(18) You may give us proof about a resource anytime, including when we ask for it or if you disagree with a decision we made, about:

(a) Who owns a resource;

(b) Who has legal control of the resource;

(c) The value of a resource;

(d) The availability of a resource; or

(e) The portion of a property you or another person owns.

[Statutory Authority: RCW 74.08.090 and 74.04.510. 03-05-015, § 388-470-0005, filed 2/7/03, effective 3/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-470-0005, filed 7/31/98, effective 9/1/98.]

WAC 388-470-0010 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-470-0012 Does the department look at the resources of people who are not getting benefits? Yes we do. We count the resources of certain people who live in your home, even if they are not getting assistance. Their resources count as part of your resources.

(1) For cash assistance, we count the resources of ineligible, disqualified, or financially responsible people as defined in WAC 388-450-0100.

(2) For Basic Food, we count the resources of ineligible assistance unit (AU) members as defined in WAC 388-408-0035.

(3) For family and SSI-related medical assistance, we count the resources of financially responsible people as defined in WAC 388-408-0055.

(4) For long term care services, we count the resources of financially responsible people as defined in WAC 388-506-0620.

(5) For cash assistance, medical assistance, and Basic Food, we also count the resources of an immigrant's sponsor as described in WAC 388-470-0060.

[Statutory Authority: RCW 74.08.090 and 74.04.510. 03-05-015, § 388-470-0012, filed 2/7/03, effective 3/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 99-09-053, § 388-470-0012, filed 4/19/99, effective 5/20/99.]

WAC 388-470-0015 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-470-0020 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-470-0025 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-470-0030 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-470-0035 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-470-0045 How do my resources count toward the resource limits for cash assistance and family medical programs? (1) We count the following resources toward your assistance unit's resource limits for cash assistance and family medical programs to decide if you are eligible for benefits under WAC 388-470-0005:

(a) Liquid resources not specifically excluded in subsection (2) below. These are resources that are easily changed into cash. Some examples of liquid resources are:

- (i) Cash on hand;
- (ii) Money in checking or savings accounts;
- (iii) Money market accounts or certificates of deposit (CDs) less any withdrawal penalty;
- (iv) Available retirement funds or pension benefits, less any withdrawal penalty;
- (v) Stocks, bonds, annuities, or mutual funds less any early withdrawal penalty;
- (vi) Available trusts or trust accounts; or
- (vii) Lump sum payments as described in chapter 388-455 WAC.

(b) The cash surrender value (CSV) of whole life insurance policies.

(c) The CSV over fifteen hundred dollars of revocable burial insurance policies or funeral agreements.

(d) The amount of a child's irrevocable educational trust fund that is over four thousand dollars per child.

(e) Funds withdrawn from an individual development account (IDA) if they were removed for a purpose other than those specified in RCW 74.08A.220.

(f) Any real property like a home, land or buildings not specifically excluded in subsection (3) below.

(g) The equity value of vehicles as described in WAC 388-470-0070.

(h) Personal property that is not:

- (i) A household good;
- (ii) Needed for self-employment; or
- (iii) Of "great sentimental value," due to personal attachment or hobby interest.

(i) Resources of a sponsor as described in WAC 388-470-0060.

(j) For cash assistance only, sales contracts.

(2) The following types of liquid resources do not count when we determine your eligibility:

- (a) Bona fide loans, including student loans;
- (b) Basic Food benefits;
- (c) Income tax refunds in the month of receipt;
- (d) Earned income tax credit (EITC) in the month received and the following month;
- (e) Advance earned income tax credit payments;
- (f) Individual development accounts (IDAs) established under RCW 74.08A.220;
- (g) Retroactive cash benefits or TANF/SFA benefits resulting from a court order modifying a decision of the department;
- (h) Underpayments received under chapter 388-410 WAC;
- (i) Educational benefits that are excluded as income under WAC 388-450-0035;
- (j) The income and resources of an SSI recipient;
- (k) A bank account jointly owned with an SSI recipient if SSA already counted the money for SSI purposes;

(l) Foster care payments provided under Title IV-E and/or state foster care maintenance payments;

(m) Adoption support payments;

(n) Self-employment accounts receivable that the client has billed to the customer but has been unable to collect; and

(o) Resources specifically excluded by federal law.

(3) The following types of real property do not count when we determine your eligibility:

(a) Your home and the surrounding property that you, your spouse, or your dependents live in;

(b) A house you do not live in, if you plan on returning to the home and you are out of the home because of:

- (i) Employment;
- (ii) Training for future employment;
- (iii) Illness; or
- (iv) Natural disaster or casualty.

(c) Property that:

(i) You are making a good faith effort to sell;

(ii) You intend to build a home on, if you do not already own a home;

(iii) Produces income consistent with its fair market value, even if used only on a seasonal basis; or

(iv) A household member needs for employment or self-employment. Property excluded under this section and used by a self-employed farmer or fisher retains its exclusion for one year after the household member stops farming or fishing.

(d) Indian lands held jointly with the Tribe, or land that can be sold only with the approval of the Bureau of Indian Affairs.

(4) If you deposit excluded liquid resources into a bank account with countable liquid resources, we do not count the excluded liquid resources for six months from the date of deposit.

(5) If you sell your home, you have ninety days to reinvest the proceeds from the sale of a home into an exempt resource.

(a) If you do not reinvest within ninety days, we will determine whether there is good cause to allow more time. Some examples of good cause are:

(i) Closing on your new home is taking longer than anticipated;

(ii) You are unable to find a new home that you can afford;

(iii) Someone in your household is receiving emergent medical care; or

(iv) Your children are in school and moving would require them to change schools.

(b) If you have good cause, we will give you more time based on your circumstances.

(c) If you do not have good cause, we count the money you got from the sale as a resource.

[Statutory Authority: RCW 74.08.090 and 74.04.510. 03-05-015, § 388-470-0045, filed 2/7/03, effective 3/1/03; 99-16-024, § 388-470-0045, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-470-0045, filed 7/31/98, effective 9/1/98.]

WAC 388-470-0050 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-470-0055 How do my resources count toward the resource limit for Basic Food? (1) If your AU is not categorically eligible (CE) for Basic Food under WAC 388-414-0001, we count the following resources toward your AU's resource limit for Basic Food to decide if you are eligible for benefits under WAC 388-470-0005:

(a) Liquid resources. These are resources that are easily changed into cash. Some examples of liquid resources are:

- (i) Cash on hand;
- (ii) Money in checking or savings accounts;
- (iii) Money market accounts or certificates of deposit (CDs) less any withdrawal penalty;
- (iv) Keogh plans that do not involve a contractual agreement with someone outside of the assistance unit, less any withdrawal penalty;

(v) Individual Retirement Accounts (IRAs) less any withdrawal penalty;

(vi) Stocks, bonds, annuities, or mutual funds less any early withdrawal penalty;

(vii) Available trusts or trust accounts; or

(viii) Lump sum payments. A lump sum payment is money owed to you from a past period of time that you get but do not expect to get on a continuing basis.

(b) Nonliquid resources, personal property, and real property not specifically excluded in subsection (2) below.

(c) Vehicles as described in WAC 388-470-0075.

(d) The resources of a sponsor as described in WAC 388-470-0060.

(2) The following resources do not count toward your resource limit:

(a) Your home and the surrounding property that you, your spouse, or your dependents live in;

(b) A house you do not live in, if you plan on returning to the home and you are out of the home because of:

- (i) Employment;
- (ii) Training for future employment;
- (iii) Illness; or
- (iv) Natural disaster or casualty.

(c) Property that:

(i) You are making a good faith effort to sell;

(ii) You intend to build a home on, if you do not already own a home;

(iii) Produces income consistent with its fair market value, even if used only on a seasonal basis;

(iv) Is essential to the employment or self-employment of a household member. Property excluded under this section and used by a self-employed farmer or fisher retains its exclusion for one year after the household member stops farming or fishing; or

(v) Is essential for the maintenance or use of an income-producing vehicle; or

(vi) Has an equity value equal to or less than half of the resource limit as described in WAC 388-470-0005.

(d) Household goods

(e) Personal effects;

(f) Life insurance policies, including policies with cash surrender value (CSV);

(g) One burial plot per household member;

(h) One funeral agreement per household member, up to fifteen hundred dollars;

(i) Pension plans or retirement funds not specifically counted in subsection (1) above;

(j) Sales contracts, if the contract is producing income consistent with its fair market value;

(k) Government payments issued for the restoration of a home damaged in a disaster;

(l) Indian lands held jointly with the Tribe, or land that can be sold only with the approval of the Bureau of Indian Affairs;

(m) Nonliquid resources that have a lien placed against them;

(n) Earned Income Tax Credits (EITC):

(i) For twelve months, if you were a Basic Food recipient when you got the EITC and you remain on Basic Food for all twelve months; or

(ii) The month you get it and the month after, if you were not getting Basic Food when you got the EITC.

(o) Energy assistance payments or allowances;

(p) The resources of a household member who gets SSI, TANF/SFA, or GA benefits; and

(q) Resources specifically excluded by federal law.

(3) If you deposit excluded liquid resources into a bank account with countable liquid resources, we do not count the excluded liquid resources for six months from the date of deposit.

(4) If you sell your home, you have ninety days to reinvest the proceeds from the sale of a home into an exempt resource.

(a) If you do not reinvest within ninety days, we will determine whether there is good cause to allow more time. Some examples of good cause are:

(i) Closing on your new home is taking longer than anticipated;

(ii) You are unable to find a new home that you can afford;

(iii) Someone in your household is receiving emergent medical care; or

(iv) Your children are in school and moving would require them to change schools.

(b) If you have good cause, we will give you more time based on your circumstances.

(c) If you do not have good cause, we count the money you got from the sale as a resource.

[Statutory Authority: RCW 74.08.090 and 74.04.510. 03-05-015, § 388-470-0055, filed 2/7/03, effective 3/1/03; 99-16-024, § 388-470-0055, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-470-0055, filed 7/31/98, effective 9/1/98.]

WAC 388-470-0065 Repealed. See Disposition Table at beginning of this chapter.

Chapter 388-474 WAC

SUPPLEMENTAL SECURITY INCOME

WAC

388-474-0012 What is a state supplemental payment and who can get it?

WAC 388-474-0012 What is a state supplemental payment and who can get it? (1) The state supplemental

payment (SSP) is a state-paid cash assistance program for certain clients who the Social Security Administration determines are eligible for Supplemental Security Income (SSI).

(2) You can get an SSP if:

(a) You are a grandfathered SSI recipient under WAC 388-474-0001;

(b) You are an individual with an ineligible spouse under WAC 388-474-0001;

(c) You receive SSI because you are age sixty-five or older under WAC 388-474-0001;

(d) You receive SSI because you are blind under WAC 388-474-0001; or

(e) You are determined eligible for SSP by the division of developmental disabilities.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. 03-21-125, § 388-474-0012, filed 10/20/03, effective 11/1/03; 03-03-114, § 388-474-0012, filed 1/21/03, effective 2/23/03.]

**Chapter 388-476 WAC
SOCIAL SECURITY NUMBER**

WAC

388-476-0005 Social Security number requirements.

WAC 388-476-0005 Social Security number requirements. (1) With certain exceptions, each person who applies for or receives cash, medical or food assistance benefits must provide to the department a Social Security number (SSN), or numbers if more than one has been issued.

(2) If the person is unable to provide the SSN, either because it is not known or has not been issued, the person must:

(a) Apply for the SSN;

(b) Provide proof that the SSN has been applied for; and

(c) Provide the SSN when it is received.

(3) Assistance will not be delayed, denied or terminated pending the issuance of an SSN by the Social Security Administration. However, a person who does not comply with these requirements is not eligible for assistance.

(4) For cash, medical, and food assistance benefits, a person cannot be disqualified from receiving benefits for refusing to apply for or supply an SSN based on religious grounds.

(5) For food assistance programs:

(a) A person can receive benefits for the month of application and the following month if the person attempted to apply for the SSN and made every effort to provide the needed information to the Social Security Administration.

(b) A newborn may receive benefits for up to six months from the date of birth if the household is unable to provide proof of application for an SSN at the time of birth.

(6) For medical programs, a newborn as described in WAC 388-505-0210(1) is eligible for categorically needy (CN) medical without meeting the SSN requirement until the baby's first birthday.

(7) There is no SSN requirement for the following programs:

- (a) The consolidated emergency assistance program;
- (b) The refugee cash and medical assistance program;
- (c) The alien emergency medical program;
- (d) The state-funded pregnant woman program; and
- (e) Detoxification services.

[Statutory Authority: RCW 74.08.090. 03-20-061, § 388-476-0005, filed 9/26/03, effective 10/27/03. Statutory Authority: RCW 74.08.090 and 74.04.510. 99-17-025, § 388-476-0005, filed 8/10/99, effective 10/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-476-0005, filed 7/31/98, effective 9/1/98. Formerly WAC 388-505-0530.]

**Chapter 388-478 WAC
STANDARDS FOR PAYMENTS**

WAC

388-478-0015	Need standards for cash assistance.
388-478-0055	How much do I get from my Supplemental Security Income (SSI) and state supplemental payments (SSP)?
388-478-0060	What are the income limits and maximum benefit amounts for Basic Food?
388-478-0075	Medical programs—Monthly income standards based on the federal poverty level (FPL).

WAC 388-478-0015 Need standards for cash assistance. The need standards for cash assistance units are:

(1) For assistance units with obligation to pay shelter costs:

Assistance Unit Size	Need Standard
1	\$ 1,036
2	1,311
3	1,619
4	1,910
5	2,202
6	2,493
7	2,881
8	3,189
9	3,497
10 or more	3,804

(2) For assistance units with shelter provided at no cost:

Assistance Unit Size	Need Standard
1	\$ 511
2	647
3	799
4	943
5	1,086
6	1,230
7	1,422
8	1,574
9	1,725
10 or more	1,877

[Statutory Authority: RCW 74.04.770, 74.04.050, 74.04.055, 74.04.057. 03-24-059, § 388-478-0015, filed 12/1/03, effective 1/1/04; 03-23-116, § 388-478-0015, filed 11/18/03, effective 12/19/03. Statutory Authority: RCW 74.08.090, 74.04.510, and 74.04.770. 02-23-029, § 388-478-0015, filed 11/12/02, effective 12/1/02. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.04.200. 01-11-108, § 388-478-0015, filed 5/21/01, effective 7/1/01. Statutory Authority: RCW 74.04.200. 99-04-056, § 388-478-0015, filed 1/29/99, effective 3/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-478-0015, filed 7/31/98, effective 9/1/98.]

WAC 388-478-0055 How much do I get from my Supplemental Security Income (SSI) and state supplemental payments (SSP)? (1) SSI is a federal cash assistance program for needy individuals and couples who meet federal disability guidelines as aged, blind or disabled. SSP is a pay-

ment from the state for certain SSI eligible people (see WAC 388-474-0012).

If you are eligible for SSI, you may receive a federal cash payment from the federal Social Security Administration, as well as a SSP cash payment from the state.

If you were converted from state assistance to the federal SSI program in January 1974 because you were aged, blind, or disabled, the department calls you a grandfathered client. Social Security calls you a mandatory income level (MIL) client. To be a grandfathered (MIL) client, you must have remained continuously eligible for SSI from January 1974.

A change in living situation, cost-of-living adjustment (COLA) or federal payment level (FPL) can affect a grandfa-

thered (MIL) client. A grandfathered (MIL) client gets a federal SSI payment and a SSP payment, which totals the higher of one of the following:

(a) The state assistance standard set in December 1973, unless you lived in a medical institution at the time of conversion, plus the federal cost-of-living adjustments (COLA) since then; or

(b) The current payment standard.

(2) The federal, state and combined payment level for an eligible individual and couple are:

(a) If you are living alone.

LIVING ALONE - In own household or alternate care, except nursing homes or medical institutions

	Federal Payment Level	State Supplement Payment Level	Combined Federal/State Payment Level
Individual	\$552.00	\$0.00	\$552.00
Individual with:	829.00	0.00	829.00
One essential person			
Individual with an ineligible spouse	\$552.00	\$100.00	\$652.00
Couple	\$829.00	\$0.00	\$829.00
Couple with one essential person	\$829.00	\$0.00	\$829.00

(b) If you are in shared living.

	Federal Payment Level	State Supplement Payment Level	Combined Federal/State Payment Level
SHARED LIVING - In the home of another person			
Individual	\$368.00	\$0.00	\$368.00
Individual with:	665.00	0.00	665.00
One essential person			
Individual with an ineligible spouse	\$368.00	\$100.00	\$468.00
Couple	\$552.67	\$0.00	\$552.67
Couple with one essential person	\$665.00	\$0.00	\$665.00

(c) If you are residing in a medical institution: Area 1 and 2.

	Federal Payment Level	State Supplement Payment Level	Combined Payment Level
MEDICAL INSTITUTION			
Individual	\$ 30.00	\$ 11.62	\$ 41.62

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. 03-03-114, § 388-478-0055, filed 1/21/03, effective 2/23/03. Statutory Authority: RCW 74.08.090, 74.04.057. 01-19-024, § 388-478-0055, filed 9/12/01, effective 11/1/01; 01-08-015, § 388-478-0055, filed 3/23/01, effective 5/1/01. Statutory Authority: RCW 74.08.090. 00-20-054, § 388-478-0055, filed 9/29/00, effective 11/1/00. Statutory Authority: RCW 74.08.090 and 74.04.057. 00-11-130, § 388-478-0055, filed 5/22/00, effective 7/1/00; 99-18-063, § 388-478-0055, filed 8/30/99, effective 10/1/99. Statutory Authority: RCW 74.08.090 and 74.04.630. 99-04-103, § 388-478-0055, filed 2/3/99, effective 3/6/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-478-0055, filed 7/31/98, effective 9/1/98. Formerly WAC 388-511-1115.]

WAC 388-478-0060 What are the income limits and maximum benefit amounts for Basic Food? If your assistance unit (AU) meets all other eligibility requirements for Basic Food, your AU must have income at or below the limits in column B and C to get Basic Food, unless you meet one of the exceptions listed below. The maximum monthly food assistance benefit your AU could receive is listed in column D.

EFFECTIVE 10-1-2003

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
1	\$973	\$749	\$141	\$1,235
2	1,313	1,010	259	1,667
3	1,654	1,272	371	2,099
4	1,994	1,534	471	2,530
5	2,334	1,795	560	2,962
6	2,674	2,057	672	3,394
7	3,014	2,319	743	3,826
8	3,354	2,580	849	4,257

Column A	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
Number of Eligible AU Members	9	2,842	955	4,689
10	3,695	3,104	1,061	5,121
Each Additional Member	+ 341	+ 262	+ 106	+ 432

Exceptions:

(1) If your AU is categorically eligible as under WAC 388-414-0001, your AU does not have to meet the gross or net income standards in columns B and C. We do budget your AU's income to decide the amount of Basic Food your AU will receive.

(2) If your AU includes a member who is sixty years of age or older or has a disability, your income must be at or below the limit in column C only.

(3) If you are sixty years of age or older and cannot buy and cook your own meals because of a permanent disability, we will use column E to decide if you can be a separate AU.

(4) If your AU has zero income, your benefits are the maximum allotment in column D, based on the number of eligible members in your AU.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. 03-21-030, § 388-478-0060, filed 10/7/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. 02-21-050, § 388-478-0060, filed 10/14/02, effective 12/1/02. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510. 01-21-059, § 388-478-0060, filed 10/16/01, effective 12/1/01. Statutory Authority: RCW 74.04.510, 74.08.090. 00-23-013, § 388-478-0060, filed 11/3/00, effective 12/4/00. Statutory Authority: RCW 74.04.510. 99-24-053, § 388-478-0060, filed 11/29/99, effective 12/30/99. Statutory Authority: RCW 74.08.090 and 74.04.510. 99-16-024, § 388-478-0060, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.500, 74.04.510, 74.08.090. 99-05-074, § 388-478-0060, filed 2/17/99, effective 3/20/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-478-0060, filed 7/31/98, effective 9/1/98.]

WAC 388-478-0075 Medical programs—Monthly income standards based on the federal poverty level (FPL). (1) The department bases the income standard upon the Federal Poverty Level (FPL) for the following medical programs:

- (a) Pregnant women's program up to one hundred eighty-percent of FPL;
- (b) Children's categorically needy program up to two hundred percent of FPL;
- (c) Healthcare for workers with disabilities (HWD) up to two hundred twenty percent of FPL; and
- (d) The state children's health insurance program (SCHIP) is over two hundred percent of FPL but under two hundred fifty percent of FPL.

(2) Beginning April 1, 2003, the monthly FPL standards are:

FAMILY SIZE	100% FPL	185% FPL	200% FPL	220% FPL	250% FPL
1	\$749	\$1385	\$1497	\$1647	\$1871
2	\$1010	\$1869	\$2020	\$2222	\$2525
3	\$1272	\$2353	\$2544	\$2798	\$3180
4	\$1534	\$2837	\$3067	\$3374	\$3834
5	\$1795	\$3321	\$3590	\$3949	\$4488
6	\$2057	\$3805	\$4114	\$4525	\$5142
7	\$2319	\$4289	\$4637	\$5101	\$5796
8	\$2580	\$4773	\$5160	\$5676	\$6450

FAMILY SIZE	100% FPL	185% FPL	200% FPL	220% FPL	250% FPL
9	\$2842	\$5258	\$5684	\$6252	\$7105
10	\$3104	\$5742	\$6207	\$6828	\$7759
Add to the ten person standard for each person over ten:					
	\$262	\$485	\$524	\$576	\$655

(3) There are no resource limits for the programs under this section.

[Statutory Authority: RCW 74.08.090, 74.04.050, 74.04.057, 74.09.530, and 42 U.S.C. 9902(2), 03-15-088, § 388-478-0075, filed 7/17/03, effective 7/17/03. Statutory Authority: RCW 74.08.090, 74.08A.100, 74.09.080, and 74.09.415. 02-17-030, § 388-478-0075, filed 8/12/02, effective 9/12/02. Statutory Authority: RCW 74.04.050, 74.08.090, 74.09.500, 74.09.510, and Section 1902 (a)(10)(A)(ii)(XV) and (XVI) of the Social Security Act. 02-07-090, § 388-478-0075, filed 3/19/02, effective 4/1/02. Statutory Authority: RCW 74.08.090, 74.04.050, 74.04.057, 74.09.530, and Section 673(2) (42 U.S.C. 9902(2)). 01-18-056, § 388-478-0075, filed 8/30/01, effective 9/30/01; 00-17-085, § 388-478-0075, filed 8/14/00, effective 9/14/00; 99-19-005, § 388-478-0075, filed 9/3/99, effective 10/4/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-478-0075, filed 7/31/98, effective 9/1/98. Formerly WAC 388-507-0805, 388-508-0810, 388-509-0910, 388-509-0920, 388-509-0940 and 388-509-0960.]

**Chapter 388-480 WAC
STRIKERS**

WAC

388-480-0001 Does being on strike impact my eligibility for the Washington Basic Food program?

WAC 388-480-0001 Does being on strike impact my eligibility for the Washington Basic Food program? (1) A strike is a work stoppage, slowdown or other interruption of work caused by employees. This includes when a stoppage happens because a collective bargaining agreement has expired.

(2) We do not consider you to be on strike if you:

- (a) Are locked out by your employer;
- (b) Do not have work available as a result of striking employees;
- (c) Are not a member of the bargaining unit on strike and you fear someone may physically hurt you if you cross a picket line; or
- (d) Would have been exempt from work registration under WAC 388-444-0015 the day before the strike for any reason other than being employed at least thirty hours per week.

(3) If a person in your assistance unit (AU) is a striker, your AU is not eligible for Basic Food unless:

- (a) Your AU met all income requirements the day before the strike; and
- (b) You meet all other requirements of the Basic Food program as described in WAC 388-400-0040.

(4) If someone in your AU is on strike, your AU cannot receive a higher amount of Basic Food benefits solely

because the person receives less income as a direct result of being on strike. We count the larger of the two following amounts to determine if your AU is eligible and calculate your benefits:

- (a) The striker's income before they went on strike; or
- (b) The striker's current income.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.04.510. 03-22-037, § 388-480-0001, filed 10/28/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.04.510. 00-05-007, § 388-480-0001, filed 2/4/00, effective 3/6/00. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-480-0001, filed 7/31/98, effective 9/1/98.]

Chapter 388-482 WAC STUDENT STATUS

WAC

388-482-0005 How does being a student impact my eligibility for the Washington Basic Food program?

WAC 388-482-0005 How does being a student impact my eligibility for the Washington Basic Food program?

- (1) For Basic Food, we consider you a student if you are:
- (a) Age eighteen through forty-nine;
 - (b) Physically and mentally able to work; and
 - (c) Enrolled in an institution of higher education at least half-time as defined by the institution.
- (2) An institution of higher education is:
- (a) Any educational institution that requires a high school diploma or general education development certificate (GED);
 - (b) A business, trade, or vocational that requires a high school diploma or GED; or
 - (c) A two-year or four-year college or university that offers a degree but does not require a high school diploma or GED.
- (3) If you are a student, you must meet one of the following conditions to be eligible for Basic Food:
- (a) Have paid employment of twenty hours per week.
 - (b) Be self-employed, work, and earn at least the amount you would earn working twenty hours at the federal minimum wage;
 - (c) Be participating in a state or federal work study program at the time you applied for Basic Food benefits. For the purpose of being eligible for Basic Food, work study is:
 - (i) Working and receiving money from the work study program; and
 - (ii) Not turning down a work assignment.
 - (d) Be responsible for more than half the care of a dependent person in your assistance unit (AU) who is age five or younger;
 - (e) Be responsible for more than half the care of a dependent person in your AU who is between age six and eleven if we have determined that there is not adequate child care available during the school year to allow you to:
 - (i) Attend class and satisfy the twenty-hour work requirement; or
 - (ii) Take part in a work study program.
 - (f) Be a single parent responsible for the care of your natural, step, or adopted child who is eleven or younger;

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(g) Be an adult who has the parental responsibility of a child who is age eleven or younger if none of the following people live in the home:

- (i) The child's parents; or
 - (ii) Your spouse.
- (h) Participate in the WorkFirst program under WAC 388-310-0200;
- (i) Receive TANF or SFA benefits;
 - (j) Attend an institution of higher education through:
 - (i) The Workforce Investment Act (WIA);
 - (ii) The food stamp employment and training program under chapter 388-444 WAC;
 - (iii) An approved state or local employment and training program; or
 - (iv) Section 236 of the Trade Act of 1974.
- (4) If you are a student and the only reason you are eligible for Basic Food is because you participate in work study, you are only eligible while you work and receive money from work study. If your work study stops during the summer months, you must meet another condition to be an eligible student during this period.
- (5) If you are a student, your status as a student:
 - (a) Begins the first day of the school term; and
 - (b) Continues through vacations. This includes the summer break if you plan to return to school for the next term.
 - (6) We do not consider you a student if you:
 - (a) Graduate;
 - (b) Are suspended or expelled;
 - (c) Drop out; or
 - (d) Do not intend to register for the next school term other than summer.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.04.510. 03-22-037, § 388-482-0005, filed 10/28/03, effective 12/1/03. Statutory Authority: RCW 74.08.090 and 74.04.510. 99-16-024, § 388-482-0005, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-482-0005, filed 7/31/98, effective 9/1/98.]

Chapter 388-484 WAC TANF/SFA FIVE YEAR TIME LIMIT

WAC

388-484-0005 There is a five-year (sixty-month) time limit for TANF, SFA and GA-S cash assistance.

388-484-0006 TANF/SFA time limit extensions.

WAC 388-484-0005 There is a five-year (sixty-month) time limit for TANF, SFA and GA-S cash assistance. (1) What is the sixty-month time limit?

- (a) You can receive cash assistance for temporary assistance for needy families (TANF), state family assistance (SFA), and general assistance for pregnant women (GA-S) for a lifetime limit of sixty months. The time limit applies to cash assistance provided by any combination of these programs, and whether or not it was received in consecutive months.
- (b) If you receive cash assistance for part of the month, it counts as a whole month against the time limit.
- (c) If you have received cash assistance from another state on or after August 1, 1997, and it was paid for with federal TANF funds, those months will count against your time limit.

(d) The time limit does not apply to diversion cash assistance, support services, food assistance or Medicaid.

(2) When did the sixty-month time limit go into effect?

The sixty-month time limit applies to cash assistance received on or after August 1, 1997 for TANF and SFA. Although the GA-S program no longer exists, the time limit applies to GA-S cash assistance received from May 1, 1999 through July 31, 1999.

(3) Does the time limit apply to me?

The sixty-month time limit applies to you for any month in which you are a parent or other relative as defined in WAC 388-454-0010, or a minor parent emancipated through court order or marriage.

(4) Do any exceptions to the time limits apply to me?

The department does not count months of assistance towards the sixty-month time limit if you are:

(a) An adult caretaker, as described in WAC 388-454-0005 through 488-454-0010, who is not a member of the assistance unit and you are receiving cash assistance on behalf of a child;

(b) An unemancipated pregnant or parenting minor living in a department approved living arrangement as defined by WAC 388-486-0005; or

(c) An American Indian or Native Alaskan adult and you are living in Indian country, as defined under 18 U.S.C. 1151, or an Alaskan Native village and you are receiving TANF, SFA, or GA-S cash assistance during a period when at least fifty percent of the adults living in Indian country or in the village were not employed. See WAC 388-484-0010.

(5) What happens if a member of my assistance unit has received sixty months of TANF, SFA, and GA-S cash benefits?

Once any adult or emancipated minor in the assistance unit has received sixty months of cash assistance, the entire assistance unit becomes ineligible for TANF or SFA cash assistance, unless you are eligible for an extended period of cash assistance called a TANF/SFA time limit extension under WAC 388-484-0006.

(6) What can I do if I disagree with how the department has counted my months of cash assistance?

(a) If you disagree with how we counted your months of cash assistance, you may ask for a hearing within ninety days of the date we sent you a letter telling you how many months we are counting.

(b) You will get continued benefits (the amount you were getting before the change) if:

(i) You have used all sixty months of benefits according to our records;

(ii) Your cash assistance payment has been changed to a Child SafetyNet Payment, as described in WAC 388-310-1650; and

(iii) You ask for a hearing within the ten-day notice period, as described in chapter 388-458 WAC.

(c) If you get continued benefits and the administrative law judge (ALJ) agrees with our decision, you may have to pay back the continued benefits after the hearing, as described in chapter 388-410 WAC.

(7) Does the department ever change the number of months that count against my time limit?

We change the number of months we count in the following situations:

(a) You repay an overpayment for a month where you received benefits but were not eligible for any of the benefits you received. We subtract one month for each month that you completely repay. If you were eligible for some of the benefits you received, we still count that month against your time limit.

(b) We did not close your grant on time when the division of child support (DCS) collected money for you that was over your grant amount two months in a row, as described in WAC 388-422-0030.

(c) An ALJ decides at a fair hearing that we should change the number of months we count.

(d) You start getting worker's compensation payments from the department of labor and industries (L&I) and your L&I benefits have been reduced by the payments we made to you.

(e) You participated in the excess real property (ERP) program in order to get assistance and we collected the funds when your property sold.

(f) Another state gave us incorrect information about the number of months you got cash assistance from them.

[Statutory Authority: RCW 74.08.090, 74.04.050, and 78.08A.340. 03-06-046, § 388-484-0005, filed 2/28/03, effective 3/31/03. Statutory Authority: RCW 74.08A.010(4), 74.08A.340, 74.08.090, 74.04.050. 02-12-068, § 388-484-0005, filed 5/31/02, effective 6/1/02. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.010, and 42 U.S.C. 608 (a)(7). 01-04-016, § 388-484-0005, filed 1/26/01, effective 2/1/01. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 99-08-050, § 388-484-0005, filed 4/1/99, effective 5/2/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-484-0005, filed 7/31/98, effective 9/1/98.]

WAC 388-484-0006 TANF/SFA time limit extensions. (1) What happens after I receive sixty or more months of TANF/SFA cash assistance?

After you receive sixty or more months of TANF/SFA cash assistance, you may qualify for additional months of cash assistance. We call these additional months of TANF/SFA cash assistance a TANF/SFA time limit extension.

(2) Who is eligible for a TANF/SFA time limit extension?

You are eligible for a TANF/SFA time limit extension if you are on TANF or otherwise eligible for TANF and:

(a) You qualify for one of the exemptions listed in WAC 388-310-0350; or

(b) You:

(i) Are participating satisfactorily in the WorkFirst program (see chapter 388-310 WAC for a description of WorkFirst participation requirements); or

(ii) Meet the family violence option criteria in WAC 388-61-001 and are participating satisfactorily in specialized activities listed in your individual responsibility plan.

(c) You have a temporary situation that prevents you from working or looking for a job. (For example, you may be unable to look for a job while you have health problems or if you are dealing with family violence.) You will receive a time-limited extension if:

(i) You have verification provided by an approved professional as determined by the department that your situation will last for at least six month; or

(ii) You have verification provided by an approved professional as determined by the department that your situation will last for less than six months and you have been approved by the department for an extension;

(iii) Your WorkFirst case manager conducts a hardship extension review to document your situation; and

(iv) You are participating in activities included in your individual responsibility plan to help your situation.

(d) If you are refusing to participate as required and you do not have a good reason under WAC 388-310-1600(4), you do not qualify for a regular TANF/SFA time limit extension but your family may qualify for a Child SafetyNet Payment extension, described in WAC 388-310-1650.

(3) Who reviews and approves an extension?

(a) Your case manager or social worker will review your case and we will use the case staffing process to determine which extension type will be approved. Case staffing is a process to bring together a team of multidisciplinary experts including relevant professionals and you to identify issues, review case history and information, and recommend solutions.

(b) This review will not happen until after you have received at least fifty-two months of assistance but before you reach your time limit.

(c) During the case staffing, we will tell you about the different extensions. If you are in sanction (see WAC 388-310-1600), we will explain the consequences of continued nonparticipation and tell you the steps you must take to end the sanction. We will explain that continued failure to participate will result in your getting a Child SafetyNet Payment with additional restrictions after the sixtieth month.

(d) After the case staffing and before you reach your time limit, the department will send you a notice that tells you whether your extension was approved, how to request a fair hearing if you disagree with the decision, and any changes to your IRP that were made as a result of the case staffing.

(4) Do my WorkFirst participation requirements change if I receive a TANF/SFA time limit extension?

Your participation requirements do not change. You must still meet all of the WorkFirst participation requirements listed in chapter 388-310 WAC while you receive a TANF/SFA time limit extension.

(5) Do my benefits change if I receive a TANF/SFA time limit extension?

(a) You are still a TANF/SFA recipient. If you are:

(i) Receiving a regular TANF/SFA time limit extension, your cash assistance, services, or supports will not change as long as you continue to meet all other TANF/SFA eligibility requirements.

(ii) Receiving a Child SafetyNet Payment, your benefits will be different and are described in WAC 388-310-1650.

(b) During the TANF/SFA time limit extension, you must continue to meet all other TANF/SFA eligibility requirements. If you no longer meet TANF/SFA eligibility criteria during your extension, your benefits will end.

(6) What happens if I stop participating in WorkFirst activities as required during a TANF/SFA time limit extension?

If you do not participate in the WorkFirst activities required in your individual responsibility plan, and you do not have a good reason under WAC 388-310-1600(4), the

department will follow the sanction rules in WAC 388-310-1600, and will move you into Child SafetyNet Payment which will reduce your benefits (see WAC 388-310-1650).

(7) How long will a TANF/SFA time limit extension last?

(a) We will review your TANF/SFA time limit extension and your case periodically for changes in family circumstances:

(i) If you are extended under WAC 388-484-0006 (2)(a) then we will review your extension at least every twelve months;

(ii) If you are extended under WAC 388-484-0006 (2)(b) then we will review your extension at least every six months;

(iii) If you are extended under WAC 388-484-0006 (2)(c) then we will review your extension at least every twelve months.

(b) Your TANF/SFA time limit extension may be renewed for as long as you continue to meet the criteria to qualify.

(c) If during the extension period we get proof that your circumstances have changed, we may review your case and change the type of TANF/SFA time limit extension.

[Statutory Authority: RCW 74.08.090, 74.04.050, and 74.08A.340. 03-24-057, § 388-484-0006, filed 12/1/03, effective 1/1/04. Statutory Authority: RCW 74.08A.010(4), 74.08A.340, 74.08.090, 74.04.050. 02-12-068, § 388-484-0006, filed 5/31/02, effective 6/1/02.]

**Chapter 388-490 WAC
VERIFICATION**

WAC

388-490-0005 The department requires proof before authorizing benefits for cash, medical, and Basic Food.

WAC 388-490-0005 The department requires proof before authorizing benefits for cash, medical, and Basic Food. This rule applies to cash, medical, and Basic Food.

(1) When you first apply for benefits, the department may require you to provide proof of things that help us decide if you are eligible for benefits. This is also called "verification." The types of things that need to be proven are different for each program.

(2) After that, we will ask you to give us proof when:

(a) You report a change;

(b) We find out that your circumstances have changed;

or

(c) The information we have is questionable, confusing, or outdated.

(3) Whenever we ask for proof, we will give you a notice as described in WAC 388-458-0020.

(4) You must give us the proof within the time limits described in:

(a) WAC 388-406-0030 if you are applying for benefits; and

and

(b) WAC 388-458-0020 if you currently receive benefits.

(5) We will accept any proof that you can easily get when it reasonably supports your statement or circumstances. The proof you give to us must:

(a) Clearly relate to what you are trying to prove;

(b) Be from a reliable source; and

(c) Be accurate, complete, and consistent.

(6) We cannot make you give us a specific type or form of proof.

(7) If the only type of proof that you can get costs money, we will pay for it.

(8) If the proof that you give to us is questionable or confusing, we may:

(a) Ask you to give us more proof, which may include providing a collateral statement. A "collateral statement" is from someone outside of your residence who knows your situation;

(b) Schedule a visit to come to your home and verify your circumstances; or

(c) Send an investigator from the Division of Fraud Investigations (DFI) to make an unannounced visit to your home to verify your circumstances.

(9) By signing the application, eligibility review, or change of circumstances form, you give us permission to contact other people, agencies, or institutions.

(10) If you do not give us all of the proof that we have asked for, we will determine if you are eligible based on the information that we already have. If we cannot determine that you are eligible based on this information, we will deny or stop your benefits.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.04.510. 03-21-029, § 388-490-0005, filed 10/7/03, effective 11/1/03. Statutory Authority: RCW 74.08.090 and 74.04.510. 00-08-091, § 388-490-0005, filed 4/5/00, effective 5/6/00. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-490-0005, filed 7/31/98, effective 9/1/98. Formerly WAC 388-504-0460.]

Chapter 388-492 WAC

WASHINGTON COMBINED APPLICATION PROJECT

WAC

388-492-0040 Can I choose whether I get WASHCAP or Basic Food?
388-492-0070 How are my Washington state combined application program (WASHCAP) benefits calculated?

WAC 388-492-0040 Can I choose whether I get WASHCAP or Basic Food? You can choose to have Basic Food benefits instead of WASHCAP benefits when:

(1) Your shelter costs are more than five hundred fourteen dollars a month. We count the following items as a shelter cost:

- (a) Rent or mortgage;
- (b) Property taxes;
- (c) Homeowner's insurance (for the building only); or
- (d) Mandatory homeowner's association or condo fees.

(2) Your out-of-pocket medical expenses are more than thirty-five dollars a month;

(3) You would get more benefits from being in the Basic Food program; or

(4) You are waiting to receive WASHCAP benefits.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. 03-21-030, § 388-492-0040, filed 10/7/03, effective 12/1/03. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510. 03-01-045, § 388-492-0040, filed 12/10/02, effective 1/10/03; 02-15-148, § 388-492-0040, filed 7/22/02, effective 9/1/02; 01-21-058, § 388-492-0040, filed 10/16/01, effective 12/1/01.]

WAC 388-492-0070 How are my Washington state combined application program (WASHCAP) benefits calculated? We calculate your WASHCAP benefits as follows:

(1) We begin with your gross income. (Social Security Administration (SSA) tells us how much income you have.)

(2) We subtract one hundred thirty-four dollars from your gross income to get your countable income.

(3) We figure your shelter cost as follows:

(a) If SSA tells us you pay three hundred two dollars or more a month for shelter, we use three hundred twenty-one dollars as your shelter cost; or

(b) If SSA tells us you pay less than three hundred two dollars for shelter, we use one hundred fifty-five dollars as your shelter cost; and

(c) We add the current standard utility allowance under WAC 388-450-0195 to determine your total shelter cost.

(4) We figure your shelter deduction by subtracting one half of your countable income from your shelter cost.

(5) We figure your net income by subtracting your shelter deduction from your countable income.

(6) We figure your WASHCAP benefits (allotment) by:

(a) Multiplying your net income by thirty percent and rounding up to the next whole dollar; and

(b) Subtracting the result from the maximum allotment under WAC 388-478-0060.

(c) If you are eligible for WASHCAP, your assistance unit will get at least ten dollars food benefits each month.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. 03-21-030, § 388-492-0070, filed 10/7/03, effective 12/1/03. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510. 03-01-045, § 388-492-0070, filed 12/10/02, effective 1/10/03; 02-15-148, § 388-492-0070, filed 7/22/02, effective 9/1/02; 01-21-058, § 388-492-0070, filed 10/16/01, effective 12/1/01.]

Chapter 388-501 WAC

ADMINISTRATION OF MEDICAL PROGRAMS—GENERAL

WAC

388-501-0135 Patient review and restriction (PRR).

WAC 388-501-0135 Patient review and restriction (PRR). Patient review and restriction (PRR) is a medical assistance administration (MAA) health and safety program for clients needing help in the appropriate use of medical services. PRR is authorized under federal Medicaid law by 42 USC 1396n (a)(2) and 42 CFR 431.54. A client is assigned to the PRR program based upon a determination by MAA of overuse or inappropriate use of medical services.

(1) **Definitions**—The following definitions apply to this section only:

"Assigned provider" - A medical provider assigned by MAA staff in the PRR program to be the primary provider and coordinator of services for a client in the PRR program. A PRR client may have an assigned medical provider; an assigned pharmacy and an assigned hospital and may be restricted to these provider(s).

"At-risk" means a medical history that includes evidence of life-threatening or potentially life-threatening events or conditions which required medical intervention.

"Inappropriate use" - means use of medical services which are not adapted to or appropriate for a patient's medical needs.

"Medically unnecessary" - means services that are nonessential, redundant, and/or not necessary for a patient's medical care.

"Overuse" - means the excessive use of medical services well beyond the patient's medically necessary care.

(2) **Clients selected for review**—Clients are selected for PRR review by:

(a) An "exception report" produced by the Medicaid Management Information System; or

(b) Direct referral from medical providers, social service agencies or other concerned parties.

(3) **Initial review criteria**—Any client of the department's medical programs may be considered for assignment to PRR if conditions in either (a) or (b) of this subsection apply:

(a) Any two or more of the following conditions have been met in a period of ninety calendar days in the previous twelve months. The client:

(i) Received services from four or more different physicians;

(ii) Had prescriptions filled by four or more different pharmacies;

(iii) Received ten or more prescriptions;

(iv) Had prescriptions written by four or more different prescribers; or

(v) Received similar services from two or more providers in the same day.

(b) Any one of the following conditions applies: The client has:

(i) Made two or more emergency department visits in a ninety-day period;

(ii) A medical history indicating at-risk utilization patterns; or

(iii) Made repeated and documented efforts to seek medically unnecessary services and been counseled at least once by a health care provider or managed care representative about the appropriate use of health care services.

(4) **Request for clinical review**—If either subsection (2)(a) or (b) of this section applies, PRR program staff may review the client's medical and billing history for overuse or inappropriate use of medical services and on a case-by-case basis decide to:

(a) Close the file;

(b) Send the client a letter of concern with information on specific findings and notice of potential placement in the PRR program; or

(c) Request a clinical review of the records.

(5) **Clinical review**—A nurse consultant, physician, or other qualified clinical staff at MAA may review the client's medical records to determine if there is a history of overuse or inappropriate or medically unnecessary use of services. The reviewer relies on established medical guidelines and may on a case-by-case basis decide to:

(a) Take no action and close the PRR file; or

(b) Proceed with any or all of the following:

(i) Continue to monitor the client's utilization pattern for thirty to sixty days;

(ii) Refer the client for education on appropriate use of services;

(iii) Refer the client to other support services or agencies; or

(iv) Assign the client to the PRR program.

(6) **Client restriction**—When the clinical review determines that the client has obtained inappropriate or medically unnecessary services, by established medical guidelines, the client will be restricted:

(a) The department will send a written notice to the client or the client's authorized representative that:

(i) Asks the client to select a primary care provider (PCP) and/or a pharmacy and/or a hospital. (See WAC 388-546-5000 through 388-546-5400 for limitations on non-emergency transportation services.)

(ii) Directs the client to respond to the department within twenty calendar days after receiving the written notice:

(A) To provide information on the selected provider(s);

(B) To submit additional medical information, justifying the client's use of medical services; or

(C) To request assistance from PRR program staff.

(iii) Informs the client of fair hearing rights (see subsection (8) of this section); and

(iv) Informs the client that, if a response is not received within twenty calendar days, the client will be restricted to provider(s) assigned by the PRR program.

(b) After twenty calendar days, the PRR program may restrict the client to the specific provider(s) either chosen by the client or assigned by the program.

(7) **Assigned providers**—Assigned providers will be:

(a) Located in the client's local geographic area; and/or

(b) Reasonably accessible to the client.

(8) **Fair hearing rights**

(a) A client has ninety calendar days following the date of the department's notice in which to request a fair hearing.

(b) A client who requests a fair hearing within twenty calendar days from the date the client receives notice under subsection (6)(a) of this section, will not be assigned to the PRR program until a fair hearing decision is made or if the client appeals, until a final order is issued.

(c) A client who requests a fair hearing after twenty calendar days from the date the client receives notice under subsection (6)(a) of this section, and who has already been assigned a provider or providers, will remain in PRR until a fair hearing decision is made and a final administrative order is issued. (The client will remain in PRR if the fair hearing decision is adverse to the client.)

(9) **Provider selection and role**—For fee for service clients the providers must be contracted with MAA.

(a) The selected primary care provider (PCP) must be either:

(i) A physician who meets the criteria under WAC 388-502-0020 and 388-502-0030;

(ii) An advanced registered nurse practitioner (ARNP) who meets criteria under WAC 388-502-0020 and 388-502-0030; or

(iii) A licensed physician assistant, practicing with a sponsoring supervising physician.

(b) The PCP supervises and coordinates medical care for the client on restriction. The PCP provides continuity of care and refers to specialists when necessary.

(c) A single pharmacy fills all prescriptions for the client.

(d) A single hospital provides all nonemergent and outpatient hospital care for the client.

(10) **Provider changes**—A client in PRR cannot change the assigned providers for twelve months after the assignments are made, unless:

(a) The client moves to a residence outside the provider's geographic area;

(b) The provider moves out of the client's geographical area;

(c) The provider refuses to continue to serve the client; or

(d) The client did not select the provider. The client may change a department-assigned provider once within sixty calendar days of the initial assignment.

(11) **Managed care clients on PRR**—A client in PRR enrolled in an MAA managed care plan must select a primary care provider (PCP) and/or a pharmacy and/or a hospital from those identified as available within the plan. In addition to the reasons given in subsection (9) of this section, the client may change a provider if the chosen or assigned PCP or pharmacy no longer participates with the plan. In such a situation, the client may:

(a) Select a new PCP from the list of available PCPs provided by the plan; or

(b) Transfer enrollment of all family members to the new department-contracted plan that the established PCP has joined.

(12) **Lifting or continuing restrictions**—After twenty-four months of assignment to the PRR program, a PRR client's use of services is reviewed.

(a) A client is removed from PRR after the twenty-four-month review if:

(i) Clinical and billing documentation show the client's care was reasonable and appropriate; and/or

(ii) The PCP reports the services requested and received were reasonable and appropriate.

(b) If the client is not removed from PRR after the twenty-four-month review, the client remains in PRR for an additional twelve months. After that twelve-month period, the client is reviewed again pursuant to this subsection.

(13) **Client financial responsibility**—So long as the requirements of WAC 388-502-0160 are followed, a client who is restricted under the PRR program may be billed for services and held financially responsible for:

(a) Services that MAA and/or the client's health plan determine are not medically necessary; and:

(b) Nonemergent services obtained from providers or facilities other than those assigned under the PRR program.

[Statutory Authority: RCW 74.08.090, 74.04.055, and 42 C.F.R. Subpart B 431.51, 431.54 (e) and (3), and 456.1. 04-01-099, § 388-501-0135, filed 12/16/03, effective 1/16/04. Statutory Authority: RCW 74.08.090. 01-02-076, § 388-501-0135, filed 12/29/00, effective 1/29/01. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-501-0135, filed 7/31/98, effective 9/1/98. Statutory Authority: RCW 74.08.090 and 74.09.522. 97-03-038, § 388-501-0135, filed 1/9/97, effective 2/9/97. Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-501-0135, filed 5/3/94, effective 6/3/94. Formerly WAC 388-81-100.]

Chapter 388-502 WAC

ADMINISTRATION OF MEDICAL PROGRAMS—PROVIDERS

WAC

388-502-0010 Payment—Eligible providers defined.

WAC 388-502-0010 Payment—Eligible providers defined. The department reimburses enrolled providers for covered medical services, equipment and supplies they provide to eligible clients.

(1) To be eligible for enrollment, a provider must:

(a) Be licensed, certified, accredited, or registered according to Washington state laws and rules; and

(b) Meet the conditions in this chapter and chapters regulating the specific type of provider, program, and/or service.

(2) To enroll, an eligible provider must sign a core provider agreement or a contract with the department and receive a unique provider number. (Note: Section 13 of the core provider agreement, DSHS 09-048 (REV. 06/2002), is hereby rescinded. The department and each provider signing a core provider agreement will hold each other harmless from a legal action based on the negligent actions or omissions of either party under the terms of the agreement.)

(3) Eligible providers listed in this subsection may request enrollment. Out-of-state providers listed in this subsection are subject to conditions in WAC 388-502-0120.

(a) Professionals:

(i) Advanced registered nurse practitioners;

(ii) Anesthesiologists;

(iii) Audiologists;

(iv) Chiropractors;

(v) Dentists;

(vi) Dental hygienists;

(vii) Denturists;

(viii) Dietitians or nutritionists;

(ix) Maternity case managers;

(x) Midwives;

(xi) Occupational therapists;

(xii) Ophthalmologists;

(xiii) Opticians;

(xiv) Optometrists;

(xv) Orthodontists;

(xvi) Osteopathic physicians;

(xvii) Podiatric physicians;

(xviii) Pharmacists;

(xix) Physicians;

(xx) Physical therapists;

(xxi) Psychiatrists;

(xxii) Psychologists;

(xxiii) Registered nurse delegators;

(xxiv) Registered nurse first assistants;

(xxv) Respiratory therapists;

(xxvi) Speech/language pathologists;

(xxvii) Radiologists; and

(xxviii) Radiology technicians (technical only);

(b) Agencies, centers and facilities:

(i) Adult day health centers;

(ii) Ambulance services (ground and air);

(iii) Ambulatory surgery centers (Medicare-certified);

(iv) Birthing centers (licensed by the department of health);

(v) Blood banks;

(vi) Chemical dependency treatment facilities certified by the department of social and health services (DSHS) division of alcohol and substance abuse (DASA), and contracted through either:

(A) A county under chapter 388-810 WAC; or

(B) DASA to provide chemical dependency treatment services;

(vii) Centers for the detoxification of acute alcohol or other drug intoxication conditions (certified by DASA);

(viii) Community AIDS services alternative agencies;

(ix) Community mental health centers;

(x) Early and periodic screening, diagnosis, and treatment (EPSDT) clinics;

(xi) Family planning clinics;

(xii) Federally qualified health care centers (designated by the Federal Health Care Financing Administration);

(xiii) Genetic counseling agencies;

(xiv) Health departments;

(xv) HIV/AIDS case management;

(xvi) Home health agencies;

(xvii) Hospice agencies;

(xviii) Hospitals;

(xix) Indian Health Service;

(xx) Tribal or urban Indian clinics;

(xxi) Inpatient psychiatric facilities;

(xxii) Intermediate care facilities for the mentally retarded (ICF-MR);

(xxiii) Kidney centers;

(xxiv) Laboratories (CLIA certified);

(xxv) Maternity support services agencies;

(xxvi) Neuromuscular and neurodevelopmental centers;

(xxvii) Nursing facilities (approved by DSHS Aging and Adult Services);

(xxviii) Pharmacies;

(xxix) Private duty nursing agencies;

(xxx) Rural health clinics (Medicare-certified);

(xxxi) Tribal mental health services (contracted through the DSHS mental health division); and

(xxxii) Washington state school districts and educational service districts.

(c) Suppliers of:

(i) Durable and nondurable medical equipment and supplies;

(ii) Infusion therapy equipment and supplies;

(iii) Prosthetics/orthotics;

(iv) Hearing aids; and

(v) Oxygen equipment and supplies;

(d) Contractors of:

(i) Transportation brokers;

(ii) Interpreter services agencies; and

(iii) Eyeglass and contact lens providers.

(4) Nothing in this chapter precludes the department from entering into other forms of written agreements to provide services to eligible clients.

(5) The department does not enroll licensed or unlicensed practitioners who are not specifically addressed in subsection (3) of this section, including, but not limited to:

(a) Acupuncturists;

(b) Counselors;

(c) Sanipractors;

(d) Naturopaths;

(e) Homeopaths;

(f) Herbalists;

(g) Massage therapists;

(h) Social workers; or

(i) Christian Science practitioners or theological healers.

[Statutory Authority: RCW 74.08.090, 74.09.080, 74.09.120. 03-14-106, § 388-502-0010, filed 6/30/03, effective 7/31/03. Statutory Authority: RCW 74.08.090, 74.09.500, and 74.09.530. 01-07-076, § 388-502-0010, filed 3/20/01, effective 4/20/01; 00-15-050, § 388-502-0010, filed 7/17/00, effective 8/17/00.]

Chapter 388-505 WAC

FAMILY MEDICAL

WAC

388-505-0210 Children's medical eligibility.

WAC 388-505-0210 Children's medical eligibility.

(1) A child under the age of one is eligible for categorically needy (CN) medical assistance when:

(a) The child's mother was eligible for and receiving coverage under a medical program at the time of the child's birth; and

(b) The child remains with the mother and resides in the state.

(2) Children under the age of nineteen are eligible for CN medical assistance when they meet the requirements for:

(a) Citizenship or U.S. national status as described in WAC 388-424-0005(1) or immigrant status as described in WAC 388-424-0010 (1) or (2);

(b) State residence as described in chapter 388-468 WAC;

(c) A social security number as described in chapter 388-476 WAC; and

(d) Family income levels as described in WAC 388-478-0075 (1)(c).

(3) Children under the age of nineteen are eligible for the state children's health insurance program (SCHIP), as described in chapter 388-542 WAC, when:

(a) They meet the requirements of subsection (2)(a)[,] (b), and (c) of this section;

(b) They do not have other creditable health insurance coverage; and

(c) Family income exceeds two hundred percent of the federal poverty level (FPL), but does not exceed two hundred fifty percent of the FPL as described in WAC 388-478-0075 (1)(c) and (d).

(4) Children under the age of twenty-one are eligible for CN medical assistance when they meet:

(a) Citizenship or immigrant status, state residence, and social security number requirements as described in subsection (2)(a), (b), and (c) of this section;

(b) Income levels described in WAC 388-478-0075; and

(c) One of the following criteria:

(i) Reside, or are expected to reside, in a medical hospital, intermediate care facility for mentally retarded (ICF/MR), or nursing facility for thirty days or more;

(ii) Reside in a psychiatric or chemical dependency facility for ninety days or more;

(iii) Are in foster care; or

(iv) Receive subsidized adoption services.

(d) For a child meeting the criteria (c)(i) of this subsection, the only parental income the department considers available to the child is the amount the parent chooses to contribute.

(e) For a child meeting the criteria in (c)(ii) of this subsection, parental income is counted as described in WAC 388-408-0055 (1)(c).

(5) Children are eligible for CN medical assistance if they:

(a) Receive Supplemental Security Income (SSI) payments based upon their own disability; or

(b) Received SSI cash assistance for August 1996, and except for the August 1996 passage of amendments to federal disability definitions, would be eligible for SSI cash assistance.

(6) Children under the age of nineteen are eligible for medically needy (MN) medical assistance as defined in chapter 388-500 WAC when they:

(a) Meet citizenship or immigrant status, state residence, and social security number requirements as described in subsection (2)(a), (b), and (c); and

(b) Have income above the income levels described in WAC 388-478-0075 (1)(c).

(7) A child is eligible for SSI-related MN when the child:

(a) Meets the blind and/or disability criteria of the federal SSI program or the condition in subsection (5)(b); and

(b) Has countable income above the level described in WAC 388-478-0070(1).

(8) There are no resource limits for children under CN, MN, or SCHIP coverage.

(9) Children may also be eligible for:

(a) Family medical as described in WAC 388-505-0220; or

(b) Medical extensions as described in WAC 388-523-0100.

(10) Except for a client described in subsection (4)(c)(i) and (ii), an inmate of a public institution, as defined in WAC 388-500-0005, is not eligible for CN or MN medical coverage.

[Statutory Authority: RCW 74.08.090 and 74.04.050. 03-14-107, § 388-505-0210, filed 6/30/03, effective 7/31/03. Statutory Authority: RCW 74.08.090, 74.08A.100, 74.09.080, and 74.09.415. 02-17-030, § 388-505-0210, filed 8/12/02, effective 9/12/02. Statutory Authority: RCW 74.08.090, 74.04.050, [74.04.]055, and [74.04.]057. 01-11-110, § 388-505-0210, filed 5/21/01, effective 6/21/01. Statutory Authority: RCW 74.08.090 and 74.08A.100. 99-17-023, § 388-505-0210, filed 8/10/99, effective 9/10/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-505-0210, filed 7/31/98, effective 9/1/98. Formerly WAC 388-509-0905, 388-509-0910 and 388-509-0920.]

Chapter 388-510 WAC ALIEN MEDICAL ELIGIBILITY

WAC

388-510-1005 Repealed.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

388-510-1005 Definitions—Aliens. [Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, 74.04.005, 74.08.331, 74.08A.010, [74.08A.]100, [74.08A.]210, [74.08A.]230, 74.09.510, 74.12.255, Public Law 104-193 (1997) and the Balanced Budget Act [of] 1997. 98-15-066, § 388-510-1005, filed 7/13/98, effective 7/30/98.] Repealed by 03-23-086, filed 11/17/03, effective 12/18/03. Statutory Authority: RCW 74.08.090 and 34.05.353 (2)(d).

WAC 388-510-1005 Repealed. See Disposition Table at beginning of this chapter.

Chapter 388-513 WAC CLIENT NOT IN OWN HOME—INSTITUTIONAL MEDICAL

WAC

388-513-1364 Evaluating the transfer of an asset made on or after April 1, 2003 for long-term care (LTC) services.

388-513-1365 Evaluating the transfer of an asset made on or after March 1, 1997 and before April 1, 2003 for long-term care (LTC) services.

WAC 388-513-1364 Evaluating the transfer of an asset made on or after April 1, 2003 for long-term care (LTC) services. This section describes how the department evaluates the transfer of an asset made on or after April 1, 2003, by a client who is applying or approved for LTC services. The department must consider whether a transfer made within a specified time before the month of application requires a penalty period in which the client is not eligible for these services. Refer to WAC 388-513-1365 for rules used to evaluate the transfer of an asset made before April 1, 2003.

(1) The department does not apply a penalty period to the following transfers by the client, if they meet the conditions described:

(a) Gifts or donations totaling one thousand dollars or less in any month;

(b) The transfer of an excluded resource described in WAC 388-513-1360 with the exception of the client's home, unless the transfer of the client's home meets the conditions described in subsection (1)(d);

(c) The transfer of an asset for less than fair market value (FMV), if the client can provide evidence to the department of one of the following:

(i) An intent to transfer the asset at FMV or other adequate compensation;

(ii) The transfer is not made to qualify for LTC services;

(iii) The client is given back ownership of the asset;

(iv) The denial of eligibility would result in an undue hardship.

(d) The transfer of ownership of the client's home, if it is transferred to the client's:

(i) Spouse; or

(ii) Child, who:

(A) Meets the disability criteria described in WAC 388-511-1105 (1)(b) or (c); or

(B) Is less than twenty-one years old; or

(C) Lived in the home for at least two years immediately before the client's current period of institutional status, and

provided care that enabled the client to remain in the home; or

(iii) Brother or sister, who has:

(A) Equity in the home; and

(B) Lived in the home for at least one year immediately before the client's current period of institutional status.

(e) The transfer of an asset, if the transfer meets the conditions described in subsection (4), and the asset is transferred:

(i) To another person for the sole benefit of the spouse;

(ii) From the client's spouse to another person for the sole benefit of the spouse;

(iii) To trust established for the sole benefit of the client's child who meets the disability criteria described in WAC 388-511-1105 (1)(b) or (c);

(iv) To a trust established for the sole benefit of a person who is sixty-four years old or younger and meets the disability criteria described in WAC 388-511-1105 (1)(b) or (c); or

(f) The asset is transferred to the client's spouse or to the client's child, if the child meets the disability criteria described in WAC 388-511-1105 (1)(b) or (c).

(2) The department does not establish a period of ineligibility for the transfer of an asset to a family member prior to the current period of institutional status, if:

(a) The transfer is in exchange for care services the family member provided the client;

(b) The client has a documented need for the care services provided by the family member;

(c) The care services provided by the family member are allowed under the Medicaid state plan or the department's waived services;

(d) The care services provided by the family member do not duplicate those that another party is being paid to provide;

(e) The FMV of the asset transferred is comparable to the FMV of the care services provided;

(f) The time for which care services are claimed is reasonable based on the kind of services provided; and

(g) Compensation has been paid as the care services were performed or with no more time delay than one month between the provision of the service and payment.

(3) The department considers the transfer of an asset in exchange for care services given by a family member that does not meet the criteria as described under subsection (2) as the transfer of an asset without adequate consideration.

(4) The department considers the transfer of an asset or the establishment of a trust to be for the sole benefit of a person described in subsection (1)(e), if the transfer or trust:

(a) Is established by a legal document that makes the transfer irrevocable;

(b) Provides that no individual or entity except the spouse, blind or disabled child, or disabled individual can benefit from the assets transferred in any way, whether at the time of the transfer or at any time during the life of the primary beneficiary; and

(c) Provides for spending all assets involved for the sole benefit of the individual on a basis that is actuarially sound based on the life expectancy of that individual or the term of the trust, whichever is less; and

(d) The requirements in subsection (4)(c) of this section do not apply to trusts described in WAC 388-561-0100 (6)(a) and (b).

(5) If a client or the client's spouse transfers an asset within the look-back period described in WAC 388-513-1365 without receiving adequate compensation, the result is a penalty period in which the client is not eligible for LTC services. If a client or the client's spouse transfers an asset on or after April 1, 2003, the department must establish a penalty period as follows:

(a) If a single or multiple transfers are made within a single month, then the penalty period:

(i) Begins on the first day of the month in which the transfer is made; and

(ii) Ends on the last day of the number of whole days found by dividing the total uncompensated value of the assets by the statewide average daily private cost for nursing facilities at the time of application.

(b) If multiple transfers are made during multiple months, then the transfers are treated as separate events and multiple penalty periods are established that begin on the latter of:

(i) The first day of the month in which the transfer is made; or

(ii) The first day after any previous penalty period has ended and end on the last day of the whole number of days as described in subsection (5)(a)(ii).

(6) If an asset is sold, transferred, or exchanged, the portion of the proceeds:

(a) That is used within the same month to acquire an excluded resource described in WAC 388-513-1360 does not affect the client's eligibility;

(b) That remain after an acquisition described in subsection (6)(a) becomes an available resource as of the first day of the following month.

(7) If the transfer of an asset to the client's spouse includes the right to receive a stream of income not generated by a transferred resource, the department must apply rules described in WAC 388-513-1330 (6) through (8).

(8) If the transfer of an asset for which adequate compensation is not received is made to a person other than the client's spouse and includes the right to receive a stream of income not generated by a transferred resource, the length of the penalty period is determined and applied in the following way:

(a) The total amount of income that reflects a time frame based on the actuarial life expectancy of the client who transfers the income is added together;

(b) The amount described in subsection (8)(a) is divided by the statewide average daily private cost for nursing facilities at the time of application; and

(c) A penalty period equal to the number of whole days found by following subsections (5)(a) and (b) and (8)(a) and (b) is applied that begins on the latter of:

(i) The first day of the month in which the client transfers the income; or

(ii) The first day of the month after any previous penalty period has ended.

(9) A penalty period for the transfer of an asset that is applied to one spouse is not applied to the other spouse, unless:

(a) Both spouses are receiving LTC services; and

(b) A division of the penalty period between the spouses is requested.

(10) If a client or the client's spouse disagrees with the determination or application of a penalty period, that person may request a hearing as described in chapter 388-02 WAC.

[Statutory Authority: RCW 74.08.090, 03-20-059, § 388-513-1364, filed 9/26/03, effective 10/27/03. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.575, 03-06-048, § 388-513-1364, filed 2/28/03, effective 4/1/03.]

WAC 388-513-1365 Evaluating the transfer of an asset made on or after March 1, 1997 and before April 1, 2003 for long-term care (LTC) services. This section describes how the department evaluates the transfer of an asset made on or after March 1, 1997 and before April 1, 2003, by a client who is applying or approved for LTC services. The department must consider whether a transfer made within a specified time before the month of application requires a penalty period in which the client is not eligible for these services. Refer to WAC 388-513-1366 for rules used to evaluate the transfer of an asset made before March 1, 1997. Refer to WAC 388-513-1364 for rules used to evaluate the transfer of an asset made on or after March 31, 2003.

(1) The department disregards the following transfers by the client, if they meet the conditions described:

(a) Gifts or donations totaling one thousand dollars or less in any month;

(b) The transfer of an excluded resource described in WAC 388-513-1360 with the exception of the client's home, unless the transfer meets the conditions described in subsection (1)(d);

(c) The transfer of an asset for less than fair market value (FMV), if the client can provide evidence to the department that satisfies one of the following:

(i) An intent to transfer the asset at FMV or other adequate compensation;

(ii) The transfer is not made to qualify for LTC services;

(iii) The client is given back ownership of the asset;

(iv) The denial of eligibility would result in an undue hardship.

(d) The transfer of ownership of the client's home, if it is transferred to the client's:

(i) Spouse; or

(ii) Child, who:

(A) Meets the disability criteria described in WAC 388-511-1105 (1)(b) or (c); or

(B) Is less than twenty-one years old; or

(iii) A son or daughter, who:

(A) Lived in the home for at least two years immediately before the client's current period of institutional status; and

(B) Provided care that enabled the client to remain in the home; or

(iv) A brother or sister, who has:

(A) Equity in the home, and

(B) Lived in the home for at least one year immediately before the client's current period of institutional status.

(e) The transfer of an asset other than the home, if the transfer meets the conditions described in subsection (4), and the asset is transferred:

(i) To the client's spouse or to another person for the sole benefit of the spouse;

(ii) From the client's spouse to another person for the sole benefit of the spouse;

(iii) To the client's child who meets the disability criteria described in WAC 388-511-1105 (1)(b) or (c) or to a trust established for the sole benefit of this child; or

(iv) To a trust established for the sole benefit of a person who is sixty-four years old or younger and meets the disability criteria described in WAC 388-511-1105 (1)(b) or (c).

(f) The transfer of an asset to a member of the client's family in exchange for care the family member provided the client before the current period of institutional status, if a written agreement that describes the terms of the exchange:

(i) Was established at the time the care began;

(ii) Defines a reasonable FMV for the care provided that reflects a time frame based on the actuarial life expectancy of the client who transfers the asset; and

(iii) States that the transferred asset is considered payment for the care provided.

(2) When the fair market value of the care described in subsection (1)(f) is less than the value of the transferred asset, the department considers the difference the transfer of an asset without adequate consideration.

(3) The department considers the transfer of an asset in exchange for care given by a family member without a written agreement as described under subsection (1)(f) as the transfer of an asset without adequate consideration.

(4) The transfer of an asset or the establishment of a trust is considered to be for the sole benefit of a person described in subsection (1)(e), if the transfer or trust:

(a) Is established by a legal document that makes the transfer irrevocable; and

(b) Provides for spending all funds involved for the benefit of the person for whom the transfer is made within a time frame based on the actuarial life expectancy of that person.

(5) When evaluating the effect of the transfer of an asset on a client's eligibility for LTC services received on or after October 1, 1993, the department counts the number of months before the month of application to establish what is referred to as the "look-back" period. The following number of months apply as described:

(a) Thirty-six months, if all or part of the assets were transferred on or after August 11, 1993; and

(b) Sixty months, if all or part of the assets were transferred into a trust as described in WAC 388-561-0100.

(6) If a client or the client's spouse transfers an asset within the look-back period without receiving adequate compensation, the result is a penalty period in which the client is not eligible for LTC services. If a client or the client's spouse transfers an asset on or after March 1, 1997 and before April 1, 2003, the department must establish a penalty period as follows:

(a) If a single or multiple transfers are made within a single month, then the penalty period:

(i) Begins on the first day of the month in which the transfer is made; and

(ii) Ends on the last day of the number of whole months found by dividing the total uncompensated value of the assets by the statewide average monthly private cost for nursing facilities at the time of application.

(b) If multiple transfers are made during multiple months, then the transfers are treated as separate events and multiple penalty periods are established that:

(i) Begin on the latter of:

(A) The first day of the month in which the transfer is made; or

(B) The first day after any previous penalty period has ended; and

(ii) End on the last day of the whole number of months as described in subsection (6)(a)(ii).

(7) If an asset is sold, transferred, or exchanged, the portion of the proceeds:

(a) That is used within the same month to acquire an excluded resource described in WAC 388-513-1360 does not affect the client's eligibility;

(b) That remains after an acquisition described in subsection (7)(a) becomes an available resource as of the first day of the following month.

(8) If the transfer of an asset to the client's spouse includes the right to receive a stream of income not generated by a transferred resource, the department must apply rules described in WAC 388-513-1330 (6) through (8).

(9) If the transfer of an asset for which adequate compensation is not received is made to a person other than the client's spouse and includes the right to receive a stream not generated by a transferred resource, the length of the penalty period is determined and applied in the following way:

(a) The total amount of income that reflects a time frame based on the actuarial life expectancy of the client who transfers the income is added together;

(b) The amount described in (9)(a) is divided by the statewide average monthly private cost for nursing facilities at the time of application; and

(c) A penalty period equal to the number of whole months found by following subsections (9)(a) and (b) is applied that begins on the latter of:

(i) The first day of the month in which the client transfers the income; or

(ii) The first day of the month after any previous penalty period has ended.

(10) A penalty period for the transfer of an asset that is applied to one spouse is not applied to the other spouse, unless:

(a) Both spouses are receiving LTC services; and

(b) A division of the penalty period between the spouses is requested.

(11) If a client or the client's spouse disagrees with the determination or application of a penalty period, that person may request a hearing as described in chapter 388-02 WAC.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.575. 03-14-038, § 388-513-1365, filed 6/23/03, effective 8/1/03. Statutory Authority: RCW 74.08.090. 01-02-076, § 388-513-1365, filed 12/29/00, effective 1/29/01. Statutory Authority: RCW 11.92.180, 43.20B.460, 48.85.020, 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530, 74.[09.]575, 74.09.585; 20 C.F.R. 416.1110-1112, 1123 and 1160; 42 C.F.R. 435.403 (j)(2) and 1005; and Sections 17, 1915(c), and 1924 (42 U.S.C. 1396) of the Social Security Act. 00-01-051, § 388-513-1365, filed 12/8/99, effective 1/8/00. Statutory Authority: RCW 74.08.090 and 74.09.500. 99-06-045, § 388-513-1365, filed 2/26/99, effective 3/29/99. Statutory Authority: RCW 74.08.090, 74.04.050, 74.04.057, 74.09.585 and § 17 of the Social Security Act. 97-05-040, § 388-513-1365, filed 2/14/97, effective 3/17/97. Statutory Authority: RCW 74.08.090. 95-02-027 (Order 3818), § 388-513-1365, filed 12/28/94, effective 1/28/95; 94-10-065 (Order 3732), § 388-513-1365, filed 5/3/94, effective 6/3/94. Formerly WAC 388-95-395.]

Chapter 388-515 WAC

ALTERNATE LIVING—INSTITUTIONAL MEDICAL

WAC

388-515-1530 Repealed.
388-515-1540 Medically needy residential waiver (MNRW) effective March 17, 2003.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

388-515-1530 Coordinated community AIDS services alternatives (CASA) program. [Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.500. 01-02-052, § 388-515-1530, filed 12/28/00, effective 1/28/01. Statutory Authority: RCW 11.92.180, 43.20B.460, 48.85.020, 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530, 74.[09.]575, 74.09.585; 20 C.F.R. 416.1110-1112, 1123 and 1160; 42 C.F.R. 435.403 (j)(2) and 1005; and Sections 17, 1915(c), and 1924 (42 U.S.C. 1396) of the Social Security Act. 00-01-051, § 388-515-1530, filed 12/8/99, effective 1/8/00. Statutory Authority: RCW 74.08.090 and 74.09.500. 99-06-045, § 388-515-1530, filed 2/26/99, effective 3/29/99. Statutory Authority: RCW 74.08.090. 95-18-001 (Order 3882), § 388-515-1530, filed 8/23/95, effective 9/23/95; 94-10-065 (Order 3732), § 388-515-1530, filed 5/3/94, effective 6/3/94. Formerly WAC 388-83-220.] Repealed by 03-08-067, filed 3/31/03, effective 5/1/03. Statutory Authority: RCW 74.08.090, 34.05.353 (2)(c).

WAC 388-515-1530 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-515-1540 Medically needy residential waiver (MNRW) effective March 17, 2003. This section describes the financial eligibility requirements for waiver services under the medically needy residential waiver (MNRW) and the rules used to determine a client's responsibility in the total cost of care.

(1) To be eligible for MNRW, a client must meet the following conditions:

(a) Does not meet financial eligibility for Medicaid personal care or the COPES program;

(b) Is eighteen years of age or older;

(c) Meets the SSI related criteria described in WAC 388-511-1105(1);

(d) Requires the level of care provided in a nursing facility as described in WAC 388-71-0700;

(e) In the absence of waiver services described in WAC 388-71-0410 and 388-71-0415, would continue to reside in a medical facility as defined in WAC 388-513-1301, or will likely be placed in one within the next thirty days;

(f) Has attained institutional status as described in WAC 388-513-1320;

(g) Has been determined to be in need of waiver services as described in WAC 388-71-0442;

(h) Lives in one of the following department-contracted residential facilities:

(i) Licensed adult family home (AFH);

(ii) Assisted living (AL) facility; or

(iii) Enhanced adult residential care (EARC) facility.

(i) Is not subject to a penalty period of ineligibility for the transfer of an asset as described in WAC 388-513-1364, 388-513-1365 and 388-513-1366; and

(j) Meets the resource and income requirements described in subsections (2) through (6).

(2) The department determines a client's nonexcluded resources under MNRW as described in WAC 388-513-1350 (1) through (4)(a) and WAC 388-513-1360;

(3) Nonexcluded resources, after disregarding excess resources described in (4), must be at or below the resource standard described in WAC 388-513-1350 (1) and (2).

(4) In determining a client's resource eligibility, the department disregards excess resources above the standard described in subsection (3) of this section:

(a) In an amount equal to incurred medical expenses such as:

(i) Premiums, deductibles, and co-insurance/co-payment charges for health insurance and Medicare premiums;

(ii) Necessary medical care recognized under state law, but not covered under the state's Medicaid plan; or

(iii) Necessary medical care covered under the state's Medicaid plan.

(b) As long as the incurred medical expenses:

(i) Are not subject to third-party payment or reimbursement;

(ii) Have not been used to satisfy a previous spend down liability;

(iii) Have not previously been used to reduce excess resources;

(iv) Have not been used to reduce client responsibility toward cost of care; and

(v) Are amounts for which the client remains liable.

(5) The department determines a client's countable income under MNRW in the following way:

(a) Considers income available described in WAC 388-513-1325 and 388-513-1330 (1), (2), and (3);

(b) Excludes income described in WAC 388-513-1340;

(c) Disregards income described in WAC 388-513-1345;

(d) Deducts monthly health insurance premiums, except Medicare premiums.

(6) If the client's countable income is:

(a) Less than the residential facility's department-contracted rate, based on an average of 30.42 days in a month the client may qualify for MNRW subject to availability per WAC 388-71-0465;

(b) More than the residential facility's department-contracted rate, based on an average of 30.42 days in a month the client may qualify for MNRW when they meet the requirements described in subsections (7) through (9), subject to availability per WAC 388-71-0465.

(7) The portion of a client's countable income over the department-contracted rate is called "excess income."

(8) A client who meets the requirements for MNRW chooses a three or six month base period. The months must be consecutive calendar months.

(9) A client who has or will have "excess income" is not eligible for MNRW until the client has medical expenses which are equal in amount to that excess income. This is the process of meeting "spenddown." The excess income from each of the months in the base period is added together to determine the total "spenddown" amount.

(10) Medical expenses described in subsection (4) of this WAC may be used to meet spenddown if not already used in subsection (4) of this WAC to disregard excess resources or to reduce countable income as described in subsection (5)(d).

(11) In cases where spenddown has been met, medical coverage begins the day services are authorized.

(12) The client's income that remains after determining available income in WAC 388-513-1325 and 388-513-1330 (1), (2), (3) and excluded income in WAC 388-513-1340 is paid towards the cost of care after deducting the following amounts in the order listed:

(a) An earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income;

(b) Personal needs allowance (PNA) described in WAC 388-515-1505 (7)(b);

(c) Medicare and health insurance premiums not used to meet spenddown or reduce excess resources;

(d) Incurred medical expenses described in (4) not used to meet spenddown or reduce excess resources.

[Statutory Authority: 2001 c 269, RCW 74.09.700, 74.08.090, 74.04.050, 74.09.575 and chapter 74.39 RCW. 03-13-052, § 388-515-1540, filed 6/12/03, effective 7/13/03.]

Chapter 388-523 WAC MEDICAL EXTENSIONS

WAC

388-523-0120 Medical extensions—Premiums.

WAC 388-523-0120 Medical extensions—Premiums.

(1) "**Countable income**" means, for the purposes of determining the premium amount described in this chapter, all earned income of the adult family members, minus the amount of employment-related child care paid for by the family. The earned income of an adult, living in the household, who is financially responsible for other members of the assistance unit is included, whether or not the person is an eligible member of the assistance unit.

(2) The department requires the family to pay premiums for medical coverage provided during the second six-month medical extension period. The premium amount is one percent of the family's average countable income rounded down to the nearest whole dollar. This whole dollar amount is billed per adult per month. See subsection (3).

(3) The premiums for:

(a) Months seven, eight, and nine are based solely on the average countable income received in months one, two and three of the medical extension period; and

(b) Months ten, eleven, and twelve are based solely on the average countable income received in months four, five, and six of the medical extension period.

(4) A subsequent change in income does not effect the premium amount described in subsection (2) and (3) of this section.

(5) When a family's premium is one month in arrears, the family is ineligible for the balance of the medical extension period unless good cause exists. Reasons for good cause include, but are not limited to:

(a) Illness, mental impairment, injury, trauma, or stress;

(b) Lack of understanding the premium payment requirement due to a language barrier;

(c) Transportation problems;

(d) Nonpayment of the premium because the client expected to be able to meet the family medical needs, but could not; or

(e) Receipt of incorrect information or nonreceipt of advance and adequate notice about the premium payment requirements. WAC 388-422-0020 (4) and (5) provisions regarding good cause rights and periodic review apply to good cause for nonpayment of premiums.

(6) The department exempts individual family members from premium payment requirements, as follows:

- (a) Children;
- (b) Pregnant women;
- (c) American Indians and Alaska Natives; and

(d) Caretaker adults in a family whose countable income is equal to or less than one hundred percent of the Federal Poverty Level based on family size as described in WAC 388-478-0075(2).

(7) When determining the exemption described in subsection (6)(b), the premium exemption is effective the first of the month following the client's report of the pregnancy to the department.

(8) When determining the exemption described in subsection (6)(d), the department shall include in the household size an unborn child and a person who is financially responsible for other members of the assistance unit, whether or not the person is an eligible member of the assistance unit. A person receiving SSI cash assistance is not included when determining the household size.

(9) The department determines a family's exemption from the premium requirement as described in subsection (6)(d) for:

(a) Months seven, eight and nine based solely on information available to the department at the time the premium for these months is calculated; and

(b) Months ten, eleven, and twelve based solely on information available to the department at the time the premium for these months is calculated.

(10) Any change resulting in an individual meeting the exemption criteria in subsection (6)(d) after the establishment of the premium amount for months seven, eight and nine is used to calculate the premium amount for months ten, eleven, and twelve. Any change resulting in an individual meeting the exemption criteria in subsection (6)(d) after the establishment of the premium amount for months ten, eleven, and twelve is not used to recalculate the premium amount for months ten, eleven, and twelve.

[Statutory Authority: RCW 74.08.090 and 2001 c 7 § 209. 03-14-108, § 388-523-0120, filed 6/30/03, effective 6/30/03; 02-10-018, § 388-523-0120, filed 4/22/02, effective 5/23/02.]

Chapter 388-530 WAC PHARMACY SERVICES

WAC

388-530-1270 Mail-order services.
388-530-1300 General reimbursement methodology.

WAC 388-530-1270 Mail-order services. The medical assistance administration (MAA) provides a contracted mail-order pharmacy service for client use. The mail-order contractor is selected as a result of a competitive procurement process.

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

- (a) Scope of the client's medical care program;
- (b) Availability of services from the contracted mail-order provider; and
- (c) Special terms and conditions described in subsection (2) and (3) of this section.

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

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

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

- (i) Preferred drugs (see WAC 388-530-1260);
- (ii) Generic drugs; and,
- (iii) Drugs that do not require prior authorization or expedited prior authorization (see WAC 388-530-1200 and 388-530-1250).

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

- (i) Controlled substances (schedules II through V); and
- (ii) Drugs requiring prior authorization or expedited prior authorization (see WAC 388-530-1200).

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

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

[Statutory Authority: RCW 74.08.090, 74.09.510, and 2002 c 371 (2001-03 Revised Omnibus Operating Budget - 2002 Supp.). 03-05-043, § 388-530-1270, filed 2/13/03, effective 3/16/03.]

WAC 388-530-1300 General reimbursement methodology. (1) The medical assistance administration's (MAA) total reimbursement for a prescription drug must not exceed the lowest of:

- (a) Estimated acquisition cost (EAC) plus a dispensing fee;
- (b) Maximum allowable cost (MAC) plus a dispensing fee;
- (c) Federal Upper Limit (FUL) plus a dispensing fee;
- (d) Actual acquisition cost (AAC) plus a dispensing fee for drugs purchased under section 340 B of the Public Health Service (PHS) Act and dispensed to medical assistance clients;

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

(f) Certified average wholesale price (CAWP) plus a dispensing fee; or

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

(2) MAA selects the sources for pricing information used to set EAC and MAC. These sources may include pharmaceutical wholesalers.

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

(4) MAA reimburses a pharmacy for the least costly dosage form of a drug within the same route of administration, unless the prescriber has designated a medically necessary specific dosage form.

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

(6) If a pharmacy gives a product free to the general public, the pharmacy must not submit a claim to MAA when giving the free product to a medical assistance client.

[Statutory Authority: RCW 74.08.090 and 74.09.520. 04-01-089, § 388-530-1300, filed 12/16/03, effective 1/16/04. Statutory Authority: RCW 74.09.080, 74.04.050 and 42 C.F.R. Subpart K, subsection 162.1102. 02-17-023, § 388-530-1300, filed 8/9/02, effective 9/9/02. Statutory Authority: RCW 74.08.090, 74.04.050. 01-01-029, § 388-530-1300, filed 12/7/00, effective 1/7/01. Statutory Authority: RCW 74.08.090. 96-21-031, § 388-530-1300, filed 10/9/96, effective 11/9/96.]

Chapter 388-531 WAC PHYSICIAN-RELATED SERVICES

WAC

388-531-0050	Physician-related services definitions.
388-531-1650	Substance abuse detoxification physician-related services.

WAC 388-531-0050 Physician-related services definitions. The following definitions and abbreviations and those found in WAC 388-500-0005, apply to this chapter. Defined words and phrases are bolded the first time they are used in the text.

"Acquisition cost" means the cost of an item excluding shipping, handling, and any applicable taxes.

"Acute care" means care provided for clients who are not medically stable. These clients require frequent monitoring by a health care professional in order to maintain their health status. See also WAC 246-335-015.

"Acute physical medicine and rehabilitation (PM&R)" means a comprehensive inpatient and rehabilitative program coordinated by a multidisciplinary team at an MAA-approved rehabilitation facility. The program provides twenty-four hour specialized nursing services and an intense level of specialized therapy (speech, physical, and occupational) for a diagnostic category for which the client shows significant potential for functional improvement (see WAC 388-550-2501).

"Add-on procedure(s)" means secondary procedure(s) that are performed in addition to another procedure.

"Admitting diagnosis" means the medical condition responsible for a hospital admission, as defined by ICD-9-M diagnostic code.

"Advanced registered nurse practitioner (ARNP)" means a registered nurse prepared in a formal educational program to assume an expanded health services provider role in accordance with WAC 246-840-300 and 246-840-305.

"Aging and disability services administration (ADSA)" means the administration that administers directly or contracts for long-term care services, including but not limited to nursing facility care and home and community services. See WAC 388-71-0202.

"Allowed charges" means the maximum amount reimbursed for any procedure that is allowed by MAA.

"Anesthesia technical advisory group (ATAG)" means an advisory group representing anesthesiologists who are affected by the implementation of the anesthesiology fee schedule.

"Base anesthesia units (BAU)" means a number of anesthesia units assigned to a surgical procedure that includes the usual pre-operative, intra-operative, and post-operative visits. This includes the administration of fluids and/or blood incident to the anesthesia care, and interpretation of noninvasive monitoring by the anesthesiologist.

"Bundled services" means services integral to the major procedure that are included in the fee for the major procedure. Bundled services are not reimbursed separately.

"Bundled supplies" means supplies which are considered to be included in the practice expense RVU of the medical or surgical service of which they are an integral part.

"By report (BR)" means a method of reimbursement in which MAA determines the amount it will pay for a service that is not included in MAA's published fee schedules. MAA may request the provider to submit a "report" describing the nature, extent, time, effort, and/or equipment necessary to deliver the service.

"Call" means a face-to-face encounter between the client and the provider resulting in the provision of services to the client.

"Cast material maximum allowable fee" means a reimbursement amount based on the average cost among suppliers for one roll of cast material.

"Centers for Medicare and Medicaid Services (CMS)" means the agency within the federal Department of Health and Human Services (DHHS) with oversight responsibility for Medicare and Medicaid programs.

"Certified registered nurse anesthetist (CRNA)" means an advanced registered nurse practitioner (ARNP) with formal training in anesthesia who meets all state and national criteria for certification. The American Association of Nurse Anesthetists specifies the National Certification and scope of practice.

"Children's health insurance plan (CHIP)," see chapter 388-542 WAC.

"Clinical Laboratory Improvement Amendment (CLIA)" means regulations from the U.S. Department of Health and Human Services that require all laboratory testing sites to have either a CLIA registration or a CLIA certificate of waiver in order to legally perform testing anywhere in the U.S.

"Conversion factors" means dollar amounts MAA uses to calculate the maximum allowable fee for physician-related services.

"Covered service" means a service that is within the scope of the eligible client's medical care program, subject to the limitations in this chapter and other published WAC.

"CPT," see "current procedural terminology."

"Critical care services" means physician services for the care of critically ill or injured clients. A critical illness or injury acutely impairs one or more vital organ systems such that the client's survival is jeopardized. Critical care is given in a critical care area, such as the coronary care unit, intensive care unit, respiratory care unit, or the emergency care facility.

"Current procedural terminology (CPT)" means a systematic listing of descriptive terms and identifying codes for reporting medical services, procedures, and interventions performed by physicians and other practitioners who provide physician-related services. CPT is copyrighted and published annually by the American Medical Association (AMA).

"Diagnosis code" means a set of numeric or alphanumeric characters assigned by the ICD-9-CM, or successor document, as a shorthand symbol to represent the nature of a disease.

"Emergency medical condition(s)" means a medical condition(s) that manifests itself by acute symptoms of sufficient severity so that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

"Emergency services" means medical services required by and provided to a patient experiencing an emergency medical condition.

"Estimated acquisition cost (EAC)" means the department's best estimate of the price providers generally and currently pay for drugs and supplies.

"Evaluation and management (E&M) codes" means procedure codes which categorize physician services by type of service, place of service, and patient status.

"Expedited prior authorization" means the process of obtaining authorization that must be used for selected services, in which providers use a set of numeric codes to indicate to MAA which acceptable indications, conditions, diagnoses, and/or criteria are applicable to a particular request for services.

"Experimental" means a term to describe a procedure, or course of treatment, which lacks sufficient scientific evidence of safety and effectiveness. See WAC 388-531-0550. A service is not "experimental" if the service:

- (1) Is generally accepted by the medical profession as effective and appropriate; and
- (2) Has been approved by the FDA or other requisite government body, if such approval is required.

"Fee-for-service" means the general payment method MAA uses to reimburse providers for covered medical services provided to medical assistance clients when those services are not covered under MAA's healthy options program or children's health insurance program (CHIP) programs.

"Flat fee" means the maximum allowable fee established by MAA for a service or item that does not have a relative value unit (RVU) or has an RVU that is not appropriate.

"Geographic practice cost index (GPCI)" as defined by Medicare, means a Medicare adjustment factor that includes local geographic area estimates of how hard the provider has to work (work effort), what the practice expenses are, and what malpractice costs are. The GPCI reflects one-fourth the difference between the area average and the national average.

"Global surgery reimbursement," see WAC 388-531-1700.

"HCPCS Level II" means a coding system established by CMS (formerly known as the Health Care Financing Administration) to define services and procedures not included in CPT.

"Health care financing administration common procedure coding system (HCPCS)" means the name used for the Centers for Medicare and Medicaid Services (formerly known as the Health Care Financing Administration) codes made up of CPT and HCPCS level II codes.

"Health care team" means a group of health care providers involved in the care of a client.

"Hospice" means a medically directed, interdisciplinary program of palliative services which is provided under arrangement with a Title XVIII Washington licensed and certified Washington state hospice for terminally ill clients and the clients' families.

"ICD-9-CM," see "International Classification of Diseases, 9th Revision, Clinical Modification."

"Informed consent" means that an individual consents to a procedure after the provider who obtained a properly completed consent form has done all of the following:

- (1) Disclosed and discussed the client's diagnosis; and
- (2) Offered the client an opportunity to ask questions about the procedure and to request information in writing; and
- (3) Given the client a copy of the consent form; and
- (4) Communicated effectively using any language interpretation or special communication device necessary per 42 C.F.R. Chapter IV 441.257; and
- (5) Given the client oral information about all of the following:
 - (a) The client's right to not obtain the procedure, including potential risks, benefits, and the consequences of not obtaining the procedure; and
 - (b) Alternatives to the procedure including potential risks, benefits, and consequences; and
 - (c) The procedure itself, including potential risks, benefits, and consequences.

"Inpatient hospital admission" means an acute hospital stay for longer than twenty-four hours when the medical care record shows the need for inpatient care beyond twenty-four hours. All admissions are considered inpatient hospital admissions, and are paid as such, regardless of the length of stay, in the following circumstances:

- (1) The death of a client;
- (2) Obstetrical delivery;
- (3) Initial care of a newborn; or
- (4) Transfer to another acute care facility.

"International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM)" means the systematic listing that transforms verbal descriptions of diseases, injuries, conditions, and procedures into numerical or alpha-numerical designations (coding).

"Investigational" means a term to describe a procedure, or course of treatment, which lacks sufficient scientific evidence of benefit for a particular condition. A service is not "investigational" if the service:

- (1) Is generally accepted by the medical professional as effective and appropriate for the condition in question; or
- (2) Is supported by an overall balance of objective scientific evidence, in which the potential risks and potential benefits are examined, demonstrating the proposed service to be of greater overall benefit to the client in the particular circumstance than another, generally available service.

"Life support" means mechanical systems, such as ventilators or heart-lung respirators, which are used to supplement or take the place of the normal autonomic functions of a living person.

"Limitation extension" means a process for requesting and approving reimbursement for covered services whose proposed quantity, frequency, or intensity exceeds that which MAA routinely reimburses. Limitation extensions require prior authorization.

"Maximum allowable fee" means the maximum dollar amount that MAA will reimburse a provider for specific services, supplies, and equipment.

"Medically necessary," see WAC 388-500-0005.

"Medicare physician fee schedule data base (MPF-SDB)" means the official HCFA publication of the Medicare policies and RVUs for the RBRVS reimbursement program.

"Medicare program fee schedule for physician services (MPFSPS)" means the official HCFA publication of the Medicare fees for physician services.

"Medicare clinical diagnostic laboratory fee schedule" means the fee schedule used by Medicare to reimburse for clinical diagnostic laboratory procedures in the state of Washington.

"Mentally incompetent" means a client who has been declared mentally incompetent by a federal, state, or local court.

"Modifier" means a two-digit alphabetic and/or numeric identifier that is added to the procedure code to indicate the type of service performed. The modifier provides the means by which the reporting physician can describe or indicate that a performed service or procedure has been altered by some specific circumstance but not changed in its definition or code. The modifier can affect payment or be used for information only. Modifiers are listed in fee schedules.

"Outpatient" means a client who is receiving medical services in other than an inpatient hospital setting.

"Peer-reviewed medical literature" means medical literature published in professional journals that submit articles for review by experts who are not part of the editorial staff. It does not include publications or supplements to publications primarily intended as marketing material for pharmaceutical, medical supplies, medical devices, health service providers, or insurance carriers.

"Physician care plan" means a written plan of medically necessary treatment that is established by and periodically reviewed and signed by a physician. The plan describes the medically necessary services to be provided by a home health agency, a hospice agency, or a nursing facility.

"Physician standby" means physician attendance without direct face-to-face client contact and which does not involve provision of care or services.

"Physician's current procedural terminology," see "CPT, current procedural terminology."

"PM&R," see acute physical medicine and rehabilitation.

"Podiatric service" means the diagnosis and medical, surgical, mechanical, manipulative, and electrical treatments of ailments of the foot and ankle.

"Pound indicator (#)" means a symbol (#) indicating a CPT procedure code listed in MAA fee schedules that is not routinely covered.

"Preventive" means medical practices that include counseling, anticipatory guidance, risk factor reduction interventions, and the ordering of appropriate laboratory and diagnostic procedures intended to help a client avoid or reduce the risk or incidence of illness or injury.

"Prior authorization" means a process by which clients or providers must request and receive MAA approval for certain medical services, equipment, or supplies, based on medical necessity, before the services are provided to clients, as a precondition for provider reimbursement. Expedited prior authorization and limitation extension are forms of prior authorization.

"Professional component" means the part of a procedure or service that relies on the provider's professional skill or training, or the part of that reimbursement that recognizes the provider's cognitive skill.

"Prognosis" means the probable outcome of a client's illness, including the likelihood of improvement or deterioration in the severity of the illness, the likelihood for recurrence, and the client's probable life span as a result of the illness.

"Prolonged services" means face-to-face client services furnished by a provider, either in the inpatient or outpatient setting, which involve time beyond what is usual for such services. The time counted toward payment for prolonged E&M services includes only face-to-face contact between the provider and the client, even if the service was not continuous.

"Provider," see WAC 388-500-0005.

"Radioallergosorbent test" or "RAST" means a blood test for specific allergies.

"RBRVS," see resource based relative value scale.

"RVU," see relative value unit.

"Reimbursement" means payment to a provider or other MAA-approved entity who bills according to the provisions in WAC 388-502-0100.

"Reimbursement steering committee (RSC)" means an interagency work group that establishes and maintains RBRVS physician fee schedules and other payment and purchasing systems utilized by the health care authority, MAA, and department of labor and industries.

"Relative value guide (RVG)" means a system used by the American Society of Anesthesiologists for determining base anesthesia units (BAUs).

"Relative value unit (RVU)" means a unit which is based on the resources required to perform an individual service or intervention.

"Resource based relative value scale (RBRVS)" means a scale that measures the relative value of a medical service or intervention, based on the amount of physician resources involved.

"RBRVS RVU" means a measure of the resources required to perform an individual service or intervention. It is set by Medicare based on three components - physician work, practice cost, and malpractice expense. Practice cost varies depending on the place of service.

"RSC RVU" means a unit established by the RSC for a procedure that does not have an established RBRVS RVU or has an RBRVS RVU deemed by the RSC as not appropriate for the service.

"Stat laboratory charges" means charges by a laboratory for performing tests immediately. "Stat" is an abbreviation for the Latin word "statim," meaning immediately.

"Sterile tray" means a tray containing instruments and supplies needed for certain surgical procedures normally done in an office setting. For reimbursement purposes, tray components are considered by HCFA to be nonroutine and reimbursed separately.

"Technical advisory group (TAG)" means an advisory group with representatives from professional organizations whose members are affected by implementation of RBRVS physician fee schedules and other payment and purchasing systems utilized by the health care authority, MAA, and department of labor and industries.

"Technical component" means the part of a procedure or service that relates to the equipment set-up and technician's time, or the part of the procedure and service reimbursement that recognizes the equipment cost and technician time.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, and Public Law 104-191. 03-19-081, § 388-531-0050, filed 9/12/03, effective 10/13/03. Statutory Authority: RCW 74.08.090. 03-06-049, § 388-531-0050, filed 2/28/03, effective 3/31/03. Statutory Authority: RCW 74.08.090, 74.09.520. 01-01-012, § 388-531-0050, filed 12/6/00, effective 1/6/01.]

WAC 388-531-1650 Substance abuse detoxification physician-related services. (1) MAA covers physician services for three-day alcohol detoxification or five-day drug detoxification services for a client eligible for medical care program services in an MAA-enrolled hospital-based detoxification center.

(2) MAA covers treatment in programs certified under chapter 388-805 WAC or its successor.

(3) MAA covers detoxification and medical stabilization services to chemically using pregnant (CUP) women for up to twenty-seven days in an inpatient hospital setting.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, and Public Law 104-191. 03-19-081, § 388-531-1650, filed 9/12/03, effective 10/13/03. Statutory Authority: RCW 74.08.090, 74.09.520. 01-01-012, § 388-531-1650, filed 12/6/00, effective 1/6/01.]

Chapter 388-533 WAC

MATERNITY-RELATED SERVICES

WAC

388-533-1000 First steps child care program.

WAC 388-533-1000 First steps child care program. The purpose of the first steps child care program is to fund child care for children so that their pregnant or postpregnant mothers can access prenatal care or other medical assistance administration (MAA)-covered services.

(1) For the purposes of this section, the following terms and definitions apply:

(a) **"Background check central unit (BCCU)"** means the centralized unit established by the department of social and health services (DSHS) that performs background checks as directed by the Washington state legislature.

(b) **"Finding"** means an action taken by the department of social and health services (DSHS) that shows an individual or entity has been found by the department to have abused, neglected, exploited or abandoned a vulnerable person. Find-

ings reported by DSHS or the background check central unit (BCCU) or both are limited to official findings that have been established through legal due process or an administrative hearing process or both.

(c) **"First steps agency"** means an entity, public or private, that is contracted with the medical assistance administration (MAA) to provide first steps program services.

(d) **"MAA first steps child care authorizers"** or **"authorizers"** means the individuals eligible to authorize first steps child care through the first steps child care program. Authorizers include maternity support services (MSS) professional/paraprofessional agency staff members, community services office (CSO) social workers or designated staff members, and other MAA-designated professional/paraprofessional persons.

(e) **"MAA first steps child care coordinator or designee"** means the individual designated by MAA to review special needs requests for first steps child care through the first steps child care program.

(f) **"MAA first steps child care program manager"** means the individual designated by MAA to review all background check cases identified by the background check central unit (BCCU) as "needing further review."

(g) **"Postpregnancy"** means the period of time after the pregnancy ends (includes live birth, still birth, miscarriage, or pregnancy termination) through the end of the month that includes the sixtieth day from the end of the pregnancy.

(2) First steps child care is available for the children of either a managed care or fee-for-service client. Subject to the restrictions and limitations listed in this section, a client is eligible to receive first steps child care for her children if she:

(a) Meets one of the following criteria:

(i) Is pregnant; or

(ii) Is within the postpregnancy period.

(b) Is currently eligible under one of the following programs:

(i) Categorically needy program (CNP);

(ii) CNP - emergency medical only; or

(iii) Children's health insurance program (CHIP).

(c) Requires one or more of the covered services listed in subsection (4) and (5) of this section;

(d) Demonstrates a need for child care; and

(e) Shows that no other child care resources are available.

(3) The following persons are eligible to authorize first steps child care, subject to the restrictions and limitations in this chapter and other WAC:

(a) Maternity support services (MSS) professional/paraprofessional agency staff members. See WAC 388-533-0300 (3) and (7);

(b) Community services office (CSO) social workers or designated staff members; and

(c) Other MAA-designated professional/paraprofessional persons.

(4) First steps child care may be authorized for a client's child(ren) during the client's pregnancy or postpregnancy period when the client pursues any of the following covered services for herself or her newborn children:

(a) Childbirth education classes;

(b) Delivery/birth (during the mother's hospitalization);

(c) Dental care;

- (d) Hospital procedures;
- (e) Laboratory tests;
- (f) Maternity support services (MSS) visits, including nursing, social work, nutrition, and community health worker visits;
- (g) Medical visits; and
- (h) Family planning services.

(5) First steps child care authorized for a client's child(ren) for the following special needs requires approval by the MAA first steps child care coordinator or designee prior to providing the child care (see subsection (6) of this section for the prior approval process):

(a) Bedrest for the pregnant client for any of the following reasons:

- (i) Preterm labor, with evidence of cervical change or very high risk clinically or historically for preterm delivery;
- (ii) Incompetent cervix;
- (iii) Bleeding (abruption, placenta previa, etc.);
- (iv) Preterm ruptured membranes;
- (v) Intrauterine growth restriction;
- (vi) Oligohydramnios;
- (vii) Multiple gestations; or
- (viii) Other reasons if the obstetrical provider provides a complete clinical description of the client's circumstance (this special request for bedrest must be faxed to the MAA first steps child care coordinator or designee).

(b) The newborn(s) is in a neonatal intensive care unit (NICU) and the parent(s) is visiting the NICU.

(6) The prior approval process for a request for first steps child care for either of the reasons stated in subsection (5) of this section is as follows:

(a) The authorizer completes appropriate sections of the first steps child care billing form (DSHS 14-316) and submits the form to the MAA first steps child care coordinator or designee.

(i) If bedrest is required for a pregnant client due to one of the reasons listed in subsection (5)(a) of this section, the authorizer documents in the client's file the reason for the bedrest and that the prenatal caregiver has verified that bedrest is necessary; or

(ii) If the reason for the request is to enable a parent(s) to visit the newborn(s) in a NICU, the authorizer documents in the client's file that hospital staff member has verified the parent(s) is visiting the newborn(s) regularly.

(b) The MAA first steps child care coordinator or designee:

(i) Approves the special needs request and signs and dates the first steps child care billing form (DSHS 14-316) in the appropriate section and returns the form to the authorizer; or

(ii) Informs the authorizer in writing if the request is denied and payment will not be made.

(7) MAA pays for authorized first steps child care when provided by any of the following, subject to the limitations and restrictions listed:

(a) A licensed child care home, center, facility, or foster home; and

(b) A friend, neighbor, or relative, other than those listed in subsection (8) of this section, who is unlicensed and:

(i) Has qualified based on a background check conducted prior to providing the child care (see subsection (9) of this section for information on the background check process);

- (ii) Is eighteen years of age or older;
- (iii) Has a valid social security number; and
- (iv) Is authorized to work in the United States.

(8) The following individuals are not eligible to provide first steps child care:

- (a) The spouse of the client.
- (b) The partner of the client if the client and her partner share the same residence.

(c) The father of the pregnant client's unborn child(ren).

(d) The father of the client's other children(ren).

(e) A parent or stepparent of the client.

(f) A parent or stepparent of the client's spouse.

(g) A parent or stepparent of the client's partner if the client and her partner share the same residence.

(h) An older child(ren) of the:

(i) Client;

(ii) Client's spouse; or

(iii) Client's partner if the client and her partner share the same residence.

(i) An unlicensed child care provider:

(i) Whose background check is pending; or

(ii) Who was disqualified due to the background check.

(j) Any person under age eighteen.

(9) Each unlicensed individual child care provider who a client chooses to be a first steps child care provider is subject to a background check under RCW 43.20A.710 and 74.15.-030. First steps child care will not be authorized by a first steps child care authorizer, or paid by MAA, until MAA's background check has been completed on the unlicensed child care provider. Each unlicensed first steps child care provider is subject to a new background check every two years from the date of the first background check.

(a) MAA's background check process includes all of the following:

(i) The unlicensed child care provider completes and signs the first steps child care background check form and gives it to the client. The client returns it to a first steps child care authorizer who submits it to BCCU. The child care provider's signature on the first steps child care background check form authorizes the department's BCCU to perform the background check.

(ii) BCCU performs a background check on the individual and notifies the appropriate first steps agency or CSO of the results. The first steps child care authorizer notifies both the client and child care provider of one of the following results:

(A) "No known record" (means the individual may provide first steps child care);

(B) "Disqualifying record" (means the individual may not provide first steps child care); or

(C) "Record" (means the individual has a criminal record that needs further review).

For cases needing further review, MAA:

(I) Follows the criteria described in this subsection to determine if the individual may or may not provide first steps child care; and

(II) Notifies the first steps agency or CSO, in writing, of the decision.

(b) The department's background check of unlicensed child care providers may include a review of:

- (i) Records of criminal convictions and pending criminal charges as reported by the Washington state patrol (WSP);
- (ii) Department findings of abuse, neglect, exploitation, and/or abandonment of children or vulnerable adults; and
- (iii) Disciplinary board final decisions.

(c) The department's background check may include a review of law enforcement records of convictions and pending charges in other states or locations when the need for further information is indicated by:

- (i) A person's prior residences;
- (ii) Reports from credible community sources; or
- (iii) An identification number indicating the subject has a record on file with the Federal Bureau of Investigation.

(d) For the purpose of conducting criminal history portions of background checks as required by chapters 43.20A and 74.15 RCW, the department:

- (i) Considers only a person's convictions and pending charges; and
- (ii) Does not solicit or use as the sole basis for disqualification, information about:
 - (A) Arrests not resulting in charges; and
 - (B) Dismissed charges.
- (e) In certain situations, MAA may find an individual with conviction(s) to be eligible to provide child care to children through the first steps child care program if:

- (i) A conviction for any crime listed in WAC 388-06-0180 occurred more than five years from the date of the first steps child care request; or
- (ii) A conviction was for a crime other than those listed in WAC 388-06-0180; and
- (iii) MAA uses the criteria in subsection (f) of this section and determines the individual qualifies to provide child care.

(f) When an individual's convictions for a crime meet the conditions in (e)(i) and (ii) of this subsection, MAA may review an individual's background to determine character, suitability and competence to have unsupervised access to children using the following factors:

- (i) The amount of time that has passed since the finding or conviction;
- (ii) The seriousness of the crime that led to the finding or conviction;
- (iii) The number and types of other convictions in the individual's background;
- (iv) The individual's age at the time of finding or conviction;
- (v) Documentation indicating successful completion of all court-ordered programs and restitution;
- (vi) The individual's behavior since the finding or conviction; and
- (vii) The vulnerability of the children for whom care is needed.

(g) MAA considers findings or criminal charges that are pending to carry the same weight as a finding or conviction. The individual may provide proof to MAA that the charge has been dropped or there was an acquittal.

(h) MAA does not consider a crime a conviction if a pardon is granted or a court of law expunges or vacates the conviction.

(i) An MAA first steps child care program manager reviews all cases that are identified as "record," and reports the final decision to the first steps agency staff. The first steps agency staff notifies the client and the designated child care provider of the results.

(10) A client who does not agree with a department decision regarding first steps child care program services has a right to a fair hearing under chapter 388-02 WAC. After receiving a request for a fair hearing, MAA may request additional information from the client or the department. After MAA reviews the available information, the result may be:

- (a) A reversal of the initial department decision;
- (b) Resolution of the client's issue(s); or
- (c) A fair hearing conducted per chapter 388-02 WAC.

(11) To be a client who is authorized to receive first steps child care for her child(ren) receives the following forms from a first steps child care authorizer and gives the forms to the child care provider:

- (a) First steps child care billing form (DSHS 14-316);
- (b) W-9 Form (request for taxpayer identification number and certification); and
- (c) A first steps child care (MAA) background authorization form (DSHS 15-253) if the child care provider is unlicensed.

(12) To be paid for providing first steps child care, an authorized child care provider must, within ninety days of the first date the child care is provided:

- (a) Complete, sign, and date the appropriate sections of the first steps child care billing form (DSHS 14-316);
- (b) Complete an original W-9 Form (the W-9 is completed only once for MAA files unless the information changes); and
- (c) Mail (or give) the original completed first steps child care billing form (DSHS 14-316) and W-9 Form (both forms must have the individual's original signature) to:

- (i) The first steps authorizer, who submits them to MAA; or
- (ii) The client and the client mails (or gives) the forms to the first steps authorizer, who submits them to MAA.

(13) MAA sets payment for first steps child care services at a maximum dollar amount per hour from legislatively appropriated funds. Payment is subject to any exceptions, restrictions, or other limitations listed in this section and other WAC. MAA pays the child care provider directly for first steps child care services when the client and the client's designated first steps child care provider meet all the criteria in this section.

[Statutory Authority: RCW 74.08.090, 74.09.800, 03-19-010, § 388-533-1000, filed 9/4/03, effective 10/5/03; 01-15-008, § 388-533-1000, filed 7/6/01, effective 8/6/01.]

Chapter 388-535 WAC DENTAL-RELATED SERVICES

WAC

388-535-1050	Dental-related definitions.
388-535-1060	Clients who are eligible for dental-related services.
388-535-1065	Coverage limits for dental-related services provided under state-only funded programs.
388-535-1070	Dental-related services provider information.
388-535-1080	Covered dental-related services—Children.
388-535-1100	Dental-related services not covered—Children.
388-535-1120	Repealed.

388-535-1200	Dental-related services requiring prior authorization—Children.
388-535-1220	Obtaining prior authorization for dental-related services—Children.
388-535-1230	Crowns for children.
388-535-1240	Dentures, partial dentures, and overdentures for children.
388-535-1255	Covered dental-related services—Adults.
388-535-1265	Dental-related services not covered—Adults.
388-535-1270	Dental-related services requiring prior authorization—Adults.
388-535-1280	Obtaining prior authorization for dental-related services—Adults.
388-535-1290	Dentures and partial dentures for adults.
388-535-1350	Payment methodology for dental-related services.
388-535-1400	Payment for dental-related services.
388-535-1450	Payment for denture laboratory services.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

388-535-1120	Coverage limits for dental-related services provided under state-only funded programs. [Statutory Authority: RCW 74.08.090, 74.09.035, 74.09.500, 74.09.520, 42 U.S.C. 1396d(a), 42 C.F.R. 440.100 and 440.225. 02-13-074, § 388-535-1120, filed 6/14/02, effective 7/15/02.] Repealed by 03-19-080, filed 9/12/03, effective 10/13/03. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, 2003 1st sp.s. c 25, P.L. 104-191.
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WAC 388-535-1050 Dental-related definitions. The following definitions and abbreviations and those found in WAC 388-500-0005 apply to this chapter. The medical assistance administration (MAA) also uses dental definitions found in the American Dental Association's Current Dental Terminology (CDT) and the American Medical Association's Physician's Current Procedural Terminology (CPT). Where there is any discrepancy between the CDT or CPT and this section, this section prevails. (CPT is a trademark of the American Medical Association.)

"Access to baby and child dentistry (ABCD)" is a program to increase access to dental services in targeted areas for Medicaid eligible infants, toddlers, and preschoolers up through the age of five. See WAC 388-535-1300 for specific information.

"American Dental Association (ADA)" is a national organization for dental professionals and dental societies.

"Adult" for the general purposes of the medical assistance administration's (MAA) dental program, means a client twenty-one years of age or older (MAA's payment structure changes at age nineteen, which affects specific program services provided to adults or children).

"Anterior" means teeth and tissue in the front of the mouth.

(1) **"Mandibular anterior teeth"** - incisors and canines: Permanent teeth twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, and twenty-seven; and primary teeth M, N, O, P, Q, and R.

(2) **"Maxillary anterior teeth"** - incisors and canines: Permanent teeth six, seven, eight, nine, ten, and eleven; and primary teeth C, D, E, G, and H.

"Asymptomatic" means having or producing no symptoms.

"Base metal" means dental alloy containing little or no precious metals.

"Behavior management" means using the assistance of one additional dental professional staff to manage the behavior

of a developmentally disabled client or a client age eighteen or younger to facilitate the delivery of dental treatment.

"By report" - a method of reimbursement in which MAA determines the amount it will pay for a service when the rate for that service is not included in MAA's published fee schedules. Upon request the provider must submit a "report" which describes the nature, extent, time, effort and/or equipment necessary to deliver the service.

"Caries" means tooth decay through the enamel or decay of the root surface.

"Child" for the general purposes of the medical assistance administration's (MAA) dental program, means a client twenty years of age or younger. (MAA's payment structure changes at age nineteen, which affects specific program services provided to children or adults.)

"Comprehensive oral evaluation" means a thorough evaluation and recording of a client's dental and medical history to include extra-oral and intra-oral hard and soft tissues, dental caries, missing or unerupted teeth, restorations, occlusal relationships, periodontal conditions (including periodontal charting), hard and soft tissue anomalies, and oral cancer screening.

"Conscious sedation" is a drug-induced depression of consciousness during which clients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, spontaneous ventilation is adequate, and cardiovascular function is maintained.

"Core buildup" refers to building up of clinical crowns, including pins.

"Coronal" is the portion of a tooth that is covered by enamel, and is separated from the root or roots by a slightly constricted region, known as the cemento-enamel junction.

"Coronal polishing" is a procedure limited to the removal of plaque and stain from exposed tooth surfaces.

"Crown" means a restoration covering or replacing the major part, or the whole of, the clinical crown of a tooth.

"Current dental terminology (CDT)" a systematic listing of descriptive terms and identifying codes for reporting dental services and procedures performed by dental practitioners. CDT is published by the Council on Dental Benefit Programs of the American Dental Association (ADA).

"Current procedural terminology (CPT)" means a description of medical procedures and is available from the American Medical Association of Chicago, Illinois.

"Decay" is a term for caries or carious lesions and means decomposition of tooth structure.

"Deep sedation" is a drug-induced depression of consciousness during which a client cannot be easily aroused, ventilatory function may be impaired, but the client responds to repeated or painful stimulation.

"Dental general anesthesia" see "general anesthesia."

"Dentures" means an artificial replacement for natural teeth and adjacent tissues, and includes complete dentures, immediate dentures, overdentures, and partial dentures.

"Endodontic" means disease and injuries to the pulp requiring root canal therapy and related follow-up.

"EPSDT" means the department's early and periodic screening, diagnosis, and treatment program for clients

twenty years of age and younger as described in chapter 388-534 WAC.

"Extraction" see **"simple extraction"** and **"surgical extraction."**

"Flowable composite resin" is a low viscosity resin that is used in cervical lesions and other small, low stress bearing restorations.

"Fluoride varnish or gel" means a substance containing dental fluoride, applied to teeth.

"General anesthesia" is a drug-induced loss of consciousness during which clients are not arousable even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Clients may require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

"High noble metal" means a dental alloy containing at least sixty percent pure gold.

"Limited oral evaluation" means an evaluation limited to a specific oral health condition or problem. Typically a client receiving this type of evaluation has a dental emergency, such as trauma or acute infection.

"Limited visual oral assessment" means a screening of the hard and soft tissues in the mouth.

"Major bone grafts" means a transplant of solid bone tissue(s).

"Medically necessary" see WAC 388-500-0005.

"Minor bone grafts" means a transplant of nonsolid bone tissue(s), such as powdered bone, buttons, or plugs.

"Noble metal" means a dental alloy containing at least twenty-five percent but less than sixty percent pure gold.

"Oral evaluation" see **"comprehensive oral evaluation."**

"Oral hygiene instruction" means instruction for home oral hygiene care, such as tooth brushing techniques or flossing.

"Oral prophylaxis" means the preventive dental procedure of scaling and polishing which includes removal of calculus, soft deposits, plaque, and stains from teeth and tooth implants.

"Partials" or **"partial dentures"** means a removable appliance replacing one or more missing teeth in one arch, and receiving its support and retention from both the underlying tissues and some or all of the remaining teeth.

"Periodic oral evaluation" means an evaluation performed on a patient of record to determine any changes in the client's dental or medical status since a previous comprehensive or periodic evaluation. This includes a periodontal charting at least once per year.

"Periodontal maintenance" means a procedure for clients who have previously been treated for periodontal disease and starts after completion of active (surgical or nonsurgical) periodontal therapy. It includes removal of the supra and subgingival microbial flora and calculus from teeth and tooth implants.

"Periodontal scaling and root planing" means instrumentation of the crown and root surfaces of the teeth or tooth implants to remove plaque, calculus, microbial flora, and bacterial toxins.

"Posterior" means teeth and tissue towards the back of the mouth.

(1) **"Mandibular posterior teeth"** - molars and premolars: Permanent teeth seventeen, eighteen, nineteen, twenty, twenty-one, twenty-eight, twenty-nine, thirty, thirty-one, and thirty-two; and primary teeth K, L, S, and T.

(2) **"Maxillary posterior teeth"** - molars and premolars: Permanent teeth one, two, three, four, five, twelve, thirteen, fourteen, fifteen, and sixteen; and primary teeth A, B, I, and J.

"Proximal" means the surface of the tooth near or next to the adjacent tooth.

"Reline" means to resurface the tissue side of a denture with new base material or soft tissue conditioner in order to achieve a more accurate fit.

"Root canal" is a portion of the pulp cavity inside the root of a tooth and the chamber within the root of the tooth that contains the pulp.

"Root canal therapy" is the treatment of disease and injuries of the pulp and associated periradicular conditions.

"Root planing" is a procedure to remove microbial flora, bacterial toxins, calculus, and diseased cementum or **dentin** on the root surfaces and pockets, including tooth implants.

"Scaling" is a procedure to remove plaque, calculus, and stain deposits from tooth surfaces, including tooth implants.

"Sealant" is a material applied to teeth to prevent dental caries.

"Simple extraction" means routine removal of tooth structure.

"Standard of care" means what reasonable and prudent practitioners would do in the same or similar circumstances.

"Surgical extraction" means removal of tooth structure with cutting of gingiva and bone, including soft tissue extractions, partial boney extractions, and complete boney extractions.

"Symptomatic" means having symptoms (e.g., pain, swelling, and infection).

"Temporomandibular joint dysfunction (TMJ/JMD)" means an abnormal functioning of the temporomandibular joint or other areas secondary to the dysfunction.

"Therapeutic pulpotomy" means the surgical removal of a portion of the pulp (inner soft tissue of a tooth), to retain the healthy remaining pulp.

"Usual and customary" means the fee that the provider usually charges non-Medicaid customers for the same service or item. This is the maximum amount that the provider may bill MAA.

"Wisdom teeth" means teeth one, sixteen, seventeen, and thirty-two.

"Xerostomia" means a dryness of the mouth.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, 2003 1st sp.s. c 25, P.L. 104-191. 03-19-077, § 388-535-1050, filed 9/12/03, effective 10/13/03. Statutory Authority: RCW 74.08.090, 74.09.035, 74.09.500, 74.09.520, 42 U.S.C. 1396d(a), 42 C.F.R. 440.100 and 440.225. 02-13-074, § 388-535-1050, filed 6/14/02, effective 7/15/02. Statutory Authority: RCW 74.08.090. 01-02-076, § 388-535-1050, filed 12/29/00, effective 1/29/01. Statutory Authority: RCW 74.08.090, 74.09.035, 74.09.520 and 74.09.700, 42 USC 1396d(a), CFR 440.100 and 440.225. 99-07-023, § 388-535-1050, filed 3/10/99, effective 4/10/99. Statutory Authority: Initiative 607, 1995 c 18 2nd sp.s. and 74.08.090. 96-01-006 (Order 3931), § 388-535-1050, filed 12/6/95, effective 1/6/96.]

WAC 388-535-1060 Clients who are eligible for dental-related services. The following clients who receive services under the medical assistance programs listed in this section are eligible for covered dental-related services, subject to the restrictions and specific limitations described in this chapter and other applicable WAC:

- (1) Children eligible for the:
 - (a) Categorically needy program (CN or CNP);
 - (b) Children's health insurance program (CNP-CHIP);
 and
 - (c) Limited casualty program - medically needy program (LCP-MNP).
- (2) Adults eligible for the:
 - (a) Categorically needy program (CN or CNP); and
 - (b) Limited casualty program - medically needy program (LCP-MNP).
- (3) Clients eligible for medical care services under the following state-funded only programs are eligible only for the limited dental-related services described in WAC 388-535-1065:
 - (a) General assistance - Unemployable (GA-U); and
 - (b) General assistance - Alcohol and Drug Abuse Treatment and Support Act (ADATSA) (GA-W).
- (4) Clients who are enrolled in a managed care plan are eligible for medical assistance administration (MAA)-covered dental services that are not covered by their plan, under fee-for-service, subject to the provisions of chapter 388-535 WAC and other applicable WAC.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, 2003 1st sp.s. c 25, P.L. 104-191. 03-19-077, § 388-535-1060, filed 9/12/03, effective 10/13/03. Statutory Authority: RCW 74.08.090, 74.09.035, 74.09.500, 74.09.520, 42 U.S.C. 1396d(a), 42 C.F.R. 440.100 and 440.225. 02-13-074, § 388-535-1060, filed 6/14/02, effective 7/15/02. Statutory Authority: RCW 74.08.090, 74.09.035, 74.09.520 and 74.09.700, 42 USC 1396d(a), CFR 440.100 and 440.225. 99-07-023, § 388-535-1060, filed 3/10/99, effective 4/10/99.]

WAC 388-535-1065 Coverage limits for dental-related services provided under state-only funded programs. (1) Clients who receive medical care services under the following state-funded only programs receive only the limited coverage described in subsection (2) of this section:

- (a) General assistance unemployable (GA-U); and
 - (b) Alcohol and drug abuse treatment and support act (ADATSA) (GA-W).
- (2) The medical assistance administration (MAA) covers the dental-related services described and limited in this chapter for clients eligible for GA-U or GA-W only when those services are provided as part of a medical treatment for:
- (a) Apical abscess verified by clinical examinations and radiograph(s), and treated by:
 - (i) Palliative treatment (e.g., open and drain, open and broach);
 - (ii) Tooth extraction; or
 - (iii) Root canal therapy for permanent anterior teeth only.
 - (b) Tooth fractures (limited to extraction).
 - (c) Total dental extraction prior to and because of radiation therapy for cancer of the mouth.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, 2003 1st sp.s. c 25, P.L. 104-191. 03-19-077, § 388-535-1065, filed 9/12/03, effective 10/13/03.]

WAC 388-535-1070 Dental-related services provider information. (1) The following providers are eligible to enroll with the medical assistance administration (MAA) to furnish and bill for dental-related services provided to eligible clients:

- (a) Persons currently licensed by the state of Washington to:
 - (i) Practice dentistry or specialties of dentistry.
 - (ii) Practice as dental hygienists.
 - (iii) Practice as denturists.
 - (iv) Practice anesthesia by:
 - (A) Providing conscious sedation with parental or multiple oral agents, deep sedation, or general anesthesia as an anesthesiologist or dental anesthesiologist;
 - (B) Providing conscious sedation with parental or multiple oral agents, deep sedation, or general anesthesia as a certified registered nurse anesthetist (CRNA), when the performing dentist has the appropriate conscious sedation permit or general anesthesia permit from the department of health (DOH); or
 - (C) Providing conscious sedation with parenteral or multiple oral agents, deep sedation, or general anesthesia as a dentist, when the dentist has a conscious sedation permit or general anesthesia permit from DOH.
 - (v) Practice medicine and osteopathy for:
 - (A) Oral surgery procedures; or
 - (B) Providing fluoride varnish under EPSDT.
- (b) Facilities that are:
 - (i) Hospitals currently licensed by the department of health;
 - (ii) Federally-qualified health centers (FQHCs);
 - (iii) Medicare-certified ambulatory surgical centers (ASCs);
 - (iv) Medicare-certified rural health clinics (RHCs); or
 - (v) Community health centers.
- (c) Participating local health jurisdictions.
- (d) Border area or out-of-state providers of dental-related services who are qualified in their states to provide these services.
 - (2) Subject to the restrictions and limitations in this section and other applicable WAC, MAA pays licensed providers participating in the MAA dental program for only those services that are within their scope of practice.
 - (3) See WAC 388-502-0020 for provider documentation and record retention requirements. MAA requires additional dental documentation under specific sections in this chapter and as required by chapter 246-817 WAC.
 - (4) See WAC 388-502-0100 and 388-502-0150 for provider billing and payment requirements.
 - (5) See WAC 388-502-0160 for regulations concerning charges billed to clients.
 - (6) See WAC 388-502-0230 for provider review and appeal.
 - (7) See WAC 388-502-0240 for provider audits and the audit appeal process.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, 2003 1st sp.s. c 25, P.L. 104-191. 03-19-077, § 388-535-1070, filed 9/12/03, effective 10/13/03. Statutory Authority: RCW 74.08.090, 74.09.035, 74.09.500, 74.09.520, 42 U.S.C. 1396d(a), 42 C.F.R. 440.100 and 440.225. 02-13-074, § 388-535-1070, filed 6/14/02, effective 7/15/02.]

WAC 388-535-1080 Covered dental-related services—Children. (1) The medical assistance administration (MAA) pays for covered dental and dental-related services for children listed in this section only when they are:

(a) Within the scope of an eligible client's medical care program;

(b) Medically necessary; and

(c) Within accepted dental or medical practice standards and are:

(i) Consistent with a diagnosis of dental disease or condition; and

(ii) Reasonable in amount and duration of care, treatment, or service.

(2) MAA covers the following dental-related services for eligible children:

(a) Medically necessary services for the identification of dental problems or the prevention of dental disease, subject to the limitations of this chapter;

(b) Oral health evaluations and assessments, which must be documented in the client's file according to WAC 388-502-0020, as follows:

(i) MAA allows a comprehensive oral evaluation once per provider as an initial examination, and it must include:

(A) An oral health and developmental history;

(B) An assessment of physical and oral health status; and

(C) Health education, including anticipatory guidance.

(ii) MAA allows a periodic oral evaluation once every six months. Six months must elapse between the comprehensive oral evaluation and the first periodic oral evaluation.

(iii) MAA allows a limited oral evaluation only when the provider performing the limited oral evaluation is not providing prescheduled dental services for the client. The limited oral evaluation must be:

(A) To provide limited or emergent services for a specific dental problem; or

(B) To provide an evaluation for a referral.

(c) Radiographs as follows:

(i) Intraoral (complete series, including bitewings), allowed once in a three-year period;

(ii) Bitewings, total of four allowed every twelve months; and

(iii) Panoramic, for oral surgical purposes only, as follows:

(A) Not allowed with an intraoral complete series; and

(B) Allowed once in a three-year period, except for preoperative or postoperative surgery cases. Preoperative radiographs must be provided within fourteen days prior to surgery, and postoperative radiographs must be provided within thirty days after surgery.

(d) Fluoride treatment (either gel or varnish, but not both) as follows for clients through age eighteen (additional applications require prior authorization):

(i) Topical application of fluoride gel, once every six months; or

(ii) Topical application of fluoride varnish, up to three times in a twelve-month period;

(iii) See subsection (3) of this section for clients of the division of developmental disabilities.

(e) Sealants for children only, once per tooth in a three-year period for:

(i) The occlusal surfaces of:

(A) Permanent teeth two, three, fourteen, fifteen, eighteen, nineteen, thirty, and thirty-one only; and

(B) Primary teeth A, B, I, J, K, L, S, and T only.

(ii) The lingual pits of teeth seven and ten; and

(iii) Teeth with no decay.

(f) Prophylaxis treatment, which is allowed:

(i) Once every six months for children age eight through eighteen;

(ii) Only as a component of oral hygiene instruction for children through age seven; and

(iii) For clients of the division of developmental disabilities, see subsection (3) of this section.

(g) Space maintainers, for children through age eighteen only, as follows:

(i) Fixed (unilateral type), one per quadrant;

(ii) Fixed (bilateral type), one per arch; and

(iii) Recementation of space maintainer, once per quadrant or arch.

(h) Amalgam or composite restorations, as follows:

(i) Once in a two-year period; and

(ii) For the same surface of the same tooth.

(i) Crowns as described in WAC 388-535-1230, Crowns;

(j) Restoration of teeth and maintenance of dental health, subject to limitations of WAC 388-535-1100 and as follows:

(i) Multiple restorations involving the proximal and occlusal surfaces of the same tooth are considered to be a multisurface restoration, and are reimbursed as such; and

(ii) Proximal restorations that do not involve the incisal angle in the anterior tooth are considered to be a two-surface restoration, and are reimbursed as such;

(k) Endodontic (root canal) therapies for permanent teeth except for wisdom teeth;

(l) Therapeutic pulpotomies, once per tooth, on primary teeth only;

(m) Pulp vitality test, as follows:

(i) Once per day (not per tooth);

(ii) For diagnosis of emergency conditions only; and

(iii) Not allowed when performed on the same date as any other procedure, with the exception of an emergency examination or palliative treatment.

(n) Periodontal scaling and root planing as follows:

(i) See subsection (3) of this section for clients of the division of developmental disabilities;

(ii) Only when the client has radiographic (X-ray) evidence of periodontal disease. There must be supporting documentation, including complete periodontal charting and a definitive periodontal diagnosis;

(iii) Once per quadrant in a twenty-four month period; and

(iv) Not allowed when performed on the same date of service as prophylaxis, periodontal maintenance, gingivectomy, or gingivoplasty.

(o) Periodontal maintenance as follows:

(i) See subsection (3) of this section for clients of the division of developmental disabilities;

(ii) Only when the client has radiographic (X-ray) evidence of periodontal disease. There must be supporting documentation, including complete periodontal charting and a definitive periodontal diagnosis;

(iii) Once per full mouth in a twelve-month period; and

(iv) Not allowed when performed on the same date of service as prophylaxis, periodontal scaling, gingivectomy, or gingivoplasty.

(p) Complex orthodontic treatment for severe handicapping dental needs as specified in chapter 388-535A WAC, Orthodontic services;

(q) Occlusal orthotic appliance for temporomandibular joint disorder (TMJ/TMD) or bruxism, one in a two-year period;

(r) Medically necessary oral surgery when coordinated with the client's managed care plan (if any);

(s) Dental services or treatment necessary for the relief of pain and infections, including removal of symptomatic wisdom teeth. MAA does not cover routine removal of asymptomatic wisdom teeth without justifiable medical indications;

(t) Behavior management for clients through age eighteen only, whose documented behavior requires the assistance of more than one additional dental professional staff to protect the client from self-injury during treatment. See subsection (3) of this section for clients of the division of developmental disabilities.

(u) Nitrous oxide for children through age eighteen only, when medically necessary. See subsection (3) of this section for clients of the division of developmental disabilities.

(v) Professional visits, as follows:

(i) Bedside call at a nursing facility or residence when requested by the client or the client's surrogate decision maker as defined in WAC 388-97-055, or when a referral for services is made by the attending physician, the director of nursing, or the nursing facility supervisor, as appropriate, allowed once per day (not per client and not per facility), per provider.

(ii) Hospital call, including emergency care, allowed one per day.

(w) Emergency palliative treatment, as follows:

(i) Allowed only when no other definitive treatment is performed on the same day; and

(ii) Documentation must include tooth designation and a brief description of the service.

(3) For clients of the division of developmental disabilities, MAA allows services as follows:

(a) Fluoride application, either varnish or gel, allowed three times per calendar year;

(b) Prophylaxis, allowed three times per calendar year;

(c) Periodontal scaling and root planing, allowed once every six months;

(d) Periodontal maintenance, allowed three times every twelve months;

(e) Nitrous oxide;

(f) Behavior management that requires the assistance of one additional dental professional staff; and

(g) Panoramic radiographs, with documentation that behavior management is required.

(4) MAA covers medically necessary services provided in a hospital under the direction of a physician or dentist for:

(a) The care or treatment of teeth, jaws, or structures directly supporting the teeth if the procedure requires hospitalization; and

(b) Short stays when the procedure cannot be done in an office setting. See WAC 388-550-1100(6), Hospital coverage.

(5) MAA covers anesthesia for medically necessary services as follows:

(a) The anesthesia must be administered by:

(i) An oral surgeon;

(ii) An anesthesiologist;

(iii) A dental anesthesiologist;

(iv) A certified registered nurse anesthetist (CRNA); or

(v) A general dentist who has a current conscious sedation permit from the department of health (DOH).

(b) MAA pays for anesthesia services according to WAC 388-535-1350.

(6) For clients residing in nursing facilities or group homes:

(a) Dental services must be requested by the client or a referral for services made by the attending physician, the director of nursing or the nursing facility supervisor, or the client's legal guardian;

(b) Mass screening for dental services of clients residing in a facility is not permitted; and

(c) Nursing facilities must provide dental-related necessary services according to WAC 388-97-012, Nursing facility care.

(7) A request to exceed stated limitations or other restrictions on covered services is called a limitation extension (LE), which is a form of prior authorization. MAA evaluates and approves requests for LE for dental-related services when medically necessary, under the provisions of WAC 388-501-0165.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, 2003 1st sp.s. c 25, P.L. 104-191. 03-19-078, § 388-535-1080, filed 9/12/03, effective 10/13/03. Statutory Authority: RCW 74.08.090, 74.09.035, 74.09.500, 74.09.520, 42 U.S.C. 1396d(a), 42 C.F.R. 440.100 and 440.225. 02-13-074, § 388-535-1080, filed 6/14/02, effective 7/15/02. Statutory Authority: RCW 74.08.090, 74.09.035, 74.09.520 and 74.09.700, 42 USC 1396d(a), CFR 440.100 and 440.225. 99-07-023, § 388-535-1080, filed 3/10/99, effective 4/10/99.]

WAC 388-535-1100 Dental-related services not covered—Children. (1) The medical assistance administration (MAA) does not cover children's dental-related services described in subsection (2) of this section unless the services are:

(a) Required by a physician as a result of an EPSDT screen as provided under chapter 388-534 WAC; or

(b) Included in an MAA waived program.

(2) MAA does not cover the following services for children:

(a) Any service specifically excluded by statute;

(b) More costly services when less costly, equally effective services as determined by the department are available;

(c) Services, procedures, treatment, devices, drugs, or application of associated services which the department or the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)) consider investigative or experimental on the date the services were provided;

(d) Routine fluoride treatments (gel or varnish) for clients age nineteen through twenty, unless the clients are:

- (i) Clients of the division of developmental disabilities; or
 - (ii) Diagnosed with xerostomia, in which case the provider must request prior authorization.
 - (e) Crowns, as follows:
 - (i) For wisdom and peg teeth;
 - (ii) Laboratory processed crowns for posterior teeth;
 - (iii) Temporary crowns, including stainless steel crowns placed as temporary crowns; and
 - (iv) Post and core for crowns.
 - (f) Root canal services for primary or wisdom teeth;
 - (g) Root planing, unless they are clients of the division of developmental disabilities;
 - (h) Bridges;
 - (i) Transitional or treatment dentures;
 - (j) Teeth implants, including follow up and maintenance;
 - (k) Cosmetic treatment or surgery, except for medically necessary reconstructive surgery to correct defects attributable to an accident, birth defect, or illness;
 - (l) Porcelain margin extensions (also known as crown lengthening), due to receding gums;
 - (m) Extraction of asymptomatic teeth;
 - (n) Minor bone grafts;
 - (o) Nonemergent oral surgery performed in an inpatient hospital setting, except for the following:
 - (i) For clients of the division of developmental disabilities, or for children eighteen years of age or younger whose surgeries cannot be performed in an office setting. This requires written prior authorization for the inpatient hospitalization; or
 - (ii) As provided in WAC 388-535-1080(4).
 - (p) Dental supplies such as toothbrushes (manual, automatic, or electric), toothpaste, floss, or whiteners;
 - (q) Dentist's time writing prescriptions or calling in prescriptions or prescription refills to a pharmacy;
 - (r) Educational supplies;
 - (s) Missed or canceled appointments;
 - (t) Nonmedical equipment, supplies, personal or comfort items or services;
 - (u) Provider mileage or travel costs;
 - (v) Service charges or delinquent payment fees;
 - (w) Supplies used in conjunction with an office visit;
 - (x) Take-home drugs;
 - (y) Teeth whitening; or
 - (z) Restorations for anterior or posterior wear with no evidence of decay.
- (3) MAA evaluates a request for any service that is listed as noncovered under the provisions of WAC 388-501-0165.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, 2003 1st sp.s. c 25, P.L. 104-191. 03-19-078, § 388-535-1100, filed 9/12/03, effective 10/13/03. Statutory Authority: RCW 74.08.090, 74.09.035, 74.09.500, 74.09.520, 42 U.S.C. 1396d(a), 42 C.F.R. 440.100 and 440.225. 02-13-074, § 388-535-1100, filed 6/14/02, effective 7/15/02. Statutory Authority: RCW 74.08.090, 74.09.035, 74.09.520 and 74.09.700, 42 USC 1396d(a), CFR 440.100 and 440.225. 99-07-023, § 388-535-1100, filed 3/10/99, effective 4/10/99. Statutory Authority: Initiative 607, 1995 c 18 2nd sp.s. and 74.08.090. 96-01-006 (Order 3931), § 388-535-1100, filed 12/6/95, effective 1/6/96.]

WAC 388-535-1120 Repealed. See Disposition Table at beginning of this chapter.

[2004 WAC Supp—page 1728]

WAC 388-535-1200 Dental-related services requiring prior authorization—Children. The following services for children require prior authorization:

- (1) Nonemergent inpatient hospital dental admissions as described under WAC 388-535-1100 (2)(o) and 388-550-1100(1);
- (2) Crowns as described in WAC 388-535-1230;
- (3) Dentures as described in WAC 388-535-1240; and
- (4) Selected procedures identified by the medical assistance administration (MAA) and published in its current dental billing instructions.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, 2003 1st sp.s. c 25, P.L. 104-191. 03-19-078, § 388-535-1200, filed 9/12/03, effective 10/13/03. Statutory Authority: RCW 74.08.090, 74.09.035, 74.09.500, 74.09.520, 42 U.S.C. 1396d(a), 42 C.F.R. 440.100 and 440.225. 02-13-074, § 388-535-1200, filed 6/14/02, effective 7/15/02. Statutory Authority: RCW 74.08.090, 74.09.035, 74.09.520 and 74.09.700, 42 USC 1396d(a), CFR 440.100 and 440.225. 99-07-023, § 388-535-1200, filed 3/10/99, effective 4/10/99. Statutory Authority: Initiative 607, 1995 c 18 2nd sp.s. and 74.08.090. 96-01-006 (Order 3931), § 388-535-1200, filed 12/6/95, effective 1/6/96.]

WAC 388-535-1220 Obtaining prior authorization for dental-related services—Children. When the medical assistance administration (MAA) authorizes a dental-related service for children, that authorization indicates only that the specific service is medically necessary; it is not a guarantee of payment. The client must be eligible for covered services at the time those services are provided.

(1) MAA requires a dental provider who is requesting prior authorization to submit sufficient objective clinical information to establish medical necessity. The request must be submitted in writing on an American Dental Association (ADA) claim form, which may be obtained by writing to the American Dental Association, 211 East Chicago Avenue, Chicago, Illinois 60611. The request must include at least all of the following:

- (a) Physiological description of the disease, injury, impairment, or other ailment;
- (b) Radiographs;
- (c) Treatment plan;
- (d) Study model, if requested; and
- (e) Photographs, if requested.

(2) MAA authorizes requested services that meet the criteria in WAC 388-535-1080.

(3) MAA denies a request for dental services when the requested service is:

- (a) Not medically necessary; or
- (b) A service, procedure, treatment, device, drug, or application of associated service which the department or the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)) consider investigative or experimental on the date the service is provided.

(4) MAA may require second opinions and/or consultations before authorizing any procedure.

(5) Authorization is valid only if the client is eligible for covered services on the date of service.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, 2003 1st sp.s. c 25, P.L. 104-191. 03-19-078, § 388-535-1220, filed 9/12/03, effective 10/13/03. Statutory Authority: RCW 74.08.090, 74.09.035, 74.09.500, 74.09.520, 42 U.S.C. 1396d(a), 42 C.F.R. 440.100 and 440.225. 02-13-074, § 388-535-1220, filed 6/14/02, effective 7/15/02. Statutory

Authority: RCW 74.08.090, 74.09.035, 74.09.520 and 74.09.700, 42 USC 1396d(a), CFR 440.100 and 440.225. 99-07-023, § 388-535-1220, filed 3/10/99, effective 4/10/99.]

WAC 388-535-1230 Crowns for children. (1) Subject to the limitations in WAC 388-535-1100, the medical assistance administration (MAA) covers the following crowns for children without prior authorization:

(a) Stainless steel. MAA considers these as permanent crowns, and does not cover them as temporary crowns; and

(b) Nonlaboratory resin for primary anterior teeth.

(2) MAA does not cover laboratory-processed crowns for posterior teeth.

(3) MAA requires prior authorization for the following crowns, which are limited to single restorations for permanent anterior maxillary and mandibular teeth seven, eight, nine, ten, eleven, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, and twenty-seven:

(a) Resin (laboratory);

(b) Porcelain with ceramic substrate;

(c) Porcelain fused to high noble metal;

(d) Porcelain fused to predominantly base metal; and

(e) Porcelain fused to noble metal.

(4) Criteria for covered crowns as described in subsections (1) and (3) of this section:

(a) Crowns may be authorized when the crown is medically necessary.

(b) Coverage is based upon a supportable five-year prognosis that the client will retain the tooth if the tooth is crowned. The provider must submit the following client information:

(i) The overall condition of the mouth;

(ii) Oral health status;

(iii) Client maintenance of good oral health status;

(iv) Arch integrity; and

(v) Prognosis of remaining teeth (that is, no more involved than periodontal case type II).

(c) Anterior teeth must show traumatic or pathological destruction to loss of at least one incisal angle.

(5) The laboratory processed crowns described in subsection (3) are covered:

(a) Only when a lesser service will not suffice because of extensive coronal destruction, and treatment is beyond intra-coronal restoration;

(b) Only once per permanent tooth in a five-year period;

(c) For endodontically treated anterior teeth only after satisfactory completion of the root canal therapy. Postendodontic treatment radiographs must be submitted for prior authorization of these crowns.

(6) MAA reimburses only for covered crowns as described in subsections (1) and (3) of this section. The reimbursement is full payment; all of the following are included in the reimbursement and must not be billed separately:

(a) Tooth and soft tissue preparation;

(b) Amalgam or acrylic build-ups;

(c) Temporary restoration;

(d) Cement bases;

(e) Insulating bases;

(f) Impressions;

(g) Seating; and

(h) Local anesthesia.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, 2003 1st sp.s. c 25, P.L. 104-191. 03-19-078, § 388-535-1230, filed 9/12/03, effective 10/13/03. Statutory Authority: RCW 74.08.090, 74.09.035, 74.09.500, 74.09.520, 42 U.S.C. 1396d(a), 42 C.F.R. 440.100 and 440.225. 02-13-074, § 388-535-1230, filed 6/14/02, effective 7/15/02. Statutory Authority: RCW 74.08.090, 74.09.035, 74.09.500, 74.09.520. 01-07-077, § 388-535-1230, filed 3/20/01, effective 4/20/01. Statutory Authority: RCW 74.08.090, 74.09.035, 74.09.520 and 74.09.700, 42 USC 1396d(a), CFR 440.100 and 440.225. 99-07-023, § 388-535-1230, filed 3/10/99, effective 4/10/99.]

WAC 388-535-1240 Dentures, partial dentures, and overdentures for children. (1) Subject to the limitations in WAC 388-535-1100, the medical assistance administration (MAA) covers for children only one maxillary denture and one mandibular denture per client in a ten-year period, and considers that set to be the first set. The exception to this is replacement dentures, which may be allowed as specified in subsection (4) of this section. Except as described in subsection (5) of this section, MAA does not require prior authorization for the first set of dentures. The first set of dentures may be any of the following:

(a) An immediate set (constructed prior to removal of the teeth);

(b) An initial set (constructed after the client has been without teeth for a period of time); or

(c) A final set (constructed after the client has received immediate or initial dentures).

(2) The first maxillary denture and the first mandibular denture must be of the structure and quality to be considered the primary set. MAA does not cover transitional or treatment dentures.

(3) MAA covers partials (resin and cast base) once every five years, except as noted in subsection (4) of this section, and subject to the following limits:

(a) Cast base partials only when replacing three or more teeth per arch excluding wisdom teeth; and

(b) No partials are covered when they replace wisdom teeth only.

(4) Except as stated below, MAA does not require prior authorization for replacement dentures or partials when:

(a) The client's existing dentures or partials meet any of the following conditions. MAA requires prior authorization for replacement dentures or partials requested within one year of the seat date. The dentures or partials must be:

(i) No longer serviceable and cannot be relined or rebased; or

(ii) Damaged beyond repair.

(b) The client's health would be adversely affected by absence of dentures;

(c) The client has been able to wear dentures successfully;

(d) The dentures or partials meet the criteria of medically necessary; and

(e) The dentures are replacing a lost maxillary denture and/or a mandibular denture, and the replacement set does not exceed MAA's limit of one set in a ten-year period as stated in subsection (1) of this section.

(5) MAA does not reimburse separately for laboratory and professional fees for dentures and partials. However, MAA may partially reimburse for these fees when the provider obtains prior authorization and the client:

(a) Dies;

- (b) Moves from the state;
- (c) Cannot be located; or
- (d) Does not participate in completing the dentures.
- (6) The provider must document in the client's medical or dental record:
 - (a) Justification for replacement of dentures;
 - (b) Charts of missing teeth, for replacement of partials; and
 - (c) Receipts for laboratory costs or laboratory records and notes.
- (7) For billing purposes, the provider may use the impression date as the service date for dentures, including partials, only when:
 - (a) Related dental services including laboratory services were provided during a client's eligible period; and
 - (b) The client is not eligible at the time of delivery.
- (8) For billing purposes, the provider may use the delivery date as the service date when the client is using the first set of dentures in lieu of noncovered transitional or treatment dentures after oral surgery.
- (9) MAA includes the cost of relines and adjustments that are done within six months of the seat date in the reimbursement for the dentures.
- (10) MAA covers one rebase in a five-year period; the dentures must be at least three years old.
- (11) The requirements in this section also apply to overdentures.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, 2003 1st sp.s. c 25, P.L. 104-191, 03-19-079, § 388-535-1240, filed 9/12/03, effective 10/13/03. Statutory Authority: RCW 74.08.090, 74.09.035, 74.09.500, 74.09.520, 42 U.S.C. 1396d(a), 42 C.F.R. 440.100 and 440.225. 02-13-074, § 388-535-1240, filed 6/14/02, effective 7/15/02. Statutory Authority: RCW 74.08.090, 74.09.035, 74.09.520 and 74.09.700, 42 USC 1396d(a), CFR 440.100 and 440.225. 99-07-023, § 388-535-1240, filed 3/10/99, effective 4/10/99.]

WAC 388-535-1255 Covered dental-related services—Adults. (1) The medical assistance administration (MAA) pays for covered dental and dental-related services for adults listed in this section only when they are:

- (a) Within the scope of an eligible client's medical care program;
 - (b) Medically necessary; and
 - (c) Within accepted dental or medical practice standards and are:
 - (i) Consistent with a diagnosis of dental disease or condition; and
 - (ii) Reasonable in amount and duration of care, treatment, or service.
- (2) MAA covers the following dental-related services for eligible adults, subject to the restrictions and limitations in this section and other applicable WAC:
 - (a) Medically necessary services for the identification of dental problems or the prevention of dental disease, subject to the limitations of this chapter.
 - (b) A comprehensive oral evaluation once per provider as an initial examination, that must include:
 - (i) A complete dental and medical history and a general health assessment;
 - (ii) A complete thorough evaluation of extra-oral and intra-oral hard and soft tissue; and

- (ii) The evaluation and recording of dental caries, missing or unerupted teeth, restorations, occlusal relationships, periodontal conditions (including periodontal charting), hard and soft tissue anomalies, and oral cancer screening.

- (c) Periodic oral evaluations once every six months to include a periodontal screening/charting at least once per year. There must be six months between the comprehensive oral evaluation and the first periodic oral evaluation.

- (d) Limited oral evaluations only when the provider is not providing prescheduled dental services for the client. The limited oral evaluation must be:
 - (i) To provide limited or emergent services for a specific dental problem; and/or
 - (ii) To provide an evaluation for a referral.

- (e) Radiographs, as follows:
 - (i) Intraoral, complete series (including bitewings), allowed only once in a three-year period;
 - (ii) Panoramic film, allowed only once in a three-year period and only for oral surgical purposes (see subsection (3) of this section for clients of the division of developmental disabilities);
 - (iii) Periapical radiographs as needed (periapical radiographs and bitewings taken on the same date of service cannot exceed MAA's fee for a complete intraoral series); and
 - (iv) Bitewings, up to four allowed every twelve months.

- (f) Fluoride treatment as follows (see subsection (3) of this section for clients of the division of developmental disabilities):
 - (i) Topical application of fluoride gel or fluoride varnish for adults age nineteen through sixty-four with xerostomia (requires prior authorization); and
 - (ii) Topical application of fluoride gel or fluoride varnish for adults age sixty-five and older for:
 - (A) Rampant root surface decay; or
 - (B) Xerostomia.
 - (g) Oral prophylaxis treatment, which is:
 - (i) Allowed once every twelve months for adults age nineteen and older, including nursing facility clients, and for clients of the division of developmental disabilities as provided in subsection (3) of this section;
 - (ii) Not reimbursed when oral prophylaxis treatment is performed on the same date of service as periodontal scaling and root planing, gingivectomy, or gingivoplasty; and
 - (iii) Reimbursed only if periodontal maintenance is not billed for the same client within the same twelve-month period.
 - (h) Restoration of teeth and maintenance of dental health, subject to the limitations in WAC 388-535-1265 and the following:
 - (i) Amalgam and composite restorations are allowed once for the same surface of the same tooth per client, per provider;
 - (ii) Multiple restorations involving the proximal and occlusal surfaces of the same tooth are considered to be a single multisurface restoration. Payment is limited to that of a single multisurface restoration.
 - (iii) Proximal restorations that do not involve the incisal angle in the anterior teeth are considered to be a two-surface restoration. Payment is limited to a two-surface restoration.

(iv) Proximal restorations that involve the incisal angle are considered to be either a three- or four-surface restoration. All surfaces must be listed on the claim for payment.

(v) MAA pays for a maximum of six surfaces for a posterior tooth, which is allowed once per client, per provider, in a two-year period.

(vi) MAA pays for a maximum of six surfaces for an anterior tooth, which is allowed once per client, per provider, in a two-year period.

(vii) MAA pays for a core buildup on an anterior or a posterior tooth, including any pins, which is allowed once per client, per provider, in a two-year period, subject to the following:

(A) MAA does not pay for a core buildup when a permanent or temporary crown is being placed on the same tooth.

(B) MAA does not pay for a core buildup when placed in combination with any other restoration on the same tooth.

(viii) MAA pays for flowable composites as a restoration only, when used with a cavity preparation for a carious lesion that penetrates through the enamel:

(A) As a small Class I (occlusal) restoration; or

(B) As a Class V (buccal or lingual) restoration.

(i) Endodontic (root canal) therapy for permanent anterior teeth only.

(j) Periodontal scaling and root planing, which is:

(i) Allowed for clients of the division of developmental disabilities as provided in subsection (3) of this section;

(ii) Allowed for clients age nineteen and older;

(iii) Allowed only when the client has radiographic evidence of periodontal disease. There must be supporting documentation in the client's record, including complete periodontal charting and a definitive periodontal diagnosis;

(iv) Allowed once per quadrant in a twenty-four month period;

(v) Allowed only when the client's clinical condition meets existing periodontal guidelines; and

(vi) Not allowed when performed on the same date of service as oral prophylaxis, periodontal maintenance, gingivectomy or gingivoplasty. Refer to subsection (2)(g) of this section for limitations on oral prophylaxis. Refer to subsection (2)(k) of this section for limitations on periodontal maintenance.

(k) Periodontal maintenance, which is:

(i) Allowed for clients of the division of developmental disabilities as provided in subsection (3) of this section;

(ii) Allowed for clients age nineteen and older;

(iii) Allowed only when the client has been previously treated for periodontal disease, including surgical or nonsurgical periodontal therapy;

(iv) Allowed when supporting documentation in the client's record includes a definitive periodontal diagnosis and complete periodontal charting;

(v) Allowed when the client's clinical condition meets existing periodontal guidelines;

(vi) Allowed when periodontal maintenance starts at least twelve months after completion of periodontal scaling and root planing or surgical treatment and paid only at twelve month intervals;

(vii) Not reimbursed when the periodontal maintenance is performed on the same date of service as periodontal scaling and root planing, gingivectomy, or gingivoplasty; and

(viii) Reimbursed only if oral prophylaxis is not billed for the same client within the same twelve-month period.

(l) Dentures and partial dentures according to WAC 388-535-1290.

(m) Simple extractions (includes local anesthesia, suturing, and routine postoperative care).

(n) Surgical extractions, subject to the following:

(i) Includes local anesthesia, suturing, and routine postoperative care; and

(ii) Requires documentation in the client's file to support soft tissue, partially bony, or completely bony extractions.

(o) Medically necessary oral surgery when coordinated with the client's managed care plan (if any).

(p) Palliative (emergency) treatment of dental pain and infections, minor procedures, which is:

(i) Allowed once per client, per day.

(ii) Reimbursed only when performed on a different date from:

(A) Any other definitive treatment necessary to diagnose the emergency condition; and

(B) Root canal therapy.

(iii) Reimbursed only when a description of the service is included in the client's record.

(q) Behavior management that requires the assistance of one additional dental professional staff for clients of the division of developmental disabilities. See subsection (3) of this section.

(3) For clients of the division of developmental disabilities, MAA allows services as follows:

(a) Fluoride application, either varnish or gel, three times per calendar year;

(b) One of the following combinations of preventive or periodontal procedures, subject to the limitations listed:

(i) Prophylaxis or periodontal maintenance, three times per calendar year;

(ii) Periodontal scaling and root planing, two times per calendar year; or

(iii) Prophylaxis or periodontal maintenance, two times per calendar year, and periodontal scaling and root planing, once per calendar year.

(c) Gingivectomy or gingivoplasty, allowed for four or more contiguous teeth or bounded teeth spaces per quadrant, once every three years.

(d) Nitrous oxide;

(e) Behavior management that requires the assistance of one additional dental professional staff. A description of behavior management must be documented in the client's record;

(f) Panoramic radiographs;

(g) General anesthesia or conscious sedation with parenteral or multiple oral agents when medically necessary for providing treatment; and

(h) Limited visual oral assessment (does not replace an oral evaluation) when the assessment includes appropriate referrals, charting of patient data and oral health status and informing the client's parent or guardian of the results, and when at least one of the following occurs:

(i) The provision of triage services;

(ii) An intraoral screening of soft tissues by a public health dental hygienist to assess the need for prophylaxis, flu-

oride varnish, or referral for other dental treatments by a dentist; or

(iii) In circumstances where the client will be referred to a dentist for treatment, the referring provider will not provide treatment or provide a full evaluation at the time of the assessment.

(4) MAA covers dental services that are medically necessary and provided in a hospital under the direction of a physician or dentist for:

(a) The care or treatment of teeth, jaws, or structures directly supporting the teeth if the procedure requires hospitalization;

(b) Short stays when the procedure cannot be done in an office setting. See WAC 388-550-1100(6); and

(c) A hospital call, including emergency care, allowed one per day, per client, per provider.

(5) MAA covers general anesthesia and conscious sedation with parenteral or multiple oral agents for medically necessary dental services as follows:

(a) For treatment of clients who are eligible under the division of developmental disabilities.

(b) For oral surgery procedures.

(c) When justification for administering the general anesthesia instead of a lesser type of sedation is clearly documented in the client's record.

(d) When the anesthesia is administered by:

(i) An oral surgeon who has a current conscious sedation permit or a current general anesthesia permit from DOH;

(ii) An anesthesiologist;

(iii) A dental anesthesiologist who has a current conscious sedation permit or a current general anesthesia permit from DOH;

(iv) A certified registered nurse anesthetist (CRNA), if the performing dentist has a current conscious sedation permit or a current general anesthesia permit from the department of health (DOH); or

(v) A dentist who has a current conscious sedation permit or a current general anesthesia permit from DOH.

(e) When the provider meets the prevailing standard of care and at least the requirements in WAC 246-817-760, Conscious sedations with parenteral or multiple oral agents and WAC 246-817-770, General anesthesia.

(6) MAA pays for anesthesia services according to WAC 388-535-1350.

(7) MAA covers dental-related services for clients residing in nursing facilities or group homes as follows:

(a) Dental services must be requested by the client or the client's surrogate decision maker as defined in WAC 388-97-055, or a referral for services must be made by the attending physician, the director of nursing, or the nursing facility supervisor, as appropriate, allowed once per day (not per client and not per facility), per provider; and

(b) Nursing facilities must provide dental-related necessary services according to WAC 388-97-012, Nursing facility care.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, 2003 1st sp.s. c 25, P.L. 104-191. 03-19-079, § 388-535-1255, filed 9/12/03, effective 10/13/03.]

WAC 388-535-1265 Dental-related services not covered—Adults. (1) The medical assistance administration

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(MAA) does not cover dental-related services for adults described in subsection (2) of this section unless the services are included in an MAA waived program.

(2) MAA does not cover the following dental-related services for adults:

(a) Any service specifically excluded by statute.

(b) More costly services when less costly, equally effective services as determined by the department are available.

(c) Services, procedures, treatment, devices, drugs, or application of associated services which the department or the Centers for Medicare and Medicaid Services (CMS) consider investigative or experimental on the date the services were provided.

(d) Coronal polishing.

(e) Fluoride treatments (gel or varnish) for adults, unless the clients are:

(i) Clients of the division of developmental disabilities;

(ii) Diagnosed with xerostomia, in which case the provider must request prior authorization; or

(iii) High-risk adults sixty-five and older. High-risk means the client has at least one of the following:

(A) Rampant root surface decay; or

(B) Xerostomia.

(f) Restorations for wear on any surface of any tooth without evidence of decay through the enamel or on the root surface.

(g) Flowable composites for interproximal or incisal restorations.

(h) Any permanent crowns, temporary crowns, or crown post and cores.

(i) Bridges, including abutment teeth and pontics.

(j) Root canal services for primary teeth.

(k) Root canal services for permanent teeth other than teeth six, seven, eight, nine, ten, eleven, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, and twenty-seven.

(l) Pulpotomy services for permanent teeth.

(m) Transitional or treatment dentures.

(n) Overdentures.

(o) Replacements for:

(i) Immediate maxillary or mandibular dentures;

(ii) Maxillary or mandibular partial dentures (resin); or

(iii) Complete maxillary or mandibular dentures in excess of one replacement in a ten-year period; or

(iv) Cast metal framework maxillary or mandibular partial dentures in excess of one replacement in a ten-year period.

(p) Rebasing of complete and immediate dentures and partial dentures.

(q) Adjustments of complete and immediate dentures and partial dentures.

(r) Tooth implants, including insertion, postinsertion, maintenance, and implant removal.

(s) Periodontal bone grafts or oral soft tissue grafts.

(t) Gingivectomy, gingivoplasty, or frenectomy, frenoplasty and other periodontal surgical procedures.

(u) Crown lengthening procedures.

(v) Orthotic appliances, including but not limited to, night guards, temporomandibular joint dysfunction (TMJ/TMD) appliances, and all other mouth guards.

(w) Any treatment of TMJ/TMD.

- (x) Extraction of:
 - (i) Asymptomatic teeth;
 - (ii) Asymptomatic wisdom teeth; and
 - (iii) Surgical extraction of anterior teeth seven, eight, nine, ten, twenty-three, twenty-four, twenty-five, or twenty-six, which are considered simple extractions and paid as such.
- (y) Alveoloplasty, alveolotomy or tori, exostosis removal.
- (z) Debridement of granuloma or cyst associated with tooth extraction.
 - (aa) Cosmetic treatment or surgery, except as prior authorized by the department for medically necessary reconstructive surgery to correct defects attributable to an accident, birth defect, or illness.
 - (bb) Nonemergent oral surgery for adults performed in an inpatient hospital setting, except:
 - (i) Nonemergent oral surgery is covered in an inpatient hospital setting for clients of the division of developmental disabilities when written prior authorization is obtained for the inpatient hospitalization; or
 - (ii) As provided in WAC 388-535-1080(4).
 - (cc) Dental supplies such as toothbrushes (manual, automatic, or electric), toothpaste, floss, or whiteners.
 - (dd) Dentist's time writing and calling in prescriptions or prescription refills.
 - (ee) Educational supplies.
 - (ff) Missed or canceled appointments.
 - (gg) Nonmedical equipment, supplies, personal or comfort items or services.
 - (hh) Provider mileage or travel costs.
 - (ii) Service charges or delinquent payment fees.
 - (jj) Supplies used in conjunction with an office visit.
 - (kk) Take-home drugs.
 - (ll) Teeth whitening.
- (3) MAA evaluates a request for dental-related services that are not covered or are in excess of the dental services program's limitations or restrictions, according to WAC 388-501-0165.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, 2003 1st sp.s. c 25, P.L. 104-191. 03-19-079, § 388-535-1265, filed 9/12/03, effective 10/13/03.]

WAC 388-535-1270 Dental-related services requiring prior authorization—Adults. The following dental-related services for adults require prior authorization:

- (1) Nonemergent inpatient hospital dental admissions as described under WAC 388-535-1100 (2)(o) and 388-550-1100(1);
- (2) Dentures and partial dentures as described in WAC 388-550-1290;
- (3) Fluoride treatment (gel or varnish) for clients age nineteen through sixty-four who are diagnosed with xerostomia; and
- (4) Selected procedures identified by the medical assistance administration (MAA) and published in its current dental billing instructions.
- (5) See WAC 388-535-1280 for obtaining prior authorization for dental-related services for adults.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, 2003 1st sp.s. c 25, P.L. 104-191. 03-19-080, § 388-535-1270, filed 9/12/03, effective 10/13/03.]

WAC 388-535-1280 Obtaining prior authorization for dental-related services—Adults. When the medical assistance administration (MAA) authorizes dental-related services for adults, that authorization indicates only that the specific service is medically necessary; it is not a guarantee of payment. The client must be eligible for covered services at the time those services are provided.

(1) MAA requires a dental provider who is requesting prior authorization to submit sufficient objective clinical information to establish medical necessity. The request must be submitted in writing on an American Dental Association (ADA) claim form, which may be obtained by writing to the American Dental Association, 211 East Chicago Avenue, Chicago, Illinois 60611. The request must include at least all of the following:

- (a) The client's patient identification code (PIC);
- (b) The client's name and address;
- (c) The provider's name and address;
- (d) The provider's telephone and fax number (including area code);
- (e) The provider's MAA-assigned seven-digit provider number;
- (f) The physiological description of the disease, injury, impairment, or other ailment;
- (g) The most recent and relevant radiographs that are identified with client name, provider name, and date the radiograph was taken;
- (h) The treatment plan;
- (i) Periodontal when radiographs do not sufficiently support the medical necessity for extractions;
- (j) Study model, if requested; and
- (k) Photographs, if requested.

(2) MAA considers requests for services according to WAC 388-535-1270.

(3) MAA denies a request for dental services when the requested service is:

- (a) Not listed in chapter 388-535 WAC as a covered service;
- (b) Not medically necessary;
- (c) A service, procedure, treatment, device, drug, or application of associated service that the department or the Centers for Medicare and Medicaid Services (CMS) consider investigative or experimental on the date the service is provided; or
- (d) Covered under another department program or by an agency outside the department.

(4) MAA may require second opinions and/or consultations before authorizing any procedure.

(5) Authorization is valid only if the client is eligible for covered services on the date of service.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, 2003 1st sp.s. c 25, P.L. 104-191. 03-19-080, § 388-535-1280, filed 9/12/03, effective 10/13/03.]

WAC 388-535-1290 Dentures and partial dentures for adults. (1) The medical assistance administration (MAA) requires prior authorization for the dentures (complete or

immediate), replacement dentures, partial dentures, and replacement partial dentures that are described in this section.

(2) Subject to the criteria in this section and other applicable WAC, MAA covers the following for eligible adults:

(a) Dentures, subject to the following limitations:

(i) Only one complete maxillary denture and one complete mandibular denture allowed per client in a ten-year period, when constructed after the client has been without teeth for a period of time; or

(ii) Only one immediate maxillary denture and one immediate mandibular denture allowed per client, per lifetime, and only when constructed prior to the removal of the client's teeth.

(b) Replacement dentures, subject to the following limitations:

(i) Only one replacement of a complete maxillary denture and one replacement of a complete mandibular denture allowed per client in a ten-year period; and

(ii) Allowed only when the applicable criteria in subsection (6) of this section are met.

(c) Partial dentures, subject to the following limitations:

(i) Only one maxillary partial denture (resin) and one mandibular partial denture (resin) to replace one, two, or three missing anterior teeth per arch, allowed per client in a ten-year period; or

(ii) Only one maxillary partial denture (cast metal framework) and one mandibular partial denture (cast metal framework) allowed per client in a ten-year period to replace:

(A) Any combination of at least six anterior and posterior missing teeth per arch, excluding wisdom teeth; or

(B) At least four anterior missing teeth per arch.

(d) Replacement partial dentures, subject to the following limitations:

(i) Only one replacement of a maxillary partial denture (cast metal framework) and a mandibular partial denture (cast metal framework) allowed per client in a ten-year period; and

(ii) Allowed only when the applicable criteria in subsection (6) of this section are met.

(3) Dentures must be of an acceptable structure and quality to meet the standard of care.

(4) MAA covers complete denture and partial denture relines only once in a five-year period.

(5) MAA covers complete dentures and partial denture repairs when medically necessary.

(6) In addition to the prior authorization requirement and other limitations in this section, all replacement complete dentures and cast metal framework partial dentures are allowed once in a ten-year period and must:

(a) Replace a complete maxillary denture, a complete mandibular denture, a maxillary partial denture (cast metal framework) or a mandibular partial denture (cast metal framework) (see subsection (2) of this section);

(b) Replace dentures or partial dentures that are no longer serviceable and are unable to be relined;

(c) Replace dentures or partial dentures that are damaged beyond repair;

(d) Replace dentures or partial dentures that a client has been able to wear successfully; and

(e) Be medically necessary, as defined in WAC 388-500-0005.

(7) For billing purposes, a provider must:

(a) Use the delivery date as the service date for the dentures and partial dentures; and

(b) Use the impression date as the service date for dentures and partial dentures only when:

(i) Related dental services, including laboratory services, were provided during a client's eligible period; and

(ii) The client is not eligible at the time of delivery; or

(iii) The client does not return to obtain the dentures or partial dentures.

(8) A provider must retain in a client's record:

(a) Written laboratory prescriptions;

(b) Receipts for laboratory fees;

(c) Charts of missing teeth for partial dentures; and

(d) Documentation that justifies the placement or replacement of dentures or partial dentures.

(9) MAA does not pay separately for laboratory and professional fees for dentures and partial dentures. However, MAA may partially reimburse for these fees when the provider obtains prior authorization and the client:

(a) Dies;

(b) Moves from the state;

(c) Cannot be located; or

(d) Does not participate in completing the dentures.

(10) MAA does not pay separately for relines that are done within six months of the seat date. These procedures are included in the reimbursement for the dentures and partial dentures.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, 2003 1st sp.s. c 25, P.L. 104-191. 03-19-080, § 388-535-1290, filed 9/12/03, effective 10/13/03.]

WAC 388-535-1350 Payment methodology for dental-related services. The medical assistance administration (MAA) uses the description of dental services described in the American Dental Association's Current Dental Terminology, and the American Medical Association's Physician's Current Procedural Terminology (CPT).

(1) For covered dental-related services provided to eligible clients, MAA pays dentists and other eligible providers on a fee-for-service or contractual basis, subject to the exceptions and restrictions listed under WAC 388-535-1100 and 388-535-1400.

(2) MAA sets maximum allowable fees for dental services provided to children as follows:

(a) MAA's historical reimbursement rates for various procedures are compared to usual and customary charges.

(b) MAA consults with representatives of the provider community to identify program areas and concerns that need to be addressed.

(c) MAA consults with dental experts and public health professionals to identify and prioritize dental services and procedures for their effectiveness in improving or promoting children's dental health.

(d) Legislatively authorized vendor rate increases and/or earmarked appropriations for children's dental services are allocated to specific procedures based on the priorities identified in (c) of this subsection and considerations of access to services.

(e) Larger percentage increases may be given to those procedures which have been identified as most effective in improving or promoting children's dental health.

(f) Budget-neutral rate adjustments are made as appropriate based on the department's evaluation of utilization trends, effectiveness of interventions, and access issues.

(3) MAA reimburses dental general anesthesia services for eligible clients on the basis of base anesthesia units plus time. Payment for dental general anesthesia is calculated as follows:

(a) Dental procedures are assigned an anesthesia base unit of five;

(b) Fifteen minutes constitute one unit of time. When a dental procedure requiring dental general anesthesia results in multiple time units and a remainder (less than fifteen minutes), the remainder or fraction is considered as one time unit;

(c) Time units are added to the anesthesia base unit of five and multiplied by the anesthesia conversion factor;

(d) The formula for determining payment for dental general anesthesia is: (5.0 base anesthesia units + time units) x conversion factor = payment.

(4) When billing for anesthesia, the provider must show the actual beginning and ending times on the claim. Anesthesia time begins when the provider starts to physically prepare the client for the induction of anesthesia in the operating room area (or its equivalent), and ends when the provider is no longer in constant attendance (i.e., when the client can be safely placed under postoperative supervision).

(5) MAA pays eligible providers listed in WAC 388-535-1070 for conscious sedation with parenteral and multiple oral agents, or for general anesthesia when the provider meets the criteria in this chapter and other applicable WAC.

(6) Dental hygienists who have a contract with MAA are paid at the same rate as dentists who have a contract with MAA, for services allowed under The Dental Hygienist Practice Act.

(7) Licensed denturists who have a contract with MAA are paid at the same rate as dentists who have a contract with MAA, for providing dentures and partials.

(8) MAA makes fee schedule changes whenever the legislature authorizes vendor rate increases or decreases.

(9) MAA may adjust maximum allowable fees to reflect changes in services or procedure code descriptions.

(10) MAA does not pay separately for chart or record setup, or for completion of reports, forms, or charting. The fees for these services are included in MAA's reimbursement for comprehensive oral evaluations or limited oral evaluations.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, 2003 1st sp.s. c 25, P.L. 104-191. 03-19-080, § 388-535-1350, filed 9/12/03, effective 10/13/03. Statutory Authority: RCW 74.08.090, 74.09.035, 74.09.500, 74.09.520, 42 U.S.C. 1396d(a), 42 C.F.R. 440.100 and 440.225. 02-13-074, § 388-535-1350, filed 6/14/02, effective 7/15/02. Statutory Authority: RCW 74.08.090, 74.09.035, 74.09.520 and 74.09.700, 42 USC 1396d(a), CFR 440.100 and 440.225. 99-07-023, § 388-535-1350, filed 3/10/99, effective 4/10/99. Statutory Authority: Initiative 607, 1995 c 18 2nd sp.s. and 74.08.090. 96-01-006 (Order 3931), § 388-535-1350, filed 12/6/95, effective 1/6/96.]

WAC 388-535-1400 Payment for dental-related services. (1) The medical assistance administration (MAA) considers that a provider who furnishes covered dental services to an eligible client has accepted MAA's rules and fees.

(2) Participating providers must bill MAA their usual and customary fees.

(3) Payment for dental services is based on MAA's schedule of maximum allowances. Fees listed in the MAA fee schedule are the maximum allowable fees.

(4) MAA pays the provider the lesser of the billed charge (usual and customary fee) or MAA's maximum allowable fee.

(5) MAA pays "by report" on a case-by-case basis, for a covered service that does not have a set fee.

(6) Participating providers must bill a client according to WAC 388-502-0160, unless otherwise specified in this chapter.

(7) If the client's eligibility for dental services ends before the conclusion of the dental treatment, payment for any remaining treatment is the client's responsibility. The exception to this is dentures and partial dentures as described in WAC 388-535-1240 and 388-535-1290.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, 2003 1st sp.s. c 25, P.L. 104-191. 03-19-080, § 388-535-1400, filed 9/12/03, effective 10/13/03. Statutory Authority: RCW 74.08.090, 74.09.035, 74.09.500, 74.09.520, 42 U.S.C. 1396d(a), 42 C.F.R. 440.100 and 440.225. 02-13-074, § 388-535-1400, filed 6/14/02, effective 7/15/02. Statutory Authority: RCW 74.08.090, 74.09.035, 74.09.520 and 74.09.700, 42 USC 1396d(a), CFR 440.100 and 440.225. 99-07-023, § 388-535-1400, filed 3/10/99, effective 4/10/99. Statutory Authority: Initiative 607, 1995 c 18 2nd sp.s. and 74.08.090. 96-01-006 (Order 3931), § 388-535-1400, filed 12/6/95, effective 1/6/96.]

WAC 388-535-1450 Payment for denture laboratory services. The medical assistance administration (MAA) does not directly reimburse denture laboratories. MAA's reimbursement for complete dentures, immediate dentures, partial dentures, and overdentures includes laboratory fees. The provider is responsible to pay a denture laboratory for services furnished at the request of the provider.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, 2003 1st sp.s. c 25, P.L. 104-191. 03-19-080, § 388-535-1450, filed 9/12/03, effective 10/13/03. Statutory Authority: RCW 74.08.090, 74.09.035, 74.09.500, 74.09.520, 42 U.S.C. 1396d(a), 42 C.F.R. 440.100 and 440.225. 02-13-074, § 388-535-1450, filed 6/14/02, effective 7/15/02. Statutory Authority: RCW 74.08.090, 74.09.035, 74.09.520 and 74.09.700, 42 USC 1396d(a), CFR 440.100 and 440.225. 99-07-023, § 388-535-1450, filed 3/10/99, effective 4/10/99. Statutory Authority: Initiative 607, 1995 c 18 2nd sp.s. and 74.08.090. 96-01-006 (Order 3931), § 388-535-1450, filed 12/6/95, effective 1/6/96.]

**Chapter 388-538 WAC
MANAGED CARE**

WAC

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**DISPOSITION OF SECTIONS FORMERLY
CODIFIED IN THIS CHAPTER**

388-538-080 Managed care exemptions. [Statutory Authority: RCW 74.09.080, 74.08.510, [74.08.]522, 74.09.450, 1115 Waiver, 42 U.S.C. 1396.02-01-075, § 388-538-080, filed 12/14/01, effective 1/14/02. Statutory Authority: RCW 74.08.090, 74.09.510 and [74.09.]522 and 1115 Federal Waiver, 42 U.S.C. 1396(a), (e), (p), 42 U.S.C. 1396f-6(b), 42 U.S.C. 1396u-2.00-04-080, § 388-538-080, filed 2/1/00, effective 3/3/00. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090.98-16-044, § 388-538-080, filed 7/31/98, effective 9/1/98. Statutory Authority: RCW 74.08.090.96-24-074, § 388-538-080, filed 12/2/96, effective 1/1/97. Statutory Authority: RCW 74.08.090 and 1995 2nd sp.s. c 18.95-18-046 (Order 3886), § 388-538-080, filed 8/29/95 effective 9/1/95. Statutory Authority: RCW 74.08.090.93-17-039 (Order 3621), § 388-538-080, filed 8/11/93, effective 9/11/93.] Repealed by 03-18-109, filed 9/2/03, effective 10/3/03. Statutory Authority: RCW 74.08.090, 74.09.522.

WAC 388-538-050 Definitions. The following definitions and abbreviations and those found in WAC 388-500-0005, Medical definitions, apply to this chapter.

"Action" means:

- (1) The denial or limited authorization of a requested service, including the type or level of service;
- (2) The reduction, suspension, or termination of a previously authorized service;
- (3) The denial, in whole or in part, of payment for a service;
- (4) The failure to provide services in a timely manner, as defined by the state; or
- (5) The failure of an MCO to act within the time frames provided in 42 C.F.R. 438.408(b).

"Ancillary health services" means health services ordered by a provider, including but not limited to, laboratory services, radiology services, and physical therapy.

"Appeal" means a request by a provider or covered enrollee for reconsideration of an action.

"Assign" or **"assignment"** means that MAA selects a managed care organization (MCO) or primary care case management (PCCM) provider to serve a client who lives in a mandatory enrollment area and who has failed to select an MCO or PCCM provider.

"Basic health (BH)" means the health care program authorized by chapter 70.47 RCW and administered by the health care authority (HCA). MAA considers basic health to be third-party coverage, however, this does not include basic health plus (BH+).

"Children with special health care needs" means children identified by the department of social and health services (DSHS) as having special health care needs. This includes:

- (1) Children designated as having special health care needs by the department of health (DOH) and served under the Title V program;
- (2) Children who meet disability criteria of Title 16 of the Social Security Act (SSA); and
- (3) Children who are in foster care or who are served under subsidized adoption.

"Client" means an individual eligible for any medical program who is not enrolled with a managed care organization (MCO) or primary care case management (PCCM) provider. In this chapter, client refers to a person before the per-

son is enrolled in managed care, while enrollee refers to an individual eligible for any medical program who is enrolled in managed care.

"Emergency medical condition" means a condition meeting the definition in 42 C.F.R. 438.114(a).

"Emergency services" means services as defined in 42 C.F.R. 438.114(a).

"End enrollment" means an enrollee is currently enrolled in managed care, either with a managed care organization (MCO) or with a primary care case management (PCCM) provider, and requests to discontinue enrollment and return to the fee-for-service delivery system for one of the reasons outlined in WAC 388-538-130. This is also referred to as " disenrollment."

"Enrollee" means an individual eligible for any medical program who is enrolled in managed care through a managed care organization (MCO) or primary care case management (PCCM) provider that has a contract with the state.

"Enrollees with special health care needs" means persons having chronic and disabling conditions, including persons with special health care needs that meet all of the following conditions:

- (1) Have a biologic, psychologic, or cognitive basis;
- (2) Have lasted or are virtually certain to last for at least one year; and
- (3) Produce one or more of the following conditions stemming from a disease:
 - (a) Significant limitation in areas of physical, cognitive, or emotional function;
 - (b) Dependency on medical or assistive devices to minimize limitation of function or activities; or
 - (c) In addition, for children, any of the following:
 - (i) Significant limitation in social growth or developmental function;
 - (ii) Need for psychologic, educational, medical, or related services over and above the usual for the child's age; or
 - (iii) Special ongoing treatments, such as medications, special diet, interventions, or accommodations at home or school.

"Exemption" means a client, not currently enrolled in managed care, makes a preenrollment request to remain in the fee-for-service delivery system for one of the reasons outlined in WAC 388-538-130.

"Grievance" means an expression of dissatisfaction about any matter other than an action, as "action" is defined in this section.

"Grievance system" means the overall system that includes grievances and appeals handled at the MCO level and access to the state fair hearing process.

"Health care service" or **"service"** means a service or item provided for the prevention, cure, or treatment of an illness, injury, disease, or condition.

"Healthy options contract or HO contract" means the agreement between the department of social and health services (DSHS) and a managed care organization (MCO) to provide prepaid contracted services to enrollees.

"Healthy options program or HO program" means the medical assistance administration's (MAA) prepaid managed care health program for Medicaid-eligible clients and CHIP clients.

"Managed care" means a comprehensive system of medical and health care delivery including preventive, primary, specialty, and ancillary health services. These services are provided either through a managed care organization (MCO) or primary care case management (PCCM) provider.

"Managed care organization" or "MCO" means an organization having a certificate of authority or certificate of registration from the office of insurance commissioner that contracts with the department of social and health services (DSHS) under a comprehensive risk contract to provide pre-paid health care services to eligible medical assistance administration (MAA) clients under MAA's managed care programs.

"Nonparticipating provider" means a person or entity that does not have a written agreement with a managed care organization (MCO) but that provides MCO-contracted health care services to managed care enrollees with the authorization of the MCO. The MCO is solely responsible for payment for MCO-contracted health care services that are authorized by the MCO and provided by nonparticipating providers.

"Participating provider" means a person or entity with a written agreement with a managed care organization (MCO) to provide health care services to managed care enrollees. A participating provider must look solely to the MCO for payment for such services.

"Primary care case management (PCCM)" means the health care management activities of a provider that contracts with the department to provide primary health care services and to arrange and coordinate other preventive, specialty, and ancillary health services.

"Primary care provider (PCP)" means a person licensed or certified under Title 18 RCW including, but not limited to, a physician, an advanced registered nurse practitioner (ARNP), or a physician assistant who supervises, coordinates, and provides health services to a client or an enrollee, initiates referrals for specialist and ancillary care, and maintains the client's or enrollee's continuity of care.

"Prior authorization (PA)" means a process by which enrollees or providers must request and receive MAA approval for services provided through MAA's fee-for-service program, or MCO approval for services provided through the MCO, for certain medical services, equipment, drugs, and supplies, based on medical necessity, before the services are provided to clients, as a precondition for provider reimbursement. Expedited prior authorization and limitation extension are forms of prior authorization. See WAC 388-501-0165.

"Timely" - in relation to the provision of services, means an enrollee has the right to receive medically necessary health care as expeditiously as the enrollee's health condition requires. In relation to authorization of services and grievances and appeals, means in accordance with the healthy options (HO)/state children's health insurance program (SCHIP) contract and the time frames stated in this chapter.

[Statutory Authority: RCW 74.08.090, 74.09.522, 03-18-109, § 388-538-050, filed 9/2/03, effective 10/3/03. Statutory Authority: RCW 74.09.080, 74.08.510, [74.08.]522, 74.09.450, 1115 Waiver, 42 U.S.C. 1396. 02-01-075, § 388-538-050, filed 12/14/01, effective 1/14/02. Statutory Authority: RCW 74.08.090, 74.09.510 and [74.09.]522 and 1115 Federal Waiver, 42 U.S.C. 1396 (a), (e), (p), 42 U.S.C. 1396f-6(b), 42 U.S.C. 1396u-2, 00-04-080, § 388-538-050, filed 2/1/00, effective 3/3/00. Statutory Authority:

RCW 74.08.090 and 1995 2nd sp.s. c 18. 95-18-046 (Order 3886), § 388-538-050, filed 8/29/95, effective 9/1/95. Statutory Authority: RCW 74.08.090, 93-17-039 (Order 3621), § 388-538-050, filed 8/11/93, effective 9/11/93.]

WAC 388-538-060 Managed care and choice. (1) MAA requires a client to enroll in managed care when that client meets all of the following conditions:

(a) Is eligible for one of the medical programs for which clients must enroll in managed care;

(b) Resides in an area, determined by the medical assistance administration (MAA), where clients must enroll in managed care;

(c) Is not exempt from managed care enrollment as determined by MAA, consistent with WAC 388-538-130, and any related fair hearing has been held and decided; and

(d) Has not had managed care enrollment ended by MAA, consistent with WAC 388-538-130.

(2) American Indian/Alaska Native (AI/AN) clients who meet the provisions of 25 U.S.C. 1603 (c)-(d) for federally recognized tribal members and their descendants may choose one of the following:

(a) Enrollment with a managed care organization (MCO) available in their area;

(b) Enrollment with an Indian or tribal primary care case management (PCCM) provider available in their area; or

(c) MAA's fee-for-service system.

(3) A client may enroll with an MCO or PCCM provider by calling MAA's toll-free enrollment line or by sending a completed enrollment form to MAA.

(a) Except as provided in subsection (2) of this section for clients who are AI/AN, a client required to enroll in managed care must enroll with an MCO or PCCM provider available in the area where the client lives.

(b) All family members must either enroll with the same MCO or enroll with PCCM providers.

(c) Enrollees may request an MCO or PCCM provider change at any time.

(d) When a client requests enrollment with an MCO or PCCM provider, MAA enrolls a client effective the earliest possible date given the requirements of MAA's enrollment system. MAA does not enroll clients retrospectively.

(4) MAA assigns a client who does not choose an MCO or PCCM provider as follows:

(a) If the client has family members enrolled with an MCO, the client is enrolled with that MCO;

(b) If the client does not have family members enrolled with an MCO, and the client was enrolled in the last six months with an MCO or PCCM provider, the client is reenrolled with the same MCO or PCCM provider;

(c) If a client does not choose an MCO or a PCCM provider, but indicates a preference for a provider to serve as the client's primary case provider (PCP), MAA attempts to contact the client to complete the required choice. If MAA is not able to contact the client in a timely manner, MAA documents the attempted contacts and, using the best information available, assigns the client as follows. If the client's preferred PCP is:

(i) Available with one MCO, MAA assigns the client in the MCO where the client's PCP provider is available. The MCO is responsible for PCP choice and assignment;

(ii) Available only as a PCCM provider, MAA assigns the client to the preferred provider as the client's PCCM provider;

(iii) Available with multiple MCOs or through an MCO and as a PCCM provider, MAA assigns the client to an MCO as described in (d) of this subsection;

(iv) Not available through any MCO or as a PCCM provider, MAA assigns the client to an MCO or PCCM provider as described in (d) of this subsection.

(d) If the client cannot be assigned according to (a), (b), or (c) of this subsection, MAA assigns the client as follows:

(i) If an AI/AN client does not choose an MCO or PCCM provider, MAA assigns the client to a tribal PCCM provider if that client lives in a zip code served by a tribal PCCM provider. If there is no tribal PCCM provider in the client's area, the client continues to be served by MAA's fee-for-service system. A client assigned under this subsection may request to end enrollment at any time.

(ii) If a non-AI/AN client does not choose an MCO or PCCM provider, MAA assigns the client to an MCO or PCCM provider available in the area where the client lives. The MCO is responsible for PCP choice and assignment. An MCO must meet the healthy options (HO) contract's access standards unless the MCO has been granted an exemption by MAA. The HO contract standards are as follows:

(A) There must be two PCPs within ten miles for ninety percent of HO enrollees in urban areas and one PCP within twenty-five miles for ninety percent of HO enrollees in rural areas;

(B) There must be two obstetrical providers within ten miles for ninety percent of HO enrollees in urban areas and one obstetrical provider within twenty-five miles for ninety percent of HO enrollees in rural areas;

(C) There must be one hospital within twenty-five miles for ninety percent of HO enrollees in the contractor's service area;

(D) There must be one pharmacy within ten miles for ninety percent of HO enrollees in urban areas and one pharmacy within twenty-five miles for ninety percent of HO enrollees in rural areas.

(iii) MAA sends a written notice to each household of one or more clients who are assigned to an MCO or PCCM provider. The notice includes the name of the MCO or PCCM provider to which each client has been assigned, the effective date of enrollment, the date by which the client must respond in order to change MAA's assignment, and either the toll-free telephone number of:

(A) The MCO for enrollees assigned to an MCO; or

(B) MAA for enrollees assigned to a PCCM provider.

(iv) An assigned client has at least thirty calendar days to contact MAA to change the MCO or PCCM provider assignment before enrollment is effective.

(5) An MCO enrollee's selection of the enrollee's PCP or the enrollee's assignment to a PCP occurs as follows:

(a) MCO enrollees may choose:

(i) A PCP or clinic that is in the enrollee's MCO and accepting new enrollees; or

(ii) Different PCPs or clinics participating with the same MCO for different family members.

(b) The MCO assigns a PCP or clinic that meets the access standards set forth in subsection (4)(d)(ii) of this section if the enrollee does not choose a PCP or clinic;

(c) MCO enrollees may change PCPs or clinics in an MCO for any reason, with the change becoming effective no later than the beginning of the month following the enrollee's request; or

(d) In accordance with this subsection, MCO enrollees may file a grievance with the MCO and may change plans if the MCO denies an enrollee's request to change PCPs or clinics.

[Statutory Authority: RCW 74.08.090, 74.09.522, 03-18-109, § 388-538-060, filed 9/2/03, effective 10/3/03. Statutory Authority: RCW 74.09.080, 74.08.510, [74.08.]522, 74.09.450, 1115 Waiver, 42 U.S.C. 1396.02-01-075, § 388-538-060, filed 12/14/01, effective 1/14/02. Statutory Authority: RCW 74.08.090, 74.09.510 and [74.09.]522 and 1115 Federal Waiver, 42 U.S.C. 1396 (a), (e), (p), 42 U.S.C. 1396r-6(b), 42 U.S.C. 1396u-2.00-04-080, § 388-538-060, filed 2/1/00, effective 3/3/00. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-538-060, filed 7/31/98, effective 9/1/98. Statutory Authority: RCW 74.08.090 and 1995 2nd sp.s. c 18. 95-18-046 (Order 3886), § 388-538-060, filed 8/29/95, effective 9/1/95. Statutory Authority: RCW 74.08.090. 93-17-039 (Order 3621), § 388-538-060, filed 8/11/93, effective 9/11/93.]

WAC 388-538-067 Managed care provided through managed care organizations (MCOs). (1) Managed care organizations (MCOs) may contract with the department of social and health services (DSHS) to provide prepaid health care services to eligible medical assistance administration (MAA) clients. The MCOs must meet the qualifications in this section to be eligible to contract with DSHS. The MCO must:

(a) Have a certificate of registration from the office of the insurance commissioner (OIC) that allows the MCO to provide the services in subsection (1) of this section;

(b) Accept the terms and conditions of DSHS' HO contract;

(c) Be able to meet the network and quality standards established by DSHS; and

(d) Accept the prepaid rates published by DSHS.

(2) DSHS reserves the right not to contract with any otherwise qualified MCO.

[Statutory Authority: RCW 74.08.090, 74.09.522, 03-18-112, § 388-538-067, filed 9/2/03, effective 10/3/03. Statutory Authority: RCW 74.09.080, RCW 74.08.510, [74.08.]522, 74.09.450, 1115 Waiver, 42 U.S.C. 1396.02-01-075, § 388-538-067, filed 12/14/01, effective 1/14/02.]

WAC 388-538-070 Managed care payment. (1) The medical assistance administration (MAA) pays managed care organizations (MCOs) monthly capitated premiums that:

(a) Have been determined using generally accepted actuarial methods based on analyses of historical healthy options (HO) contractual rates and MCO experience in providing health care for the populations eligible for HO; and

(b) Are paid based on legislative allocations for the HO program.

(2) MAA pays primary care case management (PCCM) providers a monthly case management fee according to contracted terms and conditions.

(3) MAA does not pay providers on a fee-for-service basis for services that are the MCO's responsibility under the HO contract, even if the MCO has not paid for the service for

any reason. The MCO is solely responsible for payment of MCO-contracted health care services:

(a) Provided by an MCO-contracted provider; or

(b) That are authorized by the MCO and provided by nonparticipating providers.

(4) MAA pays an additional monthly amount, known as an enhancement rate, to federally qualified health care centers (FQHC) and rural health clinics (RHC) for each client enrolled with MCOs through the FQHC or RHC. MCOs may contract with FQHCs and RHCs to provide services under HO. FQHCs and RHCs receive an enhancement rate from MAA on a per member, per month basis in addition to the negotiated payments they receive from the MCOs for services provided to MCO enrollees.

[Statutory Authority: RCW 74.08.090, 74.09.522, 03-18-109, § 388-538-070, filed 9/2/03, effective 10/3/03. Statutory Authority: RCW 74.09.080, 74.08.510, [74.08.]522, 74.09.450, 1115 Waiver, 42 U.S.C. 1396. 02-01-075, § 388-538-070, filed 12/14/01, effective 1/14/02. Statutory Authority: RCW 74.08.090, 74.09.510 and [74.09.]522 and 1115 Federal Waiver, 42 U.S.C. 1396 (a), (e), (p), 42 U.S.C. 1396r-6(b), 42 U.S.C. 1396u-2. 00-04-080, § 388-538-070, filed 2/1/00, effective 3/3/00. Statutory Authority: RCW 74.08.090, 96-24-073, § 388-538-070, filed 12/2/96, effective 1/2/97. Statutory Authority: RCW 74.08.090 and 1995 2nd sp.s. c 18. 95-18-046 (Order 3886), § 388-538-070, filed 8/29/95 effective 9/1/95. Statutory Authority: RCW 74.08.090, 93-17-039 (Order 3621), § 388-538-070, filed 8/11/93, effective 9/11/93.]

WAC 388-538-080 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-538-095 Scope of care for managed care enrollees. (1) Managed care enrollees are eligible for the scope of medical care as described in WAC 388-529-0100 for categorically needy clients.

(a) A client is entitled to timely access to medically necessary services as defined in WAC 388-500-0005.

(b) The managed care organization (MCO) covers the services included in the healthy options (HO) contract for MCO enrollees. In addition, MCOs may, at their discretion, cover services not required under the HO contract.

(c) The medical assistance administration (MAA) covers the medically necessary, covered categorically needy services not included in the HO contract for MCO enrollees.

(d) MAA covers services on a fee-for-service basis for enrollees with a primary care case management (PCCM) provider. Except for emergencies, the PCCM provider must either provide the covered services needed by the enrollee or refer the enrollee to other providers who are contracted with MAA for covered services. The PCCM provider is responsible for instructing the enrollee regarding how to obtain the services that are referred by the PCCM provider. The services that require PCCM provider referral are described in the PCCM contract. MAA informs enrollees about the enrollee's program coverage, limitations to covered services, and how to obtain covered services.

(e) MCO enrollees may obtain certain services from either a MCO provider or from a medical assistance provider with a DSHS core provider agreement without needing to obtain a referral from the PCP or MCO. These services are described in the HO contract, and are communicated to enrollees by MAA and MCOs as described in (f) of this subsection.

(f) MAA sends each client written information about covered services when the client is required to enroll in managed care, and any time there is a change in covered services. This information describes covered services, which services are covered by MAA, and which services are covered by MCOs. In addition, MAA requires MCOs to provide new enrollees with written information about covered services.

(2) For services covered by MAA through PCCM contracts for managed care:

(a) MAA covers medically necessary services included in the categorically needy scope of care and rendered by providers with a current department of social and health services (DSHS) core provider agreement to provide the requested service;

(b) MAA may require the PCCM provider to obtain authorization from MAA for coverage of nonemergency services;

(c) The PCCM provider determines which services are medically necessary;

(d) An enrollee may request a fair hearing for review of PCCM provider or MAA coverage decisions (see WAC 388-538-110); and

(e) Services referred by the PCCM provider require an authorization number in order to receive payment from MAA.

(3) For services covered by MAA through contracts with MCOs:

(a) MAA requires the MCO to subcontract with a sufficient number of providers to deliver the scope of contracted services in a timely manner. Except for emergency services, MCOs provide covered services to enrollees through their participating providers;

(b) MAA requires MCOs to provide new enrollees with written information about how enrollees may obtain covered services;

(c) For nonemergency services, MCOs may require the enrollee to obtain a referral from the primary care provider (PCP), or the provider to obtain authorization from the MCO, according to the requirements of the HO contract;

(d) MCOs and their providers determine which services are medically necessary given the enrollee's condition, according to the requirements included in the HO contract;

(e) An enrollee may appeal an MCO action using the MCO's appeal process, as described in WAC 388-538-110. After exhausting the MCO's appeal process, an enrollee may also request a department fair hearing for review of an MCO action as described in WAC 388-538-112;

(f) A managed care enrollee does not need a PCP referral to receive women's health care services, as described in RCW 48.42.100 from any women's health care provider participating with the MCO. Any covered services ordered and/or prescribed by the women's health care provider must meet the MCO's service authorization requirements for the specific service.

(4) Unless the MCO chooses to cover these services, or an appeal or a fair hearing decision reverses an MCO or MAA denial, the following services are not covered:

(a) For all managed care enrollees:

(i) Services that are not medically necessary;

(ii) Services not included in the categorically needy scope of services; and

(iii) Services, other than a screening exam as described in WAC 388-538-100(3), received in a hospital emergency department for nonemergency medical conditions.

(b) For MCO enrollees:

(i) Services received from a participating specialist that require prior authorization from the MCO, but were not authorized by the MCO; and

(ii) Services received from a nonparticipating provider that require prior authorization from the MCO that were not authorized by the MCO. All nonemergency services covered under the HO contract and received from nonparticipating providers require prior authorization from the MCO.

(c) For PCCM enrollees, services that require a referral from the PCCM provider as described in the PCCM contract, but were not referred by the PCCM provider.

(5) A provider may bill an enrollee for noncovered services as described in subsection (4) of this section, if the requirements of WAC 388-502-0160 are met. The provider must give the original agreement to the enrollee and file a copy in the enrollee's record.

(a) The agreement must state all of the following:

(i) The specific service to be provided;

(ii) That the service is not covered by either MAA or the MCO;

(iii) An explanation of why the service is not covered by the MCO or MAA, such as:

(A) The service is not medically necessary; or

(B) The service is covered only when provided by a participating provider.

(iv) The enrollee chooses to receive and pay for the service; and

(v) Why the enrollee is choosing to pay for the service, such as:

(A) The enrollee understands that the service is available at no cost from a provider participating with the MCO, but the enrollee chooses to pay for the service from a provider not participating with the MCO;

(B) The MCO has not authorized emergency department services for nonemergency medical conditions and the enrollee chooses to pay for the emergency department's services rather than wait to receive services at no cost in a participating provider's office; or

(C) The MCO or PCCM has determined that the service is not medically necessary and the enrollee chooses to pay for the service.

(b) For limited-English proficient enrollees, the agreement must be translated or interpreted into the enrollee's primary language to be valid and enforceable.

(c) The agreement is void and unenforceable, and the enrollee is under no obligation to pay the provider, if the service is covered by MAA or the MCO as described in subsection (1) of this section, even if the provider is not paid for the covered service because the provider did not satisfy the payor's billing requirements.

[Statutory Authority: RCW 74.08.090, 74.09.522, 03-18-109, § 388-538-095, filed 9/2/03, effective 10/3/03. Statutory Authority: RCW 74.09.080, 74.08.510, [74.08.]522, 74.09.450, 1115 Waiver, 42 U.S.C. 1396. 02-01-075, § 388-538-095, filed 12/14/01, effective 1/14/02. Statutory Authority: RCW 74.08.090, 01-02-076, § 388-538-095, filed 12/29/00, effective 1/29/01. Statutory Authority: RCW 74.08.090, 74.09.510 and [74.09.]522 and 1115 Federal Waiver, 42 U.S.C. 1396 (a), (e), (p), 42 U.S.C. 1396r-6(b), 42 U.S.C. 1396u-2. 00-04-080, § 388-538-095, filed 2/1/00, effective 3/3/00.]

Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-538-095, filed 7/31/98, effective 9/1/98. Statutory Authority: RCW 74.08.090 and 1995 2nd sp.s. c 18. 95-18-046 (Order 3886), § 388-538-095, filed 8/29/95, effective 9/1/95. Statutory Authority: RCW 74.08.090. 93-17-039 (Order 3621), § 388-538-095, filed 8/11/93, effective 9/11/93.]

WAC 388-538-100 Managed care emergency services. (1) A managed care enrollee may obtain emergency services, for emergency medical conditions in any hospital emergency department. ("Emergency services" and "emergency medical condition" are as defined in this chapter.)

(a) The managed care organization (MCO) covers emergency services for MCO enrollees.

(b) MAA covers emergency services for primary care case management (PCCM) enrollees.

(2) Emergency services for emergency medical conditions do not require prior authorization by the MCO, primary care provider (PCP), PCCM provider, or MAA.

(3) MCOs must cover all emergency services provided to an enrollee by a provider who is qualified to furnish Medicaid services, without regard to whether the provider is a participating or nonparticipating provider.

(4) An enrollee who requests emergency services is entitled to receive an exam to determine if the enrollee has an emergency medical condition. What constitutes an emergency medical condition may not be limited on the basis of diagnosis or symptoms.

(5) The MCO must cover emergency services provided to an enrollee when:

(a) The enrollee had an emergency medical condition, including cases in which the absence of immediate medical attention would not have had the outcomes specified in the definition of an emergency medical condition; and

(b) The plan provider or other MCO representative instructs the enrollee to seek emergency services.

(6) In any disagreement between a hospital and the MCO about whether the enrollee is stable enough for discharge or transfer, or whether the medical benefits of an unstabilized transfer outweigh the risks, the judgment of the attending physician(s) actually caring for the enrollee at the treating facility prevails.

[Statutory Authority: RCW 74.08.090, 74.09.522, 03-18-110, § 388-538-100, filed 9/2/03, effective 10/3/03. Statutory Authority: RCW 74.09.080, 74.08.510, [74.08.]522, 74.09.450, 1115 Waiver, 42 U.S.C. 1396. 02-01-075, § 388-538-100, filed 12/14/01, effective 1/14/02. Statutory Authority: RCW 74.08.090, 74.09.510 and [74.09.]522 and 1115 Federal Waiver, 42 U.S.C. 1396 (a), (e), (p), 42 U.S.C. 1396r-6(b), 42 U.S.C. 1396u-2. 00-04-080, § 388-538-100, filed 2/1/00, effective 3/3/00. Statutory Authority: RCW 74.08.090 and 1995 2nd sp.s. c 18. 95-18-046 (Order 3886), § 388-538-100, filed 8/29/95, effective 9/1/95. Statutory Authority: RCW 74.08.090, 95-04-033 (Order 3826), § 388-538-100, filed 1/24/95, effective 2/1/95; 93-17-039 (Order 3621), § 388-538-100, filed 8/11/93, effective 9/11/93.]

WAC 388-538-110 The grievance system for managed care organizations (MCO). (1) A managed care enrollee may be enrolled in a managed care organization (MCO) or with a primary care case management (PCCM) provider. This section contains information about the grievance system for MCO enrollees, which includes grievances and appeals as defined in WAC 388-538-050. See WAC 388-538-111 for information about the grievance system for PCCM enrollees, which includes grievances and appeals. See

WAC 388-538-112 for the department's fair hearing process for appeals by MCO enrollees.

(2) An MCO enrollee may voice a grievance or appeal an action by an MCO either orally or in writing.

(3) If an MCO fails to meet the time frames in this section concerning any appeal, the MCO must provide the services that are the subject of the appeal.

(4) MCOs must maintain records of grievances and appeals and must review the information as part of the MCO's quality strategy.

(5) MCOs must provide information describing the MCO's grievance system to all providers and subcontractors in any contract.

(6) Each MCO must have a grievance system in place for enrollees. The system must comply with the requirements of this section and the regulations of the state office of the insurance commissioner (OIC), insofar as OIC regulations are not in conflict with this chapter. Where such a conflict exists, the requirements of this chapter take precedence. The MCO grievance system must include all of the following:

(a) A grievance process for complaints about any matter other than an action, as defined in WAC 388-538-050. See subsection (7) of this section for this process;

(b) An appeal process for an action, as defined in WAC 388-538-050. See subsection (8) of this section for the standard appeal process and subsection (9) of this section for the expedited appeal process;

(c) Access to the department's fair hearing process for actions as defined in WAC 388-538-050. The department's fair hearing process described in chapter 388-02 WAC applies to this chapter. Where conflicts exist, the requirements in this chapter take precedence. See WAC 388-538-112 for the department's fair hearing process for MCO enrollees;

(d) Access to an independent review (IR) as described in RCW 48.43.535, for actions as defined in WAC 388-538-050 (see WAC 388-538-112 for additional information about the IR); and

(e) Access to the board of appeals (BOA) for actions as defined in WAC 388-538-050 (also see chapter 388-02 WAC and WAC 388-538-112).

(7) The MCO grievance process:

(a) Only an enrollee may file a grievance with an MCO; a provider may not file a grievance on behalf of an enrollee.

(b) To ensure the rights of MCO enrollees are protected, MAA approves each MCO's grievance process.

(c) MCOs must inform enrollees in writing within fifteen days of enrollment about enrollees' rights and how to use the MCO's grievance process, including how to use the department's fair hearing process. MAA must approve all written information the MCO sends to enrollees.

(d) The MCO must give enrollees any assistance necessary in taking procedural steps for grievances (e.g., interpreter services and toll-free numbers).

(e) The MCO must acknowledge receipt of each grievance.

(f) The MCO must ensure that the individuals who make decisions on grievances are individuals who:

(i) Were not involved in any previous level of review or decision making; and

(ii) If deciding any of the following, are health care professionals who have appropriate clinical expertise in treating the enrollee's condition or disease:

(A) A grievance regarding denial of an expedited resolution of an appeal; or

(B) A grievance involving clinical issues.

(g) The MCO must complete the disposition of a grievance and notice to the affected parties within ninety days of receiving the grievance.

(8) The MCO appeal process:

(a) An MCO enrollee, or a provider acting on behalf of the enrollee and with the enrollee's written consent, may appeal an MCO action. A provider may not request a department fair hearing on behalf of an enrollee.

(b) To ensure the rights of MCO enrollees are protected, MAA approves each MCO's appeal process.

(c) MCOs must inform enrollees in writing within fifteen days of enrollment about enrollees' rights and how to use the MCO's appeal process and the department's fair hearing process. MAA must approve all written information the MCO sends to enrollees.

(d) For standard service authorization decisions, an enrollee must file an appeal, either orally or in writing, within ninety calendar days of the date on the MCO's notice of action. This also applies to an enrollee's request for an expedited appeal.

(e) For appeals for termination, suspension, or reduction of previously authorized services, if the enrollee is requesting continuation of services, the enrollee must file an appeal within ten calendar days of the date of the MCO mailing the notice of action. Otherwise, the time frames in subsection (8)(d) of this section apply.

(f) The MCO's notice of action must:

(i) Be in writing;

(ii) Be in the enrollee's primary language and be easily understood as required in 42 C.F.R. 438.10 (c) and (d);

(iii) Explain the action the MCO or its contractor has taken or intends to take;

(iv) Explain the reasons for the action;

(v) Explain the enrollee's or the provider's right to file an MCO appeal;

(vi) Explain the procedures for exercising the enrollee's rights;

(vii) Explain the circumstances under which expedited resolution is available and how to request it (also see subsection (9) of this section);

(viii) Explain the enrollee's right to have benefits continue pending resolution of an appeal, how to request that benefits be continued, and the circumstances under which the enrollee may be required to pay the costs of these services (also see subsection (10) of this section); and

(ix) Be mailed as expeditiously as the enrollee's health condition requires, and as follows:

(A) For denial of payment, at the time of any action affecting the claim. This applies only when the client can be held liable for the costs associated with the action.

(B) For standard service authorization decisions that deny or limit services, not to exceed fourteen calendar days following receipt of the request for service, with a possible extension of up to fourteen additional calendar days if the

enrollee or provider requests extension. If the request for extension is granted, the MCO must:

(I) Give the enrollee written notice of the reason for the decision for the extension and inform the enrollee of the right to file a grievance if the enrollee disagrees with that decision; and

(II) Issue and carry out the determination as expeditiously as the enrollee's health condition requires and no later than the date the extension expires.

(C) For termination, suspension, or reduction of previously authorized services, ten days prior to such termination, suspension, or reduction, except if the criteria stated in 42 C.F.R. 431.213 and 431.214 are met. The notice must be mailed by a method which certifies receipt and assures delivery within three calendar days.

(D) For expedited authorization decisions, in cases where the provider indicates or the MCO determines that following the standard time frame could seriously jeopardize the enrollee's life or health or ability to attain, maintain, or regain maximum function, no later than three calendar days after receipt of the request for service.

(g) The MCO must give enrollees any assistance necessary in taking procedural steps for an appeal (e.g., interpreter services and toll-free numbers).

(h) The MCO must acknowledge receipt of each appeal.

(i) The MCO must ensure that the individuals who make decisions on appeals are individuals who:

(i) Were not involved in any previous level of review or decision-making; and

(ii) If deciding any of the following, are health care professionals who have appropriate clinical expertise in treating the enrollee's condition or disease:

(A) An appeal of a denial that is based on lack of medical necessity; or

(B) An appeal that involves clinical issues.

(j) The process for appeals must:

(i) Provide that oral inquiries seeking to appeal an action are treated as appeals (to establish the earliest possible filing date for the appeal), and must be confirmed in writing, unless the enrollee or provider requests an expedited resolution. Also see subsection (9) for information on expedited resolutions;

(ii) Provide the enrollee a reasonable opportunity to present evidence, and allegations of fact or law, in person as well as in writing. The MCO must inform the enrollee of the limited time available for this in the case of expedited resolution;

(iii) Provide the enrollee and the enrollee's representative opportunity, before and during the appeals process, to examine the enrollee's case file, including medical records, and any other documents and records considered during the appeal process; and

(iv) Include as parties to the appeal, the enrollee and the enrollee's representative, or the legal representative of the deceased enrollee's estate.

(k) MCOs must resolve each appeal and provide notice, as expeditiously as the enrollee's health condition requires, within the following time frames:

(i) For standard resolution of appeals and notice to the affected parties, no longer than forty-five calendar days from the day the MCO receives the appeal. This time frame may not be extended.

(ii) For expedited resolution of appeals, including notice to the affected parties, no longer than three calendar days after the MCO receives the appeal.

(iii) For appeals for termination, suspension, or reduction of previously authorized services, no longer than forty-five calendar days from the day the MCO receives the appeal.

(l) The notice of the resolution of the appeal must:

(i) Be in writing. For notice of an expedited resolution, the MCO must also make reasonable efforts to provide oral notice (also see subsection (9) of this section).

(ii) Include the results of the resolution process and the date it was completed.

(iii) For appeals not resolved wholly in favor of the enrollee:

(A) Include information on the enrollee's right to request a department fair hearing and how to do so (also see WAC 388-538-112);

(B) Include information on the enrollee's right to receive services while the hearing is pending and how to make the request (also see subsection (10) of this section); and

(C) Inform the enrollee that the enrollee may be held liable for the cost of services received while the hearing is pending, if the hearing decision upholds the MCO's action (also see subsection (11) of this section).

(m) If an MCO enrollee does not agree with the MCO's resolution of the appeal, the enrollee may file a request for a department fair hearing within the following time frames (see WAC 388-538-112 for the MAA fair hearing process for MCO enrollees):

(i) For appeals regarding a standard service, within ninety days of the date of the MCO's notice of the resolution of the appeal.

(ii) For appeals regarding termination, suspension, or reduction of a previously authorized service, within ten days of the date on the MCO's notice of the resolution of the appeal.

(n) The MCO enrollee must exhaust all levels of resolution and appeal within the MCO's grievance system prior to filing an appeal (a request for a department fair hearing) with MAA.

(9) The MCO expedited appeal process:

(a) Each MCO must establish and maintain an expedited appeal review process for appeals when the MCO determines (for a request from the enrollee) or the provider indicates (in making the request on the enrollee's behalf or supporting the enrollee's request), that taking the time for a standard resolution could seriously jeopardize the enrollee's life or health or ability to attain, maintain, or regain maximum function.

(b) The MCO must make a decision on the enrollee's request for expedited appeal and provide notice, as expeditiously as the enrollee's health condition requires, within three calendar days after the MCO receives the appeal. The MCO must also make reasonable efforts to provide oral notice.

(c) The MCO must ensure that punitive action is neither taken against a provider who requests an expedited resolution or supports an enrollee's appeal.

(d) If the MCO denies a request for expedited resolution of an appeal, it must:

(i) Transfer the appeal to the time frame for standard resolution; and

(ii) Make reasonable efforts to give the enrollee prompt oral notice of the denial, and follow up within two (2) calendar days with a written notice.

(10) Continuation of previously authorized services:

(a) The MCO must continue the enrollee's services if all of the following apply:

(i) The enrollee or the provider files the appeal on or before the later of the following:

(A) Unless the criteria in 42 C.F.R. 431.213 and 431.214 are met, within ten calendar days of the MCO mailing the notice of action, which for actions involving services previously authorized, must be delivered by a method which certifies receipt and assures delivery within three calendar days; or

(B) The intended effective date of the MCO's proposed action.

(ii) The appeal involves the termination, suspension, or reduction of a previously authorized course of treatment;

(iii) The services were ordered by an authorized provider;

(iv) The original period covered by the original authorization has not expired; and

(v) The enrollee requests an extension of services.

(b) If, at the enrollee's request, the MCO continues or reinstates the enrollee's services while the appeal is pending, the services must be continued until one of the following occurs:

(i) The enrollee withdraws the appeal;

(ii) Ten calendar days pass after the MCO mails the notice of the resolution of the appeal and the enrollee has not requested a department fair hearing (with continuation of services until the department fair hearing decision is reached) within the ten days;

(iii) Ten calendar days pass after the state office of administrative hearings (OAH) issues a fair hearing decision adverse to the enrollee and the enrollee has not requested an independent review (IR) within the ten days (see WAC 388-538-112);

(iv) Ten calendar days pass after the IR mails a decision adverse to the enrollee and the enrollee has not requested a review with the board of appeals within the ten days (see WAC 388-538-112);

(v) The board of appeals issues a decision adverse to the enrollee (see WAC 388-53-112); or

(vi) The time period or service limits of a previously authorized service has been met.

(c) If the final resolution of the appeal upholds the MCO's action, the MCO may recover the amount paid for the services provided to the enrollee while the appeal was pending, to the extent that they were provided solely because of the requirement for continuation of services.

(11) Effect of reversed resolutions of appeals:

(a) If the MCO or OAH reverses a decision to deny, limit, or delay services that were not provided while the appeal was pending, the MCO must authorize or provide the disputed services promptly, and as expeditiously as the enrollee's health condition requires.

(b) If the MCO or OAH reverses a decision to deny authorization of services, and the enrollee received the disputed services while the appeal was pending, the MCO must pay for those services.

[Statutory Authority: RCW 74.08.090, 74.09.522, 03-18-110, § 388-538-110, filed 9/2/03, effective 10/3/03. Statutory Authority: RCW 74.09.080, 74.08.510, [74.08.]522, 74.09.450, 1115 Waiver, 42 U.S.C. 1396.02-01-075, § 388-538-110, filed 12/14/01, effective 1/14/02. Statutory Authority: RCW 74.08.090, 74.09.510 and [74.09.]522 and 1115 Federal Waiver, 42 U.S.C. 1396 (a), (e), (p), 42 U.S.C. 1396r-6(b), 42 U.S.C. 1396u-2.00-04-080, § 388-538-110, filed 2/1/00, effective 3/3/00. Statutory Authority: RCW 74.08.090, 97-04-004, § 388-538-110, filed 1/24/97, effective 2/24/97. Statutory Authority: RCW 74.08.090 and 1995 2nd sp.s. c 18. 95-18-046 (Order 3886), § 388-538-110, filed 8/29/95, effective 9/1/95. Statutory Authority: RCW 74.08.090, 94-04-038 (Order 3701), § 388-538-110, filed 1/26/94, effective 2/26/94; 93-17-039 (Order 3621), § 388-538-110, filed 8/11/93, effective 9/11/93.]

WAC 388-538-111 Primary care case management (PCCM) grievances and appeals. (1) A managed care enrollee may be enrolled in a managed care organization (MCO) or with a primary care case management (PCCM) provider. This section contains information about the grievance system for PCCM enrollees, which includes grievances and appeals. See WAC 388-538-110 for information about the grievance system for MCO enrollees, which includes grievances and appeals. See WAC 388-538-112 for the fair hearing process for appeals by MCO enrollees.

(2) A PCCM enrollee may voice a grievance or appeal an MAA action, either orally or in writing. PCCM enrollees use the medical assistance administration's (MAA's) grievance and appeal processes.

(3) The grievance process for PCCM enrollees;

(a) A PCCM enrollee may file a grievance with MAA. A provider may not file a grievance on behalf of a PCCM enrollee.

(b) MAA provides PCCM enrollees with information equivalent to that described in WAC 388-538-110 (7)(c).

(c) When a PCCM enrollee files a grievance with MAA, the enrollee is entitled to:

(i) Any reasonable assistance in taking procedural steps for grievances (e.g., interpreter services and toll-free numbers);

(ii) Acknowledgment of MAA's receipt of the grievance;

(iii) A review of the grievance. The review must be conducted by an MAA representative who was not involved in the grievance issue; and

(iv) Disposition of a grievance and notice to the affected parties within ninety days of MAA receiving the grievance.

(4) The appeal process for PCCM enrollees:

(a) A PCCM enrollee may file an appeal of an MAA action with MAA. A provider may not file an appeal on behalf of a PCCM enrollee.

(b) MAA provides PCCM enrollees with information equivalent to that described in WAC 388-538-110 (8)(c).

(c) The appeal process for PCCM enrollees follows that described in chapter 388-02 WAC. Where a conflict exists, the requirements in this chapter take precedence.

[Statutory Authority: RCW 74.08.090, 74.09.522, 03-18-110, § 388-538-111, filed 9/2/03, effective 10/3/03.]

WAC 388-538-112 The medical assistance administration's (MAA's) fair hearing process for enrollee appeals of managed care organization (MCO) actions. (1) The fair hearing process described in chapter 388-02 WAC applies to the fair hearing process described in this chapter.

Where a conflict exists, the requirements in this chapter take precedence.

(2) An MCO enrollee must exhaust all levels of resolution and appeal within the MCO's grievance system prior to filing an appeal (a request for a department fair hearing) with MAA. See WAC 388-538-110 for the MCO grievance system.

(3) If an MCO enrollee does not agree with the MCO's resolution of the enrollee's appeal, the enrollee may file a request for a department fair hearing within the following time frames:

(a) For appeals regarding a standard service, within ninety days of the date of the MCO's notice of the resolution of the appeal.

(b) For appeals regarding termination, suspension, or reduction of a previously authorized service, or the enrollee is requesting continuation of services, within ten days of the date on the MCO's notice of the resolution of the appeal.

(4) The entire appeal process, including the MCO appeal process, must be completed within ninety calendar days of the date the MCO enrollee filed the appeal with the MCO, not including the number of days the enrollee took to subsequently file for a department fair hearing.

(5) Parties to the MAA fair hearing include the MCO, the enrollee, and the enrollee's representative or the representative of a deceased enrollee's estate.

(6) If an enrollee disagrees with the department fair hearing decision, the enrollee may request an independent review (IR) per RCW 48.43.535.

(7) If there is disagreement with the IR decision, the state board of appeals (BOA) issues the final administrative decision.

[Statutory Authority: RCW 74.08.090, 74.09.522, 03-18-110, § 388-538-112, filed 9/2/03, effective 10/3/03.]

WAC 388-538-130 Exemptions and ending enrollment in managed care. (1) The medical assistance administration (MAA) exempts a client from mandatory enrollment in managed care or ends an enrollee's enrollment in managed care as specified in this section. Only MAA has authority to exempt a client from enrollment in, or remove an enrollee from, managed care.

(2) A client or enrollee, or the client's or enrollee's representative as defined in RCW 7.70.065, may request MAA to exempt or end enrollment in managed care as described in this section.

(a) If a client requests exemption prior to the enrollment effective date, the client is not enrolled until MAA approves or denies the request.

(b) If an enrollee requests to end enrollment, the enrollee remains enrolled pending MAA's final decision, unless staying in managed care would adversely affect the enrollee's health status.

(c) The client or enrollee receives timely notice by telephone or in writing when MAA approves or denies the client's or enrollee's request. MAA follows a telephone denial by written notification. The written notice contains all of the following:

- (i) The action MAA intends to take;
- (ii) The reason(s) for the intended action;
- (iii) The specific rule or regulation supporting the action;

(iv) The client's or enrollee's right to request a fair hearing; and

(v) A translation into the client's or enrollee's primary language when the client or enrollee has limited English proficiency.

(3) A managed care organization (MCO) or primary care case management (PCCM) provider may request MAA to end enrollment. The request must be in writing and be sufficient to satisfy MAA that the enrollee's behavior is inconsistent with the MCO's or PCCM provider's rules and regulations (e.g., intentional misconduct). MAA does not approve a request to remove an enrollee from managed care when the request is solely due to an adverse change in the enrollee's health or the cost of meeting the enrollee's health care needs. The MCO or PCCM provider's request must include documentation that:

(a) The provider furnished clinically appropriate evaluation(s) to determine whether there is a treatable problem contributing to the enrollee's behavior;

(b) Such evaluation either finds no treatable condition to be contributing, or after evaluation and treatment, the enrollee's behavior continues to prevent the provider from safely or prudently providing medical care to the enrollee; and

(c) The enrollee received written notice of the provider's intent to request the enrollee's removal, unless MAA has waived the requirement for provider notice because the enrollee's conduct presents the threat of imminent harm to others. The provider's notice must include:

(i) The enrollee's right to use the provider's grievance system as described in WAC 388-538-110 and 388-538-111; and

(ii) The enrollee's right to use the department's fair hearing process, after the enrollee has exhausted all grievance and appeals available through the provider's grievance system (see WAC 388-538-110 and 388-538-111 for provider grievance systems, and WAC 388-538-112 for the fair hearing process for enrollees).

(4) When MAA receives a request from an MCO or PCCM provider to remove an enrollee from enrollment in managed care, MAA attempts to contact the enrollee for the enrollee's perspective. If MAA approves the request, MAA sends a notice at least ten days in advance of the effective date that enrollment will end. The notice includes:

- (a) The reason MAA approved ending enrollment; and
- (b) Information about the enrollee's fair hearing rights.

(5) MAA will exempt a client from mandatory enrollment or end an enrollee's enrollment in managed care when any of the following apply:

(a) The client or enrollee is receiving foster care placement services from the division of children and family services (DCFS);

(b) The client has or the enrollee becomes eligible for Medicare, basic health (BH), CHAMPUS/TRICARE, or any other accessible third-party health care coverage that would require exemption or involuntary disenrollment from:

- (i) An MCO, in accordance with MAA's healthy options (HO) contract; or
- (ii) A primary care case management (PCCM) provider, in accordance with MAA's PCCM contract.

(6) MAA will grant a client's request for exemption or an enrollee's request to end enrollment when:

(a) The client or enrollee is American Indian/Alaska Native (AI/AN) as specified in WAC 388-538-060(2);

(b) The client or enrollee has been identified by MAA as a child who meets the definition of "children with special health care needs";

(c) The client or enrollee is homeless or is expected to live in temporary housing for less than one hundred twenty days from the date of the request; or

(d) The client or enrollee speaks limited English or is hearing impaired and the client or enrollee can communicate with a provider who communicates in the client's or enrollee's language or in American Sign Language and is not available through the MCO and the MCO does not have a provider available who can communicate in the client's language.

(7) On a case-by-case basis, MAA may grant a client's request for exemption or an enrollee's request to end enrollment when, in MAA's judgment, the client or enrollee has a documented and verifiable medical condition, and enrollment in managed care could cause an interruption of treatment that could jeopardize the client's or enrollee's life or health or ability to attain, maintain, or regain maximum function.

(8) Upon request, MAA may exempt the client or end enrollment for the period of time the circumstances or conditions that lead to exemption or ending enrollment are expected to exist. MAA may periodically review those circumstances or conditions to determine if they continue to exist. If MAA approves the request for a limited time, the client or enrollee is notified in writing or by telephone of the time limitation, the process for renewing the exemption or the ending of enrollment.

(9) An MCO may refer enrollees to MAA's patients requiring regulation (PRR) program in accordance with WAC 388-501-0135.

[Statutory Authority: RCW 74.08.090, 74.09.522, 03-18-111, § 388-538-130, filed 9/2/03, effective 10/3/03. Statutory Authority: RCW 74.09.080, 74.08.510, [74.08.]522, 74.09.450, 1115 Waiver, 42 U.S.C. 1396. 02-01-075, § 388-538-130, filed 12/14/01, effective 1/14/02. Statutory Authority: RCW 74.08.090, 74.09.510 and [74.09.]522 and 1115 Federal Waiver, 42 U.S.C. 1396 (a), (e), (p), 42 U.S.C. 1396r-6(b), 42 U.S.C. 1396u-2. 00-04-080, § 388-538-130, filed 2/1/00, effective 3/3/00. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-538-130, filed 7/31/98, effective 9/1/98. Statutory Authority: RCW 74.08.090 and 1995 2nd sp.s. c 18. 95-18-046 (Order 3886), § 388-538-130, filed 8/29/95, effective 9/1/95. Statutory Authority: RCW 74.08.090. 93-17-039 (Order 3621), § 388-538-130, filed 8/11/93, effective 9/11/93.]

WAC 388-538-140 Quality of care. (1) In order to assure that managed care enrollees receive quality health care services, the medical assistance administration (MAA) requires managed care organizations (MCOs) to comply with quality improvement standards as stated in the medical assistance administration (MAA) managed care contract as follows:

(a) Have a clearly defined quality organizational structure and operation, including a fully operational quality assessment, measurement, and improvement program;

(b) Have effective means to detect both underutilization and overutilization of services;

(c) Maintain a grievance system that includes a process for enrollees to file grievances and appeals according to the requirements of WAC 388-538-110;

(d) Maintain a system for provider and practitioner credentialing and recredentialing;

(e) Ensure that MCO subcontracts and the delegation of MCO responsibilities are in accordance with MAA standards and regulations;

(f) Cooperate with an MAA-contracted qualified independent external review organization (EQRO) conducting review activities as described in 42 C.F.R. 438.358;

(g) Have an effective means to assess the quality and appropriateness of care furnished to enrollees with special health care needs;

(h) Submit annual reports to MAA, including HEDIS performance measures, specified by MAA;

(i) Maintain a health information system that:

(i) Collects, analyzes, integrates, and reports data as requested by MAA;

(ii) Provides information on utilization, grievances and appeals, enrollees ending enrollment for reasons other than the loss of Medicaid eligibility, and other areas as defined by MAA;

(iii) Collects data on enrollees, providers, and services provided to enrollees through an encounter data system, in a standardized format as specified by MAA; and

(iv) Ensures data received from providers is adequate and complete by verifying the accuracy and timeliness of reported data and screening the data for completeness, logic, and consistency.

(j) Conduct performance improvement projects designed to achieve significant improvement, sustained over time, in clinical care outcomes and services, and that involve the following:

(i) Measuring performance using objective quality indicators;

(ii) Implementing system changes to achieve improvement in service quality;

(iii) Evaluating the effectiveness of system changes;

(iv) Planning and initiating activities for increasing or sustaining performance improvement;

(v) Reporting each project status and the results as requested by MAA; and

(vi) Completing each performance improvement project timely so as to generally allow aggregate information to produce new quality of care information every year.

(k) Ensure enrollee access to health care services;

(l) Ensure continuity and coordination of enrollee care; and

(m) Ensure the protection of enrollee rights and the confidentiality of enrollee health information.

(2) MAA may impose intermediate sanctions in accordance with 42 C.F.R. 438.700 and corrective action for substandard rates of clinical performance measures and for deficiencies found in audits and on-site visits.

[Statutory Authority: RCW 74.08.090, 74.09.522, 03-18-111, § 388-538-140, filed 9/2/03, effective 10/3/03. Statutory Authority: RCW 74.09.080, 74.08.510, [74.08.]522, 74.09.450, 1115 Waiver, 42 U.S.C. 1396. 02-01-075, § 388-538-140, filed 12/14/01, effective 1/14/02. Statutory Authority: RCW 74.08.090, 74.09.510 and [74.09.]522 and 1115 Federal Waiver, 42 U.S.C. 1396 (a), (e), (p), 42 U.S.C. 1396r-6(b), 42 U.S.C. 1396u-2. 00-04-080, § 388-538-140, filed 2/1/00, effective 3/3/00. Statutory Authority: RCW 74.08.090 and 1995 2nd sp.s. c 18. 95-18-046 (Order 3886), § 388-538-140, filed 8/29/95, effective 9/1/95. Statutory Authority: RCW 74.08.090. 93-17-039 (Order 3621), § 388-538-140, filed 8/11/93, effective 9/11/93.]

Chapter 388-540 WAC

KIDNEY DISEASE PROGRAM AND KIDNEY CENTER SERVICES

WAC

388-540-001	Purpose.
388-540-005	Definitions.
388-540-010	Repealed.
388-540-015	Client eligibility for kidney disease program (KDP).
388-540-020	Repealed.
388-540-025	Kidney disease program (KDP) eligibility determination.
388-540-030	Repealed.
388-540-035	Kidney disease program (KDP)—Transfer of resources without adequate consideration.
388-540-040	Repealed.
388-540-045	Kidney disease program (KDP) provider requirements.
388-540-050	Repealed.
388-540-055	Kidney disease program (KDP) covered services.
388-540-060	Repealed.
388-540-065	Kidney disease program (KDP)—Reimbursement.
388-540-101	Purpose and scope.
388-540-105	Definitions.
388-540-110	Eligibility.
388-540-120	Provider requirements.
388-540-130	Covered services.
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388-540-150	Reimbursement—General.
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388-540-210	Injectable drugs given in the kidney center.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

388-540-010	Services. [Statutory Authority: RCW 74.04.050 and 74.08.090. 00-01-088, § 388-540-010, filed 12/14/99, effective 1/14/00. Statutory Authority: RCW 74.08.090. 93-16-039 (Order 3600), § 388-540-010, filed 7/28/93, effective 8/28/93.] Repealed by 03-21-039, filed 10/8/03, effective 11/8/03. Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.520, 74.09.522, and 42 C.F.R. 405.2101.
388-540-020	Reimbursement. [Statutory Authority: RCW 74.04.050 and 74.08.090. 00-01-088, § 388-540-020, filed 12/14/99, effective 1/14/00. Statutory Authority: RCW 74.08.090. 93-16-039 (Order 3600), § 388-540-020, filed 7/28/93, effective 8/28/93.] Repealed by 03-21-039, filed 10/8/03, effective 11/8/03. Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.520, 74.09.522, and 42 C.F.R. 405.2101.
388-540-030	KDP eligibility requirements. [Statutory Authority: RCW 74.04.050 and 74.08.090. 00-01-088, § 388-540-030, filed 12/14/99, effective 1/14/00. Statutory Authority: RCW 74.08.090, 74.04.005 and 74.08.025. 98-06-025, § 388-540-030, filed 2/24/98, effective 3/27/98. Statutory Authority: RCW 74.08.090. 93-16-039 (Order 3600), § 388-540-030, filed 7/28/93, effective 8/28/93.] Repealed by 03-21-039, filed 10/8/03, effective 11/8/03. Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.520, 74.09.522, and 42 C.F.R. 405.2101.
388-540-040	Transfer of resources without adequate consideration. [Statutory Authority: RCW 74.04.050 and 74.08.090. 00-01-088, § 388-540-040, filed 12/14/99, effective 1/14/00. Statutory Authority: RCW 74.08.090. 93-16-039 (Order 3600), § 388-540-040, filed 7/28/93, effective 8/28/93.] Repealed by 03-21-039, filed 10/8/03, effective 11/8/03. Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.520, 74.09.522, and 42 C.F.R. 405.2101.
388-540-050	Fiscal information. [Statutory Authority: RCW 74.04.050 and 74.08.090. 00-01-088, § 388-540-050, filed 12/14/99, effective 1/14/00. Statutory Authority: RCW 74.08.090. 93-16-039 (Order 3600), § 388-540-050, filed 7/28/93, effective 8/28/93.] Repealed by 03-21-039, filed 10/8/03, effective 11/8/03. Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.520, 74.09.522, and 42 C.F.R. 405.2101.

388-540-060 KDP eligibility determination. [Statutory Authority: RCW 74.04.050 and 74.08.090. 00-01-088, § 388-540-060, filed 12/14/99, effective 1/14/00. Statutory Authority: RCW 74.08.090, 74.04.005 and 74.08.025. 98-06-025, § 388-540-060, filed 2/24/98, effective 3/27/98. Statutory Authority: RCW 74.08.090. 93-16-039 (Order 3600), § 388-540-060, filed 7/28/93, effective 8/28/93.] Repealed by 03-21-039, filed 10/8/03, effective 11/8/03. Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.520, 74.09.522, and 42 C.F.R. 405.2101.

WAC 388-540-001 Purpose. This section (WAC 388-540-001 through 388-540-065) contains rules for the state-funded kidney disease program (KDP). The kidney disease program is designed to help clients who have end-stage renal disease, but who do not meet the eligibility standards for Medicaid.

[Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.520, 74.09.522, and 42 C.F.R. 405.2101. 03-21-039, § 388-540-001, filed 10/8/03, effective 11/8/03. Statutory Authority: RCW 74.04.050 and 74.08.090. 00-01-088, § 388-540-001, filed 12/14/99, effective 1/14/00. Statutory Authority: RCW 74.08.090. 93-16-039 (Order 3600), § 388-540-001, filed 7/28/93, effective 8/28/93.]

WAC 388-540-005 Definitions. The following definitions and those found in WAC 388-500-0005, apply to this chapter for the purpose of administering the kidney disease program.

"Adequate consideration" means that the reasonable value of goods or services received in exchange for transferred property approximates the reasonable value of the property transferred;

"Affiliate" means a facility, hospital, unit, business, or person having an agreement with a **kidney center** to provide specified services to **ESRD** patients;

"Application for eligibility" means the form provided by MAA, which the client completes and submits to the contracted kidney center to determine KDP eligibility;

"Application documentation" means either a "Medicaid medical determination" letter from the DSHS community services office, or a KDP "client recertification waiver" form.

"Assets" means income, resources, or any real or personal property that a person or the person's spouse owns and could convert to cash to be used for support or maintenance;

"Certification" means the **kidney center** has determined a client eligible for the KDP for a defined period of time;

"End-stage renal disease (ESRD)" means that stage of renal impairment which is irreversible and permanent, and requires dialysis or kidney transplant to ameliorate uremic symptoms and maintain life;

"KDP application period" means the time between the date the client signed the completed application for eligibility and the date the client is certified for participation in the program;

"KDP client" means a resident of the state who has a diagnosis of ESRD and meets the financial and medical eligibility criteria as determined by a KDP contractor;

"KDP client recertification waiver for Medicaid review" means a KDP eligibility form that may in some circumstances be used in place of a "Medicaid medical assistance determination letter."

"KDP contract manual" means a set of policies and procedures for contracted kidney centers;

"KDP contractor" means a kidney center or other ESRD facility that has contracted with the Washington state department of social and health services (DSHS), kidney disease program to provide ESRD-related services to KDP clients.

"Kidney center" means a facility as defined and certified by the federal government to:

- (1) Provide ESRD services;
- (2) Promote and encourage home dialysis for a client when medically indicated; and
- (3) For the purposes of WAC 388-540-032 through 388-540-060, it is a facility that has entered into a contract with Washington state department of social and health services (DSHS), kidney disease program to provide ESRD-related services.

"Kidney disease program (KDP)" means a state-funded program that provides financial assistance to eligible clients with the costs of ESRD-related medical care;

"Medicaid medical assistance determination letter" means a medical assistance client eligibility letter from the DSHS community services office.

"Resident" means a person who lives in Washington state on more than a temporary basis.

"Substantial financial change" means the increase or decrease of income or assets that may affect eligibility.

[Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.520, 74.09.522, and 42 C.F.R. 405.2101. 03-21-039, § 388-540-005, filed 10/8/03, effective 11/8/03. Statutory Authority: RCW 74.04.050 and 74.08.090. 00-01-088, § 388-540-005, filed 12/14/99, effective 1/14/00. Statutory Authority: RCW 74.08.090, 74.04.005 and 74.08.025. 98-06-025, § 388-540-005, filed 2/24/98, effective 3/27/98. Statutory Authority: RCW 74.08.090. 93-16-039 (Order 3600), § 388-540-005, filed 7/28/93, effective 8/28/93.]

WAC 388-540-010 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-540-015 Client eligibility for kidney disease program (KDP). Clients must meet the following criteria to be considered KDP eligible:

- (1) Be a Washington state resident;
- (2) Be diagnosed with end-stage renal disease (ESRD);
- (3) Be determined ineligible for Medicaid;
- (4) Exhaust or be ineligible for all other resources providing similar benefits;
- (5) Have countable income which is equal to or less than:
 - (a) Two hundred percent of the federal poverty level (FPL) or;
 - (b) Three hundred percent of the FPL with an annual deductible required equal to the income amount which is in excess of two hundred percent of the FPL.
- (6) Have countable resources that are either equal to or less than fifteen thousand dollars, or are exempt. Exempt resources are:
 - (a) A home, defined as real property owned by a client as principal place of residence together with surrounding and contiguous property, not to exceed five acres;
 - (b) Household furnishings; and
 - (c) An automobile.
- (7) The effective date of eligibility is the first day of the month the application for eligibility is signed by the client.

[Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.520, 74.09.522, and 42 C.F.R. 405.2101. 03-21-039, § 388-540-015, filed 10/8/03, effective 11/8/03.]

WAC 388-540-020 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-540-025 Kidney disease program (KDP) eligibility determination. The kidney center and client must comply with the following rules to determine KDP eligibility:

- (1) The KDP contractor must:
 - (a) Inform the client of the requirements for KDP eligibility as defined in this chapter and provide the client with necessary department forms and instructions;
 - (b) Determine client eligibility using department policies, rules, and instructions; and
 - (c) Forward the completed application for eligibility, and the application documentation to the KDP program manager at the medical assistance administration (MAA). (The KDP program manager may amend or terminate a client's certification period within thirty days of receipt if the application is incomplete or inaccurate.)
- (2) A person applying for KDP must:
 - (a) Complete the application for eligibility and submit any necessary documentation to the kidney center;
 - (b) Apply for Medicaid, obtain a written Medicaid medical assistance determination letter, submit a copy to the kidney center; and
 - (c) Apply for Medicare.
- (3) A client reapplying for continued eligibility must:
 - (a) Complete the KDP application for eligibility and submit any documentation necessary to determine eligibility to the kidney center;
 - (b) Apply for Medicaid forty-five days before the end of the KDP certification period, obtain a written Medicaid eligibility determination, and submit a copy to the kidney center; or
 - (c) Have applied for Medicaid within the previous five years and continue to be ineligible.
- (4) The KDP application period is:
 - (a) One hundred and twenty days for a new client; and
 - (b) Forty-five days prior to the end of a certification period for a client requesting recertification.
- (5) The KDP contractor may request an extension of application time limits from MAA when extenuating circumstances prevent the client from completing the application or recertification process within the specified time limits.
- (6) The KDP contractor certifies the client for no more than one year from the first day of the month of application, unless the client:
 - (a) Needs medical coverage for less than one year; or
 - (b) Has a substantial financial change, in which case the client must complete a new application for eligibility.

[Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.520, 74.09.522, and 42 C.F.R. 405.2101. 03-21-039, § 388-540-025, filed 10/8/03, effective 11/8/03.]

WAC 388-540-030 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-540-035 Kidney disease program (KDP)—Transfer of resources without adequate consideration. A person may be ineligible for the KDP if the person knowingly and willfully assigns or transfers nonexempt resources at less than fair market value within two years preceding the date of application, for the purpose of qualifying or continuing to qualify for the program.

[Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.520, 74.09.522, and 42 C.F.R. 405.2101. 03-21-039, § 388-540-035, filed 10/8/03, effective 11/8/03.]

WAC 388-540-040 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-540-045 Kidney disease program (KDP) provider requirements. (1) The KDP contractor must:

(a) Be a Medicare-certified end-stage renal disease (ESRD) facility; and

(b) Have a valid KDP client services contract with the department.

(2) The KDP contractor must provide, directly or through an affiliate:

(a) Professional consultation, personal instructions, medical treatment and care, drug products and all supplies necessary for carrying out a medically-sound end-stage renal disease (ESRD) treatment program;

(b) Dialysis for clients with ESRD when medically indicated;

(c) Kidney transplant treatment, either directly or by referral, when medically indicated;

(d) Treatment for conditions directly related to ESRD such as anemia or venous access infections; and

(e) Supplies and equipment for home dialysis.

(3) The provider must maintain adequate records for audit and review purposes, including:

(a) Medical charts and records that meet the requirements of WAC 388-502-0020; and

(b) Eligibility determination records.

(4) The contractor must meet other obligations as required by their contract with the KDP program.

[Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.520, 74.09.522, and 42 C.F.R. 405.2101. 03-21-039, § 388-540-045, filed 10/8/03, effective 11/8/03.]

WAC 388-540-050 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-540-055 Kidney disease program (KDP) covered services. The KDP program covers the cost of health care services essential to the treatment of end stage renal disease (ESRD) and its complications. Covered services include:

(1) Mandatory services that must be provided by the KDP contractor:

(a) Dialysis:

(i) Center dialysis—Covers the cost of dialysis and related services provided in a kidney center;

(ii) Home dialysis—Covers the cost of providing dialysis and related services in the home; and

(iii) Dialysis while hospitalized—Covers the cost of dialysis and related services while the client is confined to an

acute care facility and is unable to dialyze at his/her regular site.

(b) Medication—As defined in the approved drug list in the KDP manual.

(2) Optional services that may be provided by the KDP contractor:

(a) Venous access surgery—Covers costs associated with surgically preparing the client for dialysis and medical complications related to the venous access site;

(b) Laboratory tests and X rays considered to be part of the overall treatment plan for ESRD;

(c) Post-transplant visit to assess client's ESRD status; and

(d) Health insurance premiums including copays and deductibles, when found to be cost-effective.

[Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.520, 74.09.522, and 42 C.F.R. 405.2101. 03-21-039, § 388-540-055, filed 10/8/03, effective 11/8/03.]

WAC 388-540-060 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-540-065 Kidney disease program (KDP)—Reimbursement. (1) The medical assistance administration (MAA) reimburses KDP contractors:

(a) Within the limits of legislative funding for the program;

(b) According to the terms of each kidney center's contract with the department; and

(c) According to the provisions of the KDP contract manual.

(2) The KDP contractor must submit the following documentation to MAA:

(a) A description of the services for which reimbursement is requested; and

(b) Statement of client's financial eligibility for the KDP.

(3) MAA limits KDP reimbursement for out-of-state services to fourteen days per calendar year. Reimbursement is paid only to KDP contractors. Out-of-state dialysis providers must operate under sub-contract or agreement with an in-state KDP contractor in order to receive reimbursement under this program.

[Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.520, 74.09.522, and 42 C.F.R. 405.2101. 03-21-039, § 388-540-065, filed 10/8/03, effective 11/8/03.]

WAC 388-540-101 Purpose and scope. This section describes the medical assistance administration (MAA) reimbursement rules for free-standing kidney centers providing dialysis and end-stage renal disease services to MAA clients.

[Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.520, 74.09.522, and 42 C.F.R. 405.2101. 03-21-039, § 388-540-101, filed 10/8/03, effective 11/8/03.]

WAC 388-540-105 Definitions. The following definitions and those found in WAC 388-500-0005, apply to this chapter.

"Acute dialysis" means dialysis given to patients who are not ESRD patients, but who require dialysis of temporary kidney failure due to a sudden trauma (e.g., traffic accident or ingestion of certain drugs, etc.).

"Affiliate" means a facility, hospital, unit, business, or person having an agreement with a kidney center to provide specified services to ESRD patients.

"Agreement" means a written document executed between an ESRD facility and another facility in which the other facility agrees to assume responsibility for furnishing specified services to patients and for obtaining reimbursement for those services.

"Back-up dialysis" means dialysis given to a patient under special circumstances, in a situation other than the patient's usual dialysis environment. Examples are:

- (1) Dialysis of a home dialysis patient in a dialysis facility when patient's equipment fails;
- (2) Inhospital dialysis when the patient's illness requires more comprehensive care on an inpatient basis;
- (3) Pre- and post-operative dialysis provided to transplant patients.

"Composite rate" means a payment method in which all standard equipment, supplies, and services are calculated into a blended rate. All in-facility dialysis and all home dialysis treatments are billed under the composite rate system.

"Continuous ambulatory peritoneal dialysis (CAPD)" means a type of dialysis where the patient's peritoneal membrane is used as the dialyzer. The patient dialyzes at home, using special supplies, but without the need for a machine. (See "Peritoneal dialysis.")

"Continuous cycling peritoneal dialysis (CCPD)" means a type of peritoneal dialysis where the patient dialyzes at home and utilizes an automated peritoneal cyclor for delivering dialysis.

"Dialysate" means an electrolyte solution, containing elements such as potassium, sodium chloride, etc., surrounding the membrane or fibers and allowing exchange of substances with the patient's blood in the dialyzer.

"Dialysis" means a process by which dissolved substances are removed from a patient's body by diffusion from one fluid compartment to another across a semipermeable membrane.

"Dialysis session" means the period of time beginning when the patient arrives at the facility and ending when the patient departs from the facility. In the case of home dialysis, the time period beginning when the patient prepares for dialysis and ending when the patient is disconnected from the machine.

"Dialyzer" means the synthetic porous membrane or fibers, contained in a supporting structure, through which blood flows for the purpose of eliminating harmful substances, and replacing them with useful ones.

"Drug-related supplies" means nonpharmaceutical items necessary for administration or delivery of a drug.

"Durable medical equipment (DME)" means equipment that:

- (1) Can withstand repeated use;
- (2) Is primarily and customarily used to serve a medical purpose;
- (3) Generally is not useful to a person in the absence of illness or injury; and
- (4) Is appropriate for use in the client's place of residence.

"End-stage renal disease (ESRD)" means the stage of renal impairment that is irreversible and permanent, and

requires dialysis or kidney transplant to ameliorate uremic symptoms and maintain life.

"Epoetin alpha (EPO)" means the biologically engineered protein that stimulates the bone marrow to make new red blood cells. It is used in the treatment of anemia.

"Free-standing kidney center" means a limited care facility, not operated by a hospital, certified by the federal government to provide ESRD services.

"Hemodialysis" means a method of dialysis in which blood from a patient's body is circulated through an external device or machine and then returned to the patient's bloodstream. Hemodialysis is usually done in a kidney center or facility. It can be done at home with a trained dialysis helper.

"Home dialysis" means any dialysis performed at home.

"Home dialysis helper" means a person trained to assist the client in home dialysis.

"In-facility dialysis," for the purpose of this chapter only, in-facility dialysis means dialysis of any type performed on the premises of a kidney center or other free-standing ESRD facility.

"Intermittent peritoneal dialysis (IPD)" means a type of peritoneal dialysis in which dialysis solution is infused into the peritoneal cavity, allowed to remain there for a period of time, and then drained out. IPD is usually done in a kidney center or facility. It can be done at home with a trained home dialysis helper.

"Kidney center" means a facility as defined and certified by the federal government to:

- (1) Provide ESRD services;
- (2) Provide the services specified in this chapter; and
- (3) Promote and encourage home dialysis for a client when medically indicated.

"Maintenance dialysis" means the usual periodic dialysis treatments given to a client who has ESRD.

"Peritoneal dialysis" means a procedure that introduces dialysate into the abdominal cavity to remove waste products through the peritoneum. Three forms of peritoneal dialysis are continuous ambulatory peritoneal dialysis, continuous cycling peritoneal dialysis, and intermittent peritoneal dialysis.

"Self-dialysis unit" means a unit in a free-standing kidney center where dialysis is performed by an ESRD client who has completed training in self-dialysis.

"Standard ESRD lab tests" means certain laboratory tests that the Centers for Medicare and Medicaid include in their composite rate calculations. These tests are identified in MAA's kidney center billing instructions.

"Take home drugs" means outpatient prescription drugs that are administered outside of a provider's office.

[Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.520, 74.09.522, and 42 C.F.R. 405.2101. 03-21-039, § 388-540-105, filed 10/8/03, effective 11/8/03.]

WAC 388-540-110 Eligibility. (1) To be eligible for the kidney center services described in this section, a client must be diagnosed with end-stage renal disease (ESRD) or acute renal failure and be covered under one of the following programs:

- (a) Categorically needy program (CNP);
- (b) Children's health insurance program (CHIP);

- (c) General assistance-unemployable (GAU);
 - (d) Limited casualty program—Medically needy program (MNP);
 - (e) Alien emergency medical; or
 - (f) Qualified Medicare beneficiary (QMB)—(MAA pays only for Medicare premium, coinsurance and deductible).
- (2) Managed care enrollees must have dialysis services arranged directly through their designated plan.

[Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.520, 74.09.522, and 42 C.F.R. 405.2101. 03-21-039, § 388-540-110, filed 10/8/03, effective 11/8/03.]

WAC 388-540-120 Provider requirements. To receive reimbursement from the medical assistance administration (MAA) for providing care to MAA clients, a kidney center must:

- (1) Be a Medicare-certified end-stage renal disease (ESRD) facility and have a signed core provider agreement with MAA (see chapter 388-502 WAC);
- (2) Meet requirements found in chapter 388-502 WAC;
- (3) Provide only those services within the scope of their provider's license; and
- (4) Provide, either directly or through an affiliate, all physical facilities, professional consultation, personal instructions, medical treatment, care, and all supplies necessary for carrying out an medically sound ESRD treatment program, including all of the following:
 - (a) Dialysis for ESRD clients;
 - (b) Kidney transplant treatment, either directly or by referral, for ESRD clients when medically indicated;
 - (c) Treatment for conditions directly related to ESRD;
 - (d) Training and supervision of supporting personnel and clients for home dialysis, medical care, and treatment; and
 - (e) Supplies and equipment for home dialysis.

[Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.520, 74.09.522, and 42 C.F.R. 405.2101. 03-21-039, § 388-540-120, filed 10/8/03, effective 11/8/03.]

WAC 388-540-130 Covered services. (1) The medical assistance administration (MAA) covers the following services and supplies subject to the restrictions and limitations in this section and other applicable published WAC:

- (a) In-facility dialysis;
- (b) Home dialysis;
- (c) Training for self-dialysis;
- (d) Home dialysis helpers;
- (e) Dialysis supplies;
- (f) Diagnostic lab work;
- (g) Treatment for anemia; and
- (h) Intravenous drugs.

(2) Covered services are subject to the limitations specified by MAA. Providers must obtain prior authorization (PA) or expedited prior authorization (EPA) before providing services that exceed specified limits in quantity, frequency or duration (refer to WAC 388-501-0165 for the PA process).

[Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.520, 74.09.522, and 42 C.F.R. 405.2101. 03-21-039, § 388-540-130, filed 10/8/03, effective 11/8/03.]

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WAC 388-540-140 Noncovered services. (1) The medical assistance administration (MAA) does not reimburse kidney centers for the following:

- (a) Blood and blood products (refer to WAC 388-540-190);
- (b) Personal care items such as slippers, toothbrushes, etc.; or
- (c) Additional staff time or personnel costs. Staff time is paid through the composite rate. Home dialysis helpers are the only personnel cost paid outside the composite rate (refer to WAC 388-540-160).

(2) MAA reviews all initial requests for noncovered services based on WAC 388-501-0165.

[Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.520, 74.09.522, and 42 C.F.R. 405.2101. 03-21-039, § 388-540-140, filed 10/8/03, effective 11/8/03.]

WAC 388-540-150 Reimbursement—General. (1) Kidney center services described in this section are paid by one of two methods:

(a) **Composite rate payments**—This is a payment method in which all standard equipment, supplies and services are calculated into a blended rate.

(i) A single dialysis session and related services are reimbursed through a single composite rate payment (refer to WAC 388-540-160).

(ii) Composite rate payments for continuous ambulatory peritoneal dialysis (CAPD) or continuous cycling peritoneal dialysis (CCPD) are limited to thirty-one per month for an individual client.

(iii) Composite rate payments for all other types of dialysis sessions are limited to fourteen per month for an individual client.

(b) **Noncomposite rate payments**—End-stage renal disease (ESRD) services and items covered by the medical assistance administration (MAA) but not included in the composite rate are billed and paid separately (refer to WAC 388-540-170).

(2) **Limitation extension request**—MAA evaluates billings for covered services that are subject to limitations or other restrictions, and approves such services beyond those limitations or restrictions when medically necessary, under the standards of WAC 388-501-0165.

(3) **Take-home drugs**—MAA reimburses kidney centers for take-home drugs only when they meet the conditions described in WAC 388-540-170(1). Other drugs for at-home use must be billed by a pharmacy and be subject to MAA pharmacy rules.

(4) **Medical nutrition**—Medical nutrition products must be billed by a pharmacy or a durable medical equipment (DME) provider.

(5) **Medicare eligible clients**—MAA does not reimburse kidney centers as a primary payer for Medicare eligible clients.

[Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.520, 74.09.522, and 42 C.F.R. 405.2101. 03-21-039, § 388-540-150, filed 10/8/03, effective 11/8/03.]

WAC 388-540-160 Items and services included in the composite rate. (1) The following equipment, supplies, and

services for in-facility and home dialysis are included in the composite rate:

- (a) Medically necessary dialysis equipment;
- (b) All dialysis services furnished by the facility's staff;
- (c) Standard end-stage renal disease laboratory tests (refer to WAC 388-540-180);
- (d) Home dialysis support services including delivery, installation, and maintenance of equipment;
- (e) Purchase and delivery of all necessary dialysis supplies;
- (f) Declotting of shunts and any supplies used to decloot shunts;
- (g) Oxygen and the administration of oxygen;
- (h) Staff time used to administer blood and nonroutine parenteral items;

- (i) Noninvasive vascular studies; and

- (j) Training for self-dialysis and home dialysis helpers.

(2) The medical assistance administration (MAA) issues a composite rate payment only when all of the above items and services are furnished or available at each dialysis session.

(3) If the facility fails to furnish or have available any of the above items, MAA does not pay for any part of the items and services that were furnished.

[Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.520, 74.09.522, and 42 C.F.R. 405.2101. 03-21-039, § 388-540-160, filed 10/8/03, effective 11/8/03.]

WAC 388-540-170 Items and services not included in the composite rate. The following items and services are not included in the composite rate and must be billed separately, subject to the restrictions or limitations in this section and other applicable published WAC:

(1) Drugs related to treatment, including but not limited to epoetin alpha (EPO) and diazepam. The drug must:

- (a) Be prescribed by a physician;

- (b) Meet the rebate requirements described in WAC 388-530-1125; and

- (c) Meet the requirements of WAC 246-905-020 when provided for home use.

- (2) Supplies used to administer drugs and blood;

- (3) Blood processing fees charged by the blood bank (refer to WAC 388-540-190); and

- (4) Home dialysis helpers.

[Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.520, 74.09.522, and 42 C.F.R. 405.2101. 03-21-039, § 388-540-170, filed 10/8/03, effective 11/8/03.]

WAC 388-540-180 Laboratory services. (1) Laboratory services included in the composite rate, performed by either the facility or an independent laboratory, must not be billed separately except as provided for in (b) of this subsection:

- (a) Standard end-stage renal disease (ESRD) lab tests are included in the composite rate when performed at recommended intervals (see billing instructions for current list).

- (b) The standard ESRD lab tests referred to in (a) of this subsection can be reimbursed separately from the composite rate only when it is medically necessary to test more frequently:

- (i) Proof of medical necessity must be documented in the client's medical record when billing for more frequent testing. A diagnosis of end-stage renal disease is not sufficient;

- (ii) The claim must include information on the nature of the illness or injury (diagnosis, complaint or symptom) requiring the performance of the test(s); or

- (iii) An ICD-9CM diagnosis code may be shown in lieu of a narrative description.

(2) All separately billable, ESRD laboratory services must be billed by and reimbursed to the lab that performs the test.

[Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.520, 74.09.522, and 42 C.F.R. 405.2101. 03-21-039, § 388-540-180, filed 10/8/03, effective 11/8/03.]

WAC 388-540-190 Blood products and services. (1) The medical assistance administration (MAA) reimburses free-standing kidney centers for:

- (a) Blood processing and other fees assessed by non-profit blood centers that do not charge for the blood or blood products themselves; and

- (b) Costs incurred by the center to administer its in-house blood procurement program.

- (2) MAA does not reimburse centers for blood or blood products (refer to WAC 388-550-6500).

- (3) Staff time used to administer blood or blood products is reimbursed only through the composite rate (refer to WAC 388-540-150 and 388-540-160).

[Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.520, 74.09.522, and 42 C.F.R. 405.2101. 03-21-039, § 388-540-190, filed 10/8/03, effective 11/8/03.]

WAC 388-540-200 Epoetin alpha (EPO) therapy. The medical assistance administration (MAA) reimburses the kidney center for EPO therapy when:

- (1) Administered in the kidney center to a client:

- (a) With a hematocrit less than thirty-three percent or a hemoglobin less than eleven when therapy is initiated;

- (b) Continuing EPO therapy with a hematocrit between thirty and thirty-six percent; or

- (c) Medical justification documented in the client's record is required for hematocrits greater than thirty-six or hemoglobins greater than twelve. Medical justification includes:

- (i) Documentation that dose is being titrated downward to bring a patient's hematocrit back within target range; or

- (ii) Documentation that it is medically necessary for the client to have a target hematocrit greater than thirty-six percent.

- (2) Provided to a home dialysis client:

- (a) Under the same hematocrit/hemoglobin guidelines as stated in (1)(a) and (b) of this section; and

- (b) When permitted by Washington board of pharmacy rules. (Refer to WAC 246-905-020 Home dialysis program—Legend drugs.)

[Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.520, 74.09.522, and 42 C.F.R. 405.2101. 03-21-039, § 388-540-200, filed 10/8/03, effective 11/8/03.]

WAC 388-540-210 Injectable drugs given in the kidney center. Injectable drugs administered in the kidney cen-

ter are reimbursed up to the medical assistance administration's (MAA) published maximum fees.

[Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.520, 74.09.522, and 42 C.F.R. 405.2101. 03-21-039, § 388-540-210, filed 10/8/03, effective 11/8/03.]

Chapter 388-543 WAC

DURABLE MEDICAL EQUIPMENT AND RELATED SUPPLIES, PROSTHETICS, ORTHOTICS, MEDICAL SUPPLIES AND RELATED SERVICES

WAC

388-543-1100	Scope of coverage and coverage limitations for DME and related supplies, prosthetics, orthotics, medical supplies and related services.
388-543-1150	Limits and limitation extensions.
388-543-1225	Provider requirements.
388-543-2100	Wheelchairs—Reimbursement methodology.
388-543-2500	Reimbursement methodology for other durable medical equipment.
388-543-2900	Medical supplies and nondurable medical equipment (MSE)—Reimbursement methodology.

WAC 388-543-1100 Scope of coverage and coverage limitations for DME and related supplies, prosthetics, orthotics, medical supplies and related services. The federal government deems **durable medical equipment (DME)** and related supplies, **prosthetics, orthotics, and medical supplies** as optional services under the **Medicaid** program, except when prescribed as an integral part of an approved plan of treatment under the home health program or required under the early and periodic screening, diagnosis and treatment (**EPSDT**) program. The **department** may reduce or eliminate coverage for optional services, consistent with legislative appropriations.

(1) The medical assistance administration (MAA) covers DME and related supplies, prosthetics, orthotics, medical supplies, related services, repairs and labor charges when all of the following apply. They must be:

(a) Within the scope of an eligible client's medical care program (see chapter 388-529 WAC);

(b) Within accepted medical or physical medicine community standards of practice;

(c) Prior authorized as described in WAC 388-543-1600, 388-543-1800, and 388-543-1900;

(d) Prescribed by a qualified **provider**, acting within the scope of the provider's practice. The prescription must state the specific item or service requested, diagnosis, prognosis, estimated length of need (weeks or months, not to exceed six months before being reevaluated), and quantity;

(e) Billed to the department as the payor of last resort only. MAA does not pay first and then collect from Medicare;

(f) **Medically necessary** as defined in WAC 388-500-0005. The provider or client must submit sufficient objective evidence to establish medical necessity. Information used to establish medical necessity includes, but is not limited to, the following:

(i) A physiological description of the client's disease, injury, impairment, or other ailment, and any changes in the client's condition written by the prescribing physician, licensed prosthetist and/or orthotist, physical therapist, occupational therapist, or speech therapist; or

(ii) Video and/or photograph(s) of the client demonstrating the impairments as well and client's ability to use the requested equipment, when applicable.

(2) MAA evaluates a request for any equipment or devices that are listed as noncovered in WAC 388-543-1300 under the provisions of WAC 388-501-0165.

(3) MAA evaluates a request for a service that is in a covered category, but has been determined to be experimental or investigational under WAC 388-531-0550, under the provisions of WAC 388-501-0165 which relate to medical necessity.

(4) MAA evaluates requests for covered services in this chapter that are subject to limitations or other restrictions and approves such services beyond those limitations or restrictions when medically necessary, under the standards for covered services in WAC 388-501-0165.

(5) MAA does not reimburse for DME and related supplies, prosthetics, orthotics, medical supplies, related services, and related repairs and labor charges under **fee-for-service (FFS)** when the client is any of the following:

(a) An inpatient hospital client;

(b) Eligible for both **Medicare** and Medicaid, and is staying in a **nursing facility** in lieu of hospitalization;

(c) Terminally ill and receiving hospice care; or

(d) Enrolled in a risk-based managed care plan that includes coverage for such items and/or services.

(6) MAA covers medical equipment and related supplies, prosthetics, orthotics, medical supplies and related services, repairs, and labor charges listed in MAA's published issuances, including Washington Administrative Code (WAC), billing instructions, and numbered memoranda.

(7) An interested party may request MAA to include new equipment/supplies in the billing instructions by sending a written request plus all of the following:

(a) Manufacturer's literature;

(b) Manufacturer's pricing;

(c) Clinical research/case studies (including FDA approval, if required); and

(d) Any additional information the requester feels is important.

(8) MAA bases the decision to purchase or rent DME for a client, or to pay for repairs to client-owned equipment on medical necessity.

(9) MAA covers replacement batteries for purchased medically necessary DME equipment covered within this chapter.

(10) MAA covers the following categories of medical equipment and supplies only when they are medically necessary, prescribed by a physician or other licensed practitioner of the healing arts, are within the scope of his or her practice as defined by state law, and are subject to the provisions of this chapter and related WACs:

(a) Equipment and supplies prescribed in accordance with an approved plan of treatment under the home health program;

(b) Wheelchairs and other DME;

(c) Prosthetic/orthotic devices;

(d) Surgical/ostomy appliances and urological supplies;

(e) Bandages, dressings, and tapes;

(f) Equipment and supplies for the management of diabetes; and

(g) Other medical equipment and supplies, as listed in MAA published issuances.

(11) MAA evaluates a **BR** item, procedure, or service for its medical appropriateness and reimbursement value on a case-by-case basis.

(12) For a client in a **nursing facility**, MAA covers only the following when medically necessary. All other DME and supplies identified in MAA billing instructions are the responsibility of the nursing facility, in accordance with chapters 388-96 and 388-97 WAC. See also WAC 388-543-2900 (3) and (4). MAA covers:

(a) The purchase and repair of a speech generating device (SGD), a wheelchair for the exclusive full-time use of a permanently disabled nursing facility resident when the wheelchair is not included in the nursing facility's per diem rate, or a **specialty bed**; and

(b) The rental of a specialty bed.

(13) Vendors must provide instructions for use of equipment; therefore, instructional materials such as pamphlets and video tapes are not covered.

(14) Bilirubin lights are limited to rentals, for at-home newborns with jaundice.

[Statutory Authority: RCW 74.08.090, 34.05.353, 03-12-005, § 388-543-1100, filed 5/22/03, effective 6/22/03. Statutory Authority: RCW 74.08.090, 74.09.530, 02-16-054, § 388-543-1100, filed 8/1/02, effective 9/1/02; 01-01-078, § 388-543-1100, filed 12/13/00, effective 1/13/01.]

WAC 388-543-1150 Limits and limitation extensions.

The medical assistance administration (MAA) covers non-DME (MSE), DME, and related supplies, prosthetics, orthotics, medical supplies, and related services as described in WAC 388-543-1100(1). MAA Limits the amount, frequency, or duration of certain covered MSE, DME, and related supplies, prosthetics, orthotics, medical supplies, and related services, and reimburses up to the stated limit without requiring prior authorization. These limits are designed to avoid the need for prior authorization for items normally considered medically necessary and for quantities sufficient for a thirty-day supply for one client. In order to exceed the stated limits, the provider must request a limitation extension (LE), which is a form of prior authorization (PA). MAA approves such requests for LE when medical necessary, under the standards for covered services in WAC 388-501-0165. Procedures for LE are found in MAA's billing instructions. The following items and quantities do not require prior authorization; requests to exceed the stated quantities require LE:

(1) Antiseptics and germicides:

(a) Alcohol (isopropyl) or peroxide (hydrogen) - one eight ounce bottle per month;

(b) Alcohol wipes (box of two hundred) - one box per month;

(c) Betadine or pHisoHex solution - one pint per month;

(d) Betadine or iodine swabs/wipes (box of one hundred) - one box per month;

(e) Disinfectant spray - one twelve ounces bottle or can per six month period; or

(f) Periwash (when soap and water are medically contraindicated) - one five ounce bottle of concentrate solution per six-month period.

(2) Blood monitoring/testing supplies:

(a) Replacement battery of any type, used with a client-owned, medically necessary home or specialized blood glucose monitor - one in a three month period; and

(b) Spring-powered device for lancet - one in a six-month period.

(3) Braces, belts and supportive devices:

(a) Custom vascular supports (CVS) - two pair per six-month period. CVS fitting fee - two per six-month period;

(b) Surgical stockings (below-the-knee, above-the-knee, thigh-high, or full-length) - two pair per six-month period;

(c) Graduated compression stockings for pregnancy support (panty hose style) - two per twelve-month period;

(d) Knee brace (neoprene, nylon, elastic, or with a hinged bar) - two per twelve-month period;

(e) Ankle, elbow, or wrist brace - two per twelve-month period;

(f) Lumbosacral brace, rib belt, or hernia belt - one per twelve-month period;

(g) Cervical head harness/halter, cervical pillow, pelvic belt/harness/boot, or extremity belt/harness - one per twelve-month period.

(4) Decubitus care products:

(a) Cushion (gel, sacroiliac, or accuback) and cushion cover (any size) - one per twelve-month period;

(b) Synthetic or lambs wool sheepskin pad - one per twelve-month period;

(c) Heel or elbow protectors - four per twelve-month period.

(5) Ostomy supplies:

(a) Adhesive for ostomy or catheter: Cement; powder; liquid (e.g., spray or brush); or paste (any composition, e.g., silicone or latex) - four total ounces per month.

(b) Adhesive or nonadhesive disc or foam pad for ostomy pouches - ten per month.

(c) Adhesive remover or solvent - three ounces per month.

(d) Adhesive remover wipes, fifty per box - one box per month.

(e) Closed pouch, with or without attached barrier, with a one- or two-piece flange, or for use on a faceplate - sixty per month.

(f) Closed ostomy pouch with attached standard wear barrier, with built-in one-piece convexity - ten per month.

(g) Continent plug for continent stoma - thirty per month.

(h) Continent device for continent stoma - one per month.

(i) Drainable ostomy pouch, with or without attached barrier, or with one- or two-piece flange - twenty per month.

(j) Drainable ostomy pouch with attached standard or extended wear barrier, with or without built-in one-piece convexity - twenty per month.

(k) Drainable ostomy pouch for use on a plastic or rubber faceplate (only one type of faceplate allowed) - ten per month.

(l) Drainable urinary pouch for use on a plastic, heavy plastic, or rubber faceplate (only one type of faceplate allowed) - ten per month.

(m) Irrigation bag - two every six months.

(n) Irrigation cone and catheter, including brush - two every six months.

- (o) Irrigation supply, sleeve - one per month.
- (p) Ostomy belt (adjustable) for appliance - two every six months.
- (q) Ostomy convex insert - ten per month.
- (r) Ostomy ring - ten per month.
- (s) Stoma cap - thirty per month.
- (t) Ostomy faceplate - ten per month. MAA does not allow the following to be used on a faceplate in combination with drainable pouches (refer to the billing instructions for further details):
 - (i) Drainable pouches with plastic face plate attached; or
 - (ii) Drainable pouches with rubber face plate.
- (6) Supplies associated with client-owned transcutaneous electrical nerve stimulators (TENS):
 - (a) For a four-lead TENS unit - two kits per month. (A kit contains two leads, conductive paste or gel, adhesive, adhesive remover, skin preparation material, batteries, and a battery charger for rechargeable batteries.)
 - (b) For a two-lead TENS unit - one kit per month.
 - (c) TENS tape patches (for use with carbon rubber electrodes only) are allowed when they are not used in combination with a kit(s).
 - (d) A TENS stand alone replacement battery charger is allowed when it is not used in combination with a kit(s).
- (7) Urological supplies - diapers and related supplies:
 - (a) The standards and specifications in this subsection apply to all disposable incontinent products (e.g., adult briefs/child diapers, pull-up training pants, underpads for beds, and liners/shields). See subsections (b), (c), (d), and (e) of this section for additional standards for specific products. All of the following apply to all disposable incontinent products:
 - (i) All materials used in the construction of the product must be safe for the client's skin and harmless if ingested;
 - (ii) Adhesives and glues used in the construction of the product must not be water-soluble and must form continuous seals at the edges of the absorbent core to minimize leakage;
 - (iii) The padding must provide uniform protection;
 - (iv) The product must be hypoallergenic; and
 - (v) The product must meet the flammability requirements of both federal law and industry standards.
 - (b) In addition to the standards in subsection (a) of this section, adult briefs/child diapers must meet all the following specifications. They must:
 - (i) Be hourglass shaped with formed leg contours;
 - (ii) Have an absorbent filler core that is at least one-half inch from the elastic leg gathers;
 - (iii) Have leg gathers that consist of at least three strands of elasticized materials;
 - (iv) Have an absorbent core that consists of cellulose fibers mixed with absorbent gelling materials;
 - (v) Have a backsheet that is moisture impervious and is at least 1.00 mm thick, designed to protect clothing and linens;
 - (vi) Have a topsheet that resists moisture returning to the skin;
 - (vii) Have an inner lining that is made of soft, absorbent material; and
 - (viii) Have either a continuous waistband, or side panels with a tear-away feature, or refastenable tapes, as follows:
 - (A) For adult briefs, at least four tapes, two on each side.

- (B) For child diapers, at least two tapes, one on each side.
- (C) The tape adhesive must release from the backsheet without tearing it, and permit a minimum of three fastening/unfastening cycles.
- (c) In addition to the standards in subsection (a) of this section, pull-up training pants and incontinent pants must meet the following specifications. They must:
 - (i) Be made like regular underwear with an elastic waist;
 - (ii) Have an absorbent core filler that is at least one-half inch from the elastic leg gathers;
 - (iii) Have an absorbent core that consists of cellulose fibers mixed with absorbent gelling;
 - (iv) Have leg gathers that consist of at least three strands of elasticized materials;
 - (v) Have a backsheet that is moisture impervious, is at least 1.00 mm thick, and is designed to protect clothing and linens;
 - (vi) Have an inner lining made of soft, absorbent material; and
 - (vii) Have a top sheet that resists moisture returning to the skin.
- (d) In addition to the standards in subsection (a) of this section, underpads for beds must meet the following specifications. They must:
 - (i) Have an absorbent layer that is at least one and one-half inches from the edge of the underpad;
 - (ii) Be manufactured with a waterproof backing material;
 - (iii) Be able to withstand temperatures not to exceed one hundred-forty degrees Fahrenheit;
 - (iv) Have a covering or facing sheet that is made of non-woven, porous materials that have a high degree of permeability, allowing fluids to pass through and into the absorbent filler. The patient contact surface must be soft and durable;
 - (v) Have filler material that is highly absorbent. It must be heavy weight fluff filler or the equivalent; and
 - (iv) Have four-ply, nonwoven facing, sealed on all four sides.
- (e) In addition to the standards in subsection (a) of this section, liners/shields (including pads and undergarments) must meet the following specifications. They must:
 - (i) Have channels to direct fluid throughout the absorbent area, and leg gathers to assist in controlling leakage, and/or be contoured to permit a more comfortable fit;
 - (ii) Have a waterproof backing designed to protect clothing and linens;
 - (iii) Have an inner liner that resists moisture returning to the skin;
 - (iv) Have an absorbent core that consists of cellulose fibers mixed with absorbent gelling materials;
 - (v) Have pressure-sensitive tapes on the reverse side to fasten to underwear; and
 - (vi) For undergarments only, be contoured for good fit, have at least three elastic leg gathers, and may be belted or unbelted.
- (f) MAA covers the products in this subsection only when they are used alone; they cannot be used in combination with each other. MAA approves a client's use of a combination of products only when the client uses different products for daytime and nighttime use (see MAA's billing instruc-

tions for how to specify this when billing). The total of all products used cannot exceed the monthly limitation for the product with the highest limit (see subsections (g), (h), (i), (j), (k), (l), and (m) of this section for product limitations). The following products cannot be used together:

- (i) Disposable briefs (incontinent pants)/diapers;
- (ii) Disposable pull-up training pants;
- (iii) Disposable liners/pads;
- (iv) Rented reusable briefs/diapers (e.g., from a diaper service); and
- (v) Rented reusable briefs (incontinent pants) (e.g., from a diaper service), or pull-up training pants.
- (g) Purchased disposable diapers (any size) are limited to:
 - (i) Three hundred per month for a child age three and older; and
 - (ii) Two hundred forty per month for an adult.
- (h) Reusable cloth diapers (any size) are limited to:
 - (i) Purchased - thirty-six per year; and
 - (ii) Rented - two hundred forty per month.
- (i) Disposable briefs (incontinent pants) and pull-up training pants (any size) are limited to:
 - (i) Three hundred per month for a child age three and older; and
 - (ii) One hundred fifty per month for an adult.
- (j) Reusable briefs (incontinent pants) or pull-up training pants (any size) are limited to:
 - (i) Purchased - four per year.
 - (ii) Rented - one hundred fifty per month.
- (k) Disposable pant liner/pads are limited to two hundred forty per month.
 - (l) Underpads for beds are limited to:
 - (i) Disposable (any size) - one hundred eighty per month.
 - (ii) Purchased, reusable (large) - forty-two per year.
 - (iii) Rented, reusable (large) - ninety per month.
- (8) Urological supplies - urinary retention:
 - (a) Bedside drainage bag, day or night, with or without anti-reflux device, with or without tube - two per month. This cannot be billed in combination with any of the following:
 - (i) With extension drainage tubing for use with urinary leg bag or urostomy pouch (any type, any length), with connector/adapter; and/or
 - (ii) With an insertion tray with drainage bag, and with or without catheter.
 - (b) Bedside drainage bottle, with or without tubing - two per six month period.
 - (c) Extension drainage tubing (any type, any length), with connector/adapter, for use with urinary leg bag or urostomy pouch. This cannot be billed in combination with a vinyl urinary leg bag, with or without tube.
 - (d) External urethral clamp or compression device (not be used for catheter clamp) - two per twelve-month period.
 - (e) Indwelling catheters (any type) - three per month.
 - (f) Insertion trays:
 - (i) Without drainage bag and catheter - one hundred and twenty per month. These cannot be billed in combination with other insertion trays that include drainage bag, catheters, and/or individual lubricant packets.
 - (ii) With indwelling catheters - three per month. These cannot be billed in combination with: Other insertion trays

without drainage bag and/or indwelling catheter; individual indwelling catheters; and/or individual lubricant packets.

- (g) Intermittent urinary catheter - one hundred twenty per month. These cannot be billed in combination with: An insertion tray with or without drainage bag and catheter; or other individual intermittent urinary catheters.
- (h) Irrigation syringe (bulb or piston) - cannot be billed in combination with irrigation tray or tubing.
- (i) Irrigation tray with syringe (bulb or piston) - thirty per month. These cannot be billed in combination with irrigation syringe (bulb or piston), or irrigation tubing set.
- (j) Irrigation tubing set - thirty per month. These cannot be billed in combination with an irrigation tray or irrigation syringe (bulb or piston).
- (k) Leg straps (latex foam and fabric). Allowed as replacement only.
 - (l) Male external catheter, specialty type, or with adhesive coating or adhesive strip - sixty per month.
 - (m) Urinary suspensory with leg bag, with or without tube - two per month. This cannot be billed in combination with: a latex urinary leg bag; urinary suspensory without leg bag; extension drainage tubing; or a leg strap.
 - (n) Urinary suspensory without leg bag, with or without tube - two per month.
 - (o) Urinary leg bag, vinyl, with or without tube - two per month. This cannot be billed in combination with: A leg strap; or an insertion tray with drainage bag and without catheter.
 - (p) Urinary leg bag, latex - one per month. This cannot be billed in combination with an insertion tray with drainage bag and with or without catheter.
- (9) Miscellaneous supplies:
 - (a) Bilirubin light therapy supplies - five days' supply. MAA reimburses only when these are provided with a prior authorized bilirubin light.
 - (b) Continuous passive motion (CPM) softgoods kit - one, with rental of CPM machine.
 - (c) Eye patch with elastic, tied band, or adhesive, to be attached to an eyeglass lens - one box of twenty.
 - (d) Eye patch (adhesive wound cover) - one box of twenty.
 - (e) Lice comb (e.g., LiceOut TM, or LiesMeister TM, or combs of equivalent quality and effectiveness) - one per year.
 - (f) Nontoxic gel (e.g., LiceOut TM) for use with lice combs - one bottle per twelve month period
- Syringes and needles ("sharps") disposal container for home use, up to one gallon size - two per month.
- (10) Miscellaneous DME:
 - (a) Bilirubin light or light pad - five days rental per twelve-month period.
 - (b) Blood glucose monitor (specialized or home) - one in a three-year period.
 - (c) Continuous passive motion (CPM) machine - up to ten days rental and requires prior authorization.
 - (d) Diaphragmatic pacing antennae - four per twelve month-period.
 - (e) Lightweight protective helmet/soft shell (including adjustable chin/mouth strap) - two per twelve-month period.
 - (f) Lightweight ventilated hard-shell helmet (including unbreakable face bar, woven chin strap w/adjustable buckle

and snap fastener, and one set of cushion pads for adjusting fit to head circumference) - two per twelve-month period.

(11) Prosthetics and orthotics:

(a) Thoracic-hip-knee-ankle orthosis (THKAO) standing frame - one every five years.

(b) Preparatory, above knee "PTB" type socket, non-alignable system, pylon, no cover, SACH foot plaster socket, molded to model - one per lifetime, per limb.

(c) Preparatory, below knee "PTB" type socket, non-alignable system, pylon, no cover, SACH foot thermoplastic or equal, direct formed - one per lifetime, per limb.

(d) Socket replacement, below the knee, molded to patient model - one per twelve-month period.

(e) Socket replacement, above the knee/knee disarticulation, including attachment plate, molded to patient model - one per twelve-month period.

(12) Positioning devices:

(a) Deluxe floor sitter/feeder seat (small, medium, or large), including floor sitter wedge, shoulder harness, and hip strap - one in a three-year period.

(b) High-back activity chair, including adjustable footrest, two pairs of support blocks, and hip strap - one in a three-year period.

(c) Positioning system/supine boards (small or large), including padding, straps adjustable armrests, footboard, and support blocks - one in a five-year period.

(d) Prone stander (child, youth, infant or adult size) - one in a five-year period.

(e) Adjustable standing frame (for child/adult thirty - sixty-eight inches tall), including two padded back support blocks, a chest strap, a pelvic strap, a pair of knee blocks, an abductor, and a pair of foot blocks - one in a five-year period.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, and Public Law 104-191. 03-19-082, § 388-543-1150, filed 9/12/03, effective 10/13/03. Statutory Authority: RCW 74.08.090, 74.09.530. 01-16-141, § 388-543-1150, filed 7/31/01, effective 8/31/01.]

WAC 388-543-1225 Provider requirements. (1) Providers and suppliers of durable medical equipment (DME) and related supplies, prosthetics and orthotics, medical supplies and related items must meet the general provider documentation and record retention requirements in WAC 388-502-0020. In addition to these requirements, the medical assistance administration (MAA) requires providers to furnish, upon request, documentation of proof of delivery as stated in subsections (2) and (3) of this section.

(2) When a provider delivers an item directly to the client or the client's authorized representative, the provider must be able to furnish proof of delivery when MAA requests that information. All of the following apply:

(a) MAA requires a delivery slip as proof of delivery, and it must:

(i) Be signed and dated by the client or the client's authorized representative (the date of signature must be the date the item was received);

(ii) Include the client's name and a detailed description of the item(s) delivered, including the quantity and brand name; and

(iii) For durable medical equipment that would require future repairs, include the serial number.

(b) When the provider or supplier submits a claim for payment to MAA, the date of service on the claim must be one of the following:

(i) For a one-time delivery, the date the item was received by the client or authorized representative; or

(ii) For nondurable medical supplies for which MAA has established a monthly maximum, on or after the date the item was received by the client or authorized representative.

(3) When a provider uses a delivery/shipping service to deliver items which are not fitted to the client, the provider must be able to furnish proof of delivery that the client received the equipment, when MAA requests that information. All of the following apply:

(a) MAA requires the delivery service tracking slip as proof of delivery, and it must include:

(i) The client's name or a reference to the client's package(s);

(ii) The delivery service package identification number; and

(iii) The delivery address.

(b) MAA requires the supplier's shipping invoice as proof of delivery, and it must include:

(i) The client's name;

(ii) The shipping service package identification number;

(iii) The quantity, detailed description(s), and brand name(s) of the items being shipped; and

(iv) For durable medical equipment that would require future repairs, include the serial number.

(c) When the provider submits a claim for payment to MAA, the date of service on the claim must be the shipping date.

(4) A provider must not use a delivery/shipping service to deliver items which must be fitted to the client.

(5) Providers must obtain prior authorization on any item that requires such before delivering that item to the client. The item must be delivered to the client before the provider bills MAA.

(6) MAA does not pay for DME and related supplies, prosthetics and orthotics, medical supplies and related items furnished to MAA clients when:

(a) The medical professional who provides medical justification to MAA for the item provided to the client is an employee of, has a contract with, or has any financial relationship with the provider of the item; or

(b) The medical professional who performs a client evaluation is an employee of, has a contract with, or has any financial relationship with a provider of DME and related supplies, prosthetics and orthotics, medical supplies, and related items.

(7) See WAC 388-502-0100, 388-502-0110, 388-502-0120, and 388-502-0130 for provider payment requirements.

(8) See WAC 388-502-0150 and 388-502-0160 for provider billing requirements.

(9) See WAC 388-502-0220, 388-502-0230, 388-502-0240, and 388-502-0260 for provider appeal requirements.

[Statutory Authority: RCW 74.08.090, 74.09.530. 03-05-051, § 388-543-1225, filed 2/14/03, effective 3/17/03.]

WAC 388-543-2100 Wheelchairs—Reimbursement methodology. (1) MAA reimburses a DME provider for purchased wheelchairs for a home or nursing facility client based

on the specific brand and model of wheelchair dispensed. MAA decides which brands and/or models of wheelchairs are eligible for reimbursement based on all of the following:

- (a) The client's medical needs;
 - (b) Product quality;
 - (c) Cost; and
 - (d) Available alternatives.
- (2) For wheelchair rentals and wheelchair accessories (e.g., cushions and backs), MAA uses either:
- (a) The Medicare fees that are current on April 1 of each year; or
 - (b) MAA's maximum allowable reimbursement is based on a percentage of the manufacturer's list price in effect on January 31 of the **base year**, or the invoice for the specific item. MAA uses the following percentages:
 - (i) For basic standard wheelchairs, sixty-five percent;
 - (ii) For add-on accessories and parts, eighty-four percent;
 - (iii) For upcharge modifications and cushions, eighty percent;
 - (iv) For all other manual wheelchairs, eighty percent; and
 - (v) For all other power-drive wheelchairs, eighty-five percent.
- (3) MAA determines rental reimbursement for categories of manual and power-driven wheelchairs based on average market rental rates or Medicare rates.
- (4) MAA evaluates and updates the wheelchair fee schedule once per year.
- (5) MAA implements wheelchair rate changes on April 1 of the base year, and the rates are effective until the next rate change.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, and Public Law 104-191, 03-19-083, § 388-543-2100, filed 9/12/03, effective 10/13/03. Statutory Authority: RCW 74.08.090, 74.09.530, 01-01-078, § 388-543-2100, filed 12/13/00, effective 1/13/01.]

WAC 388-543-2500 Reimbursement methodology for other durable medical equipment. (1) For the purposes of this section, MAA uses the following terms:

(a) **"Other durable medical equipment (other DME)"** means all durable medical equipment, excluding wheelchairs and related items.

(b) **"Pricing cluster"** means a group of discounted manufacturers' list prices and/or dealer's costs for brands/models of other DME that MAA uses to calculate the reimbursement rate for a procedure code that does not have a fee established by Medicare. MAA uses the discounted manufacturer list price for a brand/model unless that price is not available.

(2) MAA establishes reimbursement rates for purchased other DME.

(a) For other durable medical equipment that have a Medicare rate established for a new purchase, MAA uses the rate that is in effect on January first of the year in which MAA sets the reimbursement.

(b) For other durable medical equipment that do not have a Medicare rate established for a new purchase, MAA uses a pricing cluster to establish the rate.

(3) Establishing a pricing cluster and reimbursement rates.

(a) In order to make up a pricing cluster for a procedure code, MAA determines which brands/models of other DME its clients most frequently use. MAA obtains prices for these brands/models from manufacturer catalogs or commercial data bases. MAA may change or otherwise limit the number of brands/models included in the pricing cluster, based on the following:

- (i) Client medical needs;
- (ii) Product quality;
- (iii) Introduction of new brands/models;
- (iv) A manufacturer discontinuing or substituting a brand/model; and/or
- (v) Cost.

(b) If a manufacturer list price is not available for any of the brands/models used in the pricing cluster, MAA calculates the reimbursement rate at the manufacturer's published cost to providers plus a thirty-five percent mark-up.

(c) For each brand used in the pricing cluster, MAA discounts the manufacturer's list price by twenty percent.

(i) If six or more brands/models are used in the pricing cluster, MAA calculates the reimbursement rate at the seventieth percentile of the pricing cluster.

(ii) If five brands/models are used in the pricing cluster, MAA establishes the reimbursement rate at the fourth highest discounted list price, as described in (b) of this subsection.

(iii) If four brands/models are used in the pricing cluster, MAA establishes the reimbursement rate at the third highest discounted list price, as described in (b) of this subsection.

(iv) If three brands/models are used in the pricing cluster, MAA establishes the reimbursement rate at the third highest discounted list price, as described in (b) of this subsection.

(v) If two or fewer brands/models are used in the pricing cluster, MAA establishes the reimbursement rate at the highest discounted list price, as described in (b) of this subsection.

(4) Rental reimbursement rates for other DME.

(a) MAA sets monthly rental rates at one-tenth of the purchase reimbursement rate as it would be calculated as described in subsections (2) and (3) of this section.

(b) MAA sets daily rental rates at one-three hundredth of the purchase reimbursement rate as it would be calculated as described in subsections (2) and (3) of this section.

(5) MAA annually evaluates and updates reimbursement rates for other DME.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, and Public Law 104-191, 03-19-083, § 388-543-2500, filed 9/12/03, effective 10/13/03. Statutory Authority: RCW 74.08.090, 74.09.530, 01-01-078, § 388-543-2500, filed 12/13/00, effective 1/13/01.]

WAC 388-543-2900 Medical supplies and nondurable medical equipment (MSE)—Reimbursement methodology. (1) MAA determines rates for each category of medical supplies and non-DME (MSE) using either the:

- (a) Medicare fee schedule; or
- (b) Manufacturers' catalogs and commercial data bases for price comparisons.

(2) MAA evaluates and updates the maximum allowable fees for MSE as follows:

(a) MAA sets the maximum allowable fees for new MSE using one of the following:

- (i) Medicare's fee schedule; or

(ii) For those items without a Medicare fee, commercial data bases to identify brands to make up MAA's pricing cluster. MAA establishes the fee for products in the pricing cluster by using the lesser of either:

(A) Eighty-five percent of the average manufacturer's list price; or

(B) One hundred twenty-five percent of the average dealer cost.

(b) All the brands for which MAA obtains pricing information make up MAA's pricing cluster. However, MAA may limit the number of brands included in the pricing cluster if doing so is in the best interests of its clients. MAA considers all of the following:

(i) A client's medical needs;

(ii) Product quality;

(iii) Cost; and

(iv) Available alternatives.

(3) MAA's nursing facility per diem rate includes any reusable and disposable medical supplies that may be required for a nursing facility client. MAA may reimburse the following medical supplies separately for a client in a nursing facility:

(a) Medical supplies or services that replace all or parts of the function of a permanently impaired or malfunctioning internal body organ. This includes, but is not limited to the following:

(i) Colostomy and other ostomy bags and necessary supplies; and

(ii) Urinary retention catheters, tubes, and bags, excluding irrigation supplies;

(b) Supplies for intermittent catheterization programs, for the following purposes:

(i) Long term treatment of atonic bladder with a large capacity; and

(ii) Short term management for temporary bladder atony; and

(c) Surgical dressings required as a result of a surgical procedure, for up to six weeks after surgery.

(4) MAA considers decubitus care products to be included in the nursing facility per diem rate and does not reimburse for these separately.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, and Public Law 104-191, 03-19-083, § 388-543-2900, filed 9/12/03, effective 10/13/03. Statutory Authority: RCW 74.08.090, 74.09.530, 01-01-078, § 388-543-2900, filed 12/13/00, effective 1/13/01.]

Chapter 388-550 WAC HOSPITAL SERVICES

WAC

388-550-1050	Hospital services definitions.
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388-550-2541	Quality of care.
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388-550-5000	Payment method—LIDSH.
388-550-5100	Payment method—MIDSH.
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388-550-5400	Payment method—PHDDSH.
388-550-5600	Dispute resolution process for hospital rate reimbursement.
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388-550-6100	Outpatient hospital physical therapy.
388-550-6150	Outpatient hospital occupational therapy.
388-550-6200	Outpatient hospital speech therapy services.
388-550-6400	Outpatient hospital diabetes education.
388-550-6800	Proportionate share payments for inpatient hospital services.
388-550-6900	Proportionate share payments for outpatient hospital services.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

388-550-3401	How MAA pays acute PM&R facilities for Level B services. [Statutory Authority: RCW 74.08.090 and 74.09.520, 99-17-111, § 388-550-3401, filed 8/18/99, effective 9/18/99.] Repealed by 03-06-047, filed 2/28/03, effective 3/31/03. Statutory Authority: RCW 74.08.090, 74.09.520 and 42 C.F.R. 482.56.
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WAC 388-550-1050 Hospital services definitions.

The following definitions and abbreviations and those found in WAC 388-500-0005, Medical definitions, apply to this chapter.

"**Accommodation costs**" means the expenses incurred by a hospital to provide its patients services for which a separate charge is not customarily made. These expenses include, but are not limited to, room and board, medical social services, psychiatric social services, and the use of certain hospital equipment and facilities.

"**Acute**" means a medical condition of severe intensity with sudden onset.

"**Acute care**" means care provided for patients who are not medically stable or have not attained a satisfactory level of rehabilitation. These patients require frequent monitoring by a health care professional in order to maintain their health status (see WAC 248-27-015).

"**Acute physical medicine and rehabilitation (Acute PM&R)**" means a twenty-four hour inpatient comprehensive program of integrated medical and rehabilitative services provided during the acute phase of a client's rehabilitation.

"**ADATSA/DASA assessment center**" means an agency contracted by the division of alcohol and substance abuse (DASA) to provide chemical dependency assessment for clients and pregnant women in accordance with the alcoholism and drug addiction treatment and support act (ADATSA). Full plans for a continuum of drug and alcohol treatment services for pregnant women are also developed in ADATSA/DASA assessment centers.

"**Add-on procedure(s)**" means secondary procedure(s) that are performed in addition to another procedure.

"Administrative day" means a day of a hospital stay in which an acute inpatient level of care is no longer necessary, and noninpatient hospital placement is appropriate.

"Admitting diagnosis" means the medical condition before study, which is initially responsible for the client's admission to the hospital, as defined by the ICD-9-CM diagnostic code.

"Advance directive" means a document, such as a living will executed by a client. The advanced directive tells the client's health care providers and others the client's decisions regarding the client's medical care, particularly whether the client or client's representative wishes to accept or refuse extraordinary measures to prolong the client's life.

"Aggregate capital cost" means the total cost or the sum of all capital costs.

"Aggregate cost" means the total cost or the sum of all constituent costs.

"Aggregate operating cost" means the total cost or the sum of all operating costs.

"Alcoholism and drug addiction treatment and support act (ADATSA)" means the law and the state-funded program it established which provides medical services for persons who are incapable of gainful employment due to alcoholism or substance addiction.

"Alcoholism and/or alcohol abuse treatment" means the provision of medical social services to an eligible client designed to mitigate or reverse the effects of alcoholism or alcohol abuse and to reduce or eliminate alcoholism or alcohol abuse behaviors and restore normal social, physical, and psychological functioning. Alcoholism or alcohol abuse treatment is characterized by the provision of a combination of alcohol education sessions, individual therapy, group therapy, and related activities to detoxified alcoholics and their families.

"All-patient grouper (AP-DRG)" means a computer program that determines the DRG assignments.

"Allowed charges" means the maximum amount for any procedure that the department allows as the basis for payment computation.

"Ancillary hospital costs" means the expenses incurred by a hospital to provide additional or supporting services to its patients during their hospital stay. See **"ancillary services."**

"Ancillary services" means additional or supporting services provided by a hospital to a patient during the patient's hospital stay. These services include, but are not limited to, laboratory, radiology, drugs, delivery room, operating room, postoperative recovery rooms, and other special items and services.

"Approved treatment facility" means a treatment facility, either public or private, profit or nonprofit, approved by DSHS.

"Audit" means an assessment, evaluation, examination, or investigation of a health care provider's accounts, books and records, including:

(1) Medical, financial and billing records pertaining to billed services paid by the department through Medicaid or other state programs, by a person not employed or affiliated with the provider, for the purpose of verifying the service was provided as billed and was allowable under program regulations; and

(2) Financial, statistical and medical records, including mathematical computations and special studies conducted supporting Medicare cost reports, HCFA Form 2552, submitted to MAA for the purpose of establishing program rates of reimbursement to hospital providers.

"Audit claims sample" means a subset of the universe of paid claims from which the sample is drawn, whether based upon judgmental factors or random selection. The sample may consist of any number of claims in the population up to one hundred percent. See also **"random claims sample"** and **"stratified random sample."**

"Authorization" - See **"prior authorization"** and **"expedited prior authorization (EPA)."**

"Average hospital rate" means the average of hospital rates for any particular type of rate that MAA uses.

"Bad debt" means an operating expense or loss incurred by a hospital because of uncollectible accounts receivables.

"Beneficiary" means a recipient of Social Security benefits, or a person designated by an insuring organization as eligible to receive benefits.

"Billed charge" means the charge submitted to the department by the provider.

"Blended rate" means a mathematically weighted average rate.

"Border area hospital" means a hospital located outside Washington state and located in one of the border areas listed in WAC 388-501-0175.

"Bundled services" mean interventions which are integral to the major procedure and are not reimbursable separately.

"Buy-in premium" means a monthly premium the state pays so a client is enrolled in part A and/or part B Medicare.

"By report" means a method of reimbursement in which MAA determines the amount it will pay for a service when the rate for that service is not included in MAA's published fee schedules. Upon request the provider must submit a "report" which describes the nature, extent, time, effort and/or equipment necessary to deliver the service.

"Callback" means keeping hospital staff members on duty beyond their regularly scheduled hours, or having them return to the facility after hours to provide unscheduled services which are usually associated with hospital emergency room, surgery, laboratory and radiology services.

"Capital-related costs" mean the component of operating costs related to capital assets, including, but not limited to:

- (1) Net adjusted depreciation expenses;
- (2) Lease and rentals for the use of depreciable assets;
- (3) The costs for betterment and improvements;
- (4) The cost of minor equipment;
- (5) Insurance expenses on depreciable assets;
- (6) Interest expense; and
- (7) Capital-related costs of related organizations that provide services to the hospital.

Capital costs due solely to changes in ownership of the provider's capital assets are excluded.

"Case mix complexity" means, from the clinical perspective, the condition of the treated patients and the difficulty associated with providing care. Administratively, it means the resource intensity demands that patients place on an institution.

"Case mix index (CMI)" means the arithmetical index that measures the average relative weight of a case treated in a hospital during a defined period.

"Charity care" means necessary hospital health care rendered to indigent persons, to the extent that these persons are unable to pay for the care or to pay the deductibles or coinsurance amounts required by a third-party payer, as determined by the department.

"Chemical dependency" means an alcohol or drug addiction; or dependence on alcohol and one or more other psychoactive chemicals.

"Children's hospital" means a hospital primarily serving children.

"Client" means a person who receives or is eligible to receive services through department of social and health services (DSHS) programs.

"Comorbidity" means of, relating to, or caused by a disease other than the principal disease.

"Complication" means a disease or condition occurring subsequent to or concurrent with another condition and aggravating it.

"Comprehensive hospital abstract reporting system (CHARS)" means the department of health's hospital data collection, tracking and reporting system.

"Contract hospital" means a licensed hospital located in a selective contracting area, which is awarded a contract to participate in MAA's hospital selective contracting program.

"Contractual adjustment" means the difference between the amount billed at established charges for the services provided and the amount received or due from a third-party payer under a contract agreement. A contractual adjustment is similar to a trade discount.

"Cost proxy" means an average ratio of costs to charges for ancillary charges or per diem for accommodation cost centers used to determine a hospital's cost for the services where the hospital has Medicaid claim charges for the services, but does not report costs in corresponding centers in its Medicare cost report.

"Cost report" means the HCFA Form 2552, Hospital and Hospital Health Care Complex Cost Report, completed and submitted annually by a provider:

- (1) To Medicare intermediaries at the end of a provider's selected fiscal accounting period to establish hospital reimbursable costs for per diem and ancillary services; and
- (2) To Medicaid to establish appropriate DRG and RCC reimbursement.

"Costs" mean MAA-approved operating, medical education, and capital-related costs as reported and identified on the HCFA 2552 form.

"Cost-based conversion factor (CBCF)" means a hospital-specific dollar amount that reflects a hospital's average cost of treating Medicaid clients. It is calculated from the hospital's cost report by dividing the hospital's costs for treating Medicaid clients during a base period by the number of Medicaid discharges during that same period and adjusting for the hospital's case mix. See also **"hospital conversion factor"** and **"negotiated conversion factor."**

"County hospital" means a hospital established under the provisions of chapter 36.62 RCW.

"Current procedural terminology (CPT)" means a systematic listing of descriptive terms and identifying codes

for reporting medical services, procedures, and interventions performed by physicians. CPT is copyrighted and published annually by the American Medical Association (AMA).

"Customary charge payment limit" means the limit placed on aggregate DRG payments to a hospital during a given year to assure that DRG payments do not exceed the hospital's charges to the general public for the same services.

"Day outlier" means a case that requires MAA to make additional payment to the hospital provider but which does not qualify as a high-cost outlier. See **"day outlier payment"** and **"day outlier threshold."**

"Day outlier payment" means the additional amount paid to a disproportionate share hospital for a client five years old or younger who has a prolonged inpatient stay which exceeds the day outlier threshold but whose covered charges for care fall short of the high cost outlier threshold. The amount is determined by multiplying the number of days in excess of the day outlier threshold and the administrative day rate.

"Day outlier threshold" means the average number of days a client stays in the hospital for an applicable DRG before being discharged, plus twenty days.

"Deductible" means the amount a beneficiary is responsible for, before Medicare starts paying; or the initial specific dollar amount for which the applicant or client is responsible.

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

"Detoxification" means treatment provided to persons who are recovering from the effects of acute or chronic intoxication or withdrawal from alcohol or other drugs.

"Diabetic education program" means a comprehensive, multidisciplinary program of instruction offered by an MAA-approved facility to diabetic clients on dealing with diabetes, including instruction on nutrition, foot care, medication and insulin administration, skin care, glucose monitoring, and recognition of signs/symptoms of diabetes with appropriate treatment of problems or complications.

"Diagnosis code" means a set of numeric or alphanumeric characters assigned by the ICD-9-CM, or successor document, as a shorthand symbol to represent the nature of a disease.

"Diagnosis-related group (DRG)" means a classification system which categorizes hospital patients into clinically coherent and homogenous groups with respect to resource use, i.e., similar treatments and statistically similar lengths of stay for patients with related medical conditions. Classification of patients is based on the International Classification of Diseases (ICD-9), the presence of a surgical procedure, patient age, presence or absence of significant comorbidities or complications, and other relevant criteria.

"Direct medical education costs" means the direct costs of providing an approved medical residency program as recognized by Medicare.

"Discharging hospital" means the institution releasing a client from the acute care hospital setting.

"Disproportionate share payment" means additional payment(s) made by the department to a hospital which serves a disproportionate number of Medicaid and other low-income clients and which qualifies for one or more of the disproportionate share hospital programs identified in the state plan.

"Disproportionate share program" means a program that provides additional payments to hospitals which serve a disproportionate number of Medicaid and other low-income clients.

"Dispute conference" - See **"hospital dispute conference."**

"Distinct unit" means a Medicare-certified distinct area for psychiatric or rehabilitation services within an acute care hospital or a department-designated unit in a children's hospital.

"Division of alcohol and substance abuse (DASA)" is the division within DSHS responsible for providing alcohol and drug-related services to help clients recover from alcoholism and drug addiction.

"DRG" - See **"diagnosis-related group."**

"DRG-exempt services" means services which are paid for through other methodologies than those using cost-based conversion factors (CBCF) or negotiated conversion factors (NCF).

"DRG payment" means the payment made by the department for a client's inpatient hospital stay. This payment calculated by multiplying the hospital-specific conversion factor by the DRG relative weight for the client's medical diagnosis.

"DRG relative weight" means the average cost or charge of a certain DRG divided by the average cost or charge, respectively, for all cases in the entire data base for all DRGs.

"Drug addiction and/or drug abuse treatment" means the provision of medical and rehabilitative social services to an eligible client designed to mitigate or reverse the effects of drug addiction or drug abuse and to reduce or eliminate drug addiction or drug abuse behaviors and restore normal physical and psychological functioning. Drug addiction or drug abuse treatment is characterized by the provision of a combination of drug and alcohol education sessions, individual therapy, group therapy and related activities to detoxified addicts and their families.

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

"Elective procedure or surgery" means a nonemergent procedure or surgery that can be scheduled at convenience.

"Emergency room" or **"emergency facility"** means an organized, distinct hospital-based facility available twenty-four hours a day for the provision of unscheduled episodic services to patients who present for immediate medical attention, and is capable of providing emergency services including trauma care.

"Emergency services" means medical services required by and provided to a patient after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy; serious impairment to bodily functions; or serious dysfunction of any bodily organ or part. For hospital reimbursement purposes, inpatient maternity services are treated as emergency services.

"Equivalency factor (EF)" means a conversion factor used, in conjunction with two other factors (cost-based conversion factor and the ratable factor), to determine the level of state-only program payment.

"Exempt hospital—DRG payment method" means a hospital that for a certain patient category is reimbursed for services to MAA clients through methodologies other than those using cost-based or negotiated conversion factors.

"Exempt hospital—Hospital selective contracting program" means a hospital that is either not located in a selective contracting area or is exempted by the department from the selective contracting program.

"Expedited prior authorization (EPA)" means the MAA-delegated process of creating an authorization number for selected medical/dental procedures and related supplies and services in which providers use a set of numeric codes to indicate which MAA-acceptable indications, conditions, diagnoses, and/or MAA-defined criteria are applicable to a particular request for service.

"Expedited prior authorization (EPA) number" means an authorization number created by the provider that certifies that MAA-published criteria for the medical/dental procedures and related supplies and services have been met.

"Experimental" means a term to describe a procedure, or course of treatment, which lacks scientific evidence of safety and effectiveness. See WAC 388-531-0500. A service is not "experimental" if the service:

- (1) Is generally accepted by the medical profession as effective and appropriate; and
- (2) Has been approved by the FDA or other requisite government body if such approval is required.

"Facility triage fee" means the amount MAA will pay a hospital for a medical evaluation or medical screening examination, performed in the hospital's emergency department, for a nonemergent condition of a *healthy options* client covered under the primary care case management (PCCM) program. This amount corresponds to the professional care level A or level B service.

"Fee-for-service" means the general payment method the department uses to reimburse providers for covered medical services provided to medical assistance clients when these services are not covered under MAA's *healthy options* program.

"Fiscal intermediary" means Medicare's designated fiscal intermediary for a region and/or category of service.

"Fixed per diem rate" means a daily amount used to determine payment for specific services.

"Global surgery days" means the number of preoperative and follow-up days that are included in the reimbursement to the physician for the major surgical procedure.

"Graduate medical education costs" means the direct and indirect costs of providing medical education in teaching hospitals.

"Grouper" - See **"all-patient grouper (AP-DRG)."**

"HCFA 2552" - See **"cost report."**

"Health care team" means a group of health care providers involved in the care of a client.

"High-cost outlier" means a claim paid under the DRG method that did not meet the definition of "administrative day," and has extraordinarily high costs when compared to other claims in the same DRG, in which the allowed charges, before January 1, 2001, exceed three times the applicable DRG payment and exceed twenty-eight thousand dollars. For dates of service January 1, 2001 and after, to qualify as a high-cost outlier, the allowed charges must exceed three

times the applicable DRG payment and exceed thirty-three thousand dollars.

"Hospice" means a medically-directed, interdisciplinary program of palliative services for terminally ill clients and the clients' families. Hospice is provided under arrangement with a Title XVIII Washington state-licensed and Title XVIII-certified Washington state hospice.

"Hospital" means an entity which is licensed as an acute care hospital in accordance with applicable state laws and regulations, and which is certified under Title XVIII of the federal Social Security Act.

"Hospital base period" means, for purposes of establishing a provider rate, a specific period or timespan used as a reference point or basis for comparison.

"Hospital base period costs" means costs incurred in or associated with a specified base period.

"Hospital conversion factor" means a hospital-specific dollar amount that reflects the average cost for a DRG paid case of treating Medicaid clients in a given hospital. See cost-based conversion factor (CBCF) and negotiated conversion factor (NCF).

"Hospital covered service" means a service that is provided by a hospital, included in the medical assistance program and is within the scope of the eligible client's medical care program.

"Hospital cost report" - See **"cost report."**

"Hospital dispute resolution conference" means a meeting for deliberation during a provider administrative appeal.

(1) The first dispute resolution conference is usually a meeting between medical assistance administration and hospital staff, to discuss a department action or audit finding(s). The purpose of the meeting is to clarify interpretation of regulations and policies relied on by the department or hospital, provide an opportunity for submission and explanation of additional supporting documentation or information, and/or to verify accuracy of calculations and application of appropriate methodology for findings or administrative actions being appealed. Issues appealed by the provider will be addressed in writing by the department.

(2) At the second level of dispute resolution:

(a) For hospital rates issues, the dispute resolution conference is an informal administrative hearing conducted by an MAA administrator for the purpose of resolving contractor/provider rate disagreements with the department's action at the first level of appeal. The dispute resolution conference in this regard is not a formal adjudicative process held in accordance with the Administrative Procedure Act.

(b) For hospital audit issues, the audit dispute resolution hearing will be held by the office of administrative hearings in accordance with WAC 388-560-1000. This hearing is a formal proceeding and is governed by chapter 34.05 RCW.

"Hospital facility fee" - See **"facility triage fee."**

"Hospital market basket index" means a measure, expressed as a percentage, of the annual inflationary costs for hospital services, as measured by Data Resources, Inc. (DRI).

"Hospital peer group" means the peer group categories adopted by the former Washington state hospital commission for rate-setting purposes:

(1) Group A - rural hospitals paid under a ratio of costs-to-charges (RCC) methodology (same as peer group 1);

(2) Group B - urban hospitals without medical education programs (same as peer group 2);

(3) Group C - urban hospitals with medical education programs; and

(4) Group D - specialty hospitals and/or hospitals not easily assignable to the other three peer groups.

"Hospital selective contracting program" or **"selective contracting"** means a negotiated bidding program for hospitals within specified geographic areas to provide inpatient hospital services to medical assistance clients.

"Indigent patient" means a patient who has exhausted any third-party sources, including Medicare and Medicaid, and whose income is equal to or below two hundred percent of the federal poverty standards (adjusted for family size), or is otherwise not sufficient to enable the individual to pay for his or her care, or to pay deductibles or coinsurance amounts required by a third-party payor.

"Indirect medical education costs" means the indirect costs of providing an approved medical residency program as recognized by Medicare.

"Inflation adjustment" means, for cost inflation, the hospital inflation adjustment. This adjustment is determined by using the inflation factor method and guidance indicated by the legislature in the budget notes to the biennium appropriations bill. For charge inflation, it means the inflation factor determined by comparing average discharge charges for the industry from one year to the next, as found in the comprehensive hospital abstract reporting system (CHARS) standard reports three and four.

"Informed consent" means that an individual consents to a procedure after the provider who obtained a properly completed consent form has done all of the following:

- (1) Disclosed and discussed the patient's diagnosis;
- (2) Offered the patient an opportunity to ask questions about the procedure and to request information in writing;
- (3) Given the patient a copy of the consent form;
- (4) Communicated effectively using any language interpretation or special communication device necessary per 42 C.F.R. 441.257; and
- (5) Given the patient oral information about all of the following:

(a) The patient's right to not obtain the procedure, including potential risks, benefits, and the consequences of not obtaining the procedure;

(b) Alternatives to the procedure including potential risks, benefits, and consequences; and

(c) The procedure itself, including potential risks, benefits, and consequences.

"Inpatient hospital" means a hospital authorized by the department of health to provide inpatient services.

"Inpatient hospital admission" means admission as an inpatient to a hospital for a stay longer than twenty-four hours, or for a stay twenty-four hours or less with cases including:

- (1) The death of a client;
- (2) Obstetrical delivery;
- (3) Initial care of a newborn; or
- (4) Transfer to another acute care facility.

To qualify for inpatient reimbursement, even when the stay is longer than twenty-four hours, the medical care record must evidence the need for inpatient care.

"Inpatient services" means all services provided directly or indirectly by the hospital to a patient subsequent to admission and prior to discharge, and includes, but is not limited to, the following services: Bed and board; medical, nursing, surgical, pharmacy and dietary services; maternity services; psychiatric services; all diagnostic and therapeutic services required by the patient; the technical and/or professional components of certain services; use of hospital facilities, medical social services furnished by the hospital, and such drugs, supplies, appliances and equipment as required by the patient; transportation services subsequent to admission and prior to discharge; and services provided by the hospital within twenty-four hours of the patient's admission as an inpatient.

"Inpatient stay" - See **"inpatient hospital admission."**

"Intermediary" - See **"fiscal intermediary."**

"International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM) Edition" means the systematic listing that transforms verbal descriptions of diseases, injuries, conditions and procedures into numerical or alpha numerical designations (coding).

"Length of stay (LOS)" means the number of days of inpatient hospitalization. See also **"PAS length of stay (LOS)."**

"Length of stay extension request" means a request from a hospital provider for the department, or in the case of psychiatric admission, the appropriate regional support network (RSN), to approve a client's hospital stay exceeding the average length of stay for the client's diagnosis and age.

"Lifetime hospitalization reserve" means, under the Medicare Part A benefit, the nonrenewable sixty hospital days that a beneficiary is entitled to use during his or her lifetime for hospital stays extending beyond ninety days per benefit period. See also **"reserve days."**

"Low-cost outlier" means a case with extraordinarily low costs when compared to other cases in the same DRG, in which the allowed charges before January 1, 2001, are less than ten percent of the applicable DRG payment or less than four hundred dollars. For dates of service on and after January 1, 2001, to qualify as a low-cost outlier, the allowed charges must be less than ten percent of the applicable DRG payment or less than four hundred and fifty dollars.

"Low income utilization rate" means a formula represented as $(A/B)+(C/D)$ in which:

(1) The numerator A is the hospital's total patient services revenue under the state plan, plus the amount of cash subsidies for patient services received directly from state and local governments in a period;

(2) The denominator B is the hospital's total patient services revenue (including the amount of such cash subsidies) in the same period as the numerator;

(3) The numerator C is the hospital's total inpatient service charge attributable to charity care in a period, less the portion of cash subsidies described in (1) of this definition in the period reasonably attributable to inpatient hospital services. The amount shall not include contractual allowances and discounts (other than for indigent patients not eligible for medical assistance under the state plan); and

(4) The denominator D is the hospital's total charge for inpatient hospital services in the same period as the numerator.

"Major diagnostic category (MDC)" means one of the twenty-five mutually exclusive groupings of principal diagnosis areas in the DRG system. The diagnoses in each MDC correspond to a single major organ system or etiology and, in general, are associated with a particular medical specialty.

"Market basket index" - See **"hospital market basket index."**

"Medicaid" is the state and federally funded aid program that covers the categorically needy (CNP) and medically needy (MNP) programs.

"Medicaid cost proxy" means a figure developed to approximate or represent a missing cost figure.

"Medicaid inpatient utilization rate" means a formula represented as X/Y in which:

(1) The numerator X is the hospital's number of inpatient days attributable to patients who (for such days) were eligible for medical assistance under the state plan in a period.

(2) The denominator Y is the hospital's total number of inpatient days in the same period as the numerator's. Inpatient day includes each day in which an individual (including a newborn) is an inpatient in the hospital, whether or not the individual is in a specialized ward and whether or not the individual remains in the hospital for lack of suitable placement elsewhere.

"Medical assistance administration (MAA)" is the administration within DSHS authorized by the secretary to administer the acute care portion of the Title XIX Medicaid, Title XXI children's health insurance program (CHIP), and the state-funded medical care programs, with the exception of certain nonmedical services for persons with chronic disabilities.

"Medical assistance program" means both Medicaid and medical care services programs.

"Medical care services" means the limited scope of care financed by state funds and provided to general assistance-unemployable (GAU) and ADATSA clients.

"Medical education costs" means the expenses incurred by a hospital to operate and maintain a formally organized graduate medical education program.

"Medical screening evaluation" means the service(s) provided by a physician or other practitioner to determine whether an emergent medical condition exists. See also **"facility triage fee."**

"Medical stabilization" means a return to a state of constant and steady function. It is commonly used to mean the patient is adequately supported to prevent further deterioration.

"Medically indigent person" means a person certified by the department of social and health services as eligible for the limited casualty program-medically indigent (LCP-MI) program. See also **"indigent patient."**

"Medicare cost report" means the annual cost data reported by a hospital to Medicare on the HCFA form 2552.

"Medicare crossover" means a claim involving a client who is eligible for both Medicare benefits and Medicaid.

"Medicare fee schedule (MFS)" means the official HCFA publication of Medicare policies and relative value

units for the resource based relative value scale (RBRVS) reimbursement program.

"Medicare Part A" means that part of the Medicare program that helps pay for inpatient hospital services, which may include, but are not limited to:

- (1) A semi-private room;
- (2) Meals;
- (3) Regular nursing services;
- (4) Operating room;
- (5) Special care units;
- (6) Drugs and medical supplies;
- (7) Laboratory services;
- (8) X-ray and other imaging services; and
- (9) Rehabilitation services.

Medicare hospital insurance also helps pay for post-hospital skilled nursing facility care, some specified home health care, and hospice care for certain terminally ill beneficiaries.

"Medicare Part B" means that part of the Medicare program that helps pay for, but is not limited to:

- (1) Physician services;
- (2) Outpatient hospital services;
- (3) Diagnostic tests and imaging services;
- (4) Outpatient physical therapy;
- (5) Speech pathology services;
- (6) Medical equipment and supplies;
- (7) Ambulance;
- (8) Mental health services; and
- (9) Home health services.

"Medicare buy-in premium" - See **"buy-in premium."**

"Medicare payment principles" means the rules published in the federal register regarding reimbursement for services provided to Medicare clients.

"Mentally incompetent" means a person who has been declared mentally incompetent by a federal, state, or local court of competent jurisdiction for any purpose, unless the person has been declared competent for purposes which include the ability to consent to sterilization.

"Multiple occupancy rate" means the rate customarily charged for a hospital room with two to four patient beds.

"Negotiated conversion factor (NCF)" means a negotiated hospital-specific dollar amount which is used in lieu of the cost-based conversion factor as the multiplier for the applicable DRG weight to determine the DRG payment for a selective contracting program hospital. See also **"hospital conversion factor"** and **"cost-based conversion factor."**

"Nonallowed service or charge" means a service or charge that is not recognized for payment by the department, and cannot be billed to the client.

"Noncontract hospital" means a licensed hospital located in a selective contracting area (SCA) but which does not have a contract to participate in the hospital selective contracting program.

"Noncovered service or charge" means a service or charge that is not reimbursed by the department.

"Nonemergent hospital admission" means any inpatient hospitalization of a patient who does not have an emergent condition, as defined in WAC 388-500-0005, Emergency services.

"Nonparticipating hospital" means a noncontract hospital. See **"noncontract hospital."**

"Operating costs" means all expenses incurred in providing accommodation and ancillary services, excluding capital and medical education costs.

"OPPS" - See **"outpatient prospective payment system."**

"OPPS adjustment" means the legislative mandated reduction in the outpatient adjustment factor made to account for the delay of OPPS implementation.

"OPPS outpatient adjustment factor" means the outpatient adjustment factor reduced by the OPPS and adjustment factor as a result of legislative mandate.

"Orthotic device" or "orthotic" means a corrective or supportive device that:

- (1) Prevents or corrects physical deformity or malfunction; or
- (2) Supports a weak or deformed portion of the body.

"Out-of-state hospital" means any hospital located outside the state of Washington and outside the designated border areas in Oregon and Idaho.

"Outlier set-aside factor" means the amount by which a hospital's cost-based conversion factor is reduced for payments of high cost outlier cases.

"Outlier set-aside pool" means the total amount of payments for high cost outliers which are funded annually based on payments for high cost outliers during the year.

"Outliers" means cases with extraordinarily high or low costs when compared to other cases in the same DRG.

"Outpatient" means a patient who is receiving medical services in other than an inpatient hospital setting.

"Outpatient care" means medical care provided other than inpatient services in a hospital setting.

"Outpatient hospital" means a hospital authorized by the department of health to provide outpatient services.

"Outpatient prospective payment system (OPPS)" means a classification system that groups outpatient visits according to the clinical characteristics, and typical resource use and costs associated with their diagnoses and the procedures performed.

"Outpatient short stay" means an acute hospital stay of twenty-four hours or less, with the exception of cases involving:

- (1) The death of a client;
- (2) Obstetrical delivery;
- (3) Initial care of a new born; or
- (4) Transfer to another acute care facility.

When the department determines that the need for inpatient care is not evidenced in the medical record, even in stays longer than twenty-four hours, the department considers and reimburses the stay as an outpatient short stay.

"Outpatient stay" - See **"outpatient short stay."**

"Pain treatment facility" means an MAA-approved inpatient facility for pain management, in which a multidisciplinary approach is used to teach clients various techniques to live with chronic pain.

"Participating hospital" means a licensed hospital that accepts MAA clients.

"PAS length of stay (LOS)" means the average length of an inpatient hospital stay for patients based on diagnosis and age, as determined by the Commission of Professional and Hospital Activities and published in a book entitled

Length of Stay by Diagnosis, Western Region. See also "**professional activity study (PAS)**."

"**Patient consent**" means the informed consent of the patient and/or the patient's legal guardian, as evidenced by the patient's or guardians's signature on a consent form, for the procedure(s) to be performed upon or for the treatment to be provided to the patient.

"**Peer group**" - See "**hospital peer group**."

"**Peer group cap**" means the reimbursement limit set for hospital peer groups B and C, established at the seventieth percentile of all hospitals within the same peer group for aggregate operating, capital, and direct medical education costs.

"**Per diem charge**" means the daily room charge, per client, billed by the facility for room and board services that are covered by the department. This is sometimes referred to as "room rate."

"**Personal comfort items**" means items and services which do not contribute meaningfully to the treatment of an illness or injury or the functioning of a malformed body member.

"**PM&R**" - See "**Acute PM&R**."

"**Physician standby**" means physician attendance without direct face-to-face patient contact and does not involve provision of care or services.

"**Physician's current procedural terminology (CPT)**" - See "**CPT**."

"**Plan of treatment**" or "**plan of care**" means the written plan of care for a patient which includes, but is not limited to, the physician's order for treatment and visits by the disciplines involved, the certification period, medications, and rationale indicating need for services.

"**Pregnant and postpartum women (PPW)**" means eligible female clients who are pregnant or until the end of the month which includes the sixtieth day following the end of the pregnancy.

"**Principal diagnosis**" means the condition established after study to be chiefly responsible for the admission of the patient to the hospital for care.

"**Principal procedure**" means a procedure performed for definitive treatment rather than diagnostic or exploratory purposes, or because it was necessary due to a complication.

"**Prior authorization**" means a process by which clients or providers must request and receive MAA approval for certain medical services, equipment, or supplies, based on medical necessity, before the services are provided to clients, as a precondition for provider reimbursement. Expedited prior authorization and limitation extension are forms of prior authorization.

"**Private room rate**" means the rate customarily charged by a hospital for a one-bed room.

"**Professional activity study (PAS)**" means the compilation of inpatient hospital data by diagnosis and age, conducted by the Commission of Professional and Hospital Activities, which resulted in the determination of an average length of stay for patients. The data are published in a book entitled *Length of Stay by Diagnosis, Western Region*.

"**Professional component**" means the part of a procedure or service that relies on the physician's professional skill or training, or the part of a reimbursement that recognizes the physician's cognitive skill.

"**Prognosis**" means the probable outcome of a patient's illness, including the likelihood of improvement or deterioration in the severity of the illness, the likelihood for recurrence, and the patient's probable life span as a result of the illness.

"**Prolonged service**" means direct face-to-face patient services provided by a physician, either in the inpatient or outpatient setting, which involve time beyond what is usual for such services.

"**Prospective payment system (PPS)**" means a system that sets payment rates for a predetermined period for defined services, before the services are provided. The payment rates are based on economic forecasts and the projected cost of services for the predetermined period.

"**Prosthetic device**" or "**prosthetic**" means a replacement, corrective, or supportive device prescribed by a physician or other licensed practitioner of the healing arts, within the scope of his or her practice as defined by state law, to:

- (1) Artificially replace a missing portion of the body;
- (2) Prevent or correct physical deformity or malfunction;
- (3) Support a weak or deformed portion of the body.

"**Psychiatric hospitals**" means Medicare-certified distinct part psychiatric units, Medicare-certified psychiatric hospitals, and state-designated pediatric distinct part psychiatric units in acute care hospitals. State-owned psychiatric hospitals are excluded.

"**Public hospital district**" means a hospital district established under chapter 70.44 RCW.

"**Random claims sample**" means a sample in which all of the items are selected randomly, using a random number table or computer program, based on a scientific method of assuring that each item has an equal chance of being included in the sample. See also "**audit claims sample**" and "**stratified random sample**."

"**Ratable**" means a hospital-specific adjustment factor applied to the cost-based conversion factor (CBCF) to determine state-only program payment rates to hospitals.

"**Ratio of costs-to-charges (RCC)**" means a method used to pay hospitals for services exempt from the DRG payment method. It also refers to the factor applied to a hospital's allowed charges for medically necessary services to determine payment to the hospital for these DRG-exempt services.

"**RCC**" - See "**ratio of costs-to-charges**."

"**Rebasing**" means the process of recalculating the hospital cost-based conversion factors or RCC using historical data.

"**Recalibration**" means the process of recalculating DRG relative weights using historical data.

"**Regional support network (RSN)**" means a county authority or a group of county authorities recognized and certified by the department, that contracts with the department per chapters 38.52, 71.05, 71.24, 71.34, and 74.09 RCW and chapters 275-54, 275-55, and 275-57 WAC.

"**Rehabilitation units**" means specifically identified rehabilitation hospitals and designated rehabilitation units of general hospitals that meet Medicare criteria for distinct part rehabilitation units.

"**Relative weights**" - See "**DRG relative weights**."

"**Remote hospitals**" means hospitals that meet the following criteria during the hospital selective contracting (HSC) waiver application period:

- (1) Are located within Washington state;
- (2) Are more than ten miles from the nearest hospital in the HSC competitive area; and
- (3) Have fewer than seventy-five beds; and
- (4) Have fewer than five hundred Medicaid admissions within the previous waiver period.

"Reserve days" means the days beyond the ninetieth day of hospitalization of a Medicare patient for a benefit period or spell of illness. See also **"lifetime hospitalization reserve."**

"Retrospective payment system" means a system that sets payment rates for defined services according to historic costs. The payment rates reflect economic conditions experienced in the past.

"Revenue code" means a nationally-assigned coding system for billing inpatient and outpatient hospital services, home health services, and hospice services.

"Room and board" means the services a hospital facility provides a patient during the patient's hospital stay. These services include, but are not limited to, a routine or special care hospital room and related furnishings, routine supplies, dietary and nursing services, and the use of certain hospital equipment and facilities.

"Rural health clinic" means a clinic that is located in areas designed by the Bureau of Census as rural and by the Secretary of the Department of Health, Education and Welfare (DHEW) as medically underserved.

"Rural hospital" means a rural health care facility capable of providing or assuring availability of health services in a rural area.

"Secondary diagnosis" means a diagnosis other than the principal diagnosis for which an inpatient is admitted to a hospital.

"Selective contracting area (SCA)" means an area in which hospitals participate in negotiated bidding for hospital contracts. The boundaries of an SCA are based on historical patterns of hospital use by Medicaid patients.

"Semi-private room rate" means a rate customarily charged for a hospital room with two to four beds; this charge is generally lower than a private room rate and higher than a ward room. See also **"multiple occupancy rate."**

"Seven-day readmission" means the situation in which a patient who was admitted as an inpatient and discharged from the hospital has returned to inpatient status to the same or a different hospital within seven days as a result of one or more of the following:

- (1) A new spell of illness;
- (2) Complication(s) from the first admission;
- (3) A therapeutic admission following a diagnostic admission;
- (4) A planned readmission following discharge; or
- (5) A premature hospital discharge.

"Short stay" - See **"outpatient short stay."**

"Special care unit" means a department of health (DOH) or Medicare-certified hospital unit where intensive care, coronary care, psychiatric intensive care, burn treatment or other specialized care is provided.

"Specialty hospitals" means children's hospitals, psychiatric hospitals, cancer research centers or other hospitals which specialize in treating a particular group of patients or diseases.

"Spendedown" means the process of assigning excess income for the medically needy program, or excess income and/or resources for the medically indigent program, to the client's cost of medical care. The client must incur medical expenses equal to the excess income (spendedown) before medical care can be authorized.

"Stat laboratory charges" means the charges by a laboratory for performing a test or tests immediately. "Stat." is the abbreviation for the Latin word "statim" meaning immediately.

"State plan" means the plan filed by the department with the Health Care Financing Administration (HCFA), Department of Health and Human Services (DHHS), outlining how the state will administer Medicaid services, including the hospital program.

"Stratified random sample" means a sample consisting of claims drawn randomly, using statistical formulas, from each stratum of a universe of paid claims stratified according to the dollar value of the claims. See also **"audit claims sample"** and **"random claims sample."**

"Subacute care" means care provided to a patient which is less intensive than that given at an acute care hospital. Skilled nursing, nursing care facilities and other facilities provide subacute care services.

"Surgery" means the medical diagnosis and treatment of injury, deformity or disease by manual and instrumental operations. For reimbursement purposes, surgical procedures are those designated in CPT as procedure codes 10000 to 69999.

"Swing-bed day" means a day in which an inpatient is receiving skilled nursing services in a hospital designated swing bed at the hospital's census hour. The hospital swing bed must be certified by the health care financing administration (HCPA) for both acute care and skilled nursing services.

"Teaching hospital" means, for purposes of the teaching hospital assistance program disproportionate share hospital (THAPDSH), the University of Washington Medical Center and Harborview Medical Center.

"Technical component" means the part of a procedure or service that relates to the equipment set-up and technician's time, or the part of a reimbursement that recognizes the equipment cost and technician time.

"Tertiary care hospital" means a specialty care hospital providing highly specialized services to clients with more complex medical needs than acute care services.

"Total patient days" means all patient days in a hospital for a given reporting period, excluding days for skilled nursing, nursing care, and observation days.

"Transfer" means to move a client from one acute care facility or distinct unit to another.

"Transferring hospital" means the hospital or distinct unit that transfers a client to another acute care facility.

"Trauma care facility" means a facility certified by the department of health as a level I, II, III, IV, or V facility. See chapter 246-976 WAC.

"Trauma care service" - See department of health's WAC 246-976-935.

"UB-92" means the uniform billing document intended for use nationally by hospitals, nonhospital-based acute PM&R (Level B) nursing facilities, hospital-based skilled

nursing facilities, home health, and hospice agencies in billing third party payers for services provided to patients.

"Unbundled services" means services which are excluded from the DRG payment to a hospital.

"Uncompensated care" - See **"charity care."**

"Uniform cost reporting requirements" means a standard accounting and reporting format as defined by Medicare.

"Uninsured indigent patient" means an individual who has no health insurance coverage or has insufficient health insurance or other resources to cover the cost of provided inpatient and/or outpatient services.

"Usual and customary charge (UCC)" means the charge customarily made to the general public for a procedure or service, or the rate charged other contractors for the service if the general public is not served.

"Vendor rate increase" means an inflation adjustment determined by the legislature, used to periodically increase reimbursement to vendors, including health care providers, that do business with the state.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, and Public Law 104-191. 03-19-043, § 388-550-1050, filed 9/10/03, effective 10/11/03. Statutory Authority: RCW 74.08.090 and 42 U.S.C. 1395 x(v), 42 C.F.R. 447.271, .11303, and .2652. 01-16-142, § 388-550-1050, filed 7/31/01, effective 8/31/01. Statutory Authority: RCW 74.08.090, 74.09.730, 42 U.S.C. 1395 x(v), 42 C.F.R. 447.271, .11303 and .2652. 99-14-039, § 388-550-1050, filed 6/30/99, effective 7/1/99. Statutory Authority: RCW 74.08.090, 42 USC 1395 x(v), 42 CFR 447.271, 447.11303, and 447.2652. 99-06-046, § 388-550-1050, filed 2/26/99, effective 3/29/99. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. 98-01-124, § 388-550-1050, filed 12/18/97, effective 1/18/98.]

WAC 388-550-1300 Revenue code categories and subcategories. (1) Revenue code categories and subcategories listed in this chapter are published in the UB-92 National Uniform Billing Data Element Specifications Manual.

(2) The medical assistance administration (MAA) requires a hospital provider to report and bill all hospital services provided to medical assistance clients using the appropriate revenue codes published in the manual referenced in subsection (1) of this section.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, and Public Law 104-191. 03-19-044, § 388-550-1300, filed 9/10/03, effective 10/11/03. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. 98-01-124, § 388-550-1300, filed 12/18/97, effective 1/18/98.]

WAC 388-550-1350 Revenue code categories and subcategories—CPT and HCPCS reporting requirements for outpatient hospitals. (1) The medical assistance administration (MAA) requires an outpatient hospital provider to report the appropriate current procedural terminology (CPT) or healthcare common procedure coding system (HCPCS) codes in addition to the required revenue codes on an outpatient claim line with any of the following revenue code categories and subcategories:

- (a) "IV therapy," only subcategory "infusion pump";
- (b) "Medical/surgical supplies and devices," only subcategory "prosthetic/orthotic devices";
- (c) "Laboratory";
- (d) "Laboratory pathological";
- (e) "Radiology - diagnostic";

- (f) "Radiology - therapeutic";
- (g) "Nuclear medicine";
- (h) "CT scan";
- (i) "Operating room services," only subcategories "general classification" and "minor surgery";
- (j) "Blood and blood component administration, processing and storage," only subcategory "administration (e.g., transfusions)";
- (k) "Other imaging services";
- (l) "Respiratory services";
- (m) "Physical therapy";
- (n) "Occupational therapy";
- (o) "Speech - language pathology";
- (p) "Emergency room," only subcategories "general classification" and "urgent care";
- (q) "Pulmonary function";
- (r) "Audiology";
- (s) "Cardiology";
- (t) "Ambulatory surgical care";
- (u) "Outpatient services";
- (v) "Clinic," only subcategories "general classification," "dental clinic," and "other clinic";
- (w) "Magnetic resonance technology (MRT)";
- (x) "Medical/surgical supplies - extension";
- (y) "Pharmacy - extension";
- (z) "Labor room/delivery," only subcategories "delivery" and "birthing center";
- (aa) "EKG/ECG (electrocardiogram)";
- (bb) "EEG (electroencephalogram)";
- (cc) "Gastro-intestinal services";
- (dd) "Treatment/observation room";
- (ee) "Lithotripsy";
- (ff) "Acquisition of body components," only subcategories "living donor" and "cadaver donor";
- (gg) "Hemodialysis - outpatient or home," only subcategory "general classification";
- (hh) "Peritoneal dialysis - outpatient or home," only subcategory "general classification";
- (ii) "Continuous ambulatory peritoneal dialysis (CAPD) -outpatient or home," only subcategory "general classification";
- (jj) "Continuous cycling peritoneal dialysis (CCPD) - outpatient or home," only subcategory "general classification";
- (kk) "Miscellaneous dialysis," only subcategories "general classification" and "ultrafiltration";
- (ll) "Psychiatric/psychological treatments," only subcategory "electroshock therapy";
- (mm) "Other diagnostic services";
- (nn) "Other therapeutic services," only subcategory "other therapeutic service"; and
- (oo) Other revenue code categories and subcategories identified and published by the department.

(2) For an outpatient claim line requiring a CPT or HCPCS code(s), the department denies payment if the required code is not reported on the line.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, and Public Law 104-191. 03-19-044, § 388-550-1350, filed 9/10/03, effective 10/11/03.]

WAC 388-550-1400 Covered and noncovered revenue codes categories and subcategories for inpatient hospital services. Subject to the limitations and restrictions listed, this section identifies covered and noncovered revenue code categories and subcategories for inpatient hospital services.

(1) The department covers the following revenue code categories and subcategories for inpatient hospital services when the hospital provider accurately bills:

(a) "Room & board - private," only subcategories "general classification," "medical/surgical/gyn," "OB," "pediatric," and "oncology";

(b) "Room & board - semi-private two bed," only subcategories "general classification," "medical/surgical/gyn," "OB," "pediatric," and "oncology";

(c) "Room & board - semi-private - three and four beds," only subcategories "general classification," "medical/surgical/gyn," "OB," "pediatric," and "oncology";

(d) "Room & board - private (deluxe)," only subcategories "general classification," "medical/surgical/gyn," "OB," "pediatric," and "oncology";

(e) "Nursery," only subcategories "general classification," "newborn - level I," "newborn - level II," "newborn - level III," and "newborn - level IV";

(f) "Intensive care," only subcategories "general classification," "surgical," "medical," "pediatric," "intermediate ICU," "burn care," and "trauma";

(g) "Coronary care," only subcategories "general classification," "myocardial infarction," "pulmonary care," and "intermediate CCU";

(h) "Pharmacy," only subcategories "general classification," "generic drugs," "nongeneric drugs," "drugs incident to other diagnostic services," "drugs incident to radiology," "nonprescription," and "IV solutions";

(i) "IV therapy," only subcategories "general classification," "infusion pump," "IV therapy/pharmacy services," "IV therapy/drug/supply delivery" and "IV therapy/supplies";

(j) "Medical/surgical supplies and devices," only subcategories "general classification," "nonsterile supply," "sterile supply," "pacemaker," "intraocular lens," and "other implant";

(k) "Oncology," only subcategory "general classification";

(l) "Laboratory," only subcategories "general classification," "chemistry," "immunology," "nonroutine dialysis," "hematology," "bacteriology & microbiology," and "urology";

(m) "Laboratory pathological," only subcategories "general classification," "cytology," "histology," and "biopsy";

(n) "Radiology - diagnostic," only subcategories "general classification," "angiocardiography," "arthrography," "arteriography," and "chest X ray";

(o) "Radiology - therapeutic," only subcategories "general classification," "chemotherapy - injected," "chemotherapy - oral," "radiation therapy," and "chemotherapy - IV";

(p) "Nuclear medicine," only subcategories "general classification," "diagnostic," and "therapeutic";

(q) "CT scan," only subcategories "general classification," "head scan," and "body scan";

(r) "Operating room services," only subcategories "general classification" and "minor surgery";

(s) "Anesthesia," only subcategories "general classification," "anesthesia incident to radiology," and "anesthesia incident to other diagnostic services";

(t) "Blood and blood component administration, processing and storage," only subcategories "general classification" and "administration (e.g., transfusions)";

(u) "Other imaging services," only subcategories "general classification," "diagnostic mammography," "ultrasound," and "positron emission tomography";

(v) "Respiratory services," only subcategories "general classification," "inhalation services" and "hyper baric oxygen therapy";

(w) "Physical therapy," only subcategories "general classification," "visit charge," "hourly charge," "group rate," and "evaluation or re-evaluation";

(x) "Speech-language pathology," only subcategories "general classification," "visit charge," "hourly charge," "group rate," and "evaluation or re-evaluation";

(y) "Emergency room," only subcategories "general classification" and "urgent care";

(z) "Pulmonary function," only subcategory "general classification";

(aa) "Cardiology," only subcategories "general classification," "cardiac cath lab," "stress test," and "echocardiology";

(bb) "Ambulatory surgical care," only subcategory "general classification";

(cc) "Outpatient services," only subcategory "general classification";

(dd) "Magnetic resonance technology (MRT)," only subcategories "general classification," "MRI - brain (including brainstem)," "MRI - spinal cord (including spine)," "MRI - other," "MRA - head and neck," and "MRA - lower extremities";

(ee) "Medical/surgical supplies - extension," only subcategories "supplies incident to radiology," "supplies incident to other diagnostic services," and "surgical dressings";

(ff) "Pharmacy-extension," only subcategories "single source drug," "multiple source drug," "restrictive prescription," "erythropoietin (EPO) less than ten thousand units," "erythropoietin (EPO) ten thousand or more units," "drugs requiring detailed coding," and "self-administrable drugs";

(gg) "Cast room," only subcategory "general classification";

(hh) "Recovery room," only subcategory "general classification";

(ii) "Labor room/delivery," only subcategory "general classification," "labor," "delivery," and "birthing center";

(jj) "EKG/ECG (Electrocardiogram)," only subcategories "general classification," "holter monitor," and "telemetry";

(kk) "EEG (Electroencephalogram)," only subcategory "general classification";

(ll) "Gastro-intestinal services," only subcategory "general classification";

(mm) "Treatment/observation room," only subcategories "general classification," "treatment room," and "observation room";

(nn) "Lithotripsy," only subcategory "general classification";

(oo) "Inpatient renal dialysis," only subcategories "general classification," "inpatient hemodialysis," "inpatient peritoneal (non-CAPD)," "inpatient continuous ambulatory peritoneal dialysis (CAPD)," and "inpatient continuous cycling peritoneal dialysis (CCPD)";

(pp) "Acquisition of body components," only subcategories "general classification," "living donor," and "cadaver donor";

(qq) "Miscellaneous dialysis," only subcategory "ultra filtration," and

(rr) "Other diagnostic services," only subcategories "peripheral vascularlab," "electromyogram," and "pregnancy test."

(2) The department covers the following revenue code subcategories for inpatient hospital services only when the hospital provider is approved by the department to provide the specific service(s):

(a) "All inclusive rate," only subcategory "all-inclusive room & board plus ancillary";

(b) "Room & board - private," only subcategory "psychiatric";

(c) "Room & board - semi-private two," only subcategories "psychiatric," "detoxification," "rehabilitation," and "other";

(d) "Room & board - semi-private three and four beds," only subcategories "psychiatric" and "detoxification";

(e) "Room & board - private (deluxe)," only subcategory "psychiatric";

(f) "Room & board - ward," only subcategories "general classification" and "detoxification";

(g) "Room & board - other," only subcategories "general classification" and "other";

(h) "Intensive care," only subcategory "psychiatric";

(i) "Coronary care," only subcategory "heart transplant";

(j) "Operating room services," only subcategories "organ transplant-other than kidney" and "kidney transplant";

(k) "Occupational therapy," only subcategories "general classification," "visit charge," "hourly charge," "group rate" and "evaluation or re-evaluation";

(l) "Clinic," only subcategory "chronic pain clinic";

(m) "Ambulance," only subcategory "neonatal ambulance services";

(n) "Psychiatric/psychological treatments," only subcategory "electroshock treatment"; and

(o) "Psychiatric/psychological services," only subcategory "rehabilitation."

(3) The department covers revenue code category "occupational therapy," subcategories "general classification," "visit charge," "hourly charge," "group rate," and "evaluation or re-evaluation" when:

(a) A client is in an acute PM&R facility;

(b) A client is age twenty or younger; or

(c) The diagnosis code is listed in the medical assistance administration's (MAA's) published billing instructions.

(4) The department does not cover the following revenue code categories and subcategories for inpatient hospital services:

(a) "All inclusive rate," subcategory "all-inclusive room and board";

(b) "Room & board - private" subcategories "hospice," "detoxification," "rehabilitation," and "other";

(c) "Room & board - semi-private two bed," subcategory "hospice";

(d) "Room & board - semi-private - three and four beds," subcategories "hospice," "rehabilitation," and "other";

(e) "Room & board - private (deluxe)," subcategories "hospice," "rehabilitation," and "other";

(f) "Room & board - ward," subcategories "medical/surgical/gyn," "OB," "pediatric" "hospice," "oncology," "rehabilitation," and "other";

(g) "Room & board - other," subcategories "sterile environment," and "self care";

(h) "Nursery," subcategory "other nursery";

(i) "Leave of absence";

(j) "Subacute Care";

(k) "Intensive care," subcategory "other intensive care";

(l) "Coronary care," subcategory "other coronary care";

(m) "Special charges";

(n) "Incremental nursing charge rate";

(o) "All inclusive ancillary";

(p) "Pharmacy," subcategories "take home drugs," "experimental drugs," and "other pharmacy";

(q) "IV therapy," subcategory "other IV therapy";

(r) "Medical/surgical supplies and devices," subcategories "take home supplies," "prosthetic/orthotics devices," "oxygen - take home," and "other supplies/devices";

(s) "Oncology," subcategory "other oncology";

(t) "Durable medical equipment (other than renal)";

(u) "Laboratory," subcategories "renal patient (home)," and "other laboratory";

(v) "Laboratory pathological," subcategory "other laboratory - pathological";

(w) "Radiology - diagnostic," subcategory "other radiology - diagnostic";

(x) "Radiology - therapeutic," subcategory "other radiology - therapeutic";

(y) "Nuclear medicine," subcategory "other nuclear medicine";

(z) "CT scan," subcategory "other CT scan";

(aa) "Operating room services," subcategory "other operating room services";

(bb) "Anesthesia," subcategories "acupuncture," and "other anesthesia";

(cc) "Blood";

(dd) "Blood and blood component administration, processing and storage," subcategory "other processing and storage";

(ee) "Other imaging services," subcategories "screening mammography," and "other imaging services";

(ff) "Respiratory services," subcategory "other respiratory services";

(gg) "Physical therapy," subcategory "other physical therapy";

(hh) "Occupational therapy," subcategory "other occupational therapy";

(ii) "Speech-language pathology," subcategory "other speech-language pathology";

(jj) "Emergency room," subcategories "EMTALA emergency medical screening services," "ER beyond EMTALA screening," and "other emergency room";

(kk) "Pulmonary function," subcategory "other pulmonary function";

(ll) "Audiology";
 (mm) "Cardiology," subcategory "other cardiology";
 (nn) "Ambulatory surgical care," subcategory "other ambulatory surgical care";
 (oo) "Outpatient services," subcategory "other outpatient service";
 (pp) "Clinic," subcategories "general classification," "dental clinic," "psychiatric clinic," "OB-gyn clinic," "pediatric clinic," "urgent care clinic," "family practice clinic," and "other clinic";
 (qq) "Free-standing clinic";
 (rr) "Osteopathic services";
 (ss) "Ambulance," subcategories "general classification," "supplies," "medical transport," "heart mobile," "oxygen," "air ambulance," "pharmacy," "telephone transmission EKG," and "other ambulance";
 (tt) "Skilled nursing";
 (uu) "Medical social services";
 (vv) "Home health - home health aide";
 (ww) "Home health - other visits";
 (xx) "Home health - units of service";
 (yy) "Home health - oxygen";
 (zz) "Magnetic resonance technology (MRT)," subcategories "MRA-other" and "other MRT";
 (aaa) "Medical" "medical/surgical supplies - extension," subcategory "FDA investigational devices";
 (bbb) "Home IV therapy services";
 (ccc) "Hospice services";
 (ddd) "Respite care";
 (eee) "Outpatient residence charges";
 (fff) "Trauma response";
 (ggg) "Cast room," subcategory "other cast room";
 (hhh) "Recovery room," subcategory "other recovery room";
 (iii) "Labor room/delivery," subcategories "circumcision" and "other labor room/delivery";
 (jjj) "EKG/ECG (Electrocardiogram)," subcategory "other EKG/ECG";
 (kkk) "EEG (Electroencephalogram)," subcategory "other EEG";
 (lll) "Gastro-intestinal services," subcategory "other gastro-intestinal";
 (mmm) "Treatment/observation room," subcategory "other treatment/observation room";
 (nnn) "Preventive care services";
 (ooo) "Telemedicine";
 (ppp) "Lithotripsy," subcategory "other lithotripsy";
 (qqq) "Inpatient renal dialysis," subcategory "other inpatient dialysis";
 (rrr) "Acquisition of body components," subcategories "unknown donor," "unsuccessful organ search - donor bank charges," and "other donor";
 (sss) "Hemodialysis - outpatient or home";
 (ttt) "Peritoneal dialysis - outpatient or home";
 (uuu) "Continuous ambulatory peritoneal dialysis (CAPD) - outpatient or home";
 (vvv) "Continuous cycling peritoneal dialysis (CCPD) - outpatient or home";
 (www) "Miscellaneous dialysis," subcategories "general classification," "home dialysis aid visit," and "other miscellaneous dialysis";

(xxx) "Psychiatric/psychological treatments," subcategories "general classification," "milieu therapy," "play therapy," "activity therapy," and "other psychiatric/psychological treatment";

(yyy) "Psychiatric/psychological services," subcategories "general classification," "partial hospitalization - less intensive," "partial hospitalization - intensive," "individual therapy," "group therapy," "family therapy," "bio feedback," "testing," and "other psychiatric/psychological service";

(zzz) "Other diagnostic services," subcategories "general classification," "pap smear," "allergy test," and "other diagnostic service";

(aaaa) "Medical rehabilitation day program";

(bbbb) "Other therapeutic services";

(cccc) "Professional fees";

(dddd) "Patient convenience items"; and

(eeee) Revenue code categories and subcategories that are not identified in this section.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, and Public Law 104-191. 03-19-045, § 388-550-1400, filed 9/10/03, effective 10/11/03. Statutory Authority: RCW 74.08.090. 01-02-075, § 388-550-1400, filed 12/29/00, effective 1/29/01. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. 98-01-124, § 388-550-1400, filed 12/18/97, effective 1/18/98.]

WAC 388-550-1500 Covered and noncovered revenue code categories and subcategories for outpatient hospital services. (1) The department covers the following revenue code categories and subcategories for outpatient hospital services when the hospital provider accurately bills (see subsection (2) of this section for revenue code subcategories covered only when the department approves the hospital provider to provide the specific service(s)):

(a) "Pharmacy," only subcategories "general classification," "generic drugs," "nongeneric drugs," "drugs incident to other diagnostic services," "drugs incident to radiology," "nonprescription," and "IV solutions";

(b) "IV therapy," only subcategories "general classification," "infusion pump," "IV therapy/pharmacy services," "IV therapy/drug/supply delivery," and "IV therapy/supplies";

(c) "Medical/surgical supplies and devices," only subcategories "general classification," "nonsterile supply," "sterile supply," "pacemaker," "intraocular lens," and "other implant";

(d) "Oncology," only subcategory "general classification";

(e) "Laboratory," only subcategories "general classification," "chemistry," "immunology," "renal patient (home)," "nonroutine dialysis," "hematology," "bacteriology and microbiology," and "urology";

(f) "Laboratory pathological," only subcategories "general classification," "cytology," "histology," and "biopsy";

(g) "Radiology - diagnostic," only subcategories "general classification," "angiocardiology," "arthrography," "arteriography," and "chest X ray";

(h) "Radiology - therapeutic," only subcategories "general classification," "chemotherapy - injected," "chemotherapy - oral," "radiation therapy," and "chemotherapy - IV";

(i) "Nuclear medicine," only subcategories "general classification," "diagnostic," and "therapeutic";

- (j) "CT scan," only subcategories "general classification," "head scan," and "body scan";
 - (k) "Operating room services," only subcategories "general classification" and "minor surgery";
 - (l) "Anesthesia," only subcategories "general classification," "anesthesia incident to radiology," and "anesthesia incident to other diagnostic services";
 - (m) "Blood and blood component administration, processing and storage," only subcategories "general classification" and "administration (e.g., transfusions)";
 - (n) "Other imaging," only subcategories "general classification," "diagnostic mammography," "ultrasound," "screening mammography," and "positron emission tomography";
 - (o) "Respiratory services," only subcategories "general classification," "inhalation services," and "hyper baric oxygen therapy";
 - (p) "Physical therapy," only subcategories "general classification," "visit charge," "hourly charge," "group rate," and "evaluation or reevaluation";
 - (q) "Occupational therapy," only subcategories "general classification," "visit charge," "hourly charge," "group rate," and "evaluation or reevaluation";
 - (r) "Speech-language pathology," only subcategories "general classification," "visit charge," "hourly charge," "group rate," and "evaluation or re-evaluation";
 - (s) "Emergency room," only subcategories "general classification" and "urgent care";
 - (t) "Pulmonary function," only subcategory "general classification";
 - (u) "Audiology," only subcategories "general classification," "diagnostic," and "treatment";
 - (v) "Cardiology," only subcategories "general classification," "cardiac cath lab," "stress test," and "echocardiology";
 - (w) "Ambulatory surgical care," only subcategory "general classification";
 - (x) "Outpatient services," only subcategory "general classification";
 - (y) "Magnetic resonance technology (MRT)," only subcategories "general classification," "MRI - brain (including brainstem)," "MRI - spinal cord (including spine)," "MRI - other," "MRA - head and neck," and "MRA - lower extremities";
 - (z) "Medical/surgical supplies - extension," only subcategories "supplies incident to radiology," "supplies incident to other diagnostic services," and "surgical dressings";
 - (aa) "Pharmacy - extension," only subcategories "single source drug," "multiple source drug," "restrictive prescription," "erythropoietin (EPO) less than ten thousand units," "erythropoietin (EPO) ten thousand or more units," "drugs requiring detailed coding," and "self-administrable drugs";
 - (bb) "Cast room," only subcategory "general classification";
 - (cc) "Recovery room," only subcategory "general classification";
 - (dd) "Labor room/delivery," only subcategories "general classification," "labor," "delivery," and "birthing center";
 - (ee) "EKG/ECG (Electrocardiogram)," only subcategories "general classification," "holter monitor," and "telemetry";
 - (ff) "EEG (Electroencephalogram)," only subcategory "general classification";
 - (gg) "Gastro-intestinal services," only subcategory "general classification";
 - (hh) "Treatment/observation room," only subcategories "general classification," "treatment room," and "observation room";
 - (ii) "Lithotripsy," only subcategory "general classification";
 - (jj) "Acquisition of body components," only subcategories "general classification," "living donor," and "cadaver donor";
 - (kk) "Hemodialysis - outpatient or home," only subcategory "general classification";
 - (ll) "Peritoneal dialysis - outpatient or home," only subcategory "general classification";
 - (mm) "Continuous ambulatory peritoneal dialysis (CAPD - outpatient or home," only subcategory "general classification";
 - (nn) "Continuous cycling peritoneal dialysis (CCPD) - outpatient or home," only subcategory "general classification";
 - (oo) "Miscellaneous dialysis," only subcategories "general classification," and "ultra filtration";
 - (pp) "Psychiatric/psychological treatments," only subcategory "electroshock treatment"; and
 - (qq) "Other diagnostic services," only subcategories "peripheral vascular lab," "electromyogram," "pap smear," "allergy test," and "pregnancy test."
- (2) The department covers the following revenue code subcategories only when the outpatient hospital provider is approved by the department to provide the specific service(s):
- (a) "Clinic," subcategories "general classification," "dental clinic," and "other clinic"; and
 - (b) "Other therapeutic services - extension," subcategories "education/training" and "other therapeutic service."
- (3) The department does not cover the following revenue code categories and subcategories for outpatient hospital services:
- (a) "All inclusive rate";
 - (b) "Room & board - private";
 - (c) "Room & board - semi-private two bed";
 - (d) "Room & board - semi-private three and four beds";
 - (e) "Room & board - private (deluxe)";
 - (f) "Room & board - ward";
 - (g) "Room & board - other";
 - (h) "Nursery";
 - (i) "Leave of absence";
 - (j) "Subacute care";
 - (k) "Intensive care";
 - (l) "Coronary care";
 - (m) "Special charges";
 - (n) "Incremental nursing charge rate";
 - (o) "All inclusive ancillary";
 - (p) "Pharmacy," subcategories "take home drugs," "experimental drugs," and "other pharmacy";
 - (q) "IV therapy," subcategory "other IV therapy";
 - (r) "Medical/surgical supplies and devices," subcategories "take home supplies," "prosthetic/orthotic devices," "oxygen - take home," and "other supplies/devices";
 - (s) "Oncology," subcategory "other oncology";
 - (t) "Durable medical equipment (other than renal)";

- (u) "Laboratory," subcategory "other laboratory";
- (v) "Laboratory pathological," subcategory "other laboratory pathological";
- (w) "Radiology - diagnostic," subcategory "other radiology - diagnostic";
- (x) "Radiology - therapeutic," subcategory "other radiology - therapeutic";
- (y) "Nuclear medicine," subcategory "other nuclear medicine";
- (z) "CT scan," subcategory "other CT scan";
- (aa) "Operating room services," subcategories "organ transplant - other than kidney," "kidney transplant," and "other operating room services";
- (bb) "Anesthesia," subcategories "acupuncture" and "other anesthesia";
- (cc) "Blood";
- (dd) "Blood and blood component administration, processing and storage," subcategory "other processing and storage";
- (ee) "Other imaging," subcategory "other imaging service";
- (ff) "Respiratory services," subcategory "other respiratory services";
- (gg) "Physical therapy services," subcategory "other physical therapy";
- (hh) "Occupational therapy services," subcategory "other occupational therapy";
- (ii) "Speech-language pathology," subcategory "other speech-language pathology";
- (jj) "Emergency room," subcategories "EMTALA emergency medical screening services," "ER beyond EMTALA screening" and "other emergency room";
- (kk) "Pulmonary function," subcategory "other pulmonary function";
- (ll) "Audiology," subcategory "other audiology";
- (mm) "Cardiology," subcategory "other cardiology";
- (nn) "Ambulatory surgical care," subcategory "other ambulatory surgical care";
- (oo) "Outpatient Services," subcategory "other outpatient service";
- (pp) "Clinic," subcategories "chronic pain center," "psychiatric clinic," "OB-GYN clinic," "pediatric clinic," "urgent care clinic," and "family practice clinic";
- (qq) "Free-standing clinic";
- (rr) "Osteopathic services";
- (ss) "Ambulance";
- (tt) "Skilled nursing";
- (uu) "Medical social services";
- (vv) "Home health - home health aide";
- (ww) "Home health - other visits";
- (xx) "Home health - units of service";
- (yy) "Home health - oxygen";
- (zz) "Magnetic resonance technology(MRT)," subcategories "MRA - other" and "other MRT";
- (aaa) "Medical/surgical supplies - extension," only subcategory "FDA investigational devices";
- (bbb) "Home IV therapy services";
- (ccc) "Hospice services";
- (ddd) "Respite care";
- (eee) "Outpatient special residence charges";
- (fff) "Trauma response";
- (ggg) "Cast room," subcategory "other cast room";
- (hhh) "Recovery room," subcategory "other recovery room";
- (iii) "Labor room/delivery," subcategories "circumcision" and "other labor room/delivery";
- (jjj) "EKG/ECG (Electrocardiogram)," subcategory "other EKG/ECG";
- (kkk) "EEG (Electroencephalogram)," subcategory "other EEG";
- (lll) "Gastro-intestinal services," subcategory "other gastro-intestinal";
- (mmm) "Treatment/observation room," subcategory "other treatment/observation room";
- (nnn) "Preventive care services";
- (ooo) "Telemedicine";
- (ppp) "Lithotripsy," subcategory "other lithotripsy";
- (qqq) "Inpatient renal dialysis";
- (rrr) "Acquisition of body components," subcategories "unknown donor," "unsuccessful organ search - donor bank charges," and "other donor";
- (sss) "Hemodialysis - outpatient or home," subcategories "hemodialysis/composite or other rate," "home supplies," "home equipment," "maintenance one hundred percent," "support services," and "other outpatient hemodialysis";
- (ttt) "Peritoneal dialysis - outpatient or home," subcategories "peritoneal/composite or other rate," "home supplies," "home equipment," "maintenance one hundred percent" "support services," and "other outpatient peritoneal dialysis";
- (uuu) "Continuous ambulatory peritoneal dialysis (CAPD) - outpatient or home," subcategories "CAPD/composite or other rate," "home supplies," "home equipment," "maintenance one hundred percent" "support services," and "other outpatient CAPD";
- (vvv) "Continuous cycling peritoneal dialysis (CCPD) - outpatient or home," subcategories "CCPD/composite or other rate," "home supplies," "home equipment," "maintenance one hundred percent," "support services," and "other outpatient CCPD";
- (www) "Miscellaneous dialysis," subcategories "home dialysis aid visit" and "other miscellaneous dialysis";
- (xxx) "Psychiatric/psychological treatments," subcategories "general classification," "milieu therapy," "play therapy," "activity therapy," and "other psychiatric/psychological treatment";
- (yyy) "Psychiatric/psychological services";
- (zzz) "Other diagnostic services," subcategories "general classification" and "other diagnostic services";
- (aaaa) "Medical rehabilitation day program";
- (bbbb) "Other therapeutic services - extension," subcategories "general classification," "recreational therapy," "cardiac rehabilitation," "drug rehabilitation," "alcohol rehabilitation," "complex medical equipment - routine," "complex medical equipment - ancillary," "athletic training," and "kinesiotherapy";
- (cccc) "Professional fees";
- (dddd) "Patient convenience items"; and
- (eeee) Revenue code categories and subcategories that are not identified in this section.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, and Public Law 104-191. 03-19-046, § 388-550-1500, filed 9/10/03, effective 10/11/03. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010,

74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. 98-01-124, § 388-550-1500, filed 12/18/97, effective 1/18/98.]

WAC 388-550-2501 Acute physical medicine and rehabilitation (acute PM&R) program—General. Acute physical medicine and rehabilitation (acute PM&R) is a twenty-four-hour inpatient comprehensive program of integrated medical and rehabilitative services provided during the acute phase of a client's rehabilitation. The medical assistance administration (MAA) requires prior authorization for acute PM&R services. (See WAC 388-550-2561 for prior authorization requirements.)

(1) An interdisciplinary team coordinates individualized acute PM&R services at an MAA-approved rehabilitation facility to achieve the following for a client:

- (a) Improved health and welfare; and
- (b) Maximum physical, social, psychological and educational or vocational potential.

(2) MAA determines and authorizes a length of stay based on:

- (a) The client's acute PM&R needs; and
- (b) Community standards of care for acute PM&R services.

(3) When MAA's authorized acute period of rehabilitation ends, the provider transfers the client to a more appropriate level of care. Therapies may continue to help the client achieve maximum potential through other MAA programs such as:

- (a) Home health services;
- (b) Nursing facilities;
- (c) Outpatient physical, occupational, and speech therapies; or
- (d) Neurodevelopmental centers.

[Statutory Authority: RCW 74.08.090, 74.09.520 and 42 C.F.R. 482.56. 03-06-047, § 388-550-2501, filed 2/28/03, effective 3/31/03. Statutory Authority: RCW 74.08.090 and 74.09.520. 99-17-111, § 388-550-2501, filed 8/18/99, effective 9/18/99.]

WAC 388-550-2511 Acute PM&R definitions. The following definitions and abbreviations and those found in WAC 388-500-0005 and 388-550-1050 apply to the acute PM&R program. If conflicts occur, this section prevails for this subchapter.

"Accredit" (or "Accreditation") means a term used by nationally recognized health organizations, such as CARF, to state a facility meets community standards of medical care.

"Acute" means an intense medical episode, not longer than three months.

"Acute physical medicine and rehabilitation (acute PM&R)" means a comprehensive inpatient rehabilitative program coordinated by an interdisciplinary team at an MAA-approved rehabilitation facility. The program provides twenty-four-hour specialized nursing services and an intense level of therapy for specific medical conditions for which the client shows significant potential for functional improvement.

"Administrative day" means a day of a hospital stay in which an acute inpatient level of care is no longer necessary, and noninpatient hospital placement is appropriate.

"Administrative day rate" means the statewide Medicaid average daily nursing facility rate as determined by the department.

"CARF" is the official name for The Rehabilitation Accreditation Commission' of Tucson, Arizona. CARF is a national private agency that develops and maintains current, "field-driven" (community) standards through surveys and accreditations of rehabilitation facilities.

"Rehabilitation Accreditation Commission, The" - See "CARF."

"Survey" or "review" means an inspection conducted by a federal, state, or private agency to evaluate and monitor a facility's compliance with acute PM&R program requirements.

[Statutory Authority: RCW 74.08.090, 74.09.520 and 42 C.F.R. 482.56. 03-06-047, § 388-550-2511, filed 2/28/03, effective 3/31/03. Statutory Authority: RCW 74.08.090 and 74.09.520. 99-17-111, § 388-550-2511, filed 8/18/99, effective 9/18/99.]

WAC 388-550-2521 Client eligibility requirements for acute PM&R services. (1) Only a client who is eligible for one of the following programs may receive acute PM&R services, subject to the restrictions and limitations in this section and WAC 388-550-2501, 388-550-2511, 388-550-2531, 388-550-2541, 388-550-2551, 388-550-2561, 388-550-3381, and other published rules:

- (a) Categorically needy program (CNP);
- (b) CNP - Children's health insurance program (CNP-CHIP);
- (c) Limited casualty program - Medically needy program (LCP-MNP);
- (d) CNP - Emergency medical only;
- (e) LCP-MNP - Emergency medical only;
- (f) General assistance unemployable (GAU - No out-of-state care);
- (g) Alcoholism and drug addiction treatment and support act (ADATSA); and
- (h) Medically indigent program (MIP) - Emergency hospital-based and emergency transportation services only when:
 - (i) The client is transferred directly from an acute hospital stay; and
 - (ii) The client's acute PM&R needs are directly related to the emergency medical condition that qualified the client for MIP.

(2) If a client is enrolled in an MAA Healthy Options managed care plan at the time of acute care admission, that plan pays for and coordinates acute PM&R services as appropriate.

[Statutory Authority: RCW 74.08.090, 74.09.520 and 42 C.F.R. 482.56. 03-06-047, § 388-550-2521, filed 2/28/03, effective 3/31/03. Statutory Authority: RCW 74.08.090 and 74.09.520. 99-17-111, § 388-550-2521, filed 8/18/99, effective 9/18/99.]

WAC 388-550-2531 Requirements for becoming an acute PM&R provider. (1) Only an in-state or border area hospital may apply to become a medical assistance administration (MAA)-approved acute PM&R facility. To apply, MAA requires the hospital provider to submit a letter of request to:

Acute PM&R Program Manager

Division of Medical Management - Medical Operations
 Medical Assistance Administration
 PO Box 45506
 Olympia, WA 98504-5506

(2) A hospital that applies to become an MAA-approved acute PM&R facility must provide MAA with documentation that confirms the facility is all of the following:

- (a) A Medicare-certified hospital;
- (b) Accredited by the Joint Commission on Accreditation of Hospital Organizations (JCAHO);
- (c) Licensed by the department of health (DOH) as an acute care hospital as defined under WAC 246-310-010;
- (d) CARF accredited as a comprehensive integrated inpatient rehabilitation program or as a pediatric family centered rehabilitation program, unless subsection (3) of this section applies;

(e) Contracted under MAA's selective contracting program, if in a selective contracting area, unless exempted from the requirements by MAA; and

(f) Operating per the standards set by DOH (excluding the certified rehabilitation registered nurse (CRRN) requirement) in either:

- (i) WAC 246-976-830, Level I trauma rehabilitation designation; or
- (ii) WAC 246-976-840, Level II trauma rehabilitation designation.

(3) A hospital not yet accredited by CARF:

(a) May apply for or be awarded a twelve-month conditional written approval by MAA if the facility:

- (i) Provides MAA with documentation that it has started the process of obtaining full CARF accreditation; and
- (ii) Is actively operating under CARF standards.

(b) Is required to obtain full CARF accreditation within twelve months of MAA's conditional approval date. If this requirement is not met, MAA sends a letter of notification to revoke the conditional approval.

(4) A hospital qualifies as an MAA-approved acute PM&R facility when:

(a) The facility meets all the applicable requirements in this section;

(b) MAA's clinical staff has conducted a facility site visit; and

(c) MAA provides written notification that the facility qualifies to be reimbursed for providing acute PM&R services to eligible medical assistance clients.

(5) MAA-approved acute PM&R facilities must meet the general requirements in chapter 388-502 WAC, Administration of medical programs—Providers.

[Statutory Authority: RCW 74.08.090, 74.09.520 and 42 C.F.R. 482.56. 03-06-047, § 388-550-2531, filed 2/28/03, effective 3/31/03. Statutory Authority: RCW 74.08.090 and 74.09.520. 99-17-111, § 388-550-2531, filed 8/18/99, effective 9/18/99.]

WAC 388-550-2541 Quality of care. (1) To ensure quality of care, the medical assistance administration (MAA) may conduct reviews (e.g., post-pay, on-site) of any MAA-approved acute PM&R facility.

(2) A provider of acute PM&R services must act on any report of substandard care or violation of the facility's medical staff bylaws and CARF standards. The provider must have and follow written procedures that:

(a) Provide a resolution to either a complaint or grievance or both; and

(b) Comply with applicable CARF standards for adults or pediatrics as appropriate.

(3) A complaint or grievance regarding substandard conditions or care may be investigated by any one or more of the following:

- (a) The department of health (DOH);
- (b) The Joint Commission on Accreditation of Health-care Organizations (JCAHO);
- (c) CARF;
- (d) MAA; or
- (e) Other agencies with review authority for MAA programs.

[Statutory Authority: RCW 74.08.090, 74.09.520 and 42 C.F.R. 482.56. 03-06-047, § 388-550-2541, filed 2/28/03, effective 3/31/03. Statutory Authority: RCW 74.08.090 and 74.09.520. 99-17-111, § 388-550-2541, filed 8/18/99, effective 9/18/99.]

WAC 388-550-2551 How a client qualifies for acute PM&R services. (1) To qualify for acute PM&R services, a client must meet one of the conditions in subsection (2) of this section and have:

(a) Extensive or complex medical needs, nursing needs, and therapy needs; and

(b) A recent or new onset of a condition that causes an impairment in two or more of the following areas:

- (i) Mobility and strength;
- (ii) Self-care/ADLs (activities of daily living);
- (iii) Communication; or
- (iv) Cognitive/perceptual functioning.

(2) To qualify for acute PM&R services, a client must meet the conditions in subsection (1) of this section and have a new or recent onset of one of the following conditions:

(a) Brain injury caused by trauma or disease.

(b) Spinal cord injury resulting in:

- (i) Quadriplegia; or
- (ii) Paraplegia.

(c) Extensive burns.

(d) Bilateral limb loss.

(e) Stroke or aneurysm with resulting hemiplegia or cognitive deficits, including speech and swallowing deficits.

(f) Multiple trauma (after the client is cleared to bear weight) with complicated orthopedic conditions and neurological deficits.

(g) Severe pressure ulcers after skin flap surgery for a client who:

- (i) Requires close observation by a surgeon; and
- (ii) Is ready to mobilize or be upright in a chair.

[Statutory Authority: RCW 74.08.090, 74.09.520 and 42 C.F.R. 482.56. 03-06-047, § 388-550-2551, filed 2/28/03, effective 3/31/03. Statutory Authority: RCW 74.08.090 and 74.09.520. 99-17-111, § 388-550-2551, filed 8/18/99, effective 9/18/99.]

WAC 388-550-2561 MAA's prior authorization requirements for acute PM&R services. (1) The medical assistance administration (MAA) requires prior authorization for acute PM&R services. The acute PM&R provider of services must obtain prior authorization:

(a) Before admitting a client to the rehabilitation unit; and

(b) For an extension of stay before the client's current authorized period of stay expires.

(2) For an initial admit:

(a) A client must:

(i) Be eligible under one of the programs listed in WAC 388-550-2521, subject to the restrictions and limitations listed in that section;

(ii) Require acute PM&R services as determined in WAC 388-550-2551;

(iii) Be medically stable and show evidence of physical and cognitive readiness to participate in the rehabilitation program; and

(iv) Be willing and capable to participate at least three hours per day, seven days per week, in acute PM&R activities.

(b) The acute PM&R provider of services must:

(i) Submit a request for prior authorization to the MAA clinical consultation team by fax, electronic mail, or telephone as published in MAA's acute PM&R billing instructions; and

(ii) Include sufficient medical information to justify that:

(A) Acute PM&R treatment would effectively enable the client to obtain a greater degree of self-care and/or independence;

(B) The client's medical condition requires that intensive twenty-four-hour inpatient comprehensive acute PM&R services be provided in an MAA-approved acute PM&R facility; and

(C) The client suffers from severe disabilities including, but not limited to, neurological and/or cognitive deficits.

(3) For an extension of stay:

(a) A client must meet the conditions listed in subsection (2)(a) of this section and have observable and significant improvement; and

(b) The acute PM&R provider of services must:

(i) Submit a request for the extension of stay to the MAA clinical consultation team by fax, electronic mail, or telephone as published in MAA's acute PM&R billing instructions; and

(ii) Include sufficient medical information to justify the extension and include documentation that the client's condition has observably and significantly improved.

(4) If MAA denies the request for an extension of stay, the client must be transferred to an appropriate lower level of care as described in WAC 388-550-2501(3).

(5) The MAA clinical consultation team approves or denies authorization for acute PM&R services for initial stays or extensions of stay based on individual circumstances and the medical information received. MAA notifies the client and the acute PM&R provider of a decision.

(a) If MAA approves the request for authorization, the notification letter includes:

(i) The number of days requested;

(ii) The allowed dates of service;

(iii) An MAA-assigned authorization number;

(iv) Applicable limitations to the authorized services;

and

(v) MAA's process to request additional services.

(b) If MAA denies the request for authorization, the notification letter includes:

(i) The number of days requested;

(ii) The reason for the denial;

(iii) Alternative services available for the client; and

(iv) The client's right to request a fair hearing. (See subsection (7) of this section.)

(6) A facility intending to transfer a client to an MAA-approved acute PM&R facility, and/or an acute PM&R facility requesting an extension of stay for a client, must:

(a) Discuss MAA's authorization decision with the client and/or the client's legal representative; and

(b) Document in the client's medical record that MAA's decision was discussed with the client and/or the client's legal representative.

(7) A client who does not agree with a decision regarding acute PM&R services has a right to a fair hearing under chapter 388-02 WAC. After receiving a request for a fair hearing, MAA may request additional information from the client and the facility, or both. After MAA reviews the available information, the result may be:

(a) A reversal of the initial MAA decision;

(b) Resolution of the client's issue(s); or

(c) A fair hearing conducted per chapter 388-02 WAC.

(8) MAA may authorize administrative day(s) for a client who:

(a) Does not meet requirements described in subsection (3) of this section;

(b) Stays in the facility longer than the "community standards length of stay"; or

(c) Is waiting for a discharge destination or a discharge plan.

(9) MAA does not authorize acute PM&R services for a client who:

(a) Is deconditioned by a medical illness or by surgery; or

(b) Has loss of function primarily as a result of a psychiatric condition(s); or

(c) Has had a recent surgery and has no complicating neurological deficits. Examples of surgeries that do not qualify a client for inpatient acute PM&R services without extenuating circumstances are:

(i) Single amputation;

(ii) Single extremity surgery; and

(iii) Spine surgery.

[Statutory Authority: RCW 74.08.090, 74.09.520 and 42 C.F.R. 482.56. 03-06-047, § 388-550-2561, filed 2/28/03, effective 3/31/03. Statutory Authority: RCW 74.08.090 and 74.09.520. 99-17-111, § 388-550-2561, filed 8/18/99, effective 9/18/99.]

WAC 388-550-3381 Payment methodology for acute PM&R services and administrative day services. The medical assistance administration's (MAA's) payment methodology for acute PM&R services provided by hospital-based acute PM&R facilities is described in this section.

(1) MAA pays a rehabilitation facility according to the individual hospital's current ratio of costs-to-charges as described in WAC 388-550-4500, Payment method—RCC.

(2) Acute PM&R room and board includes, but is not limited to:

(a) Facility use;

(b) Medical social services;

(c) Bed and standard room furnishings; and

(d) Dietary and nursing services.

(3) When MAA authorizes administrative day(s) for a client as described in WAC 388-550-2561(8), MAA reimburses the facility:

- (a) The administrative day rate; and
- (b) For pharmaceuticals prescribed in the client's use during the administrative portion of the client's stay.

(4) The department pays for transportation services provided to a client receiving acute PM&R services in a hospital-based facility according to chapter 388-546 WAC.

[Statutory Authority: RCW 74.08.090, 74.09.520 and 42 C.F.R. 482.56. 03-06-047, § 388-550-3381, filed 2/28/03, effective 3/31/03. Statutory Authority: RCW 74.08.090 and 74.09.520. 99-17-111, § 388-550-3381, filed 8/18/99, effective 9/18/99.]

WAC 388-550-3401 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-550-3700 DRG high-cost and low-cost outliers. This section applies to inpatient hospital claims paid under the diagnosis-related group (DRG) payment methodology.

(1) A Medicaid or state-administered claim qualifies as a DRG high-cost outlier when:

- (a) The client's admission date on the claim is before January 1, 2001, the stay did not meet the definition of "administrative day," and the allowed charges exceed:
 - (i) A threshold of twenty-eight thousand dollars; and
 - (ii) A threshold of three times the applicable DRG payment amount.

(b) The client's admission date on the claim is January 1, 2001, or after, the stay did not meet the definition of "administrative day," and the allowed charges exceed:

- (i) A threshold of thirty-three thousand dollars; and
- (ii) A threshold of three times the applicable DRG payment amount.

(2) If the claim qualifies as a DRG high-cost outlier, the high-cost outlier threshold, for payment purposes, is the amount in subsection (1)(a)(i) or (ii), whichever is greater, for an admission date before January 1, 2001; or subsection (1)(b)(i) or (ii), whichever is greater, for an admission date January 1, 2001 or after.

(3) The department determines payment for Medicaid claims that qualify as DRG high-cost outliers as follows:

(a) All qualifying claims, except for claims in psychiatric DRGs 424-432 and in-state children's hospitals, are paid seventy-five percent of the allowed charges above the outlier threshold determined in subsection (2) of this section, multiplied by the hospital's RCC rate, plus the applicable DRG payment.

(b) In-state children's hospitals are paid eighty-five percent of the allowed charges above the outlier threshold determined in subsection (2) of this section, multiplied by the hospital's RCC rate, plus the applicable DRG payment.

(c) Psychiatric DRG high-cost outliers for DRGs 424-432 are paid one hundred percent of the allowed charges above the outlier threshold determined in subsection (2) of this section, multiplied by the hospital's RCC rate, plus the applicable DRG payment.

Examples for DRG high-cost outlier claim qualification and payment calculation (admission dates are January 1, 2001, or after).						
Allowed Charges	Applicable DRG Payment	Three times App. DRG Payment	Allowed Charges > \$33,000?	Allowed Charges > Three times App. DRG Payment?	DRG High-Cost Outlier Payment	Hospital's Individual RCC Rate
\$17,000	\$5,000	\$15,000	No	Yes	N/A	64%
*33,500	5,000	15,000	Yes	Yes	**\$5,240	64%
10,740	35,377	106,131	No	No	N/A	64%

Medicaid Payment calculation example for allowed charges of:	Nonpsych DRGs/Nonin-state children's hospital (RCC is 64%)
*\$33,500	Allowed charges
- \$33,000	The greater amount of 3 x app. DRG pymt (\$15,000) or \$33,000
\$ 500	
x 48%	75% of allowed charges x hospital RCC rate (nonpsych DRGs/nonin-state children's) (75% x 64% = 48%)
\$ 240	Outlier portion
+ \$ 5,000	Applicable DRG payment
**\$ 5,240	Outlier payment

(4) DRG high-cost outliers for state-administered programs are paid according to WAC 388-550-4800.

(5) A Medicaid or state-administered claim qualifies as a DRG low-cost outlier if:

(a) The client's admission date on the claim is before January 1, 2001, and the allowed charges are:

- (i) Less than ten percent of the applicable DRG payment; or
- (ii) Less than four hundred dollars.

(b) The client's admission date on the claim is January 1, 2001, or after, and the allowed charges are:

- (i) Less than ten percent of the applicable DRG payment; or
- (ii) Less than four hundred fifty dollars.

(6) If the claim qualifies as a DRG low-cost outlier:

(a) For an admission date before January 1, 2001, the low-cost outlier amount is the amount in subsection (5)(a)(i) or (ii), whichever is greater; or

(b) For an admission date on January 1, 2001, or after, the low-cost outlier amount is the amount in subsection (5)(b)(i) or (ii), whichever is greater.

(7) The department determines payment for a Medicaid claim that qualifies as a DRG low-cost outlier by multiplying the allowed charges for each claim by the hospital's RCC rate.

(8) DRG low-cost outliers for state-administered programs are paid according to WAC 388-550-4800.

(9) The department makes day outlier payments to hospitals in accordance with section 1923 (a)(2)(C) of the Social Security Act, for clients who have exceptionally long stays that do not reach DRG high-cost outlier status. A hospital is eligible for the day outlier payment if it meets all of the following criteria:

(a) The hospital is a disproportionate share hospital (DSH) and the client served is under age six, or the hospital may not be a DSH hospital but the client served is a child under age one;

(b) The payment methodology for the admission is DRG;

(c) The allowed charges for the hospitalization are less than the DRG high-cost outlier threshold as defined in subsection (2) of this section; and

(d) The client's length of stay exceeds the day outlier threshold for the applicable DRG payment amount. The day outlier threshold is defined as the number of days in an average length of stay for a discharge (for an applicable DRG payment), plus twenty days.

(10) The department bases the day outlier payment on the number of days that exceed the day outlier threshold, multiplied by the administrative day rate.

(11) The department's total payment for day outlier claims is the applicable DRG payment plus the day outlier or administrative days payment.

(12) A client's outlier claim is either a day outlier or a high-cost outlier, but not both.

[Statutory Authority: RCW 74.08.090, 74.09.500, 03-13-053, § 388-550-3700, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.08.090 and 42 U.S.C. 1395x(v), 42 C.F.R. 447.271, .11303, and .2652. 01-16-142, § 388-550-3700, filed 7/31/01, effective 8/31/01. Statutory Authority: RCW 74.08.090, 42 USC 1395 x(v), 42 CFR 447.271, 447.11303 and 447.2652. 99-06-046, § 388-550-3700, filed 2/26/99, effective 3/29/99. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. 98-01-124, § 388-550-3700, filed 12/18/97, effective 1/18/98.]

WAC 388-550-4500 Payment method—Inpatient RCC and administrative day rate and outpatient rate. (1) The inpatient ratio of costs-to-charges (RCC) payment is the hospital's allowable charges on a claim multiplied by the hospital's inpatient RCC rate. The department limits this RCC payment to the hospital's allowable usual and customary charges.

(a) The medical assistance administration (MAA) calculates a hospital's RCC by dividing allowable operating costs by patient revenues associated with these allowable costs.

(b) MAA bases these figures on the annual Medicare cost report data provided by the hospital.

(c) MAA updates a hospital's inpatient RCC rate annually with the submittal of new CMS 2552 Medicare cost report data. Prior to computing the ratio, MAA excludes increases in operating costs or total rate-setting revenue attributable to a change in ownership.

(2) The department limits a hospital's RCC payment to one hundred percent of its allowable charges.

(3) The department establishes the basic inpatient hospital RCC payment by multiplying the hospital's assigned RCC rate by the allowed charges for medically necessary services. MAA deducts client responsibility (spend-down) and third-party liability (TPL) from the basic payment to determine the actual payment due.

(4) The department uses the RCC payment method to reimburse:

(a) DRG-exempt hospitals as provided in WAC 388-550-4300; and

(b) Any hospital for DRG-exempt services described in WAC 388-550-4400.

(5) In-state and border area hospitals that lack sufficient CMS 2552 Medicare cost report data to establish a hospital specific RCC are reimbursed using the weighted average in-state:

(a) RCC rate for inpatient services as provided in WAC 388-550-4300 and 388-550-4400; and

(b) Outpatient rate as provided in WAC 388-550-6000.

(6) Out-of-state hospitals are also reimbursed for the respective services using the weighted average in-state:

(a) RCC rate for inpatient services as provided in WAC 388-550-4300 and 388-550-4400; and

(b) Outpatient rate for outpatient hospital services as provided in WAC 388-550-6000.

(7) MAA identifies all in-state hospitals that have hospital specific RCC rates, and calculates the weighted average in-state RCC rate annually by dividing the total allowable operating costs of these hospitals by the total respective patient revenues.

(8) The department pays hospitals an all-inclusive administrative day rate for those days of hospital stay in which a client no longer needs an acute inpatient level of care, but is not discharged because an appropriate placement outside the hospital is not available.

(a) MAA sets payment for administrative days at the statewide average Medicaid nursing facility per diem rate. The administrative day rate is adjusted annually.

(b) Ancillary services provided during administrative days are not reimbursed.

(c) The department identifies administrative days for a DRG exempt case during the length of stay review process after the client's discharge from the hospital.

(d) The department pays the hospital at the administrative day rate starting the date of hospital admission if the admission is solely for a stay until an appropriate sub-acute placement can be made.

(9) MAA calculates the weighted average in-state outpatient rate annually by multiplying the weighted average in-state RCC rate by the outpatient adjustment factor.

(10) For hospitals that have their own hospital specific inpatient RCC rate, MAA calculates the hospital's specific outpatient rate by multiplying the hospital's inpatient RCC rate by the outpatient adjustment factor.

(11) The outpatient adjustment factor:

(a) Must not exceed 1.0; and

(b) Is updated annually. This update causes an additional update of the outpatient rate for each hospital.

(12) MAA establishes the basic hospital outpatient payment as provided in WAC 388-550-6000. MAA deducts client responsibility (spend-down) and third-party liability

(TPL) from the basic payment to determine the actual payment due.

[Statutory Authority: RCW 74.08.090, 74.09.500, 74.09.035(1), and 43.88.290. 03-13-055, § 388-550-4500, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.08.090 and 42 U.S.C. 1395x(v), 42 C.F.R. 447.271, .11303, and .2652. 01-16-142, § 388-550-4500, filed 7/31/01, effective 8/31/01. Statutory Authority: RCW 74.08.090, 42 USC 1395x(v), 42 CFR 447.271, 447.11303, and 447.2652. 99-06-046, § 388-550-4500, filed 2/26/99, effective 3/29/99. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. 98-01-124, § 388-550-4500, filed 12/18/97, effective 1/18/98.]

WAC 388-550-4900 Disproportionate share payments. As required by section 1902 (a)(13)(A) of the Social Security Act, the medical assistance administration (MAA) gives consideration to hospitals that serve a disproportionate number of low-income clients with special needs by making a payment adjustment to eligible hospitals per legislative direction and established prospective payment methods. MAA considers this adjustment a disproportionate share hospital (DSH) payment.

(1) To qualify for a DSH payment for each state fiscal year, an in-state or border area hospital provider must submit to MAA by certified mail, the hospital's completed and final DSH application by the due date specified in that year's application letter. The application due date will not be less than sixty days after MAA makes the application available.

(2) A hospital is a disproportionate share hospital eligible for the low-income disproportionate share hospital (LIDSH) program for a specific state fiscal year (SFY) if the hospital submits a DSH application for that respective year in compliance with subsection (1) and if both the following apply:

(a) The hospital's Medicaid inpatient utilization rate (MIPUR) is at least one standard deviation above the mean Medicaid inpatient utilization rate for hospitals receiving Medicaid payments in the state, or its low-income utilization rate (LIUR) exceeds twenty-five percent; and

(b) The hospital has at least two obstetricians who have staff privileges at the hospital and who have agreed to provide obstetric services to eligible individuals. This requirement does not apply to a hospital:

(i) The inpatients of which are predominantly individuals under eighteen years of age; or

(ii) Which did not offer nonemergency obstetric services to the general public as of December 22, 1987, when section 1923 of the Social Security Act was enacted.

(3) For hospitals located in rural areas, "obstetrician" means any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

(4) MAA may consider a hospital a disproportionate share hospital for programs other than the LIDSH program if the hospital submits a DSH application and complies with the following for the respective year:

(a) The hospital has a MIPUR of not less than one percent; and

(b) The hospital meets the requirement of subsection (2)(b) of this section.

(5) MAA administers the low-income disproportionate share (LIDSH) program and may administer any of the following DSH programs:

(a) Medically indigent disproportionate share hospital (MIDSH);

(b) General assistance-unemployable disproportionate share hospital (GAUDSH);

(c) Small rural hospital assistance program disproportionate share hospital (SRHAPDSH);

(d) Teaching hospital assistance program disproportionate share hospital (THAPDSH);

(e) State teaching hospital financing program disproportionate share hospital (STHFPDSH);

(f) County teaching hospital financing program disproportionate share hospital (CTHFPDSH); and

(g) Public hospital district disproportionate share hospital (PHDDSH).

(6) MAA allows a hospital to receive any one or all of the DSH payment adjustments discussed in subsection (5) of this section when the hospital:

(a) Meets the requirements in subsection (4) of this section; and

(b) Meets the eligibility requirements for the particular DSH payment program, as discussed in WAC 388-550-5000 through 388-550-5400.

(7) MAA ensures each hospital's total DSH payments do not exceed the individual hospital's DSH limit, defined as:

(a) The cost to the hospital of providing services to Medicaid clients, including clients served under Medicaid managed care programs;

(b) Less the amount paid by the state under the non-DSH payment provision of the state plan;

(c) Plus the cost to the hospital of providing services to uninsured patients; and

(d) Less any cash payments made by uninsured clients.

(8) MAA's total annual DSH payments must not exceed the state's DSH allotment for the federal fiscal year.

If the MAA statewide allotment is exceeded, MAA may adjust future DSH payments to each hospital to compensate for the amount overpaid. Adjustments will be made in the following program order:

(a) PHDDSH;

(b) THAPDSH;

(c) CTHFPDSH;

(d) STHFPDSH;

(e) SRHAPDSH;

(f) MIDSH;

(g) GAUDSH; and

(h) LIDSH.

[Statutory Authority: RCW 74.08.090, 74.09.500, 74.09.035(1), and 43.88.290. 03-13-055, § 388-550-4900, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.08.090, 74.09.730 and 42 U.S.C. 1396r-4. 99-14-040, § 388-550-4900, filed 6/30/99, effective 7/1/99. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. 98-01-124, § 388-550-4900, filed 12/18/97, effective 1/18/98.]

WAC 388-550-5000 Payment method—LIDSH. (1)

A hospital serving the department's clients is eligible for a low-income disproportionate share hospital (LIDSH) payment adjustment if the hospital meets the requirements of WAC 388-550-4900(2).

(2) The medical assistance administration (MAA) pays hospitals considered eligible under the criteria in subsection (1) of this section. The total LIDSH payment amounts equal

the funding set by the state's appropriations act for LIDSH. The amount that the state appropriates for LIDSH may vary from year to year.

(3) MAA distributes LIDSH payments to individual hospitals using the prospective payment method for each LIDSH-eligible hospital. MAA determines the standardized Medicaid inpatient utilization rate (MIPUR) by:

(a) Dividing the hospital's MIPUR by the average MIPUR of all LIDSH-eligible hospitals; then

(b) Multiplying the hospital's standardized MIPUR by the hospital's most recent DRG payment method rebased case mix index, and then by the hospital's most recent fiscal year Title XIX admissions; then

(c) Multiplying the product by an initial random base amount; and then

(d) Comparing the sum of all annual LIDSH payments to the appropriated amount. If the amounts differ, MAA progressively selects a new base amount by successive approximation until the sum of the LIDSH payments to hospitals equals the legislatively appropriated amount.

(4) After each applicable state fiscal year, MAA will not make changes to the LIDSH payment distribution that has resulted from calculations identified in subsection (3)(c) of this section. However, hospitals may still submit corrected DSH application data to MAA after June 15 and prior to July 1 of the applicable state fiscal year to correct calculation of the MIPUR or low income utilization rate (LIUR) for historical record keeping. See WAC 388-550-5550 for rules regarding public notice for changes in Medicaid payment rates for hospital services.

[Statutory Authority: RCW 74.08.090, 74.09.500, 74.09.035(1), and 43.88.290. 03-13-055, § 388-550-5000, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.08.090, 74.09.730 and 42 U.S.C. 1396r-4. 99-14-040, § 388-550-5000, filed 6/30/99, effective 7/1/99. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. 98-01-124, § 388-550-5000, filed 12/18/97, effective 1/18/98.]

WAC 388-550-5100 Payment method—MIDSH. (1)

The medical assistance administration (MAA) considers a hospital eligible for the medically indigent disproportionate share hospital (MIDSH) payment if the hospital:

(a) Meets the criteria in WAC 388-550-4900 (2)(b) and (4);

(b) Is an in-state or border area hospital;

(c) Provides services to clients under the medically indigent program; and

(d) Has a low-income utilization rate of one percent or more.

(2) MAA determines the MIDSH payment for each eligible hospital, using a prospective payment method, in accordance with WAC 388-550-4800.

[Statutory Authority: RCW 74.08.090, 74.09.500, 74.09.035(1), and 43.88.290. 03-13-055, § 388-550-5100, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.08.090, 74.09.730, chapter 74.46 RCW and 42 U.S.C. 1396r-4. 99-14-025, § 388-550-5100, filed 6/28/99, effective 7/1/99. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. 98-01-124, § 388-550-5100, filed 12/18/97, effective 1/18/98.]

WAC 388-550-5150 Payment method—GAUDSH. (1)

The medical assistance administration (MAA) considers a hospital eligible for the general assistance-unemployable dis-

proportionate share hospital (GAUDSH) payment if the hospital:

(a) Meets the criteria in WAC 388-550-4900 (2)(b) and (4);

(b) Is an in-state or border area hospital;

(c) Provides services to clients under the medical care services program; and

(d) Has a low-income utilization rate (LIUR) of one percent or more.

(2) MAA determines the GAUDSH payment for each eligible hospital, using a prospective payment method, in accordance with WAC 388-550-4800, except that the payment is not reduced by the additional three percent specified in WAC 388-550-4800(4).

[Statutory Authority: RCW 74.08.090, 74.09.500, 74.09.035(1), and 43.88.290. 03-13-055, § 388-550-5150, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.08.090, 74.09.730, chapter 74.46 RCW and 42 U.S.C. 1396r-4. 99-14-025, § 388-550-5150, filed 6/28/99, effective 7/1/99. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. 98-01-124, § 388-550-5150, filed 12/18/97, effective 1/18/98.]

WAC 388-550-5200 Payment method—SRHAPDSH. (1) The medical assistance administration (MAA) makes small rural hospital assistance program disproportionate share hospital (SRHAPDSH) payments to qualifying small rural hospitals through the disproportionate share (DSH) program.

(2) To qualify for a SRHAPDSH payment, a hospital must:

(a) Meet the criteria in WAC 388-550-4900 (2)(b) and (4);

(b) Be an in-state hospital;

(c) Be a small rural hospital with fewer than seventy-five acute licensed beds; and

(d) Be located in a city or town that meets the following criteria:

(i) For the SRHAPDSH program year to be implemented for state fiscal year (SFY) beginning July 1, 2002, the city or town must have a nonstudent population of fifteen thousand five hundred or less.

(ii) For each SRHAPDSH program year to be implemented for each SFY subsequent to July 1, 2002, the nonstudent population in (d)(i) of this subsection is increased cumulatively by two percent.

(3) MAA pays hospitals qualifying for SRHAPDSH payments from a legislative appropriated pool. MAA determines each hospital's individual SRHAPDSH payment from the total dollars in the pool using percentages established through the following prospective payment method:

(a) At the time the SRHAPDSH payment is to be made, MAA identifies from historical data considered to be complete, each individual qualifying hospital's most current Medicaid reimbursement amount; then

(b) Divides the Medicaid reimbursement amount by the total Medicaid payments made to all qualifying hospitals during the same period.

(4) MAA's SRHAPDSH payments to a hospital may not exceed one hundred percent of the projected cost of care for Medicaid clients and uninsured indigent patients for that hospital. MAA reallocates dollars as defined in the state plan.

[Statutory Authority: RCW 74.08.090, 74.09.500, 74.09.035(1), and 43.88.290. 03-13-055, § 388-550-5200, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.08.090, 74.09.730, chapter 74.46 RCW and 42 U.S.C. 1396r-4. 99-14-025, § 388-550-5200, filed 6/28/99, effective 7/1/99. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. 98-01-124, § 388-550-5200, filed 12/18/97, effective 1/18/98.]

WAC 388-550-5400 Payment method—PHDDSH.

(1) The medical assistance administration (MAA) considers a hospital eligible for the public hospital district disproportionate share hospital (PHDDSH) payment if the hospital:

(a) Meets the criteria in WAC 388-550-4900 (2)(b) and (4);

(b) Is a public district hospital in Washington state or a border area hospital owned by a public corporation; and

(c) Provides at least one percent of its services to low-income patients.

(2) Using a prospective payment method, MAA pays hospitals considered eligible under the criteria in subsection (1) of this section a PHDDSH payment amount from the legislatively appropriated PHDDSH pool.

[Statutory Authority: RCW 74.08.090, 74.09.500, 74.09.035(1), and 43.88.290. 03-13-055, § 388-550-5400, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.08.090, 74.09.730, chapter 74.46 RCW and 42 U.S.C. 1396r-4. 99-14-025, § 388-550-5400, filed 6/28/99, effective 7/1/99. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. 98-01-124, § 388-550-5400, filed 12/18/97, effective 1/18/98.]

WAC 388-550-5600 Dispute resolution process for hospital rate reimbursement. The dispute resolution process for hospital rate reimbursement follows the procedures as stated in WAC 388-502-0220.

[Statutory Authority: RCW 74.08.090, 74.09.500, 74.09.035(1), and 43.88.290. 03-13-055, § 388-550-5600, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.08.090 and 74.09.730. 99-16-070, § 388-550-5600, filed 8/2/99, effective 9/2/99. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. 98-01-124, § 388-550-5600, filed 12/18/97, effective 1/18/98.]

WAC 388-550-6000 Payment—Outpatient hospital services. The medical assistance administration (MAA) pays outpatient hospital providers for providing covered outpatient hospital services to medical assistance clients using the maximum allowable fee schedule and/or the hospital outpatient rate.

(1) Maximum allowable fee schedule:

(a) MAA uses the maximum allowable fee schedule to pay for services listed in the outpatient hospital fee schedule and published in MAA's billing instructions.

(b) Outpatient hospital services are included in the outpatient hospital fee schedule when:

(i) A technical component has been established in the Medicare Fee Schedule Data Base (MFSDB); or

(ii) MAA specifically identifies certain services for payment using the maximum allowable fee schedule.

(c) Outpatient hospital services paid using MAA's maximum allowable fee schedule include:

(i) Laboratory services;

(ii) Imaging services;

(iii) EKG/ECG/EEG and other diagnostics;

(iv) Physical therapy;

(v) Occupational therapy;

(vi) Speech/language therapy;

(vii) Synagis;

(viii) Sleep studies; and

(ix) Other hospital services as identified and published by the department.

(d) MAA's payment for covered services included in the outpatient hospital fee schedule is the lesser of:

(i) The hospital's billed amount; or

(ii) MAA's maximum allowable.

(e) Certain services or supplies listed in the outpatient hospital fee schedule are identified and designated by MAA to be paid by acquisition cost or by report. See subsection (7) of this section for MAA's requirement for submitting invoices.

(2) Outpatient rate:

(a) MAA uses the outpatient rate to pay hospitals for covered services reported on a hospital claim that are not listed in the outpatient hospital fee schedule.

(b) The outpatient rate is a hospital-specific rate that uses the hospital's ratio of costs-to-charges (RCC) rate as its base. MAA's rate-setting method for an outpatient rate is described in WAC 388-500-4500.

(3) The department considers hospital stays of twenty-four hours or less outpatient short stays and uses the outpatient payment methods in subsections (1) and (2) of this section to pay a hospital for these services. However, when an outpatient short stay involves one of the following situations, the department uses inpatient payment methods to pay a hospital for covered services:

(a) Death of a client;

(b) Obstetrical delivery;

(c) Initial care of a newborn; or

(d) Transfer of a client to another acute care hospital.

(4) The department uses the outpatient payment methods in subsections (1) and (2) of this section to pay for covered inpatient hospital services provided within twenty-four hours of a client's inpatient admission that are not related to the admission. Inpatient hospital services provided within twenty-four hours of a client's inpatient admission that are related to the admission are paid according to WAC 388-550-2900(12).

(5) For a client enrolled in an MAA-contracted managed care plan, the plan is responsible to pay a hospital provider for hospital services that the plan covers. MAA pays for a service not covered by the managed care plan only when:

(a) The service is included in the scope of coverage under the client's medical assistance program;

(b) The service is medically necessary as defined in WAC 388-550-1050; and

(c) The provider has a current core provider agreement with MAA and meets applicable MAA program requirements in other published WACs.

(6) The department does not pay for:

(a) Room and ancillary services charges beyond the twenty-four hour period for outpatient short stays; or

(b) Emergency room, labor room, observation room, and other room charges in combination when billing periods for these charges overlap.

(7) In order to be paid for covered outpatient hospital services listed in the outpatient hospital fee schedule as a paid at acquisition cost or by report, MAA requires the hospital

provider to submit an invoice for billed amounts of five hundred or more.

(8) In order to be paid for covered outpatient hospital services, hospitals must bill MAA according to the conditions of payment under WAC 388-502-0100, time limits under WAC 388-502-0150, and other applicable published issuances. In addition, MAA requires hospitals to bill outpatient claims using the line item date of service and the appropriate revenue codes, admit and discharge hour, current procedural terminology (CPT) codes, healthcare common procedural coding system (HCPCS) codes, and modifiers listed in MAA's published outpatient hospital fee schedule. A hospital's bill to the department must show the admitting, principal, and secondary diagnoses and include the attending physician's name and MAA-assigned provider number.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, and Public Law 104-191. 03-19-044, § 388-550-6000, filed 9/10/03, effective 10/11/03. Statutory Authority: RCW 74.08.090, 74.09.500, 74.09.035(1), and 43.88.290. 02-21-019, § 388-550-6000, filed 10/8/02, effective 11/8/02. Statutory Authority: RCW 74.09.090, 42 U.S.C. 1395x(v), 42 C.F.R. 447.271 and 42 C.F.R. 11303. 99-14-028, § 388-550-6000, filed 6/28/99, effective 7/1/99. Statutory Authority: RCW 74.08.090, 42 USC 1395 x(v), 42 CFR 447.271, 447.11303, and 447.2652. 99-06-046, § 388-550-6000, filed 2/26/99, effective 3/29/99. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. 98-01-124, § 388-550-6000, filed 12/18/97, effective 1/18/98.]

WAC 388-550-6100 Outpatient hospital physical therapy. (1) The department pays for physical therapy provided to eligible clients as an outpatient hospital service according to WAC 388-545-500 and 388-550-6000.

(2) A hospital must bill outpatient hospital physical therapy services using appropriate billing codes listed in the department's current published billing instructions. The department does not pay outpatient hospitals a facility fee for such services.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, and Public Law 104-191. 03-19-043, § 388-550-6100, filed 9/10/03, effective 10/11/03. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. 98-01-124, § 388-550-6100, filed 12/18/97, effective 1/18/98.]

WAC 388-550-6150 Outpatient hospital occupational therapy. (1) The department pays for occupational therapy provided as an outpatient hospital service to eligible clients according to WAC 388-545-300 and 388-550-6000.

(2) The hospital must bill outpatient hospital occupational therapy services using appropriate billing codes listed in the department's current published billing instructions. The department does not pay outpatient hospitals a facility fee for such services.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, and Public Law 104-191. 03-19-043, § 388-550-6150, filed 9/10/03, effective 10/11/03. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. 98-01-124, § 388-550-6150, filed 12/18/97, effective 1/18/98.]

WAC 388-550-6200 Outpatient hospital speech therapy services. (1) The department pays for speech therapy services provided to eligible clients as an outpatient hospital service according to this section and WAC 388-545-700 and 388-550-6000.

(2) The department requires swallowing (dysphagia) evaluations to be performed by a speech/language pathologist who holds a master's degree in speech pathology and who has received extensive training in the anatomy and physiology of the swallowing mechanism, with additional training in the evaluation and treatment of dysphagia.

(3) The department requires a swallowing evaluation to include:

(a) An oral-peripheral exam to evaluate the anatomy and function of the structures used in swallowing;

(b) Dietary recommendations for oral food and liquid intake therapeutic or management techniques;

(c) Therapeutic or management techniques; and

(d) Videofluoroscopy, when necessary, for further evaluation of swallowing status and aspiration risks.

(4) A hospital must bill outpatient hospital speech therapy services using appropriate billing codes listed in the department's current published billing instructions. The department does not pay the outpatient hospital a facility fee for these services.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, and Public Law 104-191. 03-19-043, § 388-550-6200, filed 9/10/03, effective 10/11/03. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. 98-01-124, § 388-550-6200, filed 12/18/97, effective 1/18/98.]

WAC 388-550-6400 Outpatient hospital diabetes education. (1) The department pays for outpatient hospital-based diabetes education for an eligible client when:

(a) The facility where the services are provided is approved by the department of health (DOH) as a diabetes education center, and

(b) The client is referred by a licensed health care provider.

(2) The department requires the diabetes education teaching curriculum to have measurable, behaviorally-stated educational objectives. The diabetes education teaching curriculum must include all the following core modules:

(a) An overview of diabetes;

(b) Nutrition, including individualized meal plan instruction that is not part of the women, infants, and children program;

(c) Exercise, including an individualized physical activity plan;

(d) Prevention of acute complications, such as hypoglycemia, hyperglycemia, and sick day management;

(e) Prevention of other chronic complications, such as retinopathy, nephropathy, neuropathy, cardiovascular disease, foot and skin problems;

(f) Monitoring, including immediate and long term diabetes control through monitoring of glucose, ketones, and glycosylated hemoglobin; and

(g) Medication management, including administration of oral agents and insulin, and insulin startup.

(3) The department pays for a maximum of six hours of individual core survival skills outpatient diabetes education per calendar year per client.

(4) The department requires DOH-approved centers to bill the department for diabetes education services on the UB92 billing form using the specific revenue code(s) designated and published by the department.

(5) The department reimburses for outpatient hospital-based diabetes education based on the individual hospital's current specific ratio of costs-to-charges, or the hospital's customary charge for diabetes education, whichever is less.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, and Public Law 104-191. 03-19-043, § 388-550-6400, filed 9/10/03, effective 10/11/03. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. 98-01-124, § 388-550-6400, filed 12/18/97, effective 1/18/98.]

WAC 388-550-6800 Proportionate share payments for inpatient hospital services. (1) Each state fiscal year, per legislative direction and established prospective payment methods, the department creates a proportionate share pool that provides supplemental payments for inpatient hospital services to a hospital provider of Title XIX Medicaid services that is classified as either a:

- (a) State-owned hospital; or
- (b) Nonstate government-owned hospital.

(2) Prior to payment, proportionate share payments for inpatient hospital services are subject to:

- (a) Federal approval for federal matching funds;
- (b) A department analysis of the Medicare upper limit;

and

(c) The federal Medicare upper payment limit for hospital payment.

(3) The medical assistance administration (MAA) determines each payment year's total proportionate share payment for inpatient hospital services by:

(a) Using the charge and payment data from MAA's Medicaid Management Information System (MMIS) for inpatient hospital services for the base years; and

(b) Calculating the cumulative difference between covered Title XIX inpatient charges, Title XIX payments, and third party liability payments for all eligible hospitals during the most recent federal fiscal year.

(4) Proportionate share payments for inpatient hospital services:

(a) Are determined and paid periodically to participating eligible hospitals during each federal fiscal year; and

(b) Must be used to improve health care services to low income patients.

[Statutory Authority: RCW 74.08.090, 74.09.500, 74.09.035(1), and 43.88.290. 03-13-055, § 388-550-6800, filed 6/12/03, effective 7/13/03.]

WAC 388-550-6900 Proportionate share payments for outpatient hospital services. (1) Each state fiscal year, per legislative direction and established prospective payment methods, the department creates a proportionate share pool that provides supplemental payments for outpatient hospital services to a hospital provider of Title XIX Medicaid services that is classified as either a:

- (a) State-owned hospital; or
- (b) Nonstate government-owned hospital.

(2) Prior to payment, proportionate share payments for outpatient hospital services are subject to:

- (a) Federal approval for federal matching funds;
- (b) A department analysis of the Medicare upper limit;

and

(c) The federal Medicare upper payment limit for hospital payment.

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(3) The medical assistance administration (MAA) determines each payment year's total proportionate share payment for outpatient hospital services by:

(a) Using the charge and payment data from MAA's Medicaid Management Information System (MMIS) for outpatient hospital services for the base years; and

(b) Calculating the cumulative difference between covered Title XIX outpatient charges, Title XIX payments, and third party liability payments for all eligible hospitals during the most recent federal fiscal year.

(4) Proportionate share payments for outpatient hospital services:

(a) Are determined and paid periodically to participating eligible hospitals during each federal fiscal year; and

(b) Must be used to improve health care services to low income patients.

[Statutory Authority: RCW 74.08.090, 74.09.500, 74.09.035(1), and 43.88.290. 03-13-055, § 388-550-6900, filed 6/12/03, effective 7/13/03.]

Chapter 388-557 WAC

DISEASE MANAGEMENT PROGRAM

WAC

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388-557-5050	Disease management program—Definitions.
388-557-5100	Disease management program—Client eligibility and assignment.
388-557-5150	Requirements for becoming an MAA-contracted disease management organization (DMO).
388-557-5200	MAA-contracted disease management organization (DMO)—Confidentiality and data sharing.
388-557-5250	Disease management program—Scope of services.
388-557-5300	Disease management program services—Billing limits.

WAC 388-557-5000 Disease management program—General. (1) The medical assistance administration's (MAA's) disease management program provides population case management and coordination activities for clients diagnosed with specific diseases. Disease management organizations (DMOs) contracted by MAA provide and/or coordinate services that optimize treatment, improve health outcomes for clients, and promote cost-effectiveness.

(2) Disease management program services do not:

(a) Change the scope of services available to a client eligible under a Title XIX Medicaid program;

(b) Interfere with the relationship between an enrolled client and the client's chosen MAA-enrolled provider(s);

(c) Duplicate case management activities available to a client in the client's community; or

(d) Substitute for established activities that are available to a client and provided by programs administered through other department of social and health services (DSHS) divisions or state agencies.

[Statutory Authority: RCW 74.08.090 and 2001 c 7 § 209(6), part II. 03-13-054, § 388-557-5000, filed 6/12/03, effective 7/13/03.]

WAC 388-557-5050 Disease management program—Definitions. The following terms and definitions apply to the disease management program:

"Disease management organization (DMO)" - See "MAA-contracted disease management organization (DMO)."

"Disease management program services" are specialized services provided through medical assistance administration (MAA)-contracted disease management organizations (DMOs) to clients with multiple health, behavioral, and social needs. Disease management program services are aimed at care coordination, client education, and improved client self-care.

"Eligible client" means a medical assistance administration (MAA) client who has the disease management program's specified combination of eligibility and disease factors.

"Enrolled client" means an eligible client who has been notified in writing by the medical assistance administration (MAA) of enrollment in the disease management program and eligibility to receive disease management program services, and who has not declined to participate.

"Evidence-based healthcare practice" means a clinical approach to practicing medicine based on the clinician's awareness of evidence and the strength of that evidence to support the management of a disease treatment process.

"MAA-contracted disease management organization (DMO)" means a clinically-qualified disease management company that has a valid disease management program contract with the medical assistance administration (MAA).

[Statutory Authority: RCW 74.08.090 and 2001 c 7 § 209(6), part II. 03-13-054, § 388-557-5050, filed 6/12/03, effective 7/13/03.]

WAC 388-557-5100 Disease management program—Client eligibility and assignment. (1) To receive disease management program services:

- (a) A client must:
 - (i) Be a recipient of the temporary assistance for needy families (TANF) program or a children's medical program that is not a managed care program and be diagnosed with asthma; or
 - (ii) Be a recipient of the supplemental security income (SSI) program or general assistance with expedited medical categorically needy (GAX) program and be diagnosed with at least one of the following medical conditions:
 - (A) Asthma;
 - (B) Congestive heart failure;
 - (C) Diabetes;
 - (D) Chronic kidney disease; or
 - (E) End stage renal disease.
 - (b) A client must not be:
 - (i) Receiving Medicare benefits;
 - (ii) Residing in an institution, as defined in WAC 388-71-0202, for more than thirty days;
 - (iii) Eligible for third party coverage that provides disease management program services or requires administrative controls that would duplicate or interfere with MAA's disease management program;
 - (iv) Enrolled with a managed care organization contracted with MAA; or
 - (v) Receiving case management services that disease management program services would duplicate.

(2) MAA may add other targeted diseases and client populations to the disease management program based on one or more of the following:

- (a) The availability of a contractor to serve clients in a disease group;

- (b) Cost-effectiveness;
 - (c) Available funding from the state legislature; and
 - (d) Other applicable criteria as determined by MAA.
- (3) MAA selects and assigns a client to an appropriate disease management organization (DMO).
- (4) A client meeting the eligibility requirements in this section:
- (a) Is automatically enrolled in the disease management program;
 - (b) Is notified of the enrollment in writing by MAA;
 - (c) May request disenrollment at any time; and
 - (d) May request reenrollment at any time.
- (5) If an enrolled client who receives disease management program services subsequently becomes a mandatory enrollee in an MAA managed care program, the client:
- (a) Is no longer eligible for disease management services through an MAA-contracted DMO;
 - (b) Is not eligible for an enrollment exemption from the managed care program because of their existing relationship with a DMO's contracted vendor(s); and
 - (c) May only be exempt from mandatory enrollment in the managed care program under the provisions of WAC 388-538-080(3).
- (6) A client who does not agree with a decision regarding disease management program services has a right to a fair hearing under chapter 388-02 WAC.

[Statutory Authority: RCW 74.08.090 and 2001 c 7 § 209(6), part II. 03-13-054, § 388-557-5100, filed 6/12/03, effective 7/13/03.]

WAC 388-557-5150 Requirements for becoming an MAA-contracted disease management organization (DMO). To become a medical assistance administration (MAA)-contracted disease management organization (DMO), a vendor must provide documentation to MAA that shows the vendor has all of the following:

- (1) An appropriate method for using MAA healthcare data to identify populations with targeted diseases;
- (2) An evidence-based healthcare practice guideline for each targeted disease;
- (3) Existing collaborative healthcare practice models that include MAA's contracted providers, including physicians and support-service providers;
- (4) Patient self-care management methods and education materials appropriate to each population with targeted diseases;
- (5) Provisions for clients to access a nurse consultant twenty-four hours a day, seven days a week;
- (6) Existing systems for process and outcomes measurement, evaluation, and management of the disease management program;
- (7) Verifiable financial resources or backing that guarantee program savings and cost-effectiveness;
- (8) Existing processes for routine reporting that support MAA's disease management program goals; and
- (9) Successful and demonstrable experience in providing disease management program services to the targeted disease populations.

[Statutory Authority: RCW 74.08.090 and 2001 c 7 § 209(6), part II. 03-13-054, § 388-557-5150, filed 6/12/03, effective 7/13/03.]

WAC 388-557-5200 MAA-contracted disease management organization (DMO)—Confidentiality and data sharing. (1) A medical assistance administration (MAA)-contracted disease management organization (DMO) must meet the confidentiality and data sharing requirements that apply to clients eligible under Title XIX Medicaid programs and as specified in the disease management program contract.

(2) MAA:

(a) Shares healthcare data with MAA-contracted DMOs under the provisions of RCW 70.02.050 and the Health Insurance Portability and Accountability Act of 1996 (HIPAA); and

(b) May limit provider participation:

- (i) To protect the integrity of data collection; or
- (ii) For other administrative or program reasons.

[Statutory Authority: RCW 74.08.090 and 2001 c 7 § 209(6), part II. 03-13-054, § 388-557-5200, filed 6/12/03, effective 7/13/03.]

WAC 388-557-5250 Disease management program—Scope of services. (1) Disease management program services provided by a disease management organization (DMO) must meet:

(a) The conditions of the contract between the medical assistance administration (MAA) and the DMO;

(b) The scope of practice appropriate to the provider of the services; and

(c) Other applicable WAC and federal requirements.

(2) A DMO:

(a) Evaluates each client enrolled in the disease management program;

(b) May prioritize disease management program services provided to an enrolled client based on the client's need or other criteria, as appropriate; and

(c) May contact and coordinate with a department or department-authorized case manager(s) for planned service delivery to an enrolled client.

(3) Disease management program services must provide one or more of the following to each enrolled client:

(a) Assistance in locating an MAA-enrolled provider or source of routine outpatient preventive healthcare. (Refer to chapter 388-529 WAC for the scope of covered medical services available to eligible clients.)

(b) Educational materials.

(c) Instruction regarding self-managing the targeted condition(s).

(d) Assessment of available services, equipment, and supplies that might enhance the client's ability to manage the client's disease process(es).

(e) Coordination with a department or department-authorized case manager(s).

(4) MAA evaluates a request for a disease management program service that is in excess of the program's limitations or restrictions, or is not included in the disease management program's scope of services, according to the provisions of WAC 388-501-0165.

[Statutory Authority: RCW 74.08.090 and 2001 c 7 § 209(6), part II. 03-13-054, § 388-557-5250, filed 6/12/03, effective 7/13/03.]

WAC 388-557-5300 Disease management program services—Billing limits. Only a medical assistance administration (MAA)-contracted disease management organization

(DMO) may bill and be reimbursed for providing disease management program services described in chapter 388-557 WAC. Billing requirements and payment methodology are described in the contract between the DMO and MAA.

[Statutory Authority: RCW 74.08.090 and 2001 c 7 § 209(6), part II. 03-13-054, § 388-557-5300, filed 6/12/03, effective 7/13/03.]

Chapter 388-561 WAC

TRUSTS, ANNUITIES, AND LIFE ESTATES— EFFECT ON MEDICAL PROGRAMS

WAC

388-561-0001	Definitions.
388-561-0100	Trusts.

WAC 388-561-0001 Definitions. "Annuitant" means a person or entity that receives the income from an annuity.

"Annuity" means a policy, certificate or contract that is an agreement between two parties in which one party pays a lump sum to the other, and the other party agrees to guarantee payment of a set amount of money over a set amount of time. The annuity may be purchased at one time or over a set period of time and may be bought individually or with a group. It may be revocable or irrevocable. The party guaranteeing payment can be an:

(1) Individual; or

(2) Insurer or similar body licensed and approved to do business in the jurisdiction in which the annuity is established.

"Beneficiary" means an individual(s) designated in the trust who benefits from the trust. The beneficiary can also be called the grantee. The beneficiary and the grantor may be the same person.

"Designated for medical expenses" means the trustee may use the trust to pay the medical expenses of the beneficiary. The amount of the trust that is designated for medical expenses is considered an available resource to the beneficiary. Payments are a third party resource.

"Disbursement" or "distribution" means any payment from the principal or proceeds of a trust, annuity, or life estate to the beneficiary or to someone on their behalf.

"Discretion of the trustee" means the trustee may decide what portion (up to the entire amount) of the principal of the trust will be made available to the beneficiary.

"Exculpatory clause" means there is some language in the trust that legally limits the authority of the trustee to distribute funds from a trust if the distribution would jeopardize eligibility for government programs including Medicaid.

"For the sole benefit of" means that for a transfer to a spouse, blind or disabled child, or disabled individual, the transfer is arranged in such a way that no individual or entity except the spouse, blind or disabled child, or disabled individual can benefit from the assets transferred in any way, whether at the time of the transfer or at any time during the life of the primary beneficiary.

"Grantor" means an individual who uses his assets or funds to create a trust. The grantor may also be the beneficiary.

"Income beneficiary" means the person receiving the payments may only get the proceeds of the trust. The princi-

pal is not available for disbursements. If this term is used, the principal of the trust is an unavailable resource.

"Irrevocable" means the legal instrument cannot be changed or terminated in any way by anyone.

"Life estate" means an ownership interest in a property only during the lifetime of the person(s) owning the life estate. In some cases, the ownership interest lasts only until the occurrence of some specific event, such as remarriage of the life estate owner. A life estate owner may not have the legal title or deed to the property, but may have rights to possession, use, income and/or selling their life estate interest in the property.

"Principal" means the assets that make up the entity. The principal includes income earned on the principal that has not been distributed. The principal is also called the corpus.

"Proceeds" means the income earned on the principal. It is usually interest, dividends, or rent. When the proceeds are not distributed, they become part of the principal.

"Pooled trust" means a trust meeting all of the following conditions:

- (1) It contains funds of more than one disabled individual, combined for investment and management purposes;
- (2) It is for the sole benefit of disabled individuals (as determined by SSA criteria);
- (3) It was created by the disabled individuals, their parents, grandparents, legal guardians, or by a court;
- (4) It is managed by a nonprofit association with a separate account maintained for each beneficiary; and
- (5) It contains a provision that upon the death of the individual, for any funds not retained by the trust, the state will receive all amounts remaining in the individual's separate account up to the total amount of Medicaid paid on behalf of that individual.

"Revocable" means the legal instrument can be changed or terminated by the grantor, or by petitioning the court. A legal instrument that is called irrevocable, but that can be terminated if some action is taken, is revocable for the purposes of this section.

"Sole-benefit trust" means an irrevocable trust established for the sole-benefit of a spouse, blind or disabled child, or disabled individual. In a sole-benefit trust no one but the individual named in the trust receives benefit from the trust in any way either at the time the trust is established or at any time during the life of the primary beneficiary. A sole-benefit trust may allow for reasonable costs to trustees for management of the trust and reasonable costs for investment of trust funds.

"Special needs trust" means an irrevocable trust meeting all of the following conditions:

- (1) It is for the sole benefit of a disabled individual (as determined by SSA criteria) under sixty-five years old;
- (2) It was created by the individual's parent, grandparent, legal guardian, or by a court; and
- (3) It contains a provision that upon the death of the individual, the state will receive the amounts remaining in the trust up to the total amount of Medicaid paid on behalf of the individual.

"Testamentary trust" means a trust created by a will from the estate of a deceased person. The trust is paid out according to the will.

"Trust" means property (such as a home, cash, stocks, or other assets) is transferred to a trustee for the benefit of the grantor or another party. The department includes in this definition any other legal instrument similar to a trust. For annuities, refer to WAC 388-561-0200.

"Trustee" means an individual, bank, insurance company or any other entity that manages and administers the trust for the beneficiary.

"Undue hardship" means the client would be unable to meet shelter, food, clothing, and health care needs if the department applied the transfer of assets penalty.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.575. 03-06-048, § 388-561-0001, filed 2/28/03, effective 4/1/03. Statutory Authority: RCW 74.04.050, 74.08.090, and 74.09.500. 01-06-043, § 388-561-0001, filed 3/5/01, effective 5/1/01.]

WAC 388-561-0100 Trusts. (1) The department determines how trusts affect eligibility for medical programs.

(2) The department disregards trusts established, on or before April 6, 1986, for the sole benefit of a client who lives in an intermediate care facility for the mentally retarded (ICMR).

(3) For trusts established on or before August 10, 1993 the department counts the following:

(a) If the trust was established by the client, client's spouse, or the legal guardian, the maximum amount of money (payments) allowed to be distributed under the terms of the trust is considered available income to the client if all of the following conditions apply:

- (i) The client could be the beneficiary of all or part of the payments from the trust;
- (ii) The distribution of payments is determined by one or more of the trustees; and
- (iii) The trustees are allowed discretion in distributing payments to the client.

(b) If an irrevocable trust doesn't meet the conditions under subsection (3)(a) then it is considered either:

(i) An **unavailable** resource, if the client established the trust for a beneficiary other than the client or the client's spouse; or

(ii) An **available** resource in the amount of the trust's assets that:

(A) The client could access; or

(B) The trustee distributes as actual payments to the client and the department applies the transfer of assets rules of WAC 388-513-1364 or 388-513-1365.

(c) If a revocable trust doesn't meet the description under subsection (3)(a):

(i) The full amount of the trust is an available resource of the client if the trust was established by:

(A) The client;

(B) The client's spouse, and the client lived with the spouse; or

(C) A person other than the client or the client's spouse only to the extent the client had access to the assets of the trust.

(ii) Only the amount of money actually paid to the client from the trust is an available resource when the trust was established by:

(A) The client's spouse, and the client did not live with the spouse; or

(B) A person other than the client or the client's spouse; and

(C) Payments were distributed by a trustee of the trust.

(iii) The department considers the funds a resource, not income.

(4) For trusts established on or after August 11, 1993:

(a) The department considers a trust as if it were established by the client when:

(i) The assets of the trust, as defined under WAC 388-470-0005, are at least partially from the client;

(ii) The trust is not established by will; and

(iii) The trust was established by:

(A) The client or the client's spouse;

(B) A person, including a court or administrative body, with legal authority to act in place of, or on behalf of, the client or the client's spouse; or

(C) A person, including a court or administrative body, acting at the direction of or upon the request of the client or the client's spouse.

(b) Only the assets contributed to the trust by the client are available to the client when part of the trust assets were contributed by any other person.

(c) The department does not consider:

(i) The purpose for establishing a trust;

(ii) Whether the trustees have, or exercise, any discretion under the terms of the trust;

(iii) Restrictions on when or whether distributions may be made from the trust; or

(iv) Restrictions on the use of distributions from the trust.

(d) For a revocable trust established as described under subsection (4)(a) of this section:

(i) The full amount of the trust is an available resource of the client;

(ii) Payments from the trust to or for the benefit of the client are income of the client; and

(iii) Any payments from the trust, other than payments described under subsection (4)(d)(ii), are considered a transfer of client assets.

(e) For an irrevocable trust established as described under subsection (4)(a) of this section:

(i) Any part of the trust from which payment can be made to or for the benefit of the client is an available resource. When payment is made from such irrevocable trusts, we will consider the payments as:

(A) Income to the client when payment is to or for the client's benefit; or

(B) The transfer of an asset when payment is made to any person for any purpose other than the client's benefit;

(ii) A trust from which a payment cannot be made to or for the client's benefit is a transfer of assets. For such a trust, the transfer of assets is effective the date:

(A) The trust is established; or

(B) The client is prevented from receiving benefit, if this is after the trust is established.

(iii) The value of the trust includes any payments made from the trust after the effective date of the transfer.

(5) For trusts established on or after August 1, 2003:

(a) The department considers a trust as if it were established by the client when:

(i) The assets of the trust, as defined under WAC 388-470-0005, are at least partially from the client or the client's spouse;

(ii) The trust is not established by will; and

(iii) The trust was established by:

(A) The client or the client's spouse;

(B) A person, including a court or administrative body, with legal authority to act in place of, or on behalf of, the client or the client's spouse; or

(C) A person, including a court or administrative body, acting at the direction of or upon the request of the client or the client's spouse.

(b) Only the assets contributed other than by will to the trust by either the client or the client's spouse are available to the client or the client's spouse when part of the trust assets were contributed by persons other than the client or the client's spouse.

(c) The department does not consider:

(i) The purpose for establishing a trust;

(ii) Whether the trustees have, or exercise, any discretion under the terms of the trust;

(iii) Restrictions on when or whether distributions may be made from the trust; or

(iv) Restrictions on the use of the distributions from the trust.

(d) For a revocable trust established as described under subsection (5)(a) of this section:

(i) The full amount of the trust is an available resource of the client;

(ii) Payments from the trust to or for the benefit of the client are income of the client; and

(iii) Any payments from the trust, other than payments described under subsection (5)(d)(ii), are considered a transfer of client assets.

(e) For an irrevocable trust established as described under subsection (5)(a) of this section:

(i) Any part of the trust from which payment can be made to or for the benefit of the client or the client's spouse is an available resource. When payment is made from such irrevocable trusts, the department will consider the payment as:

(A) Income to the client or the client's spouse when payment is to or for the benefit of either the client or the client's spouse; or

(B) The transfer of an asset when payment is made to any person for any purpose other than the benefit of the client or the client's spouse;

(ii) A trust from which a payment cannot be made to or for the benefit of the client or client's spouse is a transfer of assets. For such a trust, the transfer of assets is effective the date:

(A) The trust is established; or

(B) The client or client's spouse is prevented from receiving benefit, if this is after the trust is established.

(iii) The value of the trust includes any payments made from the trust after the effective date of the transfer.

(6) Trusts established on or after August 11, 1993 are not considered available resources if they contain the assets of either:

(a) A person sixty-four years of age or younger who is disabled as defined by SSI criteria (as described in WAC 388-503-0510) and the trust:

(i) Is established for the sole benefit of this person by their parent, grandparent, legal guardian, or a court; and

(ii) Stipulates that the state will receive all amounts remaining in the trust upon the death of the client, up to the amount of Medicaid spent on the client's behalf; or

(b) A person regardless of age, who is disabled as defined by SSI criteria (as described in WAC 388-503-0510), and the trust meets the following criteria:

(i) It is irrevocable;

(ii) It is established and managed by a nonprofit association;

(iii) A separate account is maintained for each beneficiary of the trust but for purposes of investment and management of funds the trust pools the funds in these accounts;

(iv) Accounts in the trust are established solely for the benefit of the disabled individual as defined by the SSI program;

(v) Accounts in the trust are established by:

(A) The individual;

(B) The individual's spouse, where the spouse is acting in the place of or on behalf of the individual;

(C) The individual's parent, grandparent, legal guardian;

(D) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or

(E) A person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

(vi) It stipulates that either:

(A) The state will receive all amounts remaining in the client's separate account upon the death of the client, up to the amount of Medicaid spent on the client's behalf; or

(B) The funds will remain in the trust to benefit other disabled beneficiaries of the trust.

(7) Trusts established on or after August 1, 2003 are not considered available resources if they contain the assets of either:

(a) A person sixty-four years of age or younger who is disabled as defined by SSI criteria (as described in WAC 388-503-0510) and the trust:

(i) Is irrevocable;

(ii) Is established for the sole benefit of this person by their parent, grandparent, legal guardian, or a court; and

(iii) Stipulates that the state will receive all amounts remaining in the trust upon the death of the client, the end of the disability, or the termination of the trust, whichever comes first, up to the amount of Medicaid spent on the client's behalf; or

(b) A person regardless of age, who is disabled as defined by SSI criteria (as described in WAC 388-503-0510), and the trust meets the following criteria:

(i) It is irrevocable;

(ii) It is established and managed by a nonprofit association;

(iii) A separate account is maintained for each beneficiary of the trust but for purposes of investment and management of funds the trust pools the funds in these accounts;

(iv) Accounts in the trust are established solely for the benefit of the disabled individual as defined by the SSI program;

(v) Accounts in the trust are established by:

(A) The individual;

(B) The individual's spouse, where the spouse is acting in the place of or on behalf of the individual;

(C) The individual's parent, grandparent, legal guardian;

(D) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or

(E) A person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

(vi) It stipulates that either:

(A) The state will receive all amounts remaining in the client's separate account upon the death of the client, the end of the disability, or the termination of the trust, whichever comes first, up to the amount of Medicaid spent on the client's behalf; or

(B) The funds will remain in the trust to benefit other disabled beneficiaries of the trust.

(8) Trusts described in subsection (6)(a) and (7)(a) continue to be considered an unavailable resource even after the individual becomes age sixty-five. However, additional transfers made to the trust after the individual reaches age sixty-five would be considered an available resource and would be subject to a transfer penalty.

(9) The department does not apply a penalty period to transfers into a trust described in subsections (6)(b) and (7)(b) if the trust is established for the benefit of a disabled individual under age sixty-five as described in WAC 388-513-1364 and the transfer is made to the trust before the individual reaches age sixty-five.

(10) The department considers any payment from a trust to the client to be unearned income. Except for trusts described in subsection (6), the department considers any payment to or for the benefit of either the client or client's spouse as described in subsections (4)(e) and (5)(e) to be unearned income.

(11) The department will only count income received by the client from trusts and not the principal, if:

(a) The beneficiary has no control over the trust; and

(b) It was established with funds of someone other than the client, spouse or legally responsible person.

(12) This section does not apply when a client establishes that undue hardship exists.

(13) WAC 388-513-1364, 388-513-1365, and 388-513-1366 apply under this section when the department determines that a trust or a portion of a trust is a transfer of assets.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.575. 03-13-113, § 388-561-0100, filed 6/17/03, effective 8/1/03. Statutory Authority: RCW 74.04.050, 74.08.090, and 74.09.500. 01-06-043, § 388-561-0100, filed 3/5/01, effective 5/1/01.]

Chapter 388-730 WAC

PLACEMENT OF JUVENILE OFFENDERS COMMITTED TO THE JUVENILE REHABILITATION ADMINISTRATION (JRA)

(Formerly chapter 275-46 WAC)

WAC

388-730-0010

388-730-0060

388-730-0065

388-730-0070

Definitions.

Minimum security.

Special placement restrictions.

Residential disciplinary standards.

(d) Extortion or blackmail that threatens the safety or security of the facility or community;

(e) Setting or causing an unauthorized fire with intent to harm self, others, or property, or with reckless disregard for the safety of others;

(f) Possession or manufacture of weapons or explosives, or tools intended to assist in escape;

(g) Interfering with staff or service providers in performing duties relating to the security and/or safety of the facility or community;

(h) Intentional property damage in excess of one thousand five hundred dollars;

(i) Possession, use, or distribution of drugs or alcohol, or use of inhalants;

(j) Rioting or inciting others to riot;

(k) Refusal of urinalysis or search; or

(l) Other behaviors which threaten the safety or security of the facility, its staff, or residents or the community.

(2) Other violations by a juvenile placed in a community facility or residential treatment and care program include:

(a) Unaccounted for time when a juvenile is away from the community facility or residential treatment and care program;

(b) Violation of conditions of authorized leave;

(c) Intimidation or coercion against any person;

(d) Misuse of medication such as hoarding medication or taking another person's medication;

(e) Self-mutilation, self tattooing, body piercing, or assisting others to do the same;

(f) Intentional destruction of property valued at less than fifteen hundred dollars;

(g) Fighting;

(h) Unauthorized withdrawal of funds with intent to commit other violations;

(i) Suspensions or expulsions from school or work;

(j) Violations of school, employment or volunteer work agreements related to custody and security concerns;

(k) Escape talk;

(l) Sexual contact or any other behavior, not defined as a serious violation, resulting in a referral to the department of licensing, child protective services, or law enforcement; or

(m) Lewd or disruptive behavior in the community.

(3) Juveniles must be held accountable when there is reasonable cause to believe they have committed a violation.

(a) Whenever a juvenile placed in a community facility or residential treatment and care program commits a serious violation, the juvenile must be returned to an institution. The JRA program administrator who receives a service provider report of a serious violation must make arrangements to transfer the juvenile to an institution as soon as possible. Juveniles may be placed in a secure JRA or contracted facility pending transportation to an institution.

(b) Sanctions for serious violations committed by juveniles in an institution, and additional sanctions for serious violations committed by juveniles returned to an institution, must include one or more of the following:

(i) Loss of privileges for up to thirty days;

(ii) Loss of program level; or

(iii) Room confinement up to seventy-two hours.

(c) Sanctions for serious violations may also include, but are not limited to, one or more of the following:

(i) Change in release date;

(ii) Referral for prosecution;

(iii) Transfer to an intensive management unit;

(iv) Increase in security classification;

(v) Reprimand and loss of points;

(vi) Restitution; or

(vii) Community service.

(d) Sanctions for violations listed in WAC 388-730-0070(2) may include transfer to a higher security facility and must include one or more of the following:

(i) Loss of privileges;

(ii) Loss of program level;

(iii) Room confinement up to seventy-two hours;

(iv) Change in release date;

(v) Reprimand and/or loss of points;

(vi) Additional restitution; or

(vii) Community service.

(4) When a sanction is imposed, the juvenile must also receive a counseling intervention to address the violation.

(5) If the proposed sanctions for any violation includes extending the juvenile's established release date, the juvenile must be entitled to:

(a) Notice of an administrative review to consider extension of the release date and a written statement of the incident;

(b) An opportunity to be heard before a neutral review chairperson;

(c) Present oral or written statements, and call witnesses unless testimony of a witness would be irrelevant, repetitive, unnecessary, or would disrupt the orderly administration of the facility;

(d) Imposition of the sanction only if the administrative review chairperson finds by a preponderance of the evidence that the serious violation did occur; and

(e) A written decision, stating the reasons for the decision, by the administrative review chairperson.

(6) Each superintendent, regional administrator and service provider must clearly post, or make readily available, the list of serious violations and possible sanctions in all living units.

(7) Each program administrator must adopt procedures for implementing the requirements of this section.

[Statutory Authority: RCW 13.40.460 and 72.05.150. 03-03-070, § 388-730-0070, filed 1/15/03, effective 2/15/03. Statutory Authority: Chapter 72.05 RCW. 00-22-019, amended and recodified as § 388-730-0070, filed 10/20/00, effective 11/20/00. Statutory Authority: RCW 72.05.400, [72.05.]405, [72.05.]410, [72.05.]415, [72.05.]425, [72.05.]430, [72.05.]435, [72.05.]440, 74.15.210, 13.40.460 and [13.40.]480. 98-18-056, § 275-46-070, filed 8/31/98, effective 9/1/98. Statutory Authority: RCW 13.40.-460. 96-18-041, § 275-46-070, filed 8/29/96, effective 9/29/96.]

WAC 388-730-0090 Service provider penalty schedule. (1) Whenever a service provider contracts with the JRA to operate a community facility or residential treatment and care program, the contracted service provider must report any known violation as required in WAC 388-730-0080.

(2) If the contracted service provider fails to report violations within the prescribed time frames, the JRA must impose one or more of the following remedies:

(a) Imposition of a corrective action plan to be completed as determined by the program administrator.

(b) Imposition of the following monetary penalties:

(i) The first time fines are imposed on a service provider, the penalty must be at the rate of fifty dollars per day for each juvenile involved in a violation that was not reported as required. The penalty must be assessed for each day the report was late, and may continue until a corrective action plan is approved by the program administrator.

(ii) Subsequent fines imposed on the service provider during the same calendar year must be at the rate of seventy-five dollars per day for each juvenile involved in a violation that was not reported as required. The penalty must be assessed for each day the report was late, and may continue until a corrective action plan is approved by the program administrator.

(c) Order to stop placement until a corrective action plan is submitted, approved by the program administrator, and implemented.

(d) Termination of the contract for convenience if it is determined such termination is in the best interests of the department.

[Statutory Authority: RCW 13.40.460 and 72.05.150. 03-03-070, § 388-730-0090, filed 1/15/03, effective 2/15/03. Statutory Authority: Chapter 72.05 RCW. 00-22-019, amended and recodified as § 388-730-0090, filed 10/20/00, effective 11/20/00. Statutory Authority: RCW 72.05.400, [72.05.]405, [72.05.]410, [72.05.]415, [72.05.]425, [72.05.]430, [72.05.]435, [72.05.]440, 74.15.210, 13.40.460 and [13.40.]480. 98-18-056, § 275-46-090, filed 8/31/98, effective 9/1/98.]

Chapter 388-805 WAC

CERTIFICATION REQUIREMENTS FOR CHEMICAL DEPENDENCY SERVICE PROVIDERS

(Formerly chapter 440-22 WAC)

WAC

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388-805-820	What are the requirements for alcohol and other drug information school?
388-805-850	What are the requirements for treatment accountability for safer communities (TASC) providers and services?
388-805-900	Repealed.
388-805-905	Repealed.
388-805-910	Repealed.
388-805-915	Repealed.
388-805-920	Repealed.
388-805-925	Repealed.
388-805-930	Repealed.
388-805-935	Repealed.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

388-805-900	What are the requirements for outpatient child care when a parent is in treatment? [Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-900, filed 11/21/00, effective 1/1/01.] Repealed by 03-20-020, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8.
388-805-905	What are the requirements for outpatient child care admission and health history? [Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-905, filed 11/21/00, effective 1/1/01.] Repealed by 03-20-020, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8.
388-805-910	What are the requirements for outpatient child care policies? [Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-910, filed 11/21/00, effective 1/1/01.] Repealed by 03-20-020, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8.
388-805-915	What are the requirements for an outpatient child care activity program? [Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-915, filed 11/21/00, effective 1/1/01.] Repealed by 03-20-020, filed 9/23/03, effective

- 10/25/03. Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8.
- 388-805-920 What are the requirements for outpatient child care behavior management and discipline? [Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-920, filed 11/21/00, effective 1/1/01.] Repealed by 03-20-020, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8.
- 388-805-925 What are the requirements for outpatient child care diaper changing? [Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-925, filed 11/21/00, effective 1/1/01.] Repealed by 03-20-020, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8.
- 388-805-930 What are the requirements for outpatient child care food service? [Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-930, filed 11/21/00, effective 1/1/01.] Repealed by 03-20-020, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8.
- 388-805-935 What are the staffing requirements for outpatient child care services? [Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-935, filed 11/21/00, effective 1/1/01.] Repealed by 03-20-020, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8.

WAC 388-805-005 What definitions are important throughout this chapter? "Added service" means the adding of certification for chemical dependency levels of care to an existing certified agency at an approved location.

"Addiction counseling competencies" means the knowledge, skills, and attitudes of chemical dependency counselor professional practice as described in Technical Assistance Publication No. 21, Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, U.S. Department of Health and Human Services 1998.

"Administrator" means the person designated responsible for the operation of the certified treatment service.

"Adult" means a person eighteen years of age or older.

"Alcoholic" means a person who has the disease of alcoholism.

"Alcoholism" means a primary, chronic disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. The disease is often progressive and fatal. It is characterized by impaired control over drinking, preoccupation with the drug alcohol, use of alcohol despite adverse consequences, and distortions in thinking, most notably denial. Each of these symptoms may be continuous or periodic.

"Approved supervisor" means a person who meets the education and experience requirements described in WAC 246-811-030 and 246-811-045 through 246-811-049 and who is available to the person being supervised.

"Authenticated" means written, permanent verification of an entry in a patient treatment record by an individual, by means of an original signature including first initial, last name, and professional designation or job title, or initials of the name if the file includes an authentication record, and the date of the entry. If patient records are maintained electronically, unique electronic passwords, biophysical or passcard equipment are acceptable methods of authentication.

"Authentication record" means a document that is part of a patient's treatment record, with legible identification of all persons initialing entries in the treatment record, and includes:

- (1) Full printed name;
- (2) Signature including the first initial and last name; and
- (3) Initials and abbreviations indicating professional designation or job title.

"Bloodborne pathogens" means pathogenic microorganisms that are present in human blood and can cause disease in humans. The pathogens include, but are not limited to, hepatitis B virus (HBV) and human immunodeficiency virus (HIV).

"Branch site" means a physically separate certified site where qualified staff provides a certified treatment service, governed by a parent organization. The branch site is an extension of a certified provider's services to one or more sites.

"Certified treatment service" means a discrete program of chemical dependency treatment offered by a service provider who has a certificate of approval from the department of social and health services, as evidence the provider meets the standards of chapter 388-805 WAC.

"Change in ownership" means one of the following conditions:

- (1) When the ownership of a certified chemical dependency treatment provider changes from one distinct legal entity (owner) to a distinct other;
- (2) When the type of business changes from one type to another; or
- (3) When the current ownership takes on a new owner of five percent or more of the organizational assets.

"Chemical dependency" means a person's alcoholism or drug addiction or both.

"Chemical dependency counseling" means face-to-face individual or group contact using therapeutic techniques that are:

- (1) Led by a chemical dependency professional (CDP), or CDP trainee under supervision of a CDP;
- (2) Directed toward patients and others who are harmfully affected by the use of mood-altering chemicals or are chemically dependent; and
- (3) Directed toward a goal of abstinence for chemically dependent persons.

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

"Child" means a person less than eighteen years of age, also known as adolescent, juvenile, or minor.

"Clinical indicators" include, but are not limited to, inability to maintain abstinence from alcohol or other nonprescribed drugs, positive drug screens, patient report of a subsequent alcohol/drug arrest, patient leaves program against program advice, unexcused absences from treatment, lack of participation in self-help groups, and lack of patient progress in any part of the treatment plan.

"Community relations plan" means a plan to minimize the impact of an opiate substitution treatment program as required by the Center for Substance Abuse Guidelines for the Accreditation of Opioid Treatment Programs, section XVIII.

"County coordinator" means the person designated by the chief executive officer of a county to carry out administrative and oversight responsibilities of the county chemical dependency program.

"Criminal background check" means a search by the Washington state patrol for any record of convictions or civil adjudication related to crimes against children or other persons, including developmentally disabled and vulnerable adults, per RCW 43.43.830 through 43.43.842 relating to the Washington state patrol.

"Critical incidents" includes serious injury or sexual assault of patients, staff members, or public citizens on the premises; a natural disaster presenting a threat to facility operation or patient safety; a bomb threat; a break in or a burglary of patient identifying information; suicide attempt at the facility; or, a case alleging abuse or neglect of an adult patient by an agency staff member that was not resolved by the agency's grievance procedure.

"CSAT" means the Federal Center For Substance Abuse Treatment, a Substance Abuse Service Center of the Substance Abuse and Mental Health Services Administration.

"Danger to self or others," for purposes of WAC 388-805-520, means a youth who resides in a chemical dependency treatment agency and creates a risk of serious harm to the health, safety, or welfare to self or others. Behaviors considered a danger to self or others include:

- (1) Suicide threat or attempt;
- (2) Assault or threat of assault; or
- (3) Attempt to run from treatment, potentially resulting in a dangerous or life-threatening situation.

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

"Determination of need" means a process used by the department for opiate substitution treatment program certification applications as described in WAC 388-805-040.

"Detoxification" or **"detox"** means care and treatment of a person while the person recovers from the transitory effects of acute or chronic intoxication or withdrawal from alcohol or other drugs.

"Disability, a person with" means a person whom:

- (1) Has a physical or mental impairment that substantially limits one or more major life activities of the person;
- (2) Has a record of such an impairment; or
- (3) Is regarded as having such an impairment.

"Discrete treatment service" means a chemical dependency treatment service that:

- (1) Provides distinct chemical dependency supervision and treatment separate from any other services provided within the facility;
- (2) Provides a separate treatment area for ensuring confidentiality of chemical dependency treatment services; and
- (3) Has separate accounting records and documents identifying the provider's funding sources and expenditures of all funds received for the provision of chemical dependency treatment services.

"Domestic violence" means:

- (1) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members;

(2) Sexual assault of one family or household member by another;

(3) Stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member; or

(4) As defined in RCW 10.99.020, 26.50.010, or other Washington state statutes.

"Drug addiction" means a primary, chronic disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. The disease is often progressive and fatal. Drug addiction is characterized by impaired control over use of drugs, preoccupation with drugs, use of a drug despite adverse consequences, and distortions in thinking, most notably denial. Each of these symptoms may be continuous or periodic.

"Essential requirement" means a critical element of chemical dependency treatment services that must be present in order to provide effective treatment.

"Established ratio" means using 0.7 percent (.007) of a designated county's adult population to determine an estimate for the number of potential clients with an opiate diagnosis in need of treatment services.

"Faith-based organization" means an agency or organization such as a church, religiously affiliated entity, or religious organization.

"First steps" means a program available across the state for low-income pregnant women and their infants. First steps provides maternity care for pregnant and postpartum women and health care for infants and young children.

"Governing body" means the legal entity responsible for the operation of the chemical dependency treatment service.

"HIV/AIDS brief risk intervention (BRI)" means an individual face-to-face interview with a client or patient, to help that person assess personal risk for HIV/AIDS infection and discuss methods to reduce infection transmission.

"HIV/AIDS education" means education, in addition to the brief risk intervention, designed to provide a person with information regarding HIV/AIDS risk factors, HIV antibody testing, HIV infection prevention techniques, the impact of alcohol and other drug use on risks and the disease process, and trends in the spread of the disease.

"Medical practitioner" means a physician, advanced registered nurse practitioner (ARNP), or certified physician's assistant. ARNPs and midwives with prescriptive authority may perform practitioner functions related only to indicated specialty services.

"Off-site treatment" means provision of chemical dependency treatment by a certified provider at a location where treatment is not the primary purpose of the site; such as in schools, hospitals, or correctional facilities.

"Opiate substitution treatment program" means an organization that administers or dispenses an approved drug as specified in 212 CFR Part 291 for treatment or detoxification of opiate substitution. The agency is:

- (1) Certified as an opioid treatment program by the Federal Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration;
- (2) Licensed by the Federal Drug Enforcement Administration;
- (3) Registered by the state board of pharmacy;

(4) Accredited by an opioid treatment program accreditation body approved by the Federal Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration; and

(5) Certified as an opiate substitution treatment program by the department.

"Outcomes evaluation" means a system for determining the effectiveness of results achieved by patients during or following service delivery, and patient satisfaction with those results for the purpose of program improvement.

"Patient" is a person receiving chemical dependency treatment services from a certified program.

"Patient contact" means time spent with a client or patient to do assessments, individual or group counseling, or education.

"Patient placement criteria (PPC)" means admission, continued service, and discharge criteria found in the patient placement criteria for the treatment of substance-related disorders as published by the American Society of Addiction Medicine (ASAM).

"Probation assessment officer (PAO)" means a person employed at a certified district or municipal court probation assessment service that meets the PAO requirements of WAC 388-805-220.

"Probation assessment service" means a certified assessment service offered by a misdemeanor probation department or unit within a county or municipality.

"Progress notes" are a permanent record of ongoing assessments of a patient's participation in and response to treatment, and progress in recovery.

"Qualified personnel" means trained, qualified staff, consultants, trainees, and volunteers who meet appropriate legal, licensing, certification, and registration requirements.

"Registered counselor" means a person registered, or certified by the state department of health as required by chapter 18.19 RCW.

"Relocation" means change in location from one office space to a new office space, or moving from one office building to another.

"Remodeling" means expansion of existing office space to additional office space at the same address, or remodeling of interior walls and space within existing office space.

"SAMHSA" means the Federal Substance Abuse and Mental Health Services Administration.

"Self-help group" means community based support groups that address chemical dependency.

"Service provider" or **"provider"** means a legally operated entity certified by the department to provide chemical dependency services. The components of a service provider are:

- (1) Legal entity/owner;
- (2) Facility; and
- (3) Staff and services.

"Sexual abuse" means sexual assault, incest, or sexual exploitation.

"Sexual harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

(1) Submission to such conduct is made either explicitly or implicitly a term or condition of employment or treatment; or

(2) Such conduct interferes with work performance or creates an intimidating, hostile, or offensive work or treatment environment.

"Substance abuse" means a recurring pattern of alcohol or other drug use that substantially impairs a person's functioning in one or more important life areas, such as familial, vocational, psychological, physical, or social.

"Summary suspension" means an immediate suspension of certification, per RCW 34.05.422(4), by the department pending administrative proceedings for suspension, revocation, or other actions deemed necessary by the department.

"Supervision" means:

(1) Regular monitoring of the administrative, clinical, or clerical work performance of a staff member, trainee, student, volunteer, or employee on contract by a person with the authority to give directions and require change; and

(2) **"Direct supervision"** means the supervisor is on the premises and available for immediate consultation.

"Suspend" means termination of the department's certification of a provider's treatment services for a specified period or until specific conditions have been met and the department notifies the provider of reinstatement.

"TARGET" means the treatment and assessment report generation tool.

"Treatment plan review" means a review of active problems on the patient's individualized treatment plan, the need to address new problems, and patient placement.

"Treatment services" means the broad range of emergency, detoxification, residential, and outpatient services and care. Treatment services include diagnostic evaluation, chemical dependency education, individual and group counseling, medical, psychiatric, psychological, and social services, vocational rehabilitation and career counseling that may be extended to alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other drugs, and intoxicated persons.

"Urinalysis" means analysis of a patient's urine sample for the presence of alcohol or controlled substances by a licensed laboratory or a provider who is exempted from licensure by the department of health:

(1) **"Negative urine"** is a urine sample in which the lab does not detect specific levels of alcohol or other specified drugs; and

(2) **"Positive urine"** is a urine sample in which the lab confirms specific levels of alcohol or other specified drugs.

"Vulnerable adult" means a person who lacks the functional, mental, or physical ability to care for oneself.

"Young adult" means an adult who is eighteen, nineteen, or twenty years old.

"Youth" means a person seventeen years of age or younger.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-005, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-005, filed 11/21/00, effective 1/1/01.]

WAC 388-805-010 What chemical dependency services are certified by the department? (1) The department certifies the following types of chemical dependency services:

(a) **Detoxification services**, which assist patients in withdrawing from alcohol and other drugs including:

(i) **Acute detox**, which provides medical care and physician supervision for withdrawal from alcohol or other drugs; and

(ii) **Subacute detox**, which is nonmedical detoxification or patient self-administration of withdrawal medications ordered by a physician, provided in a home-like environment.

(b) **Residential treatment services**, which provide chemical dependency treatment for patients and include room and board in a twenty-four-hour-a-day supervised facility, including:

(i) **Intensive inpatient**, a concentrated program of individual and group counseling, education, and activities for detoxified alcoholics and addicts, and their families;

(ii) **Recovery house**, a program of care and treatment with social, vocational, and recreational activities to aid in patient adjustment to abstinence and to aid in job training, employment, or other types of community activities; and

(iii) **Long-term treatment**, a program of treatment with personal care services for chronically impaired alcoholics and addicts with impaired self-maintenance capabilities. These patients need personal guidance to maintain abstinence and good health.

(c) **Outpatient treatment services**, which provide chemical dependency treatment to patients less than twenty-four hours a day, including:

(i) **Intensive outpatient**, a concentrated program of individual and group counseling, education, and activities for detoxified alcoholics and addicts and their families;

(ii) **Outpatient**, individual and group treatment services of varying duration and intensity according to a prescribed plan; and

(iii) **Opiate substitution outpatient treatment**, which meets both outpatient and opiate substitution treatment program service requirements.

(d) **Assessment services**, which include:

(i) **ADATSA assessments**, alcohol and other drug assessments of clients seeking financial assistance from the department due to the incapacity of chemical dependency. Services include assessment, referral, case monitoring, and assistance with employment; and

(ii) **DUI assessments**, diagnostic services requested by the courts to determine a client's involvement with alcohol and other drugs and to recommend a course of action.

(e) **Information and assistance services**, which include:

(i) **Alcohol and drug information school**, an education program about the use and abuse of alcohol and other drugs, for persons referred by the courts and others, who do not present a significant chemical dependency problem, to help those persons make informed decisions about the use of alcohol and other drugs;

(ii) **Information and crisis services**, response to persons having chemical dependency needs, by phone or in person;

(iii) **Emergency service patrol**, assistance provided to intoxicated persons in the streets and other public places;

(iv) **Treatment accountability for safer communities (TASC)**, is a referral and case management service. TASC providers furnish a link between the criminal justice system and the treatment system. TASC identifies, assesses, and refers appropriate alcohol and other drug dependent offenders to community-based substance abuse treatment and monitors the outcome for the criminal justice system.

(2) The department may certify a provider for more than one of the services listed under subsection (1) of this section when the provider complies with the specific requirements of the selected services.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-010, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-010, filed 11/21/00, effective 1/1/01.]

WAC 388-805-015 How do I apply for certification as a chemical dependency service provider? (1) A potential new chemical dependency service provider, referred to as applicant, seeking certification for one or more services, as described under WAC 388-805-010, must:

(a) Request from the department an application packet of information on how to become a certified chemical dependency service provider; and

(b) Obtain a license as a residential treatment facility from the department of health, if planning to offer residential services.

(2) The applicant must submit a completed application to the department that includes:

(a) If the applicant is a sole provider: The name and address of the applicant, and a statement of sole proprietorship;

(b) If the applicant is a partnership: The name and address of every partner, and a copy of the written partnership agreement;

(c) If the applicant is a limited liability company: The name and addresses of its officers, and any owner of five percent or more of the organizational assets, and a copy of the certificate of formation issued by the state of Washington, secretary of state;

(d) If the applicant is a corporation: The names and addresses of its officers, board of directors and trustees, and any owner of five percent or more of the organizational assets, and a copy of the corporate articles of incorporation and bylaws;

(e) A copy of the master business license authorizing the organization to do business in Washington state;

(f) The social security number or Federal Employer Identification Number for the governing organization or person;

(g) The name of the individual administrator under whose management or supervision the services will be provided;

(h) A copy of the report of findings from a criminal background check of any owner of five percent or more of the organizational assets and the administrator;

(i) Additional disclosure statements or background inquiries if the department has reason to believe that offenses,

specified under RCW 43.43.830, have occurred since completion of the original application;

(j) The physical location of the facility where services will be provided including, in the case of a location known only by postal route and box numbers, and the street address;

(k) A plan of the premises assuring the chemical dependency treatment service is discrete from other programs, indicating capacities of the location for the proposed uses;

(l) Floor plan showing use of each room and location of:

(i) Windows and doors;

(ii) Restrooms;

(iii) Floor to ceiling walls;

(iv) Areas serving as confidential counseling rooms;

(v) Other therapy and recreation areas and rooms;

(vi) Confidential patient records storage; and

(vii) Sleeping rooms, if a residential facility.

(m) A completed facility accessibility self-evaluation form;

(n) Policy and procedure manuals specific to the agency at the proposed site, and meet the manual requirements described later in this regulation, including the:

(i) Administrative manual;

(ii) Personnel manual; and

(iii) Clinical manual.

(o) Sample patient records for each treatment service applied for; and

(p) Evidence of sufficient qualified staff to deliver services.

(3) In addition to the requirements in this section, a faith-based organization may implement the requirements of the federal Public Health Act, Sections 581-584 and Section 1955 of 24 U.S.C. 290 and 42 U.S.C. 300x-65.

(4) The agency owner or legal representative must:

(a) Sign the completed application form and submit the original to the department;

(b) Send a copy of the completed application form to the county coordinator in the county where services will be provided;

(c) Submit the application fee with the application materials; and

(d) Report any changes occurring during the certification process.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-015, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-015, filed 11/21/00, effective 1/1/01.]

WAC 388-805-030 What are the requirements for opiate substitution treatment program certification? Certification as an opiate substitution treatment program is contingent on the concurrent approval by applicable state regulatory authorities; certification as an opioid treatment program by the Federal CSAT SAMHSA; accreditation by an opioid treatment program accreditation body approved by the Federal CSAT SAMSHA; and licensure by the Federal Drug Enforcement Administration. In addition to WAC 388-805-015 or 388-805-020 requirements, a potential opiate substitution treatment program provider must submit to the department:

(1) Documentation the provider has communicated with the county legislative authority and if applicable, the city leg-

islative authority, in order to secure a location for the new opiate substitution treatment program that:

(a) Meets county or city land use ordinances; and

(b) Includes a plan to minimize the impact of the opiate substitution treatment programs upon the business and residential neighborhoods in which the program is located. The plan must include strategies used to:

(i) Obtain and document stakeholder input regarding the proposed location;

(ii) Address any concerns identified by stakeholders; and

(iii) Develop an ongoing community relations plan to address new concerns expressed by stakeholders as they arise.

(2) A copy of the application for a registration certificate from the Washington state board of pharmacy.

(3) A copy of the application for licensure to the Federal Drug Enforcement Administration.

(4) A copy of the application for certification to the Federal CSAT SAMHSA.

(5) A copy of the application for accreditation by an accreditation body approved as an opioid treatment program accreditation body by the Federal CSAT SAMHSA.

(6) Policies and procedures identified under WAC 388-805-700 through 388-805-750.

(7) Documentation that transportation systems will provide reasonable opportunities to persons in need of treatment to access the services of the program.

(8) At least three letters of support from other providers within the existing health care system in the area the applicant proposes to establish a new opiate substitution treatment program to demonstrate an appropriate relationship to the service area's existing health care system.

(9) A declaration to limit the number of individual program participants to three hundred fifty as specified in RCW 70.96A.410 (1)(e).

(10) For new applicants, who operate opiate substitution treatment programs in another state, copies of national and state certification/accreditation documentation, and copies of all survey reports written by national and/or state certification or accreditation organizations for each site they have operated an opiate substitution program in over the past six years.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-030, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-030, filed 11/21/00, effective 1/1/01.]

WAC 388-805-035 What are the responsibilities for the department when an applicant applies for approval of an opiate substitution treatment program? For purposes of this section, "area" means the county in which an opiate substitution treatment program applicant proposes to locate a certified program, and counties adjacent or near to the county in which the program is proposed to be located. When making a decision on an application for certification of a program, the department must:

(1) Consult with the county legislative authority in the area in which an applicant proposes to locate a program and the city legislative authority in any city in which an applicant proposes to locate a program. The department will request the county and city legislative authority to notify the department of any applicable requirements or other issues that the depart-

ment should consider in order to fulfill the requirements of WAC 388-805-030(7), or 388-805-040 (1) through (5);

(2) Not discriminate in its certification decision on the basis of the corporate structure of the applicant;

(3) Consider the size of the population in need of treatment in the area in which the program would be located and certify only applicants whose programs meet the necessary treatment needs of the population;

(4) Determine there is a need in the community for opiate substitution treatment and not certify more program slots than justified by the need in that community as described in WAC 388-805-040;

(5) Consider whether the applicant has the capability, or has in the past demonstrated the capability to provide appropriate treatment services to assist persons in meeting legislative goals of abstinence from opiates and opiate substitutes, obtaining mental health treatment, improving economic independence, and reducing adverse consequences associated with illegal use of controlled substances;

(6) Hold at least one public hearing in the county in which the facility is proposed to be located and one public hearing in the area in which the facility is proposed to be located. After consultation with the county legislative authority, the department may have the public hearing in the adjacent county with the largest population, the adjacent county with the largest underserved population, or the county nearest to the proposed location. The hearing must be held at a time and location most likely to permit the largest number of interested persons to attend and present testimony. The department must notify appropriate media outlets of the time, date, and location of the hearing at least three weeks in advance of the hearing.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-035, filed 9/23/03, effective 10/25/03.]

WAC 388-805-040 How does the department determine there is a need in the community for opiate substitution treatment? The department will determine whether or not there is a demonstrated need in the community for opiate substitution treatment from information provided to the department by the applicant and through department consultation with the city and county legislative authority, and other appropriate community resources. A "determination of need" for a proposed program will include a review and evaluation of the following criteria:

(1) For the number of potential clients in an area, the department will consider the size of the population in need of treatment in the area in which the program would be located using adult population statistics from the most recent area population trend reports. The department will use the established ratio of .7 percent of the adult population as an estimate for the number of potential clients with an opiate diagnosis in need of treatment services.

(2) For the number of anticipated program slots in an area, the department will multiply the sum of the established ratio of .7 percent of the adult population in subsection (1) of this section by thirty-five percent to determine an estimate of the anticipated need for the number of opiate substitution treatment program slots in the area in which the program would be located.

(3) Demographic and trend data from the area in which the program would be located including the most recent department county trend data, TARGET admission data for opiate substitution treatment from the county, hospital and emergency department admission data from the county, needle exchange data from the county, and other relevant reports and data from county health organizations demonstrating the need for opiate substitution treatment program services.

(4) Availability of other opiate substitution treatment programs near the area of the applicant's proposed program. The department will determine the number of patients, capacity, and accessibility of existing opiate substitution treatment programs near the area of the applicant's proposed program and whether existing programs have the capacity to assume additional patients for treatment services.

(5) Whether the population served or to be served has need for the proposed program and whether other existing services and facilities of the type proposed are available or accessible to meet that need. The assessment will include, but not limited to, consideration of the following:

(a) The extent to which the proposed program meets the need of the population presently served;

(b) The extent to which the underserved need will be met adequately by the proposed program; and

(c) The impact of the service on the ability of low-income persons, racial and ethnic minorities, women, handicapped persons, the elderly, and other underserved groups to obtain needed health care.

(6) The department will review agency policies and procedures that describe the cost of services to clients, sliding fee scales, and charity care policies, procedures, and goals.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-040, filed 9/23/03, effective 10/25/03.]

WAC 388-805-065 How does the department determine disqualification or denial of an application? The department must consider the ability of each person named in the application to operate in accord with this chapter before the department grants or renews certification of a chemical dependency service.

(1) The department must deny an applicant's certification when any of the following conditions occurred and was not satisfactorily resolved, or when any owner or administrator:

(a) Had a license or certification for a chemical dependency treatment service or health care agency denied, revoked, or suspended;

(b) Was convicted of child abuse or adjudicated as a perpetrator of substantiated child abuse;

(c) Obtained or attempted to obtain a health provider license, certification, or registration by fraudulent means or misrepresentation;

(d) Committed, permitted, aided, or abetted the commission of an illegal act or unprofessional conduct as defined under RCW 18.130.180;

(e) Demonstrated cruelty, abuse, negligence, misconduct, or indifference to the welfare of a patient or displayed acts of discrimination;

(f) Misappropriated patient property or resources;

(g) Failed to meet financial obligations or contracted service commitments that affect patient care;

(h) Has a history of noncompliance with state or federal regulations in an agency with which the applicant has been affiliated;

(i) Knowingly, or with reason to know, made a false statement of fact or failed to submit necessary information in:

- (i) The application or materials attached; and
- (ii) Any matter under department investigation.

(j) Refused to allow the department access to records, files, books, or portions of the premises relating to operation of the chemical dependency service;

(k) Willfully interfered with the preservation of material information or attempted to impede the work of an authorized department representative;

(l) Is in violation of any provision of chapter 70.96A RCW; or

(m) Does not meet criminal background check requirements.

(2) The department may deny certification when an applicant:

- (a) Fails to provide satisfactory application materials; or
- (b) Advertises itself as certified when certification has not been granted, or has been revoked or canceled.

(3) The department may deny an application for certification of an opiate substitution treatment program when:

(a) There is not a demonstrated need in the community for opiate substitution treatment and/or there is not a demonstrated need for more program slots justified by the need in that community;

(b) There is sufficient availability, accessibility, and capacity of other certified programs near the area in which the applicant proposes to locate the program;

(c) The applicant has not demonstrated in the past, the capability to provide the appropriate services to assist the persons who will utilize the program in meeting goals established by the legislature, including:

- (i) Abstinence from opiates and opiate substitutes,
- (ii) Obtaining mental health treatment,
- (iii) Improving economic independence, and
- (iv) Reducing adverse consequences associated with illegal use of controlled substances.

(4) The applicant may appeal department decisions in accord with chapter 34.05 RCW, the Washington Administrative Procedure Act and chapter 388-02 WAC.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-065, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-065, filed 11/21/00, effective 1/1/01.]

WAC 388-805-075 How do I apply for an exemption?

(1) The department may grant an exemption from compliance with specific requirements in this WAC chapter if the exemption does not violate:

- (a) An existing federal or state law; or
- (b) An existing tribal law.

(2) Providers must submit a signed letter requesting the exemption to the Supervisor, Certification Section, Division of Alcohol and Substance Abuse, P.O. Box 45330, Olympia, WA 98504-5330. The provider must assure the exemption request does not:

(a) Jeopardize the safety, health, or treatment of patients; and

(b) Impede fair competition of another service provider.

(3) The department must approve or deny all exemption requests in writing.

(4) The department and the provider must maintain a copy of the decision.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-075, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-075, filed 11/21/00, effective 1/1/01.]

WAC 388-805-085 What are the fees for agency certification? (1) Application fees:

- (a) New agency \$500
- (b) Branch agency \$500
- (c) Application for adding one or more services \$200
- (d) Change in ownership \$500

(2) Initial and annual certification fees:

- (a) For detoxification and residential services: \$26 per licensed bed
- (b) For nonresidential services:
 - (i) Large size agencies: 3,000 or more clients served per year \$1,125 per year
 - (ii) Medium size agencies: 1,000-2,999 clients served per year \$750 per year
 - (iii) Small size agencies: 0-999 clients served per year \$375 per year
- (c) For agencies certified through deeming per WAC 388-805-115 \$200 per year

(3) Each year providers must complete a declaration form provided by the department indicating the number of patients served annually, the provider's national accreditation status, and other information necessary for establishing fees and updating certification information.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-085, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-085, filed 11/21/00, effective 1/1/01.]

WAC 388-805-090 May certification fees be waived?

(1) Certification fees may be waived when:

- (a) The fees would not be in the interest of public health and safety; or
- (b) The fees would be to the financial disadvantage of the state; or
- (c) The department determines that the cost of processing the application is so small that it warrants granting an application fee waiver.

(2) Providers may submit a letter requesting a waiver of fees to the Supervisor, Certification Section, Division of Alcohol and Substance Abuse, P.O. Box 45330, Olympia, Washington, 98504-5330.

(3) Fee waivers may be granted to qualified providers who receive funding from tribal, federal, state or county government resources as follows:

(a) For residential providers: The twenty-six dollar per bed annual fee will be assessed only for those beds not funded by a governmental source;

(b) For nonresidential providers: The amount of the fee waiver must be determined by the percent of the provider's revenues that come from governmental sources, according to the following schedule:

Percent Government Revenues	90-100%	75-89%	50-74%	0-49%
Small agency	No fee	\$90	\$185	\$375
Medium agency	No fee	\$185	\$375	\$750
Large agency	No fee	\$285	\$565	\$1,125

(4) Requests for fee waiver must be mailed to the department and include the following:

(a) The reason for the request;

(b) For residential providers:

(i) Documentation of the number of beds currently licensed by the department of health;

(ii) Documentation showing the number of beds funded by a government entity including, tribal, federal, state or county government sources.

(c) For nonresidential providers:

(i) Documentation of the number of clients served during the previous twelve-month period;

(ii) Documentation showing the amount of government revenues received during the previous twelve-month period;

(iii) Documentation showing the amount of private revenues received during the previous twelve-month period.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-090, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-090, filed 11/21/00, effective 1/1/01.]

WAC 388-805-100 What do I need to do to maintain agency certification? (1) A service provider's continued certification and renewal is contingent upon:

(a) Completion of an annual declaration of certification; and

(b) Payment of certification fees, if applicable.

(2) Providing the essential requirements for chemical dependency treatment, including the following elements:

(a) Treatment process:

(i) Assessments, as described in WAC 388-805-310;

(ii) Treatment planning, as described in WAC 388-805-315 (2)(a) and 388-805-325(10);

(iii) Documenting patient progress, as described in WAC 388-805-315 (1)(b) and 388-805-325(12);

(iv) Treatment plan reviews and updates, as described in WAC 388-805-315 (2)(a), 388-805-325(10) and 388-805-325 (12)(c);

(v) Patient compliance reports, as described in WAC 388-805-315 (4)(b), 388-805-325(16), and 388-805-330;

(vi) Continuing care, and discharge planning, as described in WAC 388-805-315 (2)(c)(d) and (7)(a), and 388-805-325 (17) and (18); and

(vii) Conducting individual and group counseling, as described in WAC 388-805-315 (2)(b) and 388-805-325(12).

(b) Staffing: Provide sufficient qualified personnel for the care of patients as described in WAC 388-805-140(5) and 388-805-145(5);

(c) Facility:

(i) Provide sufficient facilities, equipment, and supplies for the care and safety of patients as described in WAC 388-805-140 (5) and (6);

(ii) If a residential provider, be licensed by the department of health as described by WAC 388-805-015 (1)(b).

(3) Findings during periodic on-site surveys and complaint investigations to determine the provider's compliance with this chapter. During on-site surveys and complaint investigations, provider representatives must cooperate with department representatives to:

(a) Examine any part of the facility at reasonable times and as needed;

(b) Review and evaluate records, including patient clinical records, personnel files, policies, procedures, fiscal records, data, and other documents as the department requires to determine compliance; and

(c) Conduct individual interviews with patients and staff members.

(4) The provider must post the notice of a scheduled department on-site survey in a conspicuous place accessible to patients and staff.

(5) The provider must correct compliance deficiencies found at such surveys immediately or as agreed by a plan of correction approved by the department.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-100, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-100, filed 11/21/00, effective 1/1/01.]

WAC 388-805-120 How does the department assess penalties? (1) When the department determines that a service provider fails to comply with provider entry requirements or ongoing requirements of this chapter, the department may:

(a) Assess fees to cover costs of added certification activities;

(b) Cease referrals of new patients who are recipients of state or federal funds; and

(c) Notify the county alcohol and drug coordinator and local media of ceased referrals, involuntary cancellations, suspensions, revocations, or nonrenewal of certification.

(2) When the department determines a service provider knowingly failed to report, as ordered by the court pursuant to chapter 46.61 RCW, a patient's noncompliance with treatment, the department must assess the provider a fine of two hundred fifty dollars for each incident of nonreporting.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-120, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-120, filed 11/21/00, effective 1/1/01.]

WAC 388-805-130 How does the department suspend or revoke certification? (1) The department must suspend or revoke a provider's certification when a disqualifying situation described under WAC 388-805-065 applies to a current service provider.

(2) The department must revoke a provider's certification when the provider knowingly failed to report, as ordered by the court pursuant to chapter 46.61 RCW, within a continuous twelve-month period, three incidents of patient noncompliance with treatment ordered by the court.

(3) The department may suspend or revoke a provider's certification when any of the following provider deficiencies or circumstances occur:

(a) A provider fails to provide the essential requirements of chemical dependency treatment as described in WAC 388-805-100(2), and one or more of the following conditions occur:

(i) Violation of a rule threatens or results in harm to a patient;

(ii) A reasonably prudent provider should have been aware of a condition resulting in significant violation of a law or rule;

(iii) A provider failed to investigate or take corrective or preventive action to deal with a suspected or identified patient care problem;

(iv) Noncompliance occurs repeatedly in the same or similar areas;

(v) There is an inability to attain compliance with laws or rules within a reasonable period of time.

(b) The provider fails to submit an acceptable and timely plan of correction for cited deficiencies; or

(c) The provider fails to correct cited deficiencies.

(4) The department may suspend certification upon receipt of a providers written request. Providers requesting voluntary suspension must submit a written request for reinstatement of certification within one year from the effective date of the suspension. The department will review the request for reinstatement, determine if the provider is able to operate in compliance with certification requirements, and notify the provider of the results of the review for reinstatement.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-130, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-130, filed 11/21/00, effective 1/1/01.]

WAC 388-805-140 What are the requirements for a provider's governing body? The provider's governing body, legally responsible for the conduct and quality of services provided, must:

(1) Appoint an administrator responsible for the day-to-day operation of the program.

(2) Maintain a current job description for the administrator including the administrator's authority and duties.

(3) Establish the philosophy and overall objectives for the treatment services.

(4) Notify the department within thirty days, of changes of the agency administrator.

(5) Provide personnel, facilities, equipment, and supplies necessary for the safety and care of patients.

(6) If a nonresidential provider, ensure:

(a) Safety of patients and staff; and

(b) Maintenance and operation of the facility.

(7) Review and approve written administrative, personnel, and clinical policies and procedures required under WAC 388-805-150, 388-805-200, and 388-805-300.

(8) Ensure the administration and operation of the agency is in compliance with:

(a) Chapter 388-805 WAC requirements;

(b) Applicable federal, state, tribal, and local laws and rules; and

(c) Applicable federal, state, tribal, and local licenses, permits, and approvals.

(9) The governing body of a certified opiate substitution treatment program must ensure that treatment is provided to patients in compliance with 42 Code of Federal Regulations, Part 8.12.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-140, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-140, filed 11/21/00, effective 1/1/01.]

WAC 388-805-145 What are the key responsibilities required of an agency administrator? (1) The administrator is responsible for the day-to-day operation of the certified treatment service, including:

(a) All administrative matters;

(b) Patient care services; and

(c) Meeting all applicable rules and ethical standards.

(2) When the administrator is not on duty or on call, a staff person must be delegated the authority and responsibility to act in the administrator's behalf.

(3) The administrator must ensure administrative, personnel, and clinical policy and procedure manuals:

(a) Are developed and adhered to; and

(b) Are reviewed and revised as necessary, and at least annually.

(4) The administrator must employ sufficient qualified personnel to provide adequate chemical dependency treatment, facility security, patient safety and other special needs of patients.

(5) The administrator must ensure all persons providing counseling services are registered, certified or licensed by the department of health.

(6) The administrator must ensure full-time chemical dependency professionals (CDPs), CDP trainees, or other licensed or registered counselors in training to become a CDP do not exceed one hundred twenty hours of patient contact per month.

(7) The administrator must assign the responsibilities for a clinical supervisor to at least one person within the organization.

(8) The administrator of a certified opiate substitution treatment program must ensure that the number of patients will not exceed three hundred and fifty unless authorized by the county in which the program is located.

(9) The administrator or program sponsor of a certified opiate substitution treatment program must ensure that treatment is provided to patients in compliance with 42 Code of Federal Regulations, Part 8.12.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-145, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-145, filed 11/21/00, effective 1/1/01.]

WAC 388-805-150 What must be included in an agency administrative manual? Each service provider must have and adhere to an administrative manual that contains at a minimum:

(1) The organization's:

(a) Articles and certificate of incorporation if the owner is a corporation;

- (b) Partnership agreement if the owner is a partnership;
or
- (c) Statement of sole proprietorship.
- (2) The agency's bylaws if the owner is a corporation.
- (3) Copies of a current master license and state business licenses or a current declaration statement that they are updated as required.
- (4) The provider's philosophy on and objectives of chemical dependency treatment with a goal of total abstinence, consistent with RCW 70.96A.011.
- (5) A policy and procedures describing how services will be made sensitive to the needs of each patient, including assurance that:
- (a) Certified interpreters or other acceptable alternatives are available for persons with limited English-speaking proficiency and persons having a sensory impairment; and
- (b) Assistance will be provided to persons with disabilities in case of an emergency.
- (6) A policy addressing special needs and protection for youth and young adults, and for determining whether a youth or young adult can fully participate in treatment, before admission of:
- (a) A youth to a treatment service caring for adults; or
- (b) A young adult to a treatment service caring for youth.
- (7) An organization chart specifying:
- (a) The governing body;
- (b) Each staff position by job title, including volunteers, students, and persons on contract; and
- (c) The number of full- or part-time persons for each position.
- (8) A delegation of authority policy.
- (9) A copy of current fee schedules.
- (10) A policy and procedures implementing state and federal regulations on patient confidentiality, including provision of a summary of 42 CFR Part 2.22 (a)(1) and (2) to each patient.
- (11) A policy and procedures for reporting suspected child abuse and neglect.
- (12) A policy and procedures for reporting the death of a patient to the department within one business day when:
- (a) The patient is in residence; or
- (b) An outpatient dies on the premises.
- (13) Patient grievance policy and procedures.
- (14) A policy and procedures on reporting of critical incidents and actions taken to the department within two business days when an unexpected event occurs.
- (15) A smoking policy consistent with the Washington Clean Indoor Air Act, chapter 70.160 RCW.
- (16) For a residential provider, a facility security policy and procedures, including:
- (a) Preventing entry of unauthorized visitors; and
- (b) Use of passes for leaves of patients.
- (17) For a nonresidential provider, an evacuation plan for use in the event of a disaster, addressing:
- (a) Communication methods for patients, staff, and visitors including persons with a visual or hearing impairment or limitation;
- (b) Evacuation of mobility-impaired persons;
- (c) Evacuation of children if child care is offered;
- (d) Different types of disasters;
- (e) Placement of posters showing routes of exit; and

- (f) The need to mention evacuation routes at public meetings.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-150, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-150, filed 11/21/00, effective 1/1/01.]

WAC 388-805-205 What are agency personnel file requirements?

- (1) The administrator must ensure that there is a current personnel file for each employee, trainee, student, and volunteer, and for each contract staff person who provides or supervises patient care.
- (2) The administrator must designate a person to be responsible for management of personnel files.
- (3) Each person's file must contain:
- (a) A copy of the results of a tuberculin skin test or evidence the person has completed a course of treatment approved by a physician or local health officer if the results are positive;
- (b) Documentation of training on bloodborne pathogens, including HIV/AIDS and hepatitis B for all employees, volunteers, students, and treatment consultants on contract;
- (i) At the time of staff's initial assignment to tasks where occupational exposure may take place;
- (ii) Annually thereafter for bloodborne pathogens;
- (c) A signed and dated commitment to maintain patient confidentiality in accordance with state and federal confidentiality requirements; and
- (d) A record of an orientation to the agency as described in WAC 388-805-200(5).
- (4) For residential facilities, documentation of current cardiopulmonary resuscitation (CPR) and first-aid training for at least one person on each shift.
- (5) Documentation of health department training and approval for any staff administering or reading a TB test.
- (6) Employees who have been patients of the agency must have personnel records:
- (a) Separate from clinical records; and
- (b) Have no indication of current or previous patient status.
- (7) In addition, each patient care staff member's personnel file must contain:
- (a) Verification of qualifications for their assigned position including:
- (i) For a chemical dependency professional (CDP): A copy of the person's valid CDP certification issued by the department of health (DOH);
- (ii) For approved supervisors: Documentation to substantiate the person meets the qualifications of an approved supervisor as defined in WAC 246-811-010;
- (iii) For each person engaged in the treatment of chemical dependency, including counselors, physicians, nurses, and other registered, certified, or licensed health care professionals, evidence they comply with the credentialing requirements of their respective professions;
- (iv) For probation assessment officers (PAO): Documentation that the person has met the education and experience requirements described in WAC 388-805-220;
- (v) For probation assessment officer trainees:
- (A) Documentation that the person meets the qualification requirements described in WAC 388-805-225; and

(B) Documentation of the PAO trainee's supervised experience as described in WAC 388-805-230 including an individual education and experience plan and documentation of progress toward completing the plan.

(vi) For information school instructors:

(A) A copy of a certificate of completion of an alcohol and other drug information school instructor's training course approved by the department; and

(B) Documentation of continuing education as specified in WAC 388-805-250.

(b) A copy of a current job description, signed and dated by the employee and supervisor which includes:

(i) Job title;

(ii) Minimum qualifications for the position;

(iii) Summary of duties and responsibilities;

(iv) For contract staff, formal agreements or personnel contracts, which describe the nature and extent of patient care services, may be substituted for job descriptions.

(c) A written performance evaluation for each year of employment:

(i) Conducted by the immediate supervisor of each staff member; and

(ii) Signed and dated by the employee and supervisor.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-205, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-205, filed 11/21/00, effective 1/1/01.]

WAC 388-805-210 What are the requirements for approved supervisors of persons who are in training to become a chemical dependency professional? (1) When an administrator decides to provide training opportunities for persons seeking to become a chemical dependency professional (CDP), the administrator must assign an approved supervisor, as defined in WAC 388-805-005, to each chemical dependency professional trainee (CDPT), or other licensed or registered counselor.

(2) Approved supervisors must provide the CDPT or other licensed or registered counselor assigned to them with documentation substantiating their qualifications as an approved supervisor before the initiation of training.

(3) Approved supervisors must decrease the hours of patient contact allowed under WAC 388-805-145(6) by twenty percent for each full-time CDPT or other licensed or registered counselor supervised.

(4) Approved supervisors are responsible for all patients assigned to the CDPT or other licensed or registered counselor under their supervision.

(5) An approved supervisor must provide supervision to a CDPT or other licensed or registered counselor as required by WAC 246-811-048.

(6) CDPs must review and coauthenticate all clinical documentation of CDPTs or other licensed or registered counselors.

(7) Approved supervisors must supervise, assess and document the progress the CDP trainees or other licensed or registered counselors under their supervision are making toward meeting the requirements described in WAC 246-811-030 and 246-811-047. This documentation must be provided to CDP trainees or other licensed or registered counselors upon request.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-210, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-210, filed 11/21/00, effective 1/1/01.]

WAC 388-805-220 What are the requirements to be a probation assessment officer? A probation assessment officer (PAO) must:

(1) Be employed as a probation officer at a misdemeanor probation department or unit within a county or municipality;

(2) Be certified as a chemical dependency professional, or

(3) Have obtained a bachelor's or graduate degree in a social or health sciences field and have completed twelve quarter or eight semester credits from an accredited college or university in courses that include the following topics:

(a) Understanding addiction and the disease of chemical dependency;

(b) Pharmacological actions of alcohol and other drugs;

(c) Substance abuse and addiction treatment methods;

(d) Understanding addiction placement, continuing care, and discharge criteria, including ASAM PPC criteria;

(e) Cultural diversity including people with disabilities and it's implication for treatment;

(f) Chemical dependency clinical evaluation (screening and referral to include comorbidity);

(g) HIV/AIDS brief risk intervention for the chemically dependent;

(h) Chemical dependency confidentiality;

(i) Chemical dependency rules and regulations.

(4) In addition, a PAO must complete:

(a) Two thousand hours of supervised experience as a PAO trainee in a state-certified DUI assessment service program if a PAO possesses a baccalaureate degree;

(b) One thousand five hundred hours of experience as a PAO trainee in a state-certified DUI assessment service program if a PAO possesses a masters or higher degree.

(5) PAOs, must complete fifteen clock hours each year or thirty clock hours every two years of continuing education in chemical dependency subject areas which will enhance competency as a PAO beginning on January 1 of the year following the year of initial qualification.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-220, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-220, filed 11/21/00, effective 1/1/01.]

WAC 388-805-250 What are the requirements to be an information school instructor? (1) An information school instructor must have a certificate of completion of an alcohol and other drug information school instructor's training course approved by the department if not a chemical dependency professional (CDP).

(2) To remain qualified, the information school instructor must maintain information school instructor status by completing fifteen clock hours of continuing education if not a CDP:

(a) During each two-year period beginning January of the year following initial qualification; and

(b) In subject areas that increase knowledge and skills in training, teaching techniques, curriculum planning and devel-

opment, presentation of educational material, laws and rules, and developments in the chemical dependency field.

[Statutory Authority: RCW 70.96A.090. and Chapter 70.96A RCW; chapter 242, Laws of 2001; 42 C.F.R. Part 8. 03-20-020, § 388-805-250, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-250, filed 11/21/00, effective 1/1/01.]

WAC 388-805-300 What must be included in the agency clinical manual? Each chemical dependency service provider must have and adhere to a clinical manual containing patient care policies and procedures, including:

(1) How the provider meets WAC 388-805-305 through 388-805-350 requirements.

(2) How the provider will meet applicable certified service standards for the level of program service requirements:

Allowance of up to twenty percent of education time to consist of film or video presentations.

(3) Identification of resources and referral options so staff can make referrals required by law and as indicated by patient needs.

(4) Assurance that there is an identified clinical supervisor who:

(a) Is a chemical dependency professional (CDP);

(b) Reviews a sample of patient records of each CDP quarterly; and

(c) Ensures implementation of assessment, treatment, continuing care, transfer and discharge plans in accord with WAC 388-805-315.

(5) Patient admission, continued service, and discharge criteria using PPC.

(6) Policies and procedures to implement the following requirements:

(a) The administrator must not admit or retain a person unless the person's treatment needs can be met;

(b) A chemical dependency professional (CDP), or a CDP trainee under supervision of a CDP, must assess and refer each patient to the appropriate treatment service; and

(c) A person needing detoxification must immediately be referred to a detoxification provider, unless the person needs acute care in a hospital.

(7) Additional requirements for opiate substitution treatment programs:

(a) A program physician must ensure that a person is currently addicted to an opioid drug and that the person became addicted at least one year before admission to treatment;

(b) A program physician must ensure that each patient voluntarily chooses maintenance treatment and provides informed written consent to treatment;

(c) A program physician must ensure that all relevant facts concerning the use of the opioid drug are clearly and adequately explained to the patient;

(d) A person under eighteen years of age needing opiate substitution treatment is required to have had two documented attempts at short-term detoxification or drug-free treatment within a twelve-month period. A waiting period of no less than seven days is required between the first and second short-term detoxification treatment;

(e) No person under eighteen years of age may be admitted to maintenance treatment unless a parent, legal guardian,

or responsible adult designated by the relevant state authority consents in writing to treatment;

(f) A program physician may waive the requirement of a one year history of addiction under subsection (7)(a) of this section, for patients released from penal institutions (within six months after release), for pregnant patients (program physician must certify pregnancy), and for previously treated patients (up to two years after discharge);

(g) Documentation in each patient's record that the service provider made a good faith effort to review if the patient is enrolled in any other opiate substitution treatment service;

(h) When the medical director or program physician of an opiate substitution treatment program provider in which the patient is enrolled determines that exceptional circumstances exist, the patient may be granted permission to seek concurrent treatment at another opiate substitution treatment program provider. The justification for finding exceptional circumstances for double enrollment must be documented in the patient's record at both treatment program providers.

(8) Tuberculosis screening for prevention and control of TB in all detox, residential, and outpatient programs, including:

(a) Obtaining a history of preventive or curative therapy;

(b) Screening and related procedures for coordinating with the local health department; and

(c) Implementing TB control as provided by the department of health TB control program.

(9) HIV/AIDS information, brief risk intervention, and referral.

(10) Limitation of group counseling sessions to twelve or fewer patients.

(11) Counseling sessions with nine to twelve youths to include a second adult staff member.

(12) Provision of education to each patient on:

(a) Alcohol, other drugs, and chemical dependency;

(b) Relapse prevention; and

(c) HIV/AIDS, hepatitis, and TB.

(13) Provision of education or information to each patient on:

(a) The impact of chemical use during pregnancy, risks to the fetus, and the importance of informing medical practitioners of chemical use during pregnancy;

(b) Emotional, physical, and sexual abuse; and

(c) Nicotine addiction.

(14) An outline of each lecture and education session included in the service, sufficient in detail for another trained staff person to deliver the session in the absence of the regular instructor.

(15) Assigning of work to a patient by a CDP when the assignment:

(a) Is part of the treatment program; and

(b) Has therapeutic value.

(16) Use of self-help groups.

(17) Patient rules and responsibilities, including disciplinary sanctions for noncomplying patients.

(18) If youth are admitted, a policy and procedure for assessing the need for referral to child welfare services.

(19) Implementation of the deferred prosecution program.

(20) Policy and procedures for reporting status of persons convicted under chapter 46.61 RCW to the department of licensing.

(21) Nonresidential providers must have policies and procedures on:

- (a) Medical emergencies;
- (b) Suicidal and mentally ill patients;
- (c) Laboratory tests, including UA's and drug testing;
- (d) Services and resources for pregnant women:

(i) A pregnant woman who is not seen by a private physician must be referred to a physician or the local first steps maternity care program for determination of prenatal care needs; and

(ii) Services include discussion of pregnancy specific issues and resources.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-300, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-300, filed 11/21/00, effective 1/1/01.]

WAC 388-805-305 What are patients' rights requirements in certified agencies? (1) Each service provider must ensure each patient:

(a) Is admitted to treatment without regard to race, color, creed, national origin, religion, sex, sexual orientation, age, or disability, except for bona fide program criteria;

(b) Is reasonably accommodated in case of sensory or physical disability, limited ability to communicate, limited English proficiency, and cultural differences;

(c) Is treated in a manner sensitive to individual needs and which promotes dignity and self-respect;

(d) Is protected from invasion of privacy except that staff may conduct reasonable searches to detect and prevent possession or use of contraband on the premises;

(e) Has all clinical and personal information treated in accord with state and federal confidentiality regulations;

(f) Has the opportunity to review their own treatment records in the presence of the administrator or designee;

(g) Has the opportunity to have clinical contact with a same gender counselor, if requested and determined appropriate by the supervisor, either at the agency or by referral;

(h) Is fully informed regarding fees charged, including fees for copying records to verify treatment and methods of payment available;

(i) Is provided reasonable opportunity to practice the religion of their choice as long as the practice does not infringe on the rights and treatment of others or the treatment service. The patient has the right to refuse participation in any religious practice;

(j) Is allowed necessary communication:

(i) Between a minor and a custodial parent or legal guardian;

(ii) With an attorney; and

(iii) In an emergency.

(k) Is protected from abuse by staff at all times, or from other patients who are on agency premises, including:

- (i) Sexual abuse or harassment;
- (ii) Sexual or financial exploitation;
- (iii) Racism or racial harassment; and
- (iv) Physical abuse or punishment.

(l) Is fully informed and receives a copy of counselor disclosure requirements established under RCW 18.19.060;

(m) Receives a copy of patient grievance procedures upon request; and

(n) In the event of an agency closure or treatment service cancellation, each patient must be:

(i) Given thirty days notice;

(ii) Assisted with relocation;

(iii) Given refunds to which the person is entitled; and

(iv) Advised how to access records to which the person is entitled.

(2) A faith-based service provider must ensure the right of patients to receive treatment without religious coercion by ensuring that:

(a) Patients must not be discriminated against when seeking services;

(b) Patients must have the right to decide whether or not to take part in inherently religious activities; and

(c) Patients have the right to receive a referral to another service provider if they object to a religious provider.

(3) A service provider must obtain patient consent for each release of information to any other person or entity. This consent for release of information must include:

(a) Name of the consenting patient;

(b) Name or designation of the provider authorized to make the disclosure;

(c) Name of the person or organization to whom the information is to be released;

(d) Nature of the information to be released, as limited as possible;

(e) Purpose of the disclosure, as specific as possible;

(f) Specification of the date or event on which the consent expires;

(g) Statement that the consent can be revoked at any time, except to the extent that action has been taken in reliance on it;

(h) Signature of the patient or parent, guardian, or authorized representative, when required, and the date; and

(i) A statement prohibiting further disclosure unless expressly permitted by the written consent of the person to whom it pertains.

(4) A service provider must notify patients that outside persons or organizations which provide services to the agency are required by written agreement to protect patient confidentially.

(5) A service provider must notify an ADATSA recipient of the recipient's additional rights as required by WAC 388-800-0090.

(6) The administrator must ensure a copy of patients' rights is given to each patient receiving services, both at admission and in case of disciplinary discharge.

(7) The administrator must post a copy of patients' rights in a conspicuous place in the facility accessible to patients and staff.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-305, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-305, filed 11/21/00, effective 1/1/01.]

WAC 388-805-310 What are the requirements for chemical dependency assessments? A chemical depen-

dency professional (CDP), or a CDP trainee under supervision of a CDP, must conduct and document an assessment of each client's involvement with alcohol and other drugs. The CDP's assessment must include:

(1) A face-to-face diagnostic interview with each client to obtain, review, evaluate, and document the following:

(a) A history of the client's involvement with alcohol and other drugs, including:

- (i) The type of substances used;
- (ii) The route of administration; and
- (iii) Amount, frequency, and duration of use.

(b) History of alcohol or other drug treatment or education;

(c) The client's self-assessment of use of alcohol and other drugs;

- (d) A relapse history; and
- (e) A legal history.

(2) If the client is in need of treatment, a CDP or CDP trainee under supervision of a CDP must evaluate the assessment using PPC dimensions for the patient placement decision.

(3) If an assessment is conducted on a youth, and the client is in need of treatment, the CDP, or CDP trainee under supervision of a CDP, must also obtain the following information:

- (a) Parental and sibling use of drugs;
- (b) History of school assessments for learning disabilities or other problems, which may affect ability to understand written materials;
- (c) Past and present parent/guardian custodial status, including running away and out-of-home placements;
- (d) History of emotional or psychological problems;
- (e) History of child or adolescent developmental problems; and
- (f) Ability of parents/guardians to participate in treatment.

(4) Documentation of the information collected, including:

(a) A diagnostic assessment statement including sufficient data to determine a patient diagnosis supported by criteria of substance abuse or substance dependence;

(b) A written summary of the data gathered in subsections (1), (2), and (3) of this section that supports the treatment recommendation;

(c) A statement regarding provision of an HIV/AIDS brief risk intervention, and referrals made; and

(d) Evidence the client:

- (i) Was notified of the assessment results; and
- (ii) Documentation of treatment options provided, and the client's choice; or
- (iii) If the client was not notified of the results and advised of referral options, the reason must be documented.

(5) Completion and submission of all reports required by the courts, department of licensing, and department of social and health services in a timely manner.

(6) Referral of an adult or minor who requires assessment for involuntary chemical dependency treatment to the county-designated chemical dependency specialist.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-310, filed 9/23/03, effective

10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-310, filed 11/21/00, effective 1/1/01.]

WAC 388-805-315 What are the requirements for treatment, continuing care, transfer, and discharge plans?

(1) A chemical dependency professional (CDP), or a CDP trainee under supervision of a CDP, must be responsible for the overall treatment plan for each patient, including:

- (a) Patient involvement in treatment planning;
- (b) Documentation of progress toward patient attainment of goals; and
- (c) Completeness of patient records.

(2) A CDP or a CDP trainee under supervision of a CDP must:

(a) Develop the individualized treatment plan based upon the assessment and update the treatment plan based upon achievement of goals, or when new problems are identified;

(b) Conduct individual and group counseling;

(c) Develop the continuing care plan; and

(d) Complete the discharge summary.

(3) A CDP, or CDP trainee under supervision of a CDP, must also include in the treatment plan for youth problems identified in specific youth assessment, including any referrals to school and community support services.

(4) A CDP, or CDP trainee under supervision of a CDP, must follow up when a patient misses an appointment to:

(a) Try to motivate the patient to stay in treatment; and

(b) Report a noncompliant patient to the committing authority as appropriate.

(5) A CDP, or CDP trainee under supervision of a CDP, must involve each patient's family or other support persons, when the patient gives written consent:

(a) In the treatment program; and

(b) In self-help groups.

(6) When transferring a patient from one certified treatment service to another within the same agency, at the same location, a CDP, or a CDP trainee under supervision of a CDP, must:

(a) Update the patient assessment and treatment plan; and

(b) Provide a summary report of the patient's treatment and progress, in the patient's record.

(7) A CDP, or CDP trainee under supervision of a CDP, must meet with each patient at the time of discharge from any treatment agency, unless in detox or when a patient leaves treatment without notice, to:

(a) Finalize a continuing care plan to assist in determining appropriate recommendation for care;

(b) Assist the patient in making contact with necessary agencies or services; and

(c) Provide the patient a copy of the plan.

(8) When transferring a patient to another treatment provider, the current provider must forward copies of the following information to the receiving provider when a release of confidential information is signed by the patient:

(a) Patient demographic information;

(b) Diagnostic assessment statement and other assessment information, including:

(i) Documentation of the HIV/AIDS intervention;

(ii) TB test result;

- (iii) A record of the patient's detox and treatment history;
- (iv) The reason for the transfer; and
- (v) Court mandated or agency recommended follow-up treatment.
- (c) Discharge summary; and
- (d) The plan for continuing care or treatment.
- (9) A CDP, or CDP trainee under supervision of a CDP, must complete a discharge summary, within seven days of each patient's discharge from the agency, which includes:
 - (a) The date of discharge or transfer; and
 - (b) A summary of the patient's progress toward each treatment goal, except in detox.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-315, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-315, filed 11/21/00, effective 1/1/01.]

WAC 388-805-320 What are the requirements for a patient record system? Each service provider must have a comprehensive patient record system maintained in accord with recognized principles of health record management. The provider must ensure:

- (1) A designated individual is responsible for the record system;
- (2) A secure storage system which:
 - (a) Promotes confidentiality of and limits access to both active and inactive records; and
 - (b) Protects active and inactive files from damage during storage.
- (3) Patient record policies and procedures on:
 - (a) Who has access to records;
 - (b) Content of active and inactive patient records;
 - (c) A systematic method of identifying and filing individual patient records so each can be readily retrieved;
 - (d) Assurance that each patient record is complete and authenticated by the person providing the observation, evaluation, or service;
 - (e) Retention of patient records for a minimum of six years after the discharge or transfer of the patient; and
 - (f) Destruction of patient records.
- (4) In addition to subsection (1) through (3) of this section, an opiate substitution treatment program provider must ensure that the patient record system comply with all federal and state reporting requirements relevant to opioid drugs approved for use in treatment of opioid addiction.
- (5) In addition to subsection (1) through (3) of this section, providers maintaining electronic patient records must:
 - (a) Make records available in paper form upon request:
 - (i) For review by the department;
 - (ii) By patients requesting record review as authorized by WAC 388-805-305 (1)(f).
 - (b) Provide secure, limited access through means that prevent modification or deletion after initial preparation;
 - (c) Provide for back up of records in the event of equipment, media or human error;
 - (d) Provide for protection from unauthorized access, including network and internet access.
- (6) In case of an agency closure, the provider closing its treatment agency must arrange for the continued management of all patient records. The closing provider must notify the department in writing of the mailing and street address

where records will be stored and specify the person managing the records. The closing provider may:

- (a) Continue to manage the records and give assurance they will respond to authorized requests for copies of patient records within a reasonable period of time;
- (b) Transfer records of patients who have given written consent to another certified provider;
- (c) Enter into a qualified service organization agreement with a certified provider to store and manage records, when the outgoing provider will no longer be a chemical dependency treatment provider; or
- (d) In the event none of the arrangements listed in (a) through (c) of this subsection can be made, the closing provider must arrange for transfer of patient records to the department.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-320, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-320, filed 11/21/00, effective 1/1/01.]

WAC 388-805-325 What are the requirements for patient record content? The service provider must ensure patient record content includes:

- (1) Demographic information;
- (2) A chemical dependency assessment and history of involvement with alcohol and other drugs;
- (3) Documentation the patient was informed of the diagnostic assessment and options for referral or the reason not informed;
- (4) Documentation the patient was informed of federal confidentiality requirements and received a copy of the patient notice required under 42 CFR, Part 2;
- (5) Documentation the patient was informed of treatment service rules, translated when needed, signed and dated by the patient before beginning treatment;
- (6) Voluntary consent to treatment signed and dated by the patient, parent or legal guardian, except as authorized by law for protective custody, involuntary treatment, or the department of corrections;
- (7) Documentation the patient received counselor disclosure information, acknowledged by the provider and patient by signature and date;
- (8) Documentation of the patient's tuberculosis test and results;
- (9) Documentation the patient received the HIV/AIDS brief risk intervention;
- (10) Initial and updated individual treatment plans, including results of the initial assessment and periodic reviews, addressing:
 - (a) Patient biopsychosocial problems;
 - (b) Treatment goals;
 - (c) Estimated dates or conditions for completion of each treatment goal;
 - (d) Approaches to resolve the problems;
 - (e) Identification of persons responsible for implementing the approaches;
 - (f) Medical orders, if appropriate.
- (11) Documentation of referrals made for specialized care or services;

(12) At least weekly individualized documentation of ongoing services in residential services, and as required in intensive outpatient and outpatient services, including:

(a) Date, duration, and content of counseling and other treatment sessions;

(b) Ongoing assessments of each patient's participation in and response to treatment and other activities;

(c) Progress notes as events occur, and treatment plan reviews as specified under each treatment service of chapter 388-805 WAC; and

(d) Documentation of missed appointments.

(13) Medication records, if applicable;

(14) Laboratory reports, if applicable;

(15) Properly completed authorizations for release of information;

(16) Copies of all correspondence related to the patient, including reports of noncompliance;

(17) A copy of the continuing care plan signed and dated by the CDP and the patient; and

(18) The discharge summary.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-325, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-325, filed 11/21/00, effective 1/1/01.]

WAC 388-805-350 What are the requirements for outcomes evaluation? Each service provider must develop and implement policies and procedures for outcomes evaluation, to monitor and evaluate program effectiveness and patient satisfaction for the purpose of program improvement.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-350, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-350, filed 11/21/00, effective 1/1/01.]

WAC 388-805-400 What are the requirements for detoxification providers? Detoxification services include acute and subacute services. To be certified to offer detoxification services, a provider must:

(1) Meet WAC 388-805-001 through 388-805-320, 388-805-330, and 388-805-350 requirements; and

(2) Meet relevant requirements of chapter 246-337 WAC.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-400, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-400, filed 11/21/00, effective 1/1/01.]

WAC 388-805-410 What are the requirements for detox staffing and services? (1) The service provider must ensure staffing as follows:

(a) A chemical dependency professional (CDP), or a CDP trainee under supervision of a CDP, to assess, counsel, and attempt to motivate each patient for referral;

(b) Other staff as necessary to provide services needed by each patient;

(c) All personnel providing patient care, except licensed staff and CDPs, must complete a minimum of forty hours of documented training before assignment of patient care duties. The personnel training must include:

(i) Chemical dependency;

(ii) HIV/AIDS and hepatitis B education;

(iii) TB prevention and control; and

(iv) Detox screening, admission, and signs of trauma.

(d) All personnel providing patient care must have current training in:

(i) Cardio-pulmonary resuscitation (CPR); and

(ii) First aid.

(2) The service provider must ensure detoxification services include:

(a) A staff member who demonstrates knowledge about addiction, and is skilled in observation and eliciting information, will perform a screening of each person prior to admission;

(b) Counseling of each patient by a CDP, or CDP trainee under supervision of a CDP, at least once:

(i) Regarding the patient's chemical dependency; and

(ii) Attempting to motivate each person to accept referral into a continuum of care for chemical dependency treatment.

(c) Sleeping arrangements that permit observation of patients;

(d) Separate sleeping rooms for youth and adults; and

(e) Referral of each patient to other appropriate treatment services.

(3) The service provider must ensure detoxification patient records include:

(a) Demographic information;

(b) Documentation the patient was informed of federal confidentiality requirements and received a copy of the patient notice required under 42 CFR, Part 2;

(c) Documentation the patient was informed of treatment service rules, translated when needed, signed and dated by the patient before beginning treatment;

(d) Voluntary consent to treatment signed and dated by the patient, parent or legal guardian, except as authorized by law for protective custody and involuntary treatment;

(e) Documentation the patient receive counselor disclosure information, acknowledged by the provider and patient by signature and date;

(f) Documentation the patient received the HIV/AIDS brief risk intervention;

(g) Progress notes each shift and as events occur;

(h) Medication records, if applicable;

(i) Laboratory reports, if applicable;

(j) Properly completed authorizations for release of information; and

(k) The discharge summary, which includes the patient's physical condition.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-410, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-410, filed 11/21/00, effective 1/1/01.]

WAC 388-805-500 What are the requirements for residential providers? To be certified to offer intensive inpatient, recovery, or long-term residential services, a provider must meet the requirements of:

(1) WAC 388-805-001 through 388-805-350;

(2) WAC 388-805-510 through 388-805-550 as applicable; and

(3) Chapter 246-337 WAC as required for department of health licensing.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-500, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-500, filed 11/21/00, effective 1/1/01.]

WAC 388-805-520 What are the requirements for youth behavior management? (1) Upon application for a youth's admission, a service provider must:

(a) Advise the youth's parent and other referring persons of the programmatic and physical plant capabilities and constraints in regard to providing treatment with or without a youth's consent;

(b) Obtain the parent's or other referring person's agreement to participate in the treatment process as appropriate and possible; and

(c) Obtain the parent's or other referring person's agreement to return and take custody of the youth as necessary and appropriate on discharge or transfer.

(2) The administrator must ensure policies and procedures are written and implemented which detail least to increasingly restrictive practices used by the provider to stabilize and protect youth who are a danger to self or others, including:

(a) Obtaining signed behavioral contracts from the youth, at admission and updated as necessary;

(b) Acknowledging positive behavior and fostering dignity and self respect;

(c) Supporting self-control and the rights of others;

(d) Increased individual counseling;

(e) Increased staff monitoring;

(f) Verbal deescalation;

(g) Use of unlocked room for voluntary containment or time-out;

(h) Use of therapeutic physical intervention techniques during a time limited immediate crisis to prevent or limit free body movement that may cause harm to the person or others; and

(i) Emergency procedures, including notification of the parent, guardian or other referring person, and, when appropriate, law enforcement.

(3) The provider must ensure staff is trained in safe and therapeutic techniques for dealing with a youth's behavioral and emotional crises, including:

(a) Verbal deescalation;

(b) Crisis intervention;

(c) Anger management;

(d) Suicide assessment and intervention;

(e) Conflict management and problem solving skills;

(f) Management of assaultive behavior;

(g) Proper use of therapeutic physical intervention techniques; and

(h) Emergency procedures.

(4) To reduce the possibility of a youth's unauthorized exit from the residential treatment site, the provider may have:

(a) An unlocked room for voluntary containment or time-out;

(b) A secure perimeter, such as a nonscalable fence with locked gates; and

(c) Locked windows and exterior doors.

(5) Providers using holding mechanisms in subsection (4) of this section must meet current Uniform Building Code requirements, which include fire safety and special egress control devices, such as alarms and automatic releases.

(6) When less restrictive measures are not sufficient to de-escalate a behavioral crisis, clinical staff may use, for voluntary containment or time-out of a youth, a quiet unlocked room which has a window for observation and:

(a) The clinical supervisor or designated alternate must be notified immediately of the staff person's use of a quiet room for a youth, and must determine its appropriateness;

(b) A chemical dependency professional (CDP) or designated clinical alternate must consult with the youth immediately and at least every ten minutes, for counseling, assistance, and to maintain direct communication; and

(c) The clinical supervisor or designated alternate must evaluate the youth and determine the need for mental health consultation.

(7) Youth who demonstrate continuing refusal to participate in treatment or continuing to exhibit behaviors that present health and safety risks to self, other patients, or staff may be discharged or transferred to more appropriate care after:

(a) Interventions appropriate to the situation from those listed in subsection (2) of this section have been attempted without success;

(b) The person has been informed of the consequences and return options;

(c) The parents, guardian, or other referring person has been notified of the emergency and need to transfer or discharge the person; and

(d) Arrangements are made for the physical transfer of the person into the custody of the youth's parent, guardian, or other appropriate person or program.

(8) Involved staff must document the circumstances surrounding each incident requiring intervention in the youth's record and include:

(a) The precipitating circumstances;

(b) Measures taken to resolve the incident;

(c) Final resolution; and

(d) Record of notification of appropriate others.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-520, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-520, filed 11/21/00, effective 1/1/01.]

WAC 388-805-530 What are the requirements for intensive inpatient services? (1) A chemical dependency professional (CDP), or a CDP trainee under supervision of a CDP, must:

(a) Complete the initial treatment plan within five days of admission;

(b) Conduct at least one face-to-face individual chemical dependency counseling session with each patient each week;

(c) Provide a minimum of ten hours of chemical dependency counseling with each patient each week;

(d) Document a treatment plan review, at least weekly, which updates patient status, progress toward goals; and

(e) Refer each patient for ongoing treatment or support, as necessary, upon completion of treatment.

(2) The provider must ensure a minimum of twenty hours of treatment services for each patient each week; up to ten hours may be education.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-530, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-530, filed 11/21/00, effective 1/1/01.]

WAC 388-805-540 What are the requirements for recovery house services? (1) A chemical dependency professional (CDP), or a CDP trainee under supervision of a CDP, must provide a minimum of five hours of treatment, for each patient each week, consisting of:

- (a) Education regarding drug-free and sober living; and
- (b) Individual or group counseling.

(2) A CDP, or CDP trainee under supervision of a CDP, must document a treatment plan review at least monthly; and

(3) Staff must assist patients with general reentry living skills and, for youth, continuation of educational or vocational training.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-540, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-540, filed 11/21/00, effective 1/1/01.]

WAC 388-805-550 What are the requirements for long-term treatment services? Each chemical dependency service provider must ensure each patient receives:

(1) Education regarding alcohol, other drugs, and other addictions, at least two hours each week.

(2) Individual or group counseling by a chemical dependency professional (CDP), or CDP trainee under supervision of a CDP, a minimum of two hours each week.

(3) Education on social and coping skills.

(4) Social and recreational activities.

(5) Assistance in seeking employment, when appropriate.

(6) Document a treatment plan review at least monthly.

(7) Assistance with reentry living skills.

(8) A living arrangement plan.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-550, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-550, filed 11/21/00, effective 1/1/01.]

WAC 388-805-600 What are the requirements for outpatient providers? To be certified to provide intensive or other outpatient services, a chemical dependency service provider must meet the requirements of:

(1) WAC 388-805-001 through 388-805-350;

(2) WAC 388-805-610 through 388-805-630, as applicable; and

(3) WAC 388-805-700 through 388-805-750, if offering opiate substitution treatment program services.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-600, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-600, filed 11/21/00, effective 1/1/01.]

WAC 388-805-610 What are the requirements for intensive outpatient treatment services? (1) Patients admitted to intensive outpatient treatment under a deferred

prosecution order pursuant to chapter 10.05 RCW, must complete intensive treatment as described in subsection (2) of this section. Any exceptions to this requirement must be approved, in writing, by the court having jurisdiction in the case.

(2) Each chemical dependency service provider must ensure intensive outpatient services are designed to deliver:

(a) A minimum of seventy-two hours of treatment services within a maximum of twelve weeks,

(b) The first four weeks of treatment must consist of:

(i) At least three sessions each week;

(ii) Each group session must last at least one hour; and

(iii) Each session must be on separate days of the week.

(c) Individual chemical dependency counseling sessions with each patient at least once a month, or more if clinically indicated;

(d) Education totaling not more than fifty percent of patient treatment services regarding alcohol, other drugs, relapse prevention, HIV/AIDS, hepatitis B, hepatitis C, and TB prevention, and other air/bloodborne pathogens;

(e) Self-help group attendance in addition to the seventy-two hours;

(f) A chemical dependency professional (CDP), or a CDP trainee under supervision of a CDP, must conduct and document a review of each patient's treatment plan in individual chemical dependency counseling sessions, if appropriate, to assess adequacy and attainment of goals;

(g) Upon completion of intensive outpatient treatment, a CDP, or a CDP trainee under the supervision of a CDP, must refer each patient for ongoing treatment or support, as necessary.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-610, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-610, filed 11/21/00, effective 1/1/01.]

WAC 388-805-625 What are the requirements for outpatient services for persons subject to RCW 46.61.5056? (1) Patients admitted to outpatient treatment subject to RCW 46.61.5056, must complete outpatient treatment as described in subsection (2) of this section.

(2) A chemical dependency professional (CDP), or a CDP trainee under supervision of a CDP, must:

(a) For the first sixty days of treatment:

(i) Conduct group or individual chemical dependency counseling sessions for each patient, each week, according to an individual treatment plan.

(ii) Conduct at least one individual chemical dependency counseling session of no less than thirty minutes duration excluding a chemical dependency assessment for each patient, according to an individual treatment plan.

(iii) Conduct alcohol and drug basic education for each patient.

(iv) Document patient participation in self-help groups described in WAC 388-805-300(16) for patients with a diagnosis of substance dependence.

(v) For patients with a diagnosis of substance dependence who received intensive inpatient chemical dependency treatment services, the balance of the sixty-day time period will consist, at a minimum, of weekly outpatient counseling sessions according to an individual treatment plan.

(b) For the next one hundred twenty days of treatment:

(i) Conduct group or individual chemical dependency counseling sessions for each patient, every two weeks, according to an individual treatment plan.

(ii) Conduct at least one individual chemical dependency counseling session of no less than thirty minutes duration every sixty days for each patient, according to an individual treatment plan.

(c) Upon completion of one hundred eighty days of intensive treatment, a CDP, or a CDP trainee under the supervision of a CDP, must refer each patient for ongoing treatment or support, as necessary, using PPC.

(3) For client's that are assessed with insufficient evidence of substance dependence or substance abuse, a CDP must refer the client to alcohol/drug information school.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-625, filed 9/23/03, effective 10/25/03.]

WAC 388-805-700 What are the requirements for opiate substitution treatment program providers? An opiate substitution treatment program provider must meet requirements of:

- (1) WAC 388-805-001 through 388-805-350;
- (2) WAC 388-805-620;
- (3) WAC 388-805-700 through 388-805-750; and
- (4) 42 Code of Federal Regulations, Part 8.12.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-700, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-700, filed 11/21/00, effective 1/1/01.]

WAC 388-805-710 What are the requirements for opiate substitution medical management? (1) The medical director must assume responsibility for administering all medical services performed by the opiate substitution treatment program.

(2) The medical director must be responsible for ensuring that the opiate substitution treatment program is in compliance with all applicable federal, state, and local laws and regulations.

(3) A program physician or authorized health care professional under supervision of a program physician, must provide oversight for determination of opiate physical addiction and conducting a complete, fully documented physical evaluation for each patient before admission.

(4) A physical examination must be conducted on each patient:

(a) By a program physician or other medical practitioner; and

(b) Within fourteen days of admission.

(5) Following the patient's initial dose of opiate substitution treatment, the physician must establish adequacy of dose, considering:

- (a) Signs and symptoms of withdrawal;
- (b) Patient comfort; and
- (c) Side effects from over medication.

(6) Prior to the beginning of detox, a program physician must approve an individual detoxification schedule for each patient being detoxified.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-710, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-710, filed 11/21/00, effective 1/1/01.]

WAC 388-805-715 What are the requirements for opiate substitution medication management? (1) An opiate substitution treatment program must use only those opioid agonist treatment medications that are approved by the Food and Drug Administration under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) for use in the treatment of opioid addiction.

(2) In addition, an opiate substitution treatment program who is fully compliant with the protocol of an investigational use of a drug and other conditions set forth in the application may administer a drug that has been authorized by the Food and Drug Administration under an investigational new drug application under section 505(i) of the Federal Food, Drug, and Cosmetic Act for investigational use in the treatment of opioid addiction. Currently the following opioid agonist treatment medications will be considered to be approved by the Food and Drug Administration for use in the treatment of opioid addiction:

- (a) Methadone;
- (b) Levomethadyl acetate (LAAM); and
- (c) Buprenorphine distributed as Subutex and suboxone.

(3) An opiate substitution treatment program must maintain current procedures that are adequate to ensure that the following dosage form and initial dosing requirements are met:

(a) Methadone must be administered or dispensed only in oral form and must be formulated in such a way as to reduce its potential for parenteral abuse;

(b) For each new patient enrolled in a program, the initial dose of methadone must not exceed thirty milligrams and the total dose for the first day must not exceed forty milligrams, unless the program physician documents in the patient's record that forty milligrams did not suppress opiate abstinence symptoms.

(4) An opiate substitution treatment program must maintain current procedures adequate to ensure that each opioid agonist treatment medication used by the program is administered and dispensed in accordance with its approved product labeling. Dosing and administration decisions must be made by a program physician familiar with the most up-to-date product labeling. These procedures must ensure that any significant deviations from the approved labeling, including deviations with regard to dose, frequency, or the conditions of use described in the approved labeling, are specifically documented in the patient's record.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-715, filed 9/23/03, effective 10/25/03.]

WAC 388-805-720 What are the requirements for drug testing in opiate substitution treatment? (1) The provider must obtain a specimen sample from each patient for drug testing:

- (a) At least eight times per year; and
- (b) Randomly, without notice to the patient.

(2) Staff must observe the collection of each specimen sample and use proper chain of custody techniques when handling each sample;

(3) When a patient refuses to provide a specimen sample or initial the log of sample numbers, staff must consider the specimen positive; and

(4) Staff must document a positive specimen and discuss the findings with the patient at the next scheduled counseling session.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-720, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-720, filed 11/21/00, effective 1/1/01.]

WAC 388-805-730 What are the requirements for opiate substitution treatment dispensaries? (1) Each opiate substitution treatment provider must comply with applicable portions of 21 CFR, Part 1301 requirements, as now or later amended.

(2) The administrator must ensure written policies and procedures to verify the identity of patients.

(3) Dispensary staff must maintain a file with a photograph of each patient. Dispensary staff must ensure pictures are updated when:

(a) The patient's physical appearance changes significantly; or

(b) Every two years, whichever comes first.

(4) In addition to notifying the Federal CSAT, SAMHSA and the Federal Drug Enforcement Administration, the administrator must immediately notify the department and the state board of pharmacy of any theft or significant loss of a controlled substance.

(5) The administrator must have a written diversion control plan that contains specific measures to reduce the possibility of diversion of controlled substances from legitimate treatment use and that assigns specific responsibility to the medical and administrative staff members for carrying out the diversion control measures and functions described in the plan.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-730, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-730, filed 11/21/00, effective 1/1/01.]

WAC 388-805-740 What are the requirements for opiate substitution treatment counseling? (1) A chemical dependency professional (CDP), or a CDP trainee under supervision of a CDP, must provide individual or group counseling sessions once each:

(a) Week, for the first ninety days, for a new patient or a patient readmitted more than ninety days since the person's most recent discharge from opiate substitution treatment;

(b) Week, for the first month, for a patient readmitted within ninety days of the most recent discharge from opiate substitution treatment; and

(c) Month, for a patient transferring from another opiate substitution treatment program where the patient stayed for ninety or more days.

(2) A CDP, or a CDP trainee under supervision of a CDP, must conduct and document a continuing care review

with each patient to review progress, discuss facts, and determine the need for continuing opiate substitution treatment:

(a) Between six and seven months after admission; and

(b) Once every six months thereafter.

(3) A CDP, or a CDP trainee under supervision of a CDP, must provide counseling in a location that is physically separate from other activities.

(4) A pregnant woman and any other patient who requests, must receive at least one-half hour of counseling and education each month on:

(a) Matters relating to pregnancy and street drugs;

(b) Pregnancy spacing and planning; and

(c) The effects of opiate substitution treatment on the woman and fetus, when opiate substitution treatment occurs during pregnancy.

(5) Staff must provide at least one-half hour of counseling on family planning with each patient through either individual or group counseling.

(6) The administrator must ensure there is one staff member who has training in family planning, prenatal health care, and parenting skills.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-740, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-740, filed 11/21/00, effective 1/1/01.]

WAC 388-805-750 What are the requirements for opiate substitution treatment take-home medications? (1) An opiate substitution treatment provider may authorize take-home medications for a patient when:

(a) The medication is for a Sunday or legal holiday, as identified under RCW 1.16.050; or

(b) Travel to the facility presents a safety risk for patients or staff due to inclement weather.

(2) A service provider may permit take-home medications on other days for a stabilized patient who:

(a) Has received opiate substitution treatment medication for a minimum of ninety days; and

(b) Had negative urines for the last sixty days.

(3) The provider must meet 42 CFR, Part 8.12(i)(1-5) requirements.

(4) The provider may arrange for opiate substitution treatment medication to be administered by licensed staff or self-administered by a pregnant woman receiving treatment at a certified residential treatment agency when:

(a) The woman had been receiving treatment medication for ninety or more days; and

(b) The woman's use of treatment medication can be supervised.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-750, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-750, filed 11/21/00, effective 1/1/01.]

WAC 388-805-800 What are the requirements for ADATSA assessment services? (1) An agency certified to conduct ADATSA assessments must conduct the assessment for each eligible patient and be governed by the requirements under:

(a) WAC 388-805-001 through 388-805-310;

- (b) WAC 388-805-020 and 388-805-325 (1), (2), (3), (4), (9), (15), (16), 388-805-330; and 388-805-350; and
- (c) Chapter 388-800 WAC.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-800, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-800, filed 11/21/00, effective 1/1/01.]

WAC 388-805-810 What are the requirements for DUI assessment providers? (1) If located in a district or municipal probation department, each DUI service provider must meet the requirements of:

- (a) WAC 388-805-001 through 388-805-135,
- (b) WAC 388-805-145 (4), (5), and (6);
- (c) WAC 388-805-150, the administrative manual, subsections (4), (7) through (11), (13), and (14);
- (d) WAC 388-805-155, facilities, subsections (1)(b), (c), (d), and (2)(b);
- (e) WAC 388-805-200 (1), (4), and (5);
- (f) WAC 388-805-205 (1), (2), (3)(a) through (d), (4), (6), and (7);
- (g) WAC 388-805-220, 388-805-225, and 388-805-230;
- (h) WAC 388-805-260, volunteers;
- (i) WAC 388-805-300, clinical manual, subsections (1), (2), (3), (9), and (20)(e);
- (j) WAC 388-805-305, patients' rights;
- (k) WAC 388-805-310, assessments;
- (l) WAC 388-805-320, patient record system, subsections (3)(a) through (f), and (5);
- (m) WAC 388-805-325, record content, subsections (1), (2), (3), (4), (7), (9), (11), (15), and (17); and
- (n) WAC 388-805-350, outcomes evaluation;
- (o) WAC 388-805-815, DUI assessment services.

(2) If located in another certified chemical dependency treatment facility, the DUI service provider must meet the requirements of:

- (a) WAC 388-805-001 through 388-805-260; 388-805-305 and 388-805-310;
- (b) WAC 388-805-300, 388-805-320, 388-805-325 as noted in subsection (1) of this section, 388-805-350; and
- (c) WAC 388-805-815.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-810, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-810, filed 11/21/00, effective 1/1/01.]

WAC 388-805-820 What are the requirements for alcohol and other drug information school? (1) Alcohol and other drug information school providers must be governed under:

- (a) WAC 388-805-001 through 388-805-135; and
- (b) This section.
- (2) The provider must:
 - (a) Inform each student of fees at the time of enrollment; and
 - (b) Ensure adequate and comfortable seating in well-lit and ventilated rooms.
 - (3) A certified information school instructor or a chemical dependency professional must teach the course and:

(a) Advise each student there is no assumption the student is an alcoholic or drug addict, and this is not a therapy session;

- (b) Discuss the class rules;
- (c) Review the course objectives;
- (d) Follow curriculum contained in "Alcohol and Other Drugs Information School Training Curriculum," published in 2001, or later amended;
- (e) Ensure not less than eight and not more than fifteen hours of class room instruction;
- (f) Administer the posttest from the above reference to each enrolled student after the course is completed;
- (g) Ensure individual client records include:
 - (i) Intake form;
 - (ii) Hours and date or dates in attendance;
 - (iii) Source of referral;
 - (iv) Copies of all reports, letters, certificates, and other correspondence;
 - (v) A record of any referrals made; and
 - (vi) A copy of the scored posttest.
- (h) Complete and submit reports required by the courts and the department of licensing, in a timely manner.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-820, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-820, filed 11/21/00, effective 1/1/01.]

WAC 388-805-850 What are the requirements for treatment accountability for safer communities (TASC) providers and services? (1) A certified TASC provider must provide referral and case management services to each eligible patient and meet the requirements of:

- (a) WAC 388-805-001 through 388-805-210;
- (b) WAC 388-805-240, students;
- (c) WAC 388-805-260, volunteers;
- (d) WAC 388-805-300, clinical manual, subsections (1) through (6), (9) through (15), and (21)(a), (b), and (e);
- (e) WAC 388-805-305, patients' rights, subsections (1), (3), (4), (6), and (7);
- (f) WAC 388-805-310, assessments, subsections (1) through (6);
- (g) WAC 388-805-315, treatment, continuing care, transfer, and discharge plans, subsections (1), (2)(a), (c), (d), (5), and (7) through (9);
 - (i) A CDP, or a CDP trainee under supervision of a CDP, must substitute referral and case management plans for treatment plan requirements in WAC 388-805-315 (1) and (2)(a);
 - (ii) A CDP, or a CDP trainee under supervision of a CDP, must coordinate the referral of patients with the appropriate treatment provider for each identified problem, ensure they receive adequate treatment, and add new problems to the case management plan as they are identified;
 - (iii) A CDP, or a CDP trainee under supervision of a CDP, must coordinate the continuing care plan of the patient with appropriate treatment providers; and,
 - (iv) When transferring a patient to another treatment provider, a TASC provider will substitute a summary of the patient's progress toward each referral and case management goal.
- (h) WAC 388-805-320, patient record system;

- (i) WAC 388-805-325, patient record content, subsections (1) through (4), (5) through (9), and (11) through (18);
- (j) WAC 388-805-330, reporting patient noncompliance; and
- (k) WAC 388-805-350, outcomes evaluation.
- (2) A CDP, or a CDP trainee under supervision of a CDP, must assess and document the adequacy of each client's referral and case management plan and attainment of goals once each month.

[Statutory Authority: RCW 70.96A.090, chapter 70.96A RCW, 2001 c 242, 42 C.F.R. Part 8. 03-20-020, § 388-805-850, filed 9/23/03, effective 10/25/03. Statutory Authority: RCW 70.96A.090 and chapter 70.96A RCW. 00-23-107, § 388-805-850, filed 11/21/00, effective 1/1/01.]

WAC 388-805-900 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-805-905 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-805-910 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-805-915 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-805-920 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-805-925 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-805-930 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-805-935 Repealed. See Disposition Table at beginning of this chapter.

Chapter 388-818 WAC

DEAF AND HARD OF HEARING SERVICES

WAC

388-818-001	Repealed.
388-818-0010	What is the purpose of this chapter?
388-818-002	Repealed.
388-818-0020	What does the office of the deaf and hard of hearing do?
388-818-003	Repealed.
388-818-0030	What does the telecommunications access service do?
388-818-0040	What definitions apply to this chapter?
388-818-005	Repealed.
388-818-0050	What social services relating to hearing loss are available to the public?
388-818-0060	Who are qualified service providers?
388-818-0070	Is telecommunications equipment available for clients?
388-818-0080	What items are not included with telecommunications equipment?
388-818-0090	Who is eligible to apply for telecommunications equipment from TAS?
388-818-010	Repealed.
388-818-0100	Who must certify an applicant's eligibility for telecommunications equipment from TAS?
388-818-0110	How do applicants request specialized telecommunications equipment?
388-818-0120	What types of income are included when requesting equipment from TAS?
388-818-0130	How are applicants notified about decisions for telecommunications equipment?

388-818-0140	What are reasons for denying telecommunications equipment?
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388-818-0160	How do clients renew their application for telecommunications equipment?
388-818-0170	Are nonprofit organizations eligible for telecommunications equipment?
388-818-0180	What process do nonprofit organizations follow to receive telecommunications equipment from TAS?
388-818-0190	How much does an applicant have to pay for telecommunications equipment?
388-818-020	Repealed.
388-818-0200	How does an applicant request a waiver (exception) of equipment cost?
388-818-0210	What conditions must be met for a client to receive purchased telecommunication equipment?
388-818-0220	When is telecommunications equipment owned by the client?
388-818-0230	May clients return purchased telecommunications equipment?
388-818-0240	When may telecommunications equipment be loaned to an applicant?
388-818-0250	What are the conditions for loaning telecommunications equipment?
388-818-0260	When does state-loaned equipment have to be returned to TAS?
388-818-0270	May a person take loaned telecommunications equipment outside the state?
388-818-0280	Will training be provided on the use and care of telecommunications equipment?
388-818-0290	What services do trainers provide to clients?
388-818-030	Repealed.
388-818-0300	When may telecommunications equipment be replaced?
388-818-0310	When may requests for replacement telecommunications equipment be denied?
388-818-0320	Who may receive reconditioned telecommunications equipment?
388-818-0330	May an applicant disagree with a DSHS decision about telecommunications equipment?
388-818-0340	What is a relay complaint?
388-818-0350	What may a client do when dissatisfied with relay services?
388-818-0360	May a client file a formal complaint about the relay service?
388-818-0370	When is customer service available for clients?
388-818-0380	May clients file their complaint about relay services with the FCC?
388-818-0390	May the FCC file a complaint?
388-818-040	Repealed.
388-818-0400	What documents must ODHH keep for complaints?
388-818-050	Repealed.
388-818-060	Repealed.
388-818-070	Repealed.
388-818-080	Repealed.
388-818-090	Repealed.
388-818-110	Repealed.
388-818-130	Repealed.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

388-818-001	Scope. [99-20-022, recodified as § 388-818-001, filed 9/28/99, effective 9/28/99. Statutory Authority: RCW 43.20A.720, 43.20A.725 and 43.20A.730. 94-02-042 (Order 3691), § 388-43-001, filed 12/30/93, effective 1/30/94.] Repealed by 03-05-100, filed 2/19/03, effective 3/22/03. Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. Formerly chapter 388-43 WAC.
388-818-002	Regional centers. [99-20-022, recodified as § 388-818-002, filed 9/28/99, effective 9/28/99. Statutory Authority: RCW 43.20A.720, 43.20A.725 and 43.20A.730. 94-02-042 (Order 3691), § 388-43-002, filed 12/30/93, effective 1/30/94.] Repealed by 03-05-100, filed 2/19/03, effective 3/22/03. Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. Formerly chapter 388-43 WAC.
388-818-003	Services. [99-20-022, recodified as § 388-818-003, filed 9/28/99, effective 9/28/99. Statutory Authority: RCW 43.20A.720, 43.20A.725 and 43.20A.730. 94-02-042 (Order 3691), § 388-43-003, filed 12/30/93, effective 1/30/94.] Repealed by 03-05-100, filed 2/19/03, effective 3/22/03. Statutory Authority: RCW 43.20A.725,

- 43.20A.720, 2001 c 210. Formerly chapter 388-43 WAC.
- 388-818-005 Definitions. [99-20-022, recodified as § 388-818-005, filed 9/28/99, effective 9/28/99. Statutory Authority: RCW 43.20A.720, 43.20A.725 and 43.20A.730. 94-02-042 (Order 3691), § 388-43-005, filed 12/30/93, effective 1/30/94.] Repealed by 03-05-100, filed 2/19/03, effective 3/22/03. Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. Formerly chapter 388-43 WAC.
- 388-818-010 Eligibility requirements. [99-20-022, recodified as § 388-818-010, filed 9/28/99, effective 9/28/99. Statutory Authority: RCW 43.20A.725 and 43.20A.730. 95-03-049 (Order 3825), § 388-43-010, filed 1/11/95, effective 2/11/95. Statutory Authority: RCW 43.20A.720, 43.20A.725 and 43.20A.730. 94-02-042 (Order 3691), § 388-43-010, filed 12/30/93, effective 1/30/94.] Repealed by 03-05-100, filed 2/19/03, effective 3/22/03. Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. Formerly chapter 388-43 WAC.
- 388-818-020 Approval of application for initial device or request for replacement device. [99-20-022, recodified as § 388-818-020, filed 9/28/99, effective 9/28/99. Statutory Authority: RCW 43.20A.725 and 43.20A.730. 95-03-049 (Order 3825), § 388-43-020, filed 1/11/95, effective 2/11/95. Statutory Authority: RCW 43.20A.720, 43.20A.725 and 43.20A.730. 94-02-042 (Order 3691), § 388-43-020, filed 12/30/93, effective 1/30/94.] Repealed by 03-05-100, filed 2/19/03, effective 3/22/03. Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. Formerly chapter 388-43 WAC.
- 388-818-030 Denial of initial application or request for replacement device. [99-20-022, recodified as § 388-818-030, filed 9/28/99, effective 9/28/99. Statutory Authority: RCW 43.20A.720, 43.20A.725 and 43.20A.730. 94-02-042 (Order 3691), § 388-43-030, filed 12/30/93, effective 1/30/94.] Repealed by 03-05-100, filed 2/19/03, effective 3/22/03. Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. Formerly chapter 388-43 WAC.
- 388-818-040 Application renewal process. [99-20-022, recodified as § 388-818-040, filed 9/28/99, effective 9/28/99. Statutory Authority: RCW 43.20A.720, 43.20A.725 and 43.20A.730. 94-02-042 (Order 3691), § 388-43-040, filed 12/30/93, effective 1/30/94.] Repealed by 03-05-100, filed 2/19/03, effective 3/22/03. Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. Formerly chapter 388-43 WAC.
- 388-818-050 Notice of approval or denial. [99-20-022, recodified as § 388-818-050, filed 9/28/99, effective 9/28/99. Statutory Authority: RCW 43.20A.720, 43.20A.725 and 43.20A.730. 94-02-042 (Order 3691), § 388-43-050, filed 12/30/93, effective 1/30/94.] Repealed by 03-05-100, filed 2/19/03, effective 3/22/03. Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. Formerly chapter 388-43 WAC.
- 388-818-060 Review by department. [99-20-022, recodified as § 388-818-060, filed 9/28/99, effective 9/28/99. Statutory Authority: RCW 43.20A.720, 43.20A.725 and 43.20A.730. 94-02-042 (Order 3691), § 388-43-060, filed 12/30/93, effective 1/30/94.] Repealed by 03-05-100, filed 2/19/03, effective 3/22/03. Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. Formerly chapter 388-43 WAC.
- 388-818-070 Distribution. [99-20-022, recodified as § 388-818-070, filed 9/28/99, effective 9/28/99. Statutory Authority: RCW 43.20A.720, 43.20A.725 and 43.20A.730. 94-02-042 (Order 3691), § 388-43-070, filed 12/30/93, effective 1/30/94.] Repealed by 03-05-100, filed 2/19/03, effective 3/22/03. Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. Formerly chapter 388-43 WAC.
- 388-818-080 Training. [99-20-022, recodified as § 388-818-080, filed 9/28/99, effective 9/28/99. Statutory Authority: RCW 43.20A.720, 43.20A.725 and 43.20A.730. 94-02-042 (Order 3691), § 388-43-080, filed 12/30/93, effective 1/30/94.] Repealed by 03-05-100, filed 2/19/03, effective 3/22/03. Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. Formerly chapter 388-43 WAC.
- 388-818-090 Ownership and liability. [99-20-022, recodified as § 388-818-090, filed 9/28/99, effective 9/28/99. Statutory Authority: RCW 43.20A.720, 43.20A.725 and 43.20A.730. 94-02-042 (Order 3691), § 388-43-090, filed 12/30/93, effective 1/30/94.] Repealed by 03-05-100, filed 2/19/03, effective 3/22/03. Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. Formerly chapter 388-43 WAC.
- 388-818-110 Telecommunications relay service. [99-20-022, recodified as § 388-818-110, filed 9/28/99, effective 9/28/99. Statutory Authority: RCW 43.20A.720, 43.20A.725 and 43.20A.730. 94-02-042 (Order 3691), § 388-43-110, filed 12/30/93, effective 1/30/94.] Repealed by 03-05-100, filed 2/19/03, effective 3/22/03. Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. Formerly chapter 388-43 WAC.
- 388-818-130 Uses for returned equipment. [99-20-022, recodified as § 388-818-130, filed 9/28/99, effective 9/28/99. Statutory Authority: RCW 43.20A.720, 43.20A.730. 95-03-049 (Order 3825), § 388-43-130, filed 1/11/95, effective 2/11/95.] Repealed by 03-05-100, filed 2/19/03, effective 3/22/03. Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. Formerly chapter 388-43 WAC.

WAC 388-818-001 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-818-0010 What is the purpose of this chapter? (1) The purpose of this chapter is to provide regulations about social and telecommunications access services for people with hearing loss and speech impairments.

(2) These services are provided:

(a) Under contract with qualified service providers; or

(b) Directly through the office of the deaf and hard of hearing (ODHH) at the department of social and health services (DSHS).

[Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. 03-05-100, § 388-818-0010, filed 2/19/03, effective 3/22/03.]

WAC 388-818-002 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-818-0020 What does the office of the deaf and hard of hearing do? (1) The office of the deaf and hard of hearing (ODHH) within DSHS provides the following services to DSHS staff:

(a) Provides information about hearing loss;

(b) Offers technical assistance and workshops about deafness; and

(c) Identifies ways for DSHS staff to get sign language interpreter services for their clients who have hearing loss.

(2) ODHH administers and monitors contracts with qualified service providers. These service providers offer community-based social services for clients who have hearing loss.

(3) ODHH manages the telecommunications access service program.

(4) ODHH contracts to provide telecommunications relay services (TRS).

(5) ODHH facilitates the DSHS-telecommunications relay services (TRS) advisory committee on deafness.

[Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. 03-05-100, § 388-818-0020, filed 2/19/03, effective 3/22/03.]

WAC 388-818-003 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-818-0030 What does the telecommunications access service do? Telecommunications access service (TAS), a program within ODHH:

- (1) Provides eligible clients with initial or replacement equipment, based on the availability of equipment and/or funds;
- (2) Maintains and oversees the statewide program for distributing telecommunications equipment;
- (3) Maintains and oversees the contract for TRS; and
- (4) May contract with qualified service providers for other telecommunications options as technology advances.

[Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. 03-05-100, § 388-818-0030, filed 2/19/03, effective 3/22/03.]

WAC 388-818-0040 What definitions apply to this chapter? "Amplified telephone" means an electrical device that increases the volume or tone of sounds being received during a telephone call.

"Applicant" means a client who applies for specialized telecommunications equipment.

"Audiologist" means a person who has a certificate of clinical competence in audiology from the American Speech, Hearing, and Language Association and is licensed to practice in the state of Washington.

"Client" means a person who is deaf, hard of hearing, speech impaired, or deaf-blind and may receive services from ODHH.

"Deaf" means a condition where a person's hearing ability is absent or mostly absent.

"Deaf-blind" means a person with both hearing loss and visual impairments.

"DSHS or department" means the department of social and health services.

"Federal poverty guidelines" means the poverty level established by the **"Poverty Income Guideline"** updated annually in the Federal Register.

"Hearing loss" means any form of hearing impairment, from mild to profound.

"Mobility impairment" for the purpose of this chapter means restricted upper body movement, which limits the ability to hold or dial a standard telephone to communicate. Individuals must also have a hearing loss or speech impairment.

"ODHH" means the office of the deaf and hard of hearing in the department of social and health services.

"Qualified service provider" means an agency or a business that provides social services to individuals with hearing loss or speech impairments. A qualified service provider may also be a **"qualified trainer."**

"Qualified trainer" means a person under contract with TAS who is knowledgeable in the use of telecommunications equipment.

"Relay service" is defined under **"telecommunications relay service (TRS)."**

"School-age" means between four and seventeen years of age.

"Sliding fee scale" means a range used to determine an applicant's participation in the cost of equipment.

"Speech impairment" means inability to speak or a speech disability.

"TAS" means the telecommunications access service program administered by the office of the deaf and hard of hearing. The program provides equipment and services to help people with hearing loss and speech impairments have equal access to telecommunications.

"Telecommunications equipment" means any specialized device determined by TAS in ODHH to help a person with a hearing loss or speech impairment to communicate effectively. Examples include: Amplified telephone, TTY, signaling devices, software, digital equipment, and accessories. (See WAC 388-818-0070.)

"Telecommunications relay service (TRS)" means wire or radio service that enables a person with hearing loss or speech impairment to communicate with a person who uses a voice telephone. This service has communication assistants who transfer telephone conversations from one format to another (such as spoken words to text) to facilitate communication between two or more people.

"TTY" means teletypewriter or text telephone.

"TTY with Braille" means a teletypewriter with Braille keyboard and display.

[Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. 03-05-100, § 388-818-0040, filed 2/19/03, effective 3/22/03.]

WAC 388-818-005 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-818-0050 What social services relating to hearing loss are available to the public? (1) These social services relating to hearing loss are offered by qualified service providers and ODHH staff throughout the state:

- (a) Information and referral about issues related to hearing loss;
 - (b) Advocacy on behalf of people with hearing loss;
 - (c) Training on deaf awareness and daily living issues experienced by people with hearing loss;
 - (d) Social gathering opportunities for groups, organizations, and clubs related to people with hearing loss; and
 - (e) Services related to telecommunications equipment, distribution of equipment, and training on the use and care of equipment.
- (2) Qualified service providers offer these services to:
- (a) Washington residents with hearing loss;
 - (b) The general public for information about hearing loss; and
 - (c) Telephone users who need their conversations relayed, or transferred from one format to another (such as spoken words to text).

[Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. 03-05-100, § 388-818-0050, filed 2/19/03, effective 3/22/03.]

WAC 388-818-0060 Who are qualified service providers? Qualified service providers are organizations or businesses that contract with ODHH to provide social services related to hearing loss. Examples of qualified service providers include: Regional deaf and hard of hearing centers, relay service providers, and trainers for telecommunication equipment.

[Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. 03-05-100, § 388-818-0060, filed 2/19/03, effective 3/22/03.]

WAC 388-818-0070 Is telecommunications equipment available for clients? (1) Clients may request telecommunications equipment from TAS.

(2) For clients to receive equipment, TAS staff must approve equipment requests.

(3) To be approved, telecommunications equipment must help people with hearing loss or speech impairments to:

(a) Have independent use of telecommunications equipment; and

(b) Gain equal access to telecommunications services that people with normal hearing and speech have.

(4) Specialized equipment may include: Text, amplification, video, and hands-free equipment as well as ring signaling devices.

[Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. 03-05-100, § 388-818-0070, filed 2/19/03, effective 3/22/03.]

WAC 388-818-0080 What items are not included with telecommunications equipment? In the use of telecommunications equipment, neither TAS nor contracted qualified service providers offer:

(1) Replacement batteries for any telecommunications equipment, except for deaf-blind equipment;

(2) Replacement paper for TTYs;

(3) Replacement light bulbs for signal equipment; or

(4) Payment of the client's telephone bill.

[Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. 03-05-100, § 388-818-0080, filed 2/19/03, effective 3/22/03.]

WAC 388-818-0090 Who is eligible to apply for telecommunications equipment from TAS? (1) Washington state residents may apply to receive telecommunications equipment from TAS if they:

(a) Are at least school aged; and

(b) Are certified as having hearing loss or speech impairments.

(2) Nonprofit organizations may apply to receive telecommunications equipment, as specified under WAC 388-818-0180.

[Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. 03-05-100, § 388-818-0090, filed 2/19/03, effective 3/22/03.]

WAC 388-818-010 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-818-0100 Who must certify an applicant's eligibility for telecommunications equipment from TAS?

(1) A professional must certify that applicants have hearing loss and/or speech impairments and are eligible to receive telecommunications equipment from TAS.

(2) These professionals include:

(a) A person who is licensed or certified by the department of health to provide health care in the state of Washington;

(b) An audiologist or hearing aid fitter/dispenser in Washington;

(c) A vocational rehabilitation counselor;

(d) A deaf specialist or coordinator at one of the community service centers for the deaf and hard of hearing in the state;

(e) A deaf-blind specialist or coordinator at an organization that serves deaf-blind people;

(f) A certified speech pathologist practicing in the state of Washington;

(g) A licensed occupational therapist;

(h) Staff from a qualified state agency as determined and specified by the TRS advisory committee on deafness; or

(i) Any in-state nonprofit organization serving the hearing or speech impaired.

[Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. 03-05-100, § 388-818-0100, filed 2/19/03, effective 3/22/03.]

WAC 388-818-0110 How do applicants request specialized telecommunications equipment? (1) To request specialized telecommunications equipment, an applicant must send a completed "Application for Telecommunications Equipment" form (DSHS 14-264) to TAS. To request an application, contact ODHH at 1-800-422-7930 V/TTY.

(2) The application form must be signed by an approved professional who certifies applicant's eligibility. (See WAC 388-818-0100.)

(3) If the applicant is seventeen or under, his or her parent/legal guardian must sign the application form.

(4) If the applicant is seventeen or under, his or her parent/legal guardian must sign the application form.

[Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. 03-05-100, § 388-818-0110, filed 2/19/03, effective 3/22/03.]

WAC 388-818-0120 What types of income are included when requesting equipment from TAS? To meet income standards for telecommunications equipment from TAS, an applicant's income includes any of the following:

(1) Earned income, such as wages and tips;

(2) Social Security benefits;

(3) Unearned income, such as interest, dividends, and pensions;

(4) Family's share of income from corporations, partnerships, estates, and trusts; and

(5) Gains from the sale or exchange (including barter) of real estate, securities, coins, gold, silver, gems, or other property.

[Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. 03-05-100, § 388-818-0120, filed 2/19/03, effective 3/22/03.]

WAC 388-818-0130 How are applicants notified about decisions for telecommunications equipment? (1)

When approving an application for telecommunications equipment, TAS staff must inform the applicant in writing about:

(a) The receipt of the applicant's completed application form;

(b) Any cost that applicants will incur for equipment; and

(c) The timeframe when the applicant may expect a qualified trainer to set up the equipment and provide training.

(2) When denying an application for telecommunications equipment, TAS must inform the applicant in writing about:

(a) The receipt of the applicant's completed application form;

(b) The reasons for the denial; and

(c) Any applicable procedures for appeal, as well as the circumstances under which the applicant may reapply. (See WAC 388-818-0150.)

[Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. 03-05-100, § 388-818-0130, filed 2/19/03, effective 3/22/03.]

WAC 388-818-0140 What are reasons for denying telecommunications equipment? (1) For an initial application for services, TAS must deny an application for telecommunications equipment if an applicant:

(a) Does not meet the eligibility requirements of WAC 388-818-0090; or

(b) Has received similar equipment from TAS within the last three years.

(2) For an application requesting replacement of telecommunications equipment, TAS must deny the request if the client has done any of the following:

(a) Abused, misused, or repaired without approval any previously issued equipment;

(b) Failed to file with the police a report of stolen equipment within fifteen working days of discovering a theft;

(c) Failed to file with the police or the fire department a report of fire having damaged the equipment within fifteen working days of the incident of the fire;

(d) Lost, pawned, or sold the equipment; or

(e) Failed to obtain approval from DSHS before moving or traveling out of state with state-loaned equipment.

[Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. 03-05-100, § 388-818-0140, filed 2/19/03, effective 3/22/03.]

WAC 388-818-0150 When may clients renew their applications for telecommunications equipment? Clients may renew their applications for telecommunications equipment when:

(1) Additional telecommunication equipment is necessary to meet the client's needs; or

(2) Equipment no longer works and it's been more than three years since he or she first received equipment.

Note: If less than three years have passed since a client first received equipment, refer to WAC 388-818-0300 for replacement criteria.

[Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. 03-05-100, § 388-818-0150, filed 2/19/03, effective 3/22/03.]

WAC 388-818-0160 How do clients renew their application for telecommunications equipment? When renewing an application for telecommunications equipment, a client must:

(1) Complete a new application, including recent information on total annual family income and family size; and

(2) Go through the same procedures as first-time applicants (outlined in WAC 388-818-0090 through 388-818-0130).

[Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. 03-05-100, § 388-818-0160, filed 2/19/03, effective 3/22/03.]

WAC 388-818-0170 Are nonprofit organizations eligible for telecommunications equipment? (1) A nonprofit organization may be eligible for telecommunications equipment when these two criteria are met:

(a) Only nonprofit organizations under section 501 (c)(3) of the internal revenue code, are eligible for any equipment from TAS; and

(b) Nonprofit organizations must serve people with hearing loss, deaf-blindness, and/or speech impairments.

(2) A qualified nonprofit organization is eligible to receive:

(a) Reconditioned telecommunications equipment from ODHH; or

(b) New equipment when it is in the best interest of both ODHH and the individuals served by the nonprofit organization.

[Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. 03-05-100, § 388-818-0170, filed 2/19/03, effective 3/22/03.]

WAC 388-818-0180 What process do nonprofit organizations follow to receive telecommunications equipment from TAS? (1) To apply for reconditioned equipment, a nonprofit organization must provide to TAS the following:

(a) A completed application form, "Nonprofit Organization Application for Reconditioned Equipment" (DSHS 14-440), which can be obtained by calling ODHH at 1-800-422-7930;

(b) A letter explaining the services provided by the organization to people with hearing loss and speech impairments in their communities;

(c) A copy of a certificate of incorporation as a nonprofit organization under section 501 (c)(3) of the internal revenue code; and

(d) A copy of the organization's bylaws.

(2) TAS staff notifies the nonprofit organization of acceptance or denial.

(3) TAS staff sends the equipment to an approved nonprofit organization.

(4) The nonprofit organizations are responsible for care and maintenance of this equipment.

[Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. 03-05-100, § 388-818-0180, filed 2/19/03, effective 3/22/03.]

WAC 388-818-0190 How much does an applicant have to pay for telecommunications equipment? (1) TAS staff must consider family size and household income in determining how much the applicant must pay for telecommunications equipment. Financial responsibility ranges from no cost to one hundred percent of actual cost based on federal poverty guidelines.

(2) Exception: If the normal cost that TAS assesses for equipment is still beyond the applicant's ability to pay, the cost may be partly or totally waived (excused) if:

(a) The eligible person requires TTY with Braille equipment or any other equipment of comparable cost; or

(b) The cost of the equipment would create an undue hardship on the eligible person.

[Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. 03-05-100, § 388-818-0190, filed 2/19/03, effective 3/22/03.]

WAC 388-818-020 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-818-0200 How does an applicant request a waiver (exception) of equipment cost? (1) To request a waiver (exception) of equipment cost, an applicant must write a letter to the ODHH director explaining the reasons for inability to pay for equipment. Letters can be mailed to: ODHH, Attn: Director, P.O. Box 45301, Olympia WA 98504-5301.

(2) ODHH notifies the applicant in writing of the final decision for the waiver request.

[Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. 03-05-100, § 388-818-0200, filed 2/19/03, effective 3/22/03.]

WAC 388-818-0210 What conditions must be met for a client to receive purchased telecommunication equipment? For a client to receive purchased telecommunications equipment, these two conditions must be met:

(1) TAS must receive full payment before an eligible client receives telecommunications equipment; and

(2) The applicant or the applicant's parent/legal guardian must provide a signed "Statement of Rights and Responsibilities" form to TAS upon receiving the equipment.

[Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. 03-05-100, § 388-818-0210, filed 2/19/03, effective 3/22/03.]

WAC 388-818-0220 When is telecommunications equipment owned by the client? Telecommunications equipment is owned by the client when the client or the parent/legal guardian:

(1) Pay any portion of the equipment's cost; and

(2) Sign a "Statement of Rights and Responsibilities" form upon receiving the equipment.

[Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. 03-05-100, § 388-818-0220, filed 2/19/03, effective 3/22/03.]

WAC 388-818-0230 May clients return purchased telecommunications equipment? (1) A client may return purchased telecommunications equipment to TAS within thirty days after receiving the equipment.

(2) A client must receive a financial refund for the equipment if it was returned:

(a) In clean and good condition;

(b) In its original packaging; and

(c) Within the required time frame.

[Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. 03-05-100, § 388-818-0230, filed 2/19/03, effective 3/22/03.]

WAC 388-818-0240 When may telecommunications equipment be loaned to an applicant? ODHH may loan telecommunications equipment to an eligible person if:

(1) TAS determines that a client may get equipment at no cost;

(2) A "Conditions of Acceptance" form is signed by the client or the parent/legal guardian upon receiving the equipment.

(3) The applicant has not violated the requirements in WAC 388-818-0140(2).

[Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. 03-05-100, § 388-818-0240, filed 2/19/03, effective 3/22/03.]

WAC 388-818-0250 What are the conditions for loaning telecommunications equipment? (1) When loaning

telecommunications equipment, ODHH must ensure that the client understands that the equipment remains the sole property of Washington state.

(2) A client, or the client's parent/legal guardian is liable for any damage to or loss of telecommunications equipment issued by TAS.

[Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. 03-05-100, § 388-818-0250, filed 2/19/03, effective 3/22/03.]

WAC 388-818-0260 When does state-loaned equipment have to be returned to TAS? A client or the client's parent/legal guardian must return state-loaned telecommunications equipment to TAS when the client:

(1) Moves from a permanent Washington state residence to a location outside of Washington;

(2) No longer needs the equipment;

(3) Has been notified by TAS to return the equipment; or

(4) Has received new state-loaned equipment.

[Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. 03-05-100, § 388-818-0260, filed 2/19/03, effective 3/22/03.]

WAC 388-818-0270 May a person take loaned telecommunications equipment outside the state? (1) People must get written permission from TAS before moving their loaned telecommunications equipment from Washington state for over ninety days.

(2) TAS may grant the client permission to move telecommunications equipment from the state if it is in the best interest of the client and DSHS.

[Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. 03-05-100, § 388-818-0270, filed 2/19/03, effective 3/22/03.]

WAC 388-818-0280 Will training be provided on the use and care of telecommunications equipment? (1) ODHH contracts with qualified people or agencies to train individuals on ways to use and care for telecommunications equipment provided by TAS.

(2) ODHH must ensure reasonable accessibility to training for people with hearing loss or speech impairment.

(3) ODHH staff determine who receives training on proper equipment use and care from qualified trainers. Individuals receiving training may include:

(a) Clients;

(b) Parents/legal guardians; and

(c) Staff or volunteers of profit and nonprofit organizations.

(4) When applicants are age seventeen or younger, their parents/legal guardians must attend all training sessions on appropriate equipment use and care.

[Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. 03-05-100, § 388-818-0280, filed 2/19/03, effective 3/22/03.]

WAC 388-818-0290 What services do trainers provide to clients? (1) Qualified trainers must determine the training needs of individuals and the type of training that would be most effective.

(2) A qualified trainer must:

(a) Conduct individual and group training sessions for the applicants in the use and care of the equipment;

(b) Provide training and presentations to individuals, agencies and organizations, as requested by ODHH staff; and

(c) Distribute and set up telecommunications equipment for applicants.

(3) When delivering telecommunications equipment, a qualified trainer may decide that the purchased equipment does not meet the client's needs. In this case, the trainer may recommend other equipment to the client. If accepting other equipment, the client must take financial responsibility for any cost difference by signing an "Acceptance of Financial Responsibility" form.

[Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. 03-05-100, § 388-818-0290, filed 2/19/03, effective 3/22/03.]

WAC 388-818-030 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-818-0300 When may telecommunications equipment be replaced? (1) TAS may replace telecommunications equipment without a client renewing the application for equipment if:

(a) The equipment is no longer working; and
 (b) Less than three years have passed since the client's initial application date for equipment.

(2) Clients may renew their application with TAS to replace telecommunications equipment if:

(a) The equipment is no longer working; and
 (b) Three years have passed from the last time they applied and received their equipment. (See WAC 388-818-0160 for the renewal process.)

[Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. 03-05-100, § 388-818-0300, filed 2/19/03, effective 3/22/03.]

WAC 388-818-0310 When may requests for replacement telecommunications equipment be denied? TAS may deny a request for replacement telecommunications equipment if previously issued equipment:

(1) Was neglected, misused, or abused;
 (2) Was not reported as stolen or burned to either police or fire department within fifteen working days; or
 (3) Was lost, sold, traded, or pawned.

[Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. 03-05-100, § 388-818-0310, filed 2/19/03, effective 3/22/03.]

WAC 388-818-0320 Who may receive reconditioned telecommunications equipment? TAS may recondition telecommunications equipment and give it to any of the following agencies, nonprofit organizations or individuals:

(1) State agencies;
 (2) Tribal community centers;
 (3) Nonprofit organizations that are registered under section 501 (c)(3) of the internal revenue code and serve people who have hearing loss, deaf-blindness or speech impairment (see WAC 388-818-0180 for application details); and
 (4) Nonpaying clients.

[Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. 03-05-100, § 388-818-0320, filed 2/19/03, effective 3/22/03.]

[2004 WAC Supp—page 1818]

WAC 388-818-0330 May an applicant disagree with a DSHS decision about telecommunications equipment?

(1) When TAS denies an application for original or replacement equipment, an applicant or client may request that ODHH review this decision.

(2) For a review of a TAS decision, the applicant or client must:

(a) Submit a request in writing to ODHH, specifying the reason for the request; and

(b) Ensure that ODHH receives this request within forty days of the date of the denial notice.

(3) Within thirty days after receiving the request for review, ODHH staff must inform the applicant or client in writing of the decision of the request. The decision of ODHH is final.

[Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. 03-05-100, § 388-818-0330, filed 2/19/03, effective 3/22/03.]

WAC 388-818-0340 What is a relay complaint? (1) A client may make a complaint about an unsatisfactory experience while using the relay services during a telephone call. Complaints may be about:

(a) Communications assistant (CA) or video interpreter (VI) performance, such as typing speed, accuracy of relaying a message's intent, clarity of signs, and spelling accuracy;

(b) Service quality, such as timeliness of response and connection; and/or

(c) Technical issues during a call made through the relay service, such as disconnection of call, video picture quality, or text garbling.

(2) The main purpose of a relay complaint is to:

(a) Improve the quality of relay service; and

(b) Monitor relay agent or interpreter performance and the accuracy of relaying information between calling parties.

[Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. 03-05-100, § 388-818-0340, filed 2/19/03, effective 3/22/03.]

WAC 388-818-0350 What may a client do when dissatisfied with relay services? (1) ODHH must ensure that clients have access to customer services for the relay service provider or an opportunity to resolve quality of service issues with TRS regarding:

(a) Any problems with the relay service; and/or

(b) Dissatisfaction with explanations given for any relay service problems.

(2) To assist dissatisfied clients, the ODHH compliance officer must provide names and telephone numbers for customer support.

[Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. 03-05-100, § 388-818-0350, filed 2/19/03, effective 3/22/03.]

WAC 388-818-0360 May a client file a formal complaint about the relay service? (1) A client may file a formal complaint about the relay service:

(a) To obtain a complaint form about the relay service, a client may contact ODHH (at 1-800-422-7930) to request that a form be mailed.

(b) The client may also contact the ODHH compliance officer or relay provider customer service representative for assistance in completing the form.

(c) Completed complaint forms may be mailed, faxed, or e-mailed to ODHH.

(2) ODHH must investigate and resolve the complaint within one hundred eighty days, as required by the Federal Communications Commission (FCC).

(a) Complaints related to service issues are resolved by the relay service provider and the compliance officer.

(b) Technical complaints are referred to relay service provider technical personnel for resolution.

(c) Any corrective action must be taken as soon as possible.

(d) The ODHH compliance officer must notify the client about the result of the investigation, including any actions taken.

(3) If the client is satisfied with the results of the investigation, the ODHH compliance officer must document and close the case.

(4) If the client is dissatisfied with the results of the investigation, the compliance officer and relay service provider may discuss further options to resolve the complaint and corrective actions.

[Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. 03-05-100, § 388-818-0360, filed 2/19/03, effective 3/22/03.]

WAC 388-818-0370 When is customer service available for clients? The relay service provider and ODHH must ensure that customer service is available during regular work days (Monday through Friday excluding state holidays) to:

- (1) Address client complaints or inquiries; and
- (2) Respond to FCC staff members when requested.

[Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. 03-05-100, § 388-818-0370, filed 2/19/03, effective 3/22/03.]

WAC 388-818-0380 May clients file their complaint about relay services with the FCC? (1) A client who continues to be dissatisfied with responses from the formal complaint process at ODHH may file a complaint with the Federal Communications Commission (FCC).

(2) The ODHH compliance officer must give the client the toll-free telephone number and address of the FCC for further review of the complaint.

[Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. 03-05-100, § 388-818-0380, filed 2/19/03, effective 3/22/03.]

WAC 388-818-0390 May the FCC file a complaint? (1) The FCC may file a complaint to ODHH or the relay service provider.

(2) Within one hundred eighty days of receiving the complaint, ODHH must:

(a) Report the results of the complaint investigation to the FCC; or

(b) Keep the FCC informed about ongoing progress of actions toward resolution.

[Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. 03-05-100, § 388-818-0390, filed 2/19/03, effective 3/22/03.]

WAC 388-818-040 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-818-0400 What documents must ODHH keep for complaints? (1) ODHH must keep a record of all complaints about the quality of relay services.

(2) The complaint document must show at least:

(a) The name, phone number and address of the complainant;

(b) The nature and date of the complaint;

(c) Actions taken; and

(d) The final disposition of the complaint.

(3) These records must be maintained in a suitable place, readily available for FCC review.

(4) ODHH and the relay service provider must retain correspondence and records of complaints for a minimum of two years.

[Statutory Authority: RCW 43.20A.725, 43.20A.720, 2001 c 210. 03-05-100, § 388-818-0400, filed 2/19/03, effective 3/22/03.]

WAC 388-818-050 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-818-060 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-818-070 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-818-080 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-818-090 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-818-110 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-818-130 Repealed. See Disposition Table at beginning of this chapter.

Chapter 388-825 WAC

DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES RULES

(Formerly chapter 275-27 WAC)

WAC

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WAC 388-825-020 Definitions. "Abandonment" means action or inaction by a person or entity with a duty to care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Adolescent" means a DDD eligible child age thirteen through seventeen years.

"Attendant care" means provision of physical and/or behavioral support to protect the safety and well being of a client.

"Best interest" includes, but is not limited to, client-centered benefits to:

- (1) Prevent regression or loss of skills already acquired;
- (2) Achieve or maintain economic self-support;
- (3) Achieve or maintain self-sufficiency;
- (4) Prevent or remedy neglect, abuse, or exploitation of individuals unable to protect their own interest;
- (5) Preserve or reunite families; and
- (6) Provide the least-restrictive setting that will meet the person's medical and personal needs.

"Client or person" means a person the division determines under RCW 71A.16.040 and WAC 388-825-030 eligible for division-funded services.

"Community support services" means one or more of the services listed in RCW 71A.12.040 including, but not limited to the following services: Architectural, case management, early childhood intervention, employment, counseling, family support, respite care, information and referral, health services and equipment, therapy services, and residential support.

"Companion home" means the same as **"intensive individual supported living support."**

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

"Director" means the director of the division of developmental disabilities.

"Division or DDD" means the division of developmental disabilities of the department of social and health services.

"Emergency" means a sudden, unexpected occurrence demanding immediate action.

"Exemption" means the department's approval of a written request for an exception to a rule in this chapter.

"Family" means individuals, of any age, living together in the same household and related by blood, marriage, adoption or as a result of sharing legal custody of a minor child.

"Family resources coordinator" means the person who is:

- (1) Recognized by the IDEA Part C lead agency; and
- (2) Responsible for:
 - (a) Providing family resources coordination;
 - (b) Coordinating services across agencies; and
 - (c) Serving as a single contact to help families receiving assistance and services for their eligible children who are under three years of age.

"ICF/MR" means a facility certified as an intermediate care facility for the mentally retarded by Title XIX to provide services to the mentally retarded or persons with related conditions.

"ICF/MR Eligible" for admission to an ICF/MR means a person is determined by DDD as needing active treatment as defined in CFR 483.440. Active treatment requires:

- (1) Twenty-four hour supervision; and
- (2) Continuous training and physical assistance in order to function on a daily basis due to deficits in the following areas: Toilet training, personal hygiene, dental hygiene, self-feeding, bathing, dressing, grooming, and communication.

"Individual" means a person applying for services from the division.

"Individual alternative living" means provision of community-based individualized client training, assistance and/or ongoing support to enable a client to live as independently as possible with minimal services.

"Intelligence quotient score" means a full scale score on the Wechsler, or the intelligence quotient score on the Stanford-Binet or the Leiter International Performance Scale.

"Intensive individual supported living support" (also known as companion home) means provision of twenty-four hour residential support in a nonlicensed home for no more than one adult person with developmental disabilities in a regular family residence approved and contracted by the department ensuring client health, safety and well-being.

"Medicaid personal care" is the provision of medically necessary personal care tasks as defined in chapter 388-15 WAC.

"Nonresidential programs" means programs including, but not limited to, county-funded habilitation services.

"Nursing facility eligible" means a person is assessed by DDD as meeting the requirements for admission to a licensed nursing home as defined in WAC 388-71-0700 (3) through (5). The person must require twenty-four hour care provided by or under the supervision of a licensed nurse.

"Other resources" means resources that may be available to the client, including but not limited to:

- (1) Private insurance;
- (2) Medicaid;
- (3) Indian health care;
- (4) Public school services through the office of the superintendent of public instruction; and
- (5) Services through the department of health.

"Part C" means early intervention for children from birth through thirty-five months of age as defined in the Individuals with Disabilities Education Act (IDEA), Part C and 34 CFR, Part 303 and Washington's federally approved grant.

"Residential habilitation center" or **"RHC"** means a state-operated facility certified to provide ICF/MR and/or nursing facility level of care for persons with developmental disabilities.

"RHC capacity" means the maximum number of eligible persons that can reside in a residential habilitation center without exceeding its 1997 legislated budgeted capacity.

"Residential programs" means provision of support for persons in community living situations. Residential programs include DDD certified community residential services and support, both facility-based such as, licensed group homes, and nonfacility based, i.e., supportive living, inten-

sive tenant support, and state-operated living alternatives (SOLA). Other residential programs include individual alternative living, intensive individual supportive living services, adult family homes, adult residential care services, nursing homes, and children's foster homes.

"Respite care" means temporary residential services provided to a person and/or the person's family on an emergency or planned basis.

"Secretary" means the secretary of the department of social and health services or the secretary's designee.

"State supplementary payment (SSP)" is the state paid cash assistance program for certain DDD eligible SSI clients.

"Vacancy" means an opening at a RHC, which when filled, would not require the RHC to exceed its 1997 biannually budgeted capacity, minus:

- (1) Twenty-six beds designated for respite care use; and
- (2) Any downsizing related to negotiations with the Department of Justice regarding community placements.

"Vulnerable adult" means a person who has a developmental disability as defined under RCW 71A.10.020.

[Statutory Authority: RCW 71A.12.030, 71A.10.020 and 2002 c 371. 04-02-014, § 388-825-020, filed 12/29/03, effective 1/29/04. Statutory Authority: RCW 71A.16.010, 71A.16.030, 71A.12.030, chapter 71A.20 RCW, RCW 72.01.090, and 72.33.125. 02-16-014, § 388-825-020, filed 7/25/02, effective 8/25/02. Statutory Authority: RCW 71A.12.030 and 71A.12.040. 99-23-021, amended and recodified as § 388-825-020, filed 11/9/99, effective 12/10/99. Statutory Authority: RCW 71A.12.030. 99-04-071, § 275-27-020, filed 2/1/99, effective 3/4/99. Statutory Authority: RCW 74.12A.030 and 71A.16.030. 98-20-044, § 275-27-020, filed 9/30/98, effective 10/7/98. Statutory Authority: RCW 71A.14.030 and 71A.16.020. 92-09-115 (Order 3373), § 275-27-020, filed 4/21/92, effective 5/22/92. Statutory Authority: RCW 71A.16.020. 91-17-005 (Order 3230), § 275-27-020, filed 8/9/91, effective 9/9/91. Statutory Authority: RCW 71.20.070. 89-06-049 (Order 2767), § 275-27-020, filed 2/28/89; 84-15-058 (Order 2124), § 275-27-020, filed 7/18/84. Statutory Authority: RCW 72.01.090, 72.33.040, 72.33.125 and 72.33.165. 78-04-033 (Order 1280), § 275-27-020, filed 3/16/78; Order 1143, § 275-27-020, filed 8/11/76.]

WAC 388-825-055 Authorization of services. (1) The division's field services section shall be responsible for authorizing services agreed to by the person/family including, but not limited to:

- (a) Placement to and from residential habilitation centers;
- (b) Community residential services;
- (c) Family support services;
- (d) Nonresidential programs; and
- (e) Employment/day programs when the person receives the funding directly from DDD to pay for the services, subject to the eligibility requirements in WAC 388-825-060 and the restrictions in WAC 388-825-065. Allowable employment/day program services are listed in WAC 388-850-035.

(2) The division's authorization of state funded services shall be based on the services and funding available.

(a) Persons must meet the programmatic and financial eligibility requirements for the specific services;

(b) Funding for state paid services is available in the state operating budget; and

(c) SSP funding is not available to the client.

(3) The division will include the following persons when determining authorized services:

(a) The person;

(b) The person's parent or guardian and may include:

(i) The person's advocate; or

(ii) Other responsible parties.

(4) Per RCW 71A.16.010 the division shall offer adults the choice of admittance to a residential habilitation center if all of the following conditions exist:

(a) An RHC vacancy is available;

(b) Funding, specifically designated for this purpose in the state operating budget, is available for alternative community support services;

(c) The person or their family is requesting residential services;

(d) The person meets ICF/MR or nursing facility eligibility for the available RHC vacancy;

(e) The person is the most in need of residential services as determined by DDD after reviewing all persons determined eligible for ICF/MR or nursing facility level of care. DDD will make this selection based on the following criteria:

(i) The person is age eighteen or older;

(ii) The person's/family's health and safety is in jeopardy due to the lack of necessary residential support and supervision:

(A) Priority is given to eligible persons/families currently without necessary residential supports;

(B) Other eligible persons will be considered based on their risk of losing residential supports due to unstable or deteriorating circumstances.

(f) The person's alternative DDD funded community support services would cost seventy percent or more of the average RHC rate, assuming a minimum household size of three persons.

(5) If RHC capacity is not being used for permanent residents, the division will make these vacancies available for respite care or any other services the department determines are needed and allowable within the rules governing the use of federal funds.

(a) Admission of a child or adolescent to an RHC for respite care requires the written approval of the division director or designee.

(b) Respite care exceeding thirty days in a calendar year is subject to subsection (6) of this section.

(6) The division shall not make an emergency or temporary admission of a person to a residential habilitation center for thirty-one days or more without the written approval of the division director or the director's designee if the admission is not a choice provided under subsection (4) of this section.

(a) Children twelve years of age and younger shall not be admitted to an RHC.

(b) Admission of an adolescent to an RHC can only occur if:

(i) DDD determines that foster placement services cannot meet the emergency needs of the child/family; and

(ii) A voluntary placement plan is in place with DDD with the goal of community placement or family reunification; and

(iii) Progress towards placement planning is reported to the division director at least every ninety days.

(7) The division shall authorize county-funded services only when the service is included in a department contract and the person is not receiving funding directly from DDD for employment/day program services:

(a) The person is at least twenty-one years of age and is no longer attending school; or

(b) The person is age twenty and graduates prior to his/her July or August twenty-first birthday; or

(c) The child is two years of age or younger and eligible for early intervention services.

(8) The department shall require a person to participate in defraying the cost of services provided when mandated by state or federal regulation or statute.

[Statutory Authority: RCW 71A.12.030, 71A.10.020 and 2002 c 371. 04-02-014, § 388-825-055, filed 12/29/03, effective 1/29/04. Statutory Authority: RCW 71A.16.010, 71A.16.030, 71A.12.030, chapter 71A.20 RCW, RCW 72.01.090, and 72.33.125. 02-16-014, § 388-825-055, filed 7/25/02, effective 8/25/02; 99-19-104, recodified as § 388-825-055, filed 9/20/99, effective 9/20/99. Statutory Authority: RCW 74.12A.030 and 71A.16.030. 98-20-044, § 275-27-230, filed 9/30/98, effective 10/7/98. Statutory Authority: RCW 71A.16.020. 91-17-005 (Order 3230), § 275-27-230, filed 8/9/91, effective 9/9/91. Statutory Authority: RCW 71.20.070. 86-18-049 (Order 2418), § 275-27-230, filed 8/29/86; 84-15-058 (Order 2124), § 275-27-230, filed 7/18/84. Statutory Authority: RCW 71.20.070, 72.33.125 and 72.33.850. 82-06-034 (Order 1771), § 275-27-230, filed 3/1/82. Statutory Authority: RCW 72.01.090, 72.33.040, 72.33.125 and 72.33.165. 78-04-033 (Order 1280), § 275-27-230, filed 3/16/78; Order 1143, § 275-27-230, filed 8/11/76.]

WAC 388-825-060 What are the eligibility requirements for persons who receive funds directly for employment/day programs? (1) You must have received the state supplementary payment for an employment/day program between September 2002 and July 2003.

(2) This program is available only to individuals born prior to September 1, 1981.

(3) If you were born between September 1, 1979 and August 31, 1981:

(a) You received employment/day program services from a county or a county-contracted provider funded by DDD between July 1, 2001 and June 30, 2003, and:

(i) You have been assessed by DDD, the division of vocational rehabilitation (DVR) or the department of services for the blind to be in need of long-term support; and

(ii) You receive services from a county or a county-contracted provider; and

(iii) You have developed a plan with DDD for employment/day program services.

(b) If you are on the home and community based services (HCBS) waiver administered by DDD and received employment/day program services between July 1, 2001 and August 31, 2002, but receive no HCBS waiver services from DDD other than employment/day program services, you will receive employment/day program services according to WAC 388-850-035. You will not receive funds directly from DDD for employment/day program services.

(4) If you were born prior to September 1, 1979 and you have been assessed by DDD, the division of vocational rehabilitation (DVR) or the department of services for the blind to be in need of long-term support:

(a) You were authorized by DDD and the county for employment/day program services for December 2002; and

(b) These services were funded totally with state funds; and

(c) You continue to receive services from a county or county-contracted provider.

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[Statutory Authority: RCW 71A.12.030, 71A.10.020 and 2002 c 371. 04-02-014, § 388-825-060, filed 12/29/03, effective 1/29/04.]

WAC 388-825-064 What are the restrictions on the use of the funds paid directly to persons for employment/day programs? For employment/day program services, you are required to use this money to purchase employment/day program services from a county or a county-contracted provider.

[Statutory Authority: RCW 71A.12.030, 71A.10.020 and 2002 c 371. 04-02-014, § 388-825-064, filed 12/29/03, effective 1/29/04.]

WAC 388-825-070 What happens if I do not spend the funds paid directly to me for employment/day programs as specified in WAC 388-825-065? The department will stop sending these funds directly to you and has the right to recover any funds sent directly to you if it is determined that these funds were not spent as required in WAC 388-825-065.

[Statutory Authority: RCW 71A.12.030, 71A.10.020 and 2002 c 371. 04-02-014, § 388-825-070, filed 12/29/03, effective 1/29/04.]

WAC 388-825-075 How much money will I receive? The department will determine the amount of your payment on an individual basis.

[Statutory Authority: RCW 71A.12.030, 71A.10.020 and 2002 c 371. 04-02-014, § 388-825-075, filed 12/29/03, effective 1/29/04.]

WAC 388-825-076 How often will I receive a direct payment check for my employment/day program services? You will receive a monthly warrant/check from the state.

[Statutory Authority: RCW 71A.12.030, 71A.10.020 and 2002 c 371. 04-02-014, § 388-825-076, filed 12/29/03, effective 1/29/04.]

WAC 388-825-077 Who will the warrant/check be sent to? (1) The warrant/check will be sent directly to your protective payee or representative payee if you have one.

(2) If you do not have a protective payee or representative payee, the warrant/check will be sent directly to you.

[Statutory Authority: RCW 71A.12.030, 71A.10.020 and 2002 c 371. 04-02-014, § 388-825-077, filed 12/29/03, effective 1/29/04.]

WAC 388-825-078 How will the warrant/check be sent? You may choose to have your check delivered through the U.S. Postal Service, or as an electronic funds transfer.

[Statutory Authority: RCW 71A.12.030, 71A.10.020 and 2002 c 371. 04-02-014, § 388-825-078, filed 12/29/03, effective 1/29/04.]

WAC 388-825-085 What is a representative payee? A representative payee is a person, organization, institution or agency that manages your DDD direct payments. They may also provide services such as helping you manage your money.

[Statutory Authority: RCW 71A.12.030, 71A.10.020 and 2002 c 371. 04-02-014, § 388-825-085, filed 12/29/03, effective 1/29/04.]

WAC 388-825-086 Who can be a representative payee for my DDD direct payment funds for employment/day program services? (1) A representative payee may be:

(a) The person, organization, institution or agency that acts as your representative payee for Supplemental Security Income (SSI);

(b) Your parent, if you are under eighteen;

(c) Your spouse; or

(d) A person, organization, institution or agency you select if the department approves your selection.

(2) If you select a representative payee under subsection (1)(d) of this section, the department will evaluate the selection according to the following criteria:

(a) The relationship of the payee to you;

(b) The amount of interest the payee shows in you;

(c) Any legal authority the payee has to act on your behalf;

(d) Whether the payee has custody of you; and

(e) Whether the payee is in a position to know of and look after your needs.

(3) The DDD director or designee will approve or deny your request for a representative under subsection (1)(d) of this section.

[Statutory Authority: RCW 71A.12.030, 71A.10.020 and 2002 c 371. 04-02-014, § 388-825-086, filed 12/29/03, effective 1/29/04.]

WAC 388-825-087 What are the responsibilities of a representative payee? A representative payee has the responsibility to:

(1) Spend the DDD direct payment funds on you or your behalf;

(2) Notify the department if any event happens that may affect the amount of benefits you receive;

(3) Submit to the department, upon our request, a written report accounting for the payments received; and

(4) Notify the department if any change in the payee's circumstances that would affect performance of the payee responsibilities.

[Statutory Authority: RCW 71A.12.030, 71A.10.020 and 2002 c 371. 04-02-014, § 388-825-087, filed 12/29/03, effective 1/29/04.]

WAC 388-825-090 When will DDD recover direct payment funds sent to me for employment/day program services? DDD may recover funds, known as an overpayment, when:

(1) You did not spend the direct payment funds on employment/day program services as specified in WAC 388-825-065; or

(2) You were no longer eligible for services from the division of developmental disabilities in the month in which the SSP was issued; or

(3) Your assessed need has changed.

[Statutory Authority: RCW 71A.12.030, 71A.10.020 and 2002 c 371. 04-02-014, § 388-825-090, filed 12/29/03, effective 1/29/04.]

WAC 388-825-095 Who is liable for repayment of an overpayment? (1) If you received the money in your own name, you are responsible for repayment.

(2) If you are paid through a representative payee, both you and the representative payee may be responsible for repayment.

(a) You are responsible to the extent that the incorrect payments were spent on you or your behalf. Funds conserved

by a representative payee to which you do not have direct access have not been spent on you or your behalf.

(b) If the incorrect payments were spent on you or your behalf and the representative payee is without fault in connection with the overpayment, you are solely responsible for repayment.

(c) The representative payee is solely responsible for repayment if:

(i) The incorrect payments were not spent on you or your behalf; and

(ii) The representative payee is at fault in connection with the overpayment.

(d) A government entity or an institution can be a representative payee and can be found responsible for repayment—just as a private individual can.

(e) You and the representative payee are both responsible for repayment when the incorrect payments have been spent on you or your behalf and the representative payee is at fault.

(3) The representative payee is at fault when the representative payee was aware of the reason you were not eligible for the direct payment funds.

[Statutory Authority: RCW 71A.12.030, 71A.10.020 and 2002 c 371. 04-02-014, § 388-825-095, filed 12/29/03, effective 1/29/04.]

WAC 388-825-100 Notification. (1) The department shall notify the client or applicant, the parent when the client or applicant is a minor, or the guardian when the client or applicant is an adult, of the following decisions:

(a) Denial or termination of eligibility set forth in WAC 388-825-030 and 388-825-035;

(b) Development or modification of the individual service plan set forth in WAC 388-825-050;

(c) Authorization, denial, reduction, or termination of services or funds paid directly to the client set forth in WAC 388-825-055 or payment of SSP set forth in chapter 388-827 WAC; and

(d) Admission or readmission to, or discharge from, a residential habilitation center.

(2) The notice shall set forth appeal rights pursuant to WAC 388-825-120 and a statement that the client's case manager can be contacted for an explanation of the reasons for the action.

(3)(a) The department shall provide notice of a denial or partial authorization of a family support services request and a statement of reason for denial or partial authorization, or reduction to the person or persons described in subsection (1) of this section. The department shall send such notice no later than five working days before the end of the month previous to the month for which service was requested;

(b) The department shall make available an administrative review of a decision to deny or partially authorize services upon receipt of a written request by a person or persons described in subsection (1) of this section to the administrator of the region in which the client is living. The regional office must receive a request for administrative review by the last working day of the month;

(c) The client shall state in the written request why the client or client's family believes their service priority designation is not correct;

(d) Upon receipt of request for administrative review, the regional administrator or designee shall review the request and the client file; and

(e) The department shall send the results of the administrative review to the client and/or family within the first five working days of the service month for which the client is being denied or receiving a partial authorization for services.

(4) The department shall provide at least thirty days' advance notice of action to terminate a client's eligibility, terminate or reduce a client's service, or discharge a client from a residential habilitation center to the community. Transfer or removal of a client from a service set forth in WAC 388-825-120 (5)(f) is governed by that section, and reduction of family support funding during the service authorization period is covered by subsection (3)(a) of this section.

(5) All parties affected by such department decision shall be consulted, whenever possible, during the decision process by the responsible field services regional office in person and/or by telephone.

(6) The division shall ensure notification to the school district in which a school-aged child is to be placed when a placement decision is reached.

[Statutory Authority: RCW 71A.12.030, 71A.10.020 and 2002 c 371. 04-02-014, § 388-825-100, filed 12/29/03, effective 1/29/04. Statutory Authority: RCW 71A.16.010, 71A.16.030, 71A.12.030, chapter 71A.20 RCW, RCW 72.01.090, and 72.33.125. 02-16-014, § 388-825-100, filed 7/25/02, effective 8/25/02; 99-19-104, recodified as § 388-825-100, filed 9/20/99, effective 9/20/99. Statutory Authority: RCW 71A.12.030, 71A.12.040 and Title 71A RCW. 97-13-051, § 275-27-400, filed 6/13/97, effective 7/14/97. Statutory Authority: RCW 71.20.070. 88-05-004 (Order 2596), § 275-27-400, filed 2/5/88; 86-18-049 (Order 2418), § 275-27-400, filed 8/29/86; 84-15-058 (Order 2124), § 275-27-400, filed 7/18/84. Statutory Authority: RCW 72.01.090, 72.33.040, 72.33.125 and 72.33.165. 78-04-033 (Order 1280), § 275-27-400, filed 3/16/78; Order 1143, § 275-27-400, filed 8/11/76.]

WAC 388-825-120 Adjudicative proceeding. (1) A client, former client, or applicant acting on the applicant's own behalf or through an authorized representative has the right to an adjudicative proceeding to contest the following department actions:

(a) Denial or termination of eligibility set forth in WAC 388-825-030 and 388-825-035;

(b) Development or modification of the individual service plan set forth in WAC 388-825-050;

(c) Authorization, denial, reduction, or termination of services or funds paid directly to the client set forth in WAC 388-825-055 or payment of SSP set forth in chapter 388-827 WAC;

(d) Admission or readmission to, or discharge from, a residential habilitation center;

(e) A claim the client, former client, or applicant owes an overpayment debt;

(f) A decision of the secretary under RCW 71A.10.060 or 71A.10.070;

(g) A decision to change a client's placement from one category of residential services to a different category of residential services.

(2) Adjudicative proceedings are governed by the Administrative Procedure Act (chapter 34.05 RCW), RCW 71A.10.050, the rules in this chapter, and by chapter 388-02 WAC. If any provision in this chapter conflicts with chapter 388-02 WAC, the provision in this chapter shall govern.

(3) The applicant's application for an adjudicative proceeding shall be in writing and filed with the DSHS office of appeals within twenty-eight days of receipt of the decision the appellant wishes to contest.

(4) The department shall not implement the following actions while an adjudicative proceeding is pending:

(a) Termination of eligibility;

(b) Reduction or termination of service, except when the action to reduce or terminate the service is based on the availability of funding and/or service; or

(c) Removal or transfer of a client from a service, except when a condition in subsection (5)(f) of this section is present.

(5) The department shall implement the following actions while an adjudicative proceeding is pending:

(a) Denial of eligibility;

(b) Development or modification of an individual service plan;

(c) Denial of service;

(d) Reduction or termination of service when the action to reduce or terminate the service is based on the availability of funding or service;

(e) After notification of an administrative law judge's (or review judge) ruling that the appellant has caused an unreasonable delay in the proceedings; or

(f) Removal or transfer of a client from a service when:

(i) An immediate threat to the client's life or health is present;

(ii) Service termination or transfer for a specific group of clients in order to meet the intent of and comply with sections 205 and 207, chapter 371, Laws of 2002;

(iii) The client's service provider is no longer able to provide services due to:

(A) Termination of the provider's contract;

(B) Decertification of the provider;

(C) Nonrenewal of provider's contract;

(D) Revocation of provider's license; or

(E) Emergency license suspension.

(iv) The client, the parent when the client is a minor, or the guardian when the client is an adult, approves the decision.

(6) When the appellant files an application to contest a decision to return a resident of a state residential school to the community, the procedures specified in RCW 71A.10.050(2) shall govern the proceeding. These procedures include:

(a) A placement decision shall not be implemented during any period during which an appeal can be taken or while an appeal is pending and undecided unless the:

(i) Client's or the client's representative gives written consent; or

(ii) Administrative law judge (or review judge) after notice to the parties rules the appellant has caused an unreasonable delay in the proceedings.

(b) The burden of proof is on the department; and

(c) The burden of proof is whether the specific placement proposed by the department is in the best interests of the resident.

(7) The administrative law judge shall issue an initial or final order within sixty days of the department's receipt of the application for an adjudicative proceeding. When a party files a petition for administrative review, allowed under WAC

388-02-0215 (4)(w)(x) and/or (y), the review order shall be made within sixty days of the department's receipt of the petition. The decision-rendering time is extended by as many days as the proceeding is continued on motion by, or with the assent of, the appellant.

[Statutory Authority: RCW 71A.12.030, 71A.10.020 and 2002 c 371. 04-02-014, § 388-825-120, filed 12/29/03, effective 1/29/04. Statutory Authority: RCW 71A.16.010, 71A.16.030, 71A.12.030, chapter 71A.20 RCW, RCW 72.01.090, and 72.33.125. 02-16-014, § 388-825-120, filed 7/25/02, effective 8/25/02; 99-19-104, recodified as § 388-825-120, filed 9/20/99, effective 9/20/99. Statutory Authority: RCW 71A.16.020. 91-17-005 (Order 3230), § 275-27-500, filed 8/9/91, effective 9/9/91. Statutory Authority: RCW 34.05.220 (1)(a) and 71.12.030 [71A.12.030]. 90-04-074 (Order 2997), § 275-27-500, filed 2/5/90, effective 3/1/90. Statutory Authority: RCW 71.20.070. 86-18-049 (Order 2418), § 275-27-500, filed 8/29/86. Statutory Authority: RCW 72.33.161. 84-15-038 (Order 2122), § 275-27-500, filed 7/13/84. Statutory Authority: RCW 72.01.090, 72.33.040, 72.33.125 and 72.33.165. 78-04-033 (Order 1280), § 275-27-500, filed 3/16/78; Order 1143, § 275-27-500, filed 8/11/76.]

WAC 388-825-205 Who is eligible to participate in the family support opportunity program? (1) All individuals living with their families determined to be developmentally disabled according to WAC 388-825-030 and 388-825-035 are eligible to participate in the program if their family requires assistance in meeting their needs. However, the program will fund or provide support services only as funding is available.

(2) Persons currently receiving services under WAC 388-825-252, Family support services, may volunteer to participate in the program.

(3) Families will receive program services based on one or more of the following criteria: The date of application, the date the family was placed on the wait list, eligibility for SSP or other available funding, and/or HCBS waiver status.

(4) Availability of the SSP makes the family ineligible for other state only funding for the same service.

[Statutory Authority: RCW 71A.12.030, 71A.10.020 and 2002 c 371. 04-02-014, § 388-825-205, filed 12/29/03, effective 1/29/04. Statutory Authority: RCW 71A.16.010, 71A.16.030, 71A.12.030, chapter 71A.20 RCW, RCW 72.01.090, and 72.33.125. 02-16-014, § 388-825-205, filed 7/25/02, effective 8/25/02; 99-19-104, recodified as § 388-825-205, filed 9/20/99, effective 9/20/99. Statutory Authority: RCW 71A.12.030. 99-04-071, § 275-27-185, filed 2/1/99, effective 3/4/99.]

WAC 388-825-252 Family support services. (1) The purpose of the family support program is to:

(a) Reduce or eliminate the need for out-of-home residential placement of a client where the in-home placement is in the client's best interest;

(b) Allow a client to live in the most independent setting possible; and

(c) Have access to services best suited to a client's needs.

(2) The department's family support services shall include, the following services:

(a) Respite care, including the use of community activities which provide respite;

(b) Attendant care;

(c) Nursing services provided by a registered nurse or licensed practical nurse, that cannot be provided by an unlicensed caregiver, including but not limited to, ventilation, catheterization, insulin injections, etc., when not covered by another resource;

(d) Therapeutic services, provided these therapeutic services are not covered by another resource such as medicaid, private insurance, public schools, or child development services funding, including:

(i) Physical therapy;

(ii) Occupational therapy;

(iii) Behavior management therapy; and

(iv) Communication therapy; or

(v) Counseling for the client relating to a disability.

(3) Receiving family support services is based on:

(a) Funding for state paid services available in the state operating budget;

(b) SSP funding available to the client/family; or

(c) HCBS waiver status.

(4) The following rules, subsections (5) through (9), apply only to family support services authorized by the department and do not govern services purchased by the family with SSP (state supplementary payment) funding (see WAC 388-827-0145 and 388-827-0170).

(5) Up to nine hundred dollars of the service need level amount in WAC 388-825-254 may be used during a one year period for flexible use as follows. The requested service must be necessary as a result of the disability of the client.

(a) Training and supports including parenting classes and disability related support groups;

(b) Specialized equipment and supplies including the purchase, rental, loan or refurbishment of specialized equipment or adaptive equipment not covered by another resource including Medicaid. Mobility devices such as walkers and wheelchairs are included, as well as communication devices and medical supplies such as diapers for those more than three years of age;

(c) Environmental modification including home repairs for damages, and modifications to the home needed because of the disability of the client;

(d) Medical/dental services not covered by any other resource. This may include the payment of insurance premiums and deductibles and is limited to the premiums and deductibles of the client;

(e) Special formulas or specially prepared foods needed because of the disability of the client;

(f) Parent/family counseling dealing with a diagnosis, grief and loss issues, genetic counseling and behavior management;

(g) Specialized clothing adapted for a physical disability, excessive wear clothing, or specialized footwear;

(h) Specialized utility costs including extraordinary supplemental utility costs related to the client's disability or medical condition;

(i) Transportation costs for gas or tickets (ferry fare, transit cost) for a client to get to essential services and appointments, if another resource is not available;

(j) Other services approved by the DDD regional administrator or designee that will replace or reduce ongoing departmental expenditures and will reduce the risk of out-of-home placement. Exemption requests under this section are not subject to appeal.

(6) Recommendations will be made to the regional administrator by a review committee. The regional administrator will approve or disapprove the request and will communicate reasons for denial to the committee.

(7) Payment for services specified in subsection (5), except (5)(a) and (h), shall cover only the portion of cost attributable to the client.

(8) Requests must be received by DDD no later than midway through the service authorization period unless circumstances exist justifying an emergency.

(9) A plan shall be developed jointly by the family and the department for each service authorization period. The department may choose whether to contract directly with the vendor, to authorize purchase by another agency, or may reimburse the parent of the client.

(10) Emergency services. Emergency funds may be requested for use in response to a single incident or situation or short term crisis such as care giver hospitalization, absence, or incapacity. The request shall include anticipated resolution of the situation. Funds shall be provided for a limited period not to exceed two months. All requests are to be reviewed and approved or denied by the regional administrator or designee.

(11) A departmental service authorization shall state the type, amount, and period (duration) of service. Each department authorization shall constitute a new service for a new period.

(12) If the client becomes eligible and begins to receive Medicaid Personal Care services as defined in WAC 388-71-0202 and 388-71-0203, the family support funding will be reduced at the beginning of the next month of service. The family will receive notice of the reconfiguration of services at least five working days before the beginning of the month.

(13) If requested family support services are not authorized, such actions shall be deemed a denial of services.

(14) Family support services may be authorized below the amount requested by the family for the period. When, during the authorized service period, family support services are reduced or terminated below the amount specified in service authorizations, the department shall deem such actions as a reduction or termination of services.

[Statutory Authority: RCW 71A.12.030, 71A.10.020 and 2002 c 371. 04-02-014, § 388-825-252, filed 12/29/03, effective 1/29/04. Statutory Authority: RCW 71A.16.010, 71A.16.030, 71A.12.030, chapter 71A.20 RCW, RCW 72.01.090, and 72.33.125. 02-16-014, § 388-825-252, filed 7/25/02, effective 8/25/02; 99-19-104, recodified as § 388-825-252, filed 9/20/99, effective 9/20/99. Statutory Authority: RCW 71A.12.030, 71A.12.040 and Title 71A RCW. 97-13-051, § 275-27-220, filed 6/13/97, effective 7/14/97. Statutory Authority: RCW 71A.12.040 and 43.43.745. 94-04-092 (Order 3702), § 275-27-220, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 71A.12.040. 92-09-114 (Order 3372), § 275-27-220, filed 4/21/92, effective 5/22/92. Statutory Authority: RCW 71.20.070. 88-05-004 (Order 2596), § 275-27-220, filed 2/5/88; 86-18-049 (Order 2418), § 275-27-220, filed 8/29/86.]

WAC 388-825-254 Service need level rates. (1) The department shall base periodic service authorizations on:

(a) Requests for family support services described in WAC 388-825-252 (2) and (5);

(b) Service need levels. The amount of SSP (state supplementary payment) available to a client will be included when calculating the monthly allocation of state family support dollars.

(c) Service need level lid amounts as follows:

(i) Clients designated for service need level one (WAC 388-825-256) may receive up to one thousand one hundred fifty-six dollars per month or two thousand four hundred

sixty-two dollars per month if the client requires licensed nursing care in the home:

(A) If a client is receiving funding through Medicaid Personal Care or other DSHS in-home residential support, the maximum payable through family support shall be five hundred twelve dollars per month;

(B) If the combined total of family support services at this maximum plus in-home support is less than one thousand one hundred fifty-six dollars additional family support can be authorized to bring the total to one thousand one hundred fifty-six dollars.

(ii) Clients designated for service need level two (WAC 388-825-256) may receive up to four hundred fifty-six dollars per month if not receiving funding through Medicaid personal care:

(A) If a client is receiving funds through Medicaid personal care or other DSHS in-home residential support service, the maximum receivable through family support shall be two hundred fifty-six dollars per month;

(B) If the combined total of family support services at this maximum plus in-home support is less than fifty-six hundred four dollars, additional family support can be authorized to bring the total to four hundred fifty-six dollars.

(iii) Clients designated for service need level three (WAC 388-825-256) may receive up to two hundred fifty-six dollars per month provided the client is not receiving Medicaid personal care. If the client is receiving Medicaid personal care or other DSHS in-home residential support service, the maximum receivable through family support shall be one hundred twenty-eight dollars per month; and

(iv) Clients designated for service level four (WAC 388-825-256) may receive up to one hundred twenty-eight dollars per month family support services.

(d) Availability of family support funding;

(e) Authorization by a review committee, in each regional office, which reviews each request for service;

(f) The amounts designated in subsection (1)(b)(i) through (iv) of this section are subject to periodic increase if vendor rate increases are mandated by the legislature.

(2) The department shall authorize family support services contingent upon the applicant providing accurate and complete information on disability-related requests.

(3) The department shall ensure service authorizations do not exceed maximum amounts for each service need level based on the availability of funds.

(4) The department shall not authorize a birth parent, adoptive parent, or stepparent living in the same household as the client as the direct care provider for respite, attendant, nursing, therapy, or counseling services for a child seventeen years of age or younger.

[Statutory Authority: RCW 71A.12.030, 71A.10.020 and 2002 c 371. 04-02-014, § 388-825-254, filed 12/29/03, effective 1/29/04. Statutory Authority: RCW 71A.12.030, 71A.12.040, and 2001 2nd sp.s. c 7. 02-01-074, § 388-825-254, filed 12/14/01, effective 1/14/02. Statutory Authority: RCW 71A.12.030 and 71A.12.040. 00-23-106, § 388-825-254, filed 11/21/00, effective 12/22/00; 00-08-090, § 388-825-254, filed 4/5/00, effective 5/6/00; 99-19-104, recodified as § 388-825-254, filed 9/20/99, effective 10/21/99. Statutory Authority: RCW 71A.12.030, 71A.12.040 and Title 71A RCW. 97-13-051, § 275-27-222, filed 6/13/97, effective 7/14/97.]

Chapter 388-827 WAC**STATE SUPPLEMENTARY PAYMENT PROGRAM****WAC**

388-827-0100	What is the state supplementary payment (SSP) that is administered by the division of developmental disabilities (DDD)?
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388-827-0210	Who can be a representative payee for my DDD/SSP?
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388-827-0400	What is an SSP overpayment?
388-827-0410	When can an overpayment occur?
388-827-0420	Who is liable for repayment of an overpayment?

WAC 388-827-0100 What is the state supplementary payment (SSP) that is administered by the division of developmental disabilities (DDD)? The state supplementary payment (SSP) is a state-paid cash assistance program for certain clients of the division of developmental disabilities.

[Statutory Authority: RCW 71A.12.030, 71A.10.020, 2002 c 371. 04-02-015, § 388-827-0100, filed 12/29/03, effective 1/29/04.]

WAC 388-827-0105 What are the eligibility requirements for the DDD/SSP program? To be eligible to receive DDD/SSP, you must be determined DDD eligible under RCW 71A.10.020 and meet all of the financial and programmatic criteria for DDD/SSP.

[Statutory Authority: RCW 71A.12.030, 71A.10.020, 2002 c 371. 04-02-015, § 388-827-0105, filed 12/29/03, effective 1/29/04.]

WAC 388-827-0110 What are the financial eligibility requirements to receive DDD/SSP? You must be eligible for or receive supplemental security income (SSI) cash assistance in the month in which the DDD/SSP is issued.

[Statutory Authority: RCW 71A.12.030, 71A.10.020, 2002 c 371. 04-02-015, § 388-827-0110, filed 12/29/03, effective 1/29/04.]

WAC 388-827-0115 What are the programmatic eligibility requirements for DDD/SSP? (1) You received one or more of the following services from DDD with state-only funding between March 1, 2001 and June 30, 2003 and continue to demonstrate a need for and meet the DDD program eligibility requirements for these services.

(a) Certain voluntary placement program services, which include:

- (i) Foster care basic maintenance,
- (ii) Foster care specialized support,
- (iii) Agency specialized support,
- (iv) Staffed residential home,
- (v) Out-of-home respite care,
- (vi) Agency in-home specialized support,
- (vii) Group care basic maintenance,
- (viii) Group care specialized support,
- (ix) Transportation,
- (x) Agency attendant care,
- (xi) Child care,
- (xii) Professional services,
- (xiii) Nursing services,
- (xiv) Interpreter services,

(b) Family support;

(c) One or more of the following residential services:

- (i) Adult family home,
- (ii) Adult residential care facility,
- (iii) Alternative living,
- (iv) Group home,
- (v) Supported living,
- (vi) Agency attendant care,
- (vii) Supported living or other residential service allowance,
- (viii) Intensive individual supported living support (companion homes).

(2) For individuals with community protection issues as defined in WAC 388-820-020, the department will determine eligibility for SSP on a case-by-case basis.

(3) For new authorizations of family support opportunity:

(a) You were on the family support opportunity waiting list prior to January 1, 2003; and

(b) You are on the home and community based services (HCBS) waiver administered by DDD; and

(c) You continue to meet the eligibility requirements for the family support opportunity program contained in WAC 388-825-200 through 388-825-242.

[Statutory Authority: RCW 71A.12.030, 71A.10.020, 2002 c 371. 04-02-015, § 388-827-0115, filed 12/29/03, effective 1/29/04.]

WAC 388-827-0120 How often will my eligibility for DDD/SSP be redetermined? Redetermination of eligibility for the DDD/SSP program will be conducted at least every twelve months, or more frequently if deemed necessary by DDD.

[Statutory Authority: RCW 71A.12.030, 71A.10.020, 2002 c 371. 04-02-015, § 388-827-0120, filed 12/29/03, effective 1/29/04.]

WAC 388-827-0125 How will I know if I am eligible to receive a DDD/SSP payment? You will receive a written notification from DDD if you have been identified as eligible for this program.

[Statutory Authority: RCW 71A.12.030, 71A.10.020, 2002 c 371. 04-02-015, § 388-827-0125, filed 12/29/03, effective 1/29/04.]

WAC 388-827-0130 Can I choose not to accept DDD/SSP payments? If your service funding has been converted to the DDD/SSP program, DDD/SSP payments are the only way you can receive that funding.

(1) If you choose not to receive DDD/SSP payments, you will not receive department funding for that service.

(2) Your home and community based services (HCBS) waiver service(s) administered by DDD but not funded by DDD/SSP payments will not be affected by your choice to receive or reject DDD/SSP payments.

[Statutory Authority: RCW 71A.12.030, 71A.10.020, 2002 c 371. 04-02-015, § 388-827-0130, filed 12/29/03, effective 1/29/04.]

WAC 388-827-0131 What happens if I no longer meet the financial or programmatic requirements after my funding has been converted to the DDD/SSP program? If you no longer meet the eligibility requirements in WAC 388-827-0105, 388-827-0110, or 388-827-0115, you may continue to receive services only if an exception to the rules is approved in accordance with WAC 388-827-0300.

[Statutory Authority: RCW 71A.12.030, 71A.10.020, 2002 c 371. 04-02-015, § 388-827-0131, filed 12/29/03, effective 1/29/04.]

WAC 388-827-0135 Can I apply for the DDD/SSP program if I am not identified by DDD as eligible for the DDD/SSP program? You can apply through your case resource manager to determine eligibility for SSP but eligibility is limited to those meeting the eligibility requirements in WAC 388-827-0105, 388-827-0110, and 388-827-0115.

[Statutory Authority: RCW 71A.12.030, 71A.10.020, 2002 c 371. 04-02-015, § 388-827-0135, filed 12/29/03, effective 1/29/04.]

WAC 388-827-0140 What are my appeal rights if DDD determines that I am not eligible for DDD/SSP? (1) You have the right to appeal the department's denial, termination, or reduction of services. Your rights to an adjudicative proceeding are in WAC 388-825-120.

(2) Your current services will not be continued while the matter is being appealed if the service termination or transfer is for a specific group of clients in order to meet the legislative intent of and comply with sections 205 and 207, chapter 371, Laws of 2002.

[Statutory Authority: RCW 71A.12.030, 71A.10.020, 2002 c 371. 04-02-015, § 388-827-0140, filed 12/29/03, effective 1/29/04.]

WAC 388-827-0145 How much money will I receive? The purpose of the SSP is to increase the amount of income to meet your needs. The department will determine your payment amount based on your living arrangement and your assessed needs.

(1) For residential and voluntary placement program services, the amount of your SSP will be based on the amount of state-only dollars spent on certain services at the time the funding source was converted to SSP. If the type of your residential living arrangement changes, your need will be reassessed and your payment adjusted based on your new living arrangement and assessed need.

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(2) For family support services, refer to WAC 388-825-200 through 388-825-284.

(a) If you are on the home and community based services (HCBS) waiver administered by DDD:

(i) You will receive nine hundred dollars DDD/SSP money per year to use as you determine.

(ii) The remainder up to the maximum allowed may be authorized by DDD to purchase HCBS waiver services and will be paid directly to the provider.

(b) If you are not on the HCBS waiver administered by DDD, you will receive the yearly maximum allowed in the form of DDD/SSP money to use as you determine.

(c) The yearly amount of DDD/SSP money will be prorated into monthly amounts. You will receive one twelfth of the yearly amount each month.

[Statutory Authority: RCW 71A.12.030, 71A.10.020, 2002 c 371. 04-02-015, § 388-827-0145, filed 12/29/03, effective 1/29/04.]

WAC 388-827-0146 May I voluntarily remove myself from the home and community based services (HCBS) waiver administered by DDD in order to increase the amount of my SSP? You may voluntarily remove yourself from the HCBS waiver administered by DDD but your SSP will not increase because of this action.

[Statutory Authority: RCW 71A.12.030, 71A.10.020, 2002 c 371. 04-02-015, § 388-827-0146, filed 12/29/03, effective 1/29/04.]

WAC 388-827-0150 How often will I receive my DDD/SSP warrant/check? You will receive a monthly warrant/check from the state.

[Statutory Authority: RCW 71A.12.030, 71A.10.020, 2002 c 371. 04-02-015, § 388-827-0150, filed 12/29/03, effective 1/29/04.]

WAC 388-827-0155 Who will the warrant/check be sent to? (1) If you are a child under the age of eighteen, the warrant/check will be sent to your legal representative or protective payee or representative payee.

(2) If you are a person age eighteen and older, the warrant/check will be sent directly to your protective payee or representative payee if you have one.

(3) If you do not have a protective payee or representative payee, the warrant/check will be sent directly to you.

[Statutory Authority: RCW 71A.12.030, 71A.10.020, 2002 c 371. 04-02-015, § 388-827-0155, filed 12/29/03, effective 1/29/04.]

WAC 388-827-0160 How will the warrant/check be sent? You may choose to have your check delivered through the U.S. Postal Service, or as an electronic funds transfer.

[Statutory Authority: RCW 71A.12.030, 71A.10.020, 2002 c 371. 04-02-015, § 388-827-0160, filed 12/29/03, effective 1/29/04.]

WAC 388-827-0170 Are there rules restricting how I use my DDD/SSP money? There are no restrictions on how you use your DDD/SSP money.

[Statutory Authority: RCW 71A.12.030, 71A.10.020, 2002 c 371. 04-02-015, § 388-827-0170, filed 12/29/03, effective 1/29/04.]

WAC 388-827-0175 What changes must I report to the department? You must report changes in your circum-

stances within ten days from the date you become aware of the change. You must tell us if:

- (1) Your SSI stops;
- (2) Your address changes; or
- (3) There is a change in your living arrangement that affects your assessed need.

[Statutory Authority: RCW 71A.12.030, 71A.10.020, 2002 c 371. 04-02-015, § 388-827-0175, filed 12/29/03, effective 1/29/04.]

WAC 388-827-0180 Do I have additional responsibilities when I purchase my own services? (1) When you use DDD/SSP funds paid directly to you to purchase in-home services from individuals, you become the employer. As the employer, you may have tax liabilities. If you have questions regarding employer tax issues, you can contact the Internal Revenue Service.

(2) If you want to obtain a criminal background check of any employee who will have unsupervised access to children or adults with developmental disabilities, you may get the background check done through the Washington State Patrol. You can ask your DDD case resource manager to assist you with completing these background checks.

[Statutory Authority: RCW 71A.12.030, 71A.10.020, 2002 c 371. 04-02-015, § 388-827-0180, filed 12/29/03, effective 1/29/04.]

WAC 388-827-0185 When will the department stop sending my DDD/SSP money? The department will stop sending your DDD/SSP money when:

- (1) You no longer are eligible for or receive SSI cash benefits;
- (2) You no longer demonstrate a need for the services as described in WAC 388-827-0115; or
- (3) Your DDD eligibility is terminated.

[Statutory Authority: RCW 71A.12.030, 71A.10.020, 2002 c 371. 04-02-015, § 388-827-0185, filed 12/29/03, effective 1/29/04.]

WAC 388-827-0200 What is a representative payee? A representative payee is a person, organization, institution or agency that manages your DDD/SSP. They may also provide services such as helping you manage your money.

[Statutory Authority: RCW 71A.12.030, 71A.10.020, 2002 c 371. 04-02-015, § 388-827-0200, filed 12/29/03, effective 1/29/04.]

WAC 388-827-0210 Who can be a representative payee for my DDD/SSP? (1) A representative payee may be:

- (a) The person, organization, institution or agency that acts as your representative payee for Supplemental Security Income (SSI);
- (b) Your parent, if you are under eighteen;
- (c) Your spouse; or
- (d) A person, organization, institution or agency you select if the department approves your selection.

(2) If you select a representative payee under subsection (1) (d) of this section, the department will evaluate the selection according to the following criteria:

- (a) The relationship of the payee to you;
- (b) The amount of interest the payee shows in you;
- (c) Any legal authority the payee has to act on your behalf;
- (d) Whether the payee has custody of you; and

(e) Whether the payee is in a position to know of and look after your needs.

(3) The DDD director or designee will approve or deny your request for a representative under subsection (1)(d) of this section.

[Statutory Authority: RCW 71A.12.030, 71A.10.020, 2002 c 371. 04-02-015, § 388-827-0210, filed 12/29/03, effective 1/29/04.]

WAC 388-827-0215 What are the responsibilities of a representative payee? A representative payee has the responsibility to:

- (1) Spend the DDD/SSP on you or your behalf;
- (2) Notify the department if any event happens that may affect the amount of benefits you receive;
- (3) Submit to the department, upon our request, a written report accounting for the payments received; and
- (4) Notify the department of any change in the payee's circumstances that would affect performance of the payee responsibilities.

[Statutory Authority: RCW 71A.12.030, 71A.10.020, 2002 c 371. 04-02-015, § 388-827-0215, filed 12/29/03, effective 1/29/04.]

WAC 388-827-0300 Does DSHS make exceptions to the requirements in this chapter? DSHS may grant exceptions to the requirements specified in this chapter as long as the following conditions are met:

- (1) You or your case manager may request an exception to a rule in this chapter.
- (2) The case manager must submit a written request for an exception to his or her DDD regional administrator.
- (3) DSHS will evaluate requests for exceptions, considering:
 - (a) The federal and state rules governing SSP; and
 - (b) The impact on the client if the exception is not approved.
- (4) The DDD regional administrator will forward the request to the DDD director together with the regional administrator's recommendation to approve or deny the request.

(5) The DDD director or designee will approve or deny the request in writing within sixty calendar days after receiving the request from the case manager.

(6) The department will notify you of the decision.

(7) You do not have rights to adjudicative proceedings when you receive a denial from DSHS for an exception to the rules in this chapter.

[Statutory Authority: RCW 71A.12.030, 71A.10.020, 2002 c 371. 04-02-015, § 388-827-0300, filed 12/29/03, effective 1/29/04.]

WAC 388-827-0400 What is an SSP overpayment? (1) An overpayment means any SSP paid that is more than the amount you were eligible to receive.

(2) If you request a hearing and the hearing decision determines that you received any DDD/SSP money that you were not eligible to receive, then some or all of the DDD/SSP you received before the hearing decision must be paid back to the department.

[Statutory Authority: RCW 71A.12.030, 71A.10.020, 2002 c 371. 04-02-015, § 388-827-0400, filed 12/29/03, effective 1/29/04.]

WAC 388-827-0410 When can an overpayment occur? An overpayment can occur when:

(1) You were not eligible for and did not receive supplemental security income in the month in which the SSP was issued;

(2) You were no longer eligible for services from the division of developmental disabilities in the month in which the SSP was issued; or

(3) Your assessed need has changed.

[Statutory Authority: RCW 71A.12.030, 71A.10.020, 2002 c 371. 04-02-015, § 388-827-0410, filed 12/29/03, effective 1/29/04.]

WAC 388-827-0420 Who is liable for repayment of an overpayment? (1) If you received the money in your own name, you are responsible for repayment.

(2) If you are paid through a representative payee, both you and the representative payee may be responsible for repayment.

(a) You are responsible to the extent that the incorrect payments were spent on you or your behalf. Funds conserved by a representative payee to which you do not have direct access have not been spent on you or your behalf.

(b) If the incorrect payments were spent on you or your behalf and the representative payee is without fault in connection with the overpayment, you are solely responsible for repayment.

(c) The representative payee is solely responsible for repayment if:

(i) The incorrect payments were not spent on you or your behalf; and

(ii) The representative payee is at fault in connection with the overpayment.

(d) A government entity or an institution can be a representative payee and can be found responsible for repayment, just as a private individual can.

(e) You and the representative payee are both responsible for repayment when the incorrect payments have been spent on you or your behalf and the representative payee is at fault.

(3) The representative payee is at fault when the representative payee was aware of the reason you were not eligible for the SSP.

[Statutory Authority: RCW 71A.12.030, 71A.10.020, 2002 c 371. 04-02-015, § 388-827-0420, filed 12/29/03, effective 1/29/04.]

Chapter 388-850 WAC COUNTY PLAN FOR DEVELOPMENTAL DISABILITIES

(Formerly chapter 275-25 WAC)

WAC

388-850-035
388-850-045

Services—Developmental disabilities.
Funding formula—Developmental disabilities.

WAC 388-850-035 Services—Developmental disabilities. (1) A county may purchase and provide services listed under chapter 71A.14 RCW.

(a) The department shall pay a county for department authorized services provided to an eligible developmentally disabled person.

(b) DD eligible persons who receive funding from DDD directly for employment or day program services shall pay the county or a county contracted provider for services.

(2) A county may purchase or provide authorized services. Authorized services may include, but are not limited to:

(a) Early childhood intervention services;

(b) Employment services;

(c) Community access services;

(d) Residential services;

(e) Individual evaluation;

(f) Program evaluation;

(g) County planning and administration;

(h) Consultation and staff development; and

(i) Oversight of the DDD money sent directly to the DDD eligible person.

[Statutory Authority: RCW 71A.12.030, 71A.10.020 and 2002 c 371. 04-02-014, § 388-850-035, filed 12/29/03, effective 1/29/04. 99-19-104, reclassified as § 388-850-035, filed 9/20/99, effective 9/20/99. Statutory Authority: RCW 71A.14.030. 91-17-005 (Order 3230), § 275-25-520, filed 8/9/91, effective 9/9/91. Statutory Authority: RCW 71.20.070, 72.33.125 and 72.33.850. 82-06-034 (Order 1771), § 275-25-520, filed 3/1/82. Statutory Authority: RCW 71.20.030, 71.20.050, and 71.20.070. 78-04-002 (Order 1278), § 275-25-520, filed 3/2/78; Order 1142, § 275-25-520, filed 8/12/76.]

WAC 388-850-045 Funding formula—Developmental disabilities. (1) For the purposes of this section, "county" shall mean the legal subdivision of the state, regardless of any agreement with another county to provide developmental disabilities services jointly.

(2) The allocation of funds to counties shall be based on the following criteria:

(a) Each county shall receive a base amount of funds. The amount shall be based on the prior biennial allocation, including any funds from budget provisos from the prior biennium, and subject to the availability of state and federal funds;

(b) The distribution of any additional funds provided by the legislature or other sources shall be based on a distribution formula which best meets the needs of the population to be served as follows:

(i) On a basis which takes into consideration minimum grant amounts, requirements of clients residing in an ICF/MR or clients on one of the division's Title XIX home and community-based waivers, and the general population of the county, and special education enrollment as well as the population eligible for county-funded developmental disabilities services;

(ii) On a basis that takes into consideration the population numbers of minority groups residing within the county;

(iii) A biennial adjustment shall be made after these factors are considered; and

(iv) Counties not receiving any portion of additional funds pursuant to this formula shall not have their base allocation reduced due to application of this formula.

(c) Funding appropriated through legislative proviso, including vendor rate increases, shall be distributed to the population directed by the legislature utilizing a formula as directed by the legislature or using a formula specific to that population or distributed to identified people;

(d) The ability of the community to provide funds for the developmental disability program provided in chapter 71A.14 RCW may be considered with any or all of the above.

(3)(a) A county may utilize seven or less percent of the county's allocated funds for county administrative expenses. A county may utilize more than seven percent for county administration with approval of the division director. A county electing to provide all services directly, in addition to county administration, is exempt from this requirement.

(b) A county may receive funds for oversight of employment/day program services purchased by DDD clients with money sent directly to the client based on the following conditions:

(i) The oversight funds for the recipients described below will be allocated at the same rate that the county received in their original 2001-2003 DDD county program agreement for administrative expenses for these same individuals. These funds will be calculated by using the date the recipient began receiving funds directly if the recipient:

(A) Was born between September 1, 1979 and August 31, 1981; and

(B) Received a county or county-contracted service between July 1, 2001 and June 30, 2002; and

(C) Continues to receive a county or county-contracted service.

(ii) Oversight funds for the recipients described below will be allocated at the same rate that the county received in their original 2001-2003 DDD county program agreement for administrative expenses for these same individuals. These funds will be calculated by using the date the recipient began receiving funds directly if the recipient:

(A) Was born prior to September 1, 1979; and

(B) Was authorized by DDD and the county for employment/day program services for December, 2002; and

(C) Continues to receive a county or county-contracted service.

(iii) The oversight funds for recipients described below shall equal up to seven percent of the amount of the funds received directly by the recipient, if the recipient:

(A) Was born between September 1, 1979 and August 31, 1981; and

(B) Received no county or county-contracted service prior to July 1, 2002; and

(C) Received or will receive a county or county-contracted service between July 1, 2002 and June 30, 2003; and

(D) Continues to receive a county or county-contracted service.

(4) The department may withhold five or less percent of allocated funds for new programs, for statewide priority programs, and for emergency needs.

[Statutory Authority: RCW 71A.12.030, 71A.10.020 and 2002 c 371. 04-02-014, § 388-850-045, filed 12/29/03, effective 1/29/04. 99-19-104, recodified as § 388-850-045, filed 9/20/99, effective 9/20/99. Statutory Authority: RCW 71A.14.040. 92-13-032 (Order 3404), § 275-25-530, filed 6/10/92, effective 7/11/92. Statutory Authority: RCW 71A.14.030. 91-17-005 and 91-17-025 (Orders 3230 and 3230A), § 275-25-530, filed 8/9/91 and 8/14/91, effective 9/9/91 and 9/14/91. Statutory Authority: RCW 69.54.040 and 71.24.190. 83-03-011 (Order 1936), § 275-25-530, filed 1/12/83; Order 1142, § 275-25-530, filed 8/12/76.]

Chapter 388-865 WAC

COMMUNITY MENTAL HEALTH AND INVOLUNTARY TREATMENT PROGRAMS

WAC

388-865-0150	Definitions.
388-865-0217	Psychiatric indigent inpatient program.
388-865-0465	Adult residential treatment facility certification—Additional standards.

WAC 388-865-0150 Definitions. "Adult" means a person on or after their eighteenth birthday. For persons eligible for the Medicaid program, adult means a person on or after his/her twenty-first birthday.

"Child" means a person who has not reached his/her eighteenth birthday. For persons eligible for the Medicaid program, child means a person who has not reached his/her twenty-first birthday.

"Clinical services" means those direct age and culturally appropriate consumer services which either:

(1) Assess a consumer's condition, abilities or problems;

(2) Provide therapeutic interventions which are designed to ameliorate psychiatric symptoms and improve a consumer's functioning.

"Consumer" means a person who has applied for, is eligible for or who has received mental health services. For a child, under the age of thirteen, or for a child age thirteen or older whose parents or legal guardians are involved in the treatment plan, the definition of consumer includes parents or legal guardians.

"Consultation" means the clinical review and development of recommendations regarding the job responsibilities, activities, or decisions of, clinical staff, contracted employees, volunteers, or students by persons with appropriate knowledge and experience to make recommendations.

"Cultural competence" means a set of congruent behaviors, attitudes, and policies that come together in a system or agency and enable that system or agency to work effectively in cross-cultural situations. A culturally competent system of care acknowledges and incorporates at all levels the importance of language and culture, assessment of cross-cultural relations, knowledge and acceptance of dynamics of cultural differences, expansion of cultural knowledge and adaptation of services to meet culturally unique needs.

"Ethnic minority" or "racial/ethnic groups" means, for the purposes of this chapter, any of the following general population groups:

(1) African American;

(2) An American Indian or Alaskan native, which includes:

(a) A person who is a member or considered to be a member in a federally recognized tribe;

(b) A person determined eligible to be found Indian by the secretary of interior, and

(c) An Eskimo, Aleut, or other Alaskan native.

(d) A Canadian Indian, meaning a person of a treaty tribe, Metis community, or nonstatus Indian community from Canada.

(e) An unenrolled Indian meaning a person considered Indian by a federally or nonfederally recognized Indian tribe

or off reservation Indian/Alaskan native community organization.

(3) Asian/Pacific Islander; or

(4) Hispanic.

"Medical necessity" or "medically necessary" - A term for describing a requested service which is reasonably calculated to prevent, diagnose, correct, cure, alleviate or prevent the worsening of conditions in the recipient that endanger life, or cause suffering or pain, or result in illness or infirmity, or threaten to cause or aggravate a handicap, or cause or physical deformity or malfunction, and there is no other equally effective, more conservative or substantially less costly course of treatment available or suitable for the person requesting service. For the purpose of this chapter "course of treatment" may include mere observation or, where appropriate, no treatment at all.

"Mental health division" means the mental health division of the Washington state department of social and health services (DSHS). DSHS has designated the mental health division as the state mental health authority to administer the state and Medicaid funded mental health program authorized by chapters 71.05, 71.24, and 71.34 RCW.

"Mental health professional" means:

(1) A psychiatrist, psychologist, psychiatric nurse or social worker as defined in chapters 71.05 and 71.34 RCW;

(2) A person with a masters degree or further advanced degree in counseling or one of the social sciences from an accredited college or university. Such person shall have, in addition, at least two years of experience in direct treatment of persons with mental illness or emotional disturbance, such experience gained under the supervision of a mental health professional;

(3) A person who meets the waiver criteria of RCW 71.24.260, which was granted prior to 1986.

(4) A person who had an approved waiver to perform the duties of a mental health profession that was requested by the regional support network and granted by the mental health division prior to July 1, 2001; or

(5) A person who has been granted a time-limited exception of the minimum requirements of a mental health professional by the mental health division consistent with WAC 388-865-265.

"Mental health specialist" means:

(1) A **"child mental health specialist"** is defined as a mental health professional with the following education and experience:

(a) A minimum of one hundred actual hours (not quarter or semester hours) of special training in child development and the treatment of children and youth with serious emotional disturbance and their families; and

(b) The equivalent of one year of full-time experience in the treatment of seriously emotionally disturbed children and youth and their families under the supervision of a child mental health specialist.

(2) A **"geriatric mental health specialist"** is defined as a mental health professional who has the following education and experience:

(a) A minimum of one hundred actual hours (not quarter or semester hours) of specialized training devoted to the mental health problems and treatment of persons sixty years of age or older; and

(b) The equivalent of one year of full-time experience in the treatment of persons sixty years of age or older, under the supervision of a geriatric mental health specialist.

(3) An **"ethnic minority mental health specialist"** is defined as a mental health professional who has demonstrated cultural competence attained through major commitment, ongoing training, experience and/or specialization in serving ethnic minorities, including evidence of one year of service specializing in serving the ethnic minority group under the supervision of an ethnic minority mental health specialist; and

(a) Evidence of support from the ethnic minority community attesting to the person's commitment to that community; or

(b) A minimum of one hundred actual hours (not quarter or semester hours) of specialized training devoted to ethnic minority issues and treatment of ethnic minority consumers.

(4) A **"disability mental health specialist"** is defined as a mental health professional with special expertise in working with an identified disability group. For purposes of this chapter only, **"disabled"** means an individual with a disability other than a mental illness, including a developmental disability, serious physical handicap, or sensory impairment.

(a) If the consumer is deaf, the specialist must be a mental health professional with:

(i) Knowledge about the deaf culture and psychosocial problems faced by people who are deaf; and

(ii) Ability to communicate fluently in the preferred language system of the consumer.

(b) The specialist for consumers with developmental disabilities must be a mental health professional who:

(i) Has at least one year's experience working with people with developmental disabilities; or

(ii) Is a developmental disabilities professional as defined in RCW 71.05.020.

"Older person" means an adult who is sixty years of age or older.

"Service recipient" means for the purposes of a mental health prepaid health plan, a consumer eligible for the Title XIX Medicaid program.

"Substantial hardship" means that a consumer will not be billed for emergency involuntary treatment if he or she meets the eligibility standards of the psychiatric indigent inpatient program that is administered by the DSHS economic services administration.

"Supervision" means monitoring of the administrative, clinical, or clerical work performance of staff, students, volunteers, or contracted employees by persons with the authority to give direction and require change.

"Underserved" means consumers who are:

(1) Minorities;

(2) Children;

(3) Older adults;

(4) Disabled; or

(5) Low-income persons.

[Statutory Authority: RCW 71.05.560, 71.24.035, 71.34.800, and 2003 1st sp.s. c 25. 03-24-030, § 388-865-0150, filed 11/24/03, effective 12/25/03. Statutory Authority: RCW 71.05.560, 71.24.035 (5)(c), 71.34.800, 9.41.047, 43.20B.020, and 43.20B.335. 01-12-047, § 388-865-0150, filed 5/31/01, effective 7/1/01.]

WAC 388-865-0217 Psychiatric indigent inpatient program. (1) The psychiatric indigent inpatient (PII) program is a state funded, limited casualty (LCP) program specifically for mental health clients identified in need of inpatient psychiatric care by the regional support network (RSN).

(2) The psychiatric indigent inpatient (PII) program pays only for involuntary and emergent voluntary inpatient psychiatric care in community hospitals within the state of Washington. Psychiatric indigent inpatient (PII) does not cover ancillary charges for physician, transportation, pharmacy or other costs associated with an inpatient psychiatric hospitalization.

(3) To be eligible for the psychiatric indigent inpatient (PII) program, a client is subject to the following conditions and limitations:

(a) The client must have an involuntary or voluntary inpatient psychiatric admission authorized by a regional support network (RSN) in the month of application or within the three months immediately preceding the month of application.

(b) Consumers applying for the psychiatric indigent inpatient (PII) program are subject to the income and resource rules for TANF and TANF-related clients in chapters 388-450 and 388-470 WAC.

(c) If a client's income and/or resources exceed the standard for medically needy (MN), as described in WAC 388-478-0070, the client must spend down the excess amount as described in WAC 388-519-0100 for the client to be eligible for the psychiatric indigent inpatient (PII) program.

(d) A client who is voluntarily admitted must have incurred an emergency medical expense requirement (EMER) of two thousand dollars over a twelve-month period. A client who is detained under the Involuntary Treatment Act (ITA) is exempt from the emergency medical expense requirement (EMER).

(i) Qualifying emergency medical expense requirement (EMER) expenses are psychiatric inpatient services in a community hospital.

(ii) The emergency medical expense requirement (EMER) period lasts for twelve calendar months, beginning on the first day of the month of certification for psychiatric indigent inpatient (PII) and continuing through the last day of the twelfth month.

(e) A client is limited to a single three-month period of psychiatric indigent inpatient (PII) eligibility per twelve-month emergency medical expense requirement (EMER) period.

(4) Clients are not eligible for the psychiatric indigent inpatient (PII) program if they:

(a) Are eligible for, or receiving, any other cash or medical program; or

(b) Entered the Washington state specifically to obtain medical care; or

(c) Are inmates of a federal or state prison.

[Statutory Authority: RCW 71.05.560, 71.24.035, 71.34.800, and 2003 1st sp.s. c 25. 03-24-030, § 388-865-0217, filed 11/24/03, effective 12/25/03.]

WAC 388-865-0465 Adult residential treatment facility certification—Additional standards. In order to be certified to provide services at an adult residential treatment facility, the licensed mental health agency must assure that all

general minimum standards for community support are met, and in addition:

(1) Be licensed as a mental health adult residential treatment facility by the department of health under chapter 246-377 WAC; and

(2) Be certified to provide services to a consumer on a less restrictive alternative court order consistent with WAC 388-865-0466.

[Statutory Authority: RCW 71.05.560 and chapter 71.05 RCW. 04-01-091, § 388-865-0465, filed 12/16/03, effective 1/16/04.]

Chapter 388-880 WAC

SPECIAL COMMITMENT—SEXUALLY VIOLENT PREDATORS

(Formerly chapter 275-155)

WAC

388-880-005	Special commitment of sexually violent predators—Legal basis.
388-880-007	Purpose.
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388-880-020	Authorization for indefinite commitment to the sexual predator program.
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388-880-032	Repealed.
388-880-033	Evaluator—Qualifications.
388-880-034	Evaluator—Pretrial evaluation responsibilities.
388-880-035	Refusal to participate in pretrial evaluation.
388-880-036	Pretrial evaluation—Reporting.
388-880-040	Individual treatment.
388-880-042	Resident records—Purposes.
388-880-044	Resident records—Access.
388-880-045	Resident records—Retention.
388-880-050	Rights of a person court-detained or court-committed to the special commitment center.
388-880-055	Recommendation for release to a less restrictive alternative (LRA).
388-880-060	Sexual predator program reimbursement.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

388-880-032	Recommendation for release to a less restrictive alternative (LRA). [Statutory Authority: Chapter 71.09 RCW, 2000 c 44, 2001 c 286. 02-02-054, § 388-880-032, filed 12/27/01, effective 1/27/02.] Repealed by 03-23-022, filed 11/10/03, effective 12/11/03. Statutory Authority: RCW 71.09.040(4).
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WAC 388-880-005 Special commitment of sexually violent predators—Legal basis. (1) Chapter 71.09 RCW authorizes the department to develop a sexual predator program (SPP) for a person the court determines to be a sexually violent predator.

(2) The department's SPP shall provide:

(a) Custody, supervision, and evaluation of a person court-detained to the SPP to determine if the person meets the definition of a sexually violent predator under chapter 71.09 RCW; and

(b) Treatment, care, evaluation and control of a person court-committed as a sexually violent predator.

(3) Evaluations and evaluation procedures may be established in coordination with the department, the department of corrections and the end of sentence review committee.

(4) Secure facilities operated by the department for the sexual predator program include the special commitment center (SCC) total confinement facility, the secure commu-

nity transition facility, and any community-based facilities established under chapter 71.09 RCW and operated by the secretary or under contract with the secretary.

(5) The secretary or designee may execute such agreements as appropriate and necessary to implement this chapter.

[Statutory Authority: RCW 71.09.040(4). 03-23-022, § 388-880-005, filed 11/10/03, effective 12/11/03. Statutory Authority: Chapter 71.09 RCW, 2000 c 44, 2001 c 286. 02-02-054, § 388-880-005, filed 12/27/01, effective 1/27/02; 99-21-001, recodified as § 388-880-005, filed 10/6/99, effective 10/6/99. Statutory Authority: RCW 71.09.230. 97-24-054, § 275-155-005, filed 12/1/97, effective 1/1/98. Statutory Authority: 1990 c 3, 90-17-120 (Order 3054), § 275-155-005, filed 8/21/90, effective 9/21/90.]

WAC 388-880-007 Purpose. These rules carry out the legislative intent of chapter 71.09 RCW, authorizing the department to provide evaluation, care, control, and treatment of persons court-detained or court-committed to the sexual predator program.

[Statutory Authority: RCW 71.09.040(4). 03-23-022, § 388-880-007, filed 11/10/03, effective 12/11/03. Statutory Authority: Chapter 71.09 RCW, 2000 c 44, 2001 c 286. 02-02-054, § 388-880-007, filed 12/27/01, effective 1/27/02.]

WAC 388-880-010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

"Appropriate facility" means the total confinement facility the department uses to hold and evaluate a person court-detained under chapter 71.09 RCW.

"Care" means a service the department provides during a person's detention or commitment within a secure facility toward adequate health, shelter, and physical sustenance.

"Control" means a restraint, restriction, or confinement the department applies protecting a person from endangering self, others, or property during a period of custody under chapter 71.09 RCW.

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

"Escorted leave" means a leave of absence from a facility housing persons court-detained or court-committed under chapter 71.09 RCW under the continuous supervision of an escort.

"Evaluation" means an examination, report, or recommendation by a professionally qualified person to determine if a person has a personality disorder and/or mental abnormality which renders the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.

"Immediate family" includes a resident's parents, step-parents, parent surrogates, legal guardians, grandparents, spouse, brothers, sisters, half or stepbrothers or sisters, children, stepchildren, and other dependents.

"Indigent" means a resident who has not been credited with twenty-five dollars or more total from any source for deposit to the resident's trust fund account during the thirty days preceding the request for an escorted leave and has less than a twenty-five dollar balance in his/her trust fund account on the day the escorted leave is requested, and together with his/her requesting immediate family member affirm in writing that they cannot afford to pay the costs of the escorted leave without undue hardship. A declaration of indigency shall be signed by the resident and the resident's requesting

immediate family member on forms provided by the department.

"Individual treatment plan (ITP)" means an outline the SCC staff persons develop detailing how control, care, and treatment services are provided to a court-committed person or to a court-detained person.

"Less restrictive alternative" means court-ordered treatment in a setting less restrictive than total confinement which satisfies the conditions stated in RCW 71.09.092.

"Less restrictive alternative facility" means a secure community transition facility as defined under RCW 71.09.020(1).

"Mental abnormality" means a congenital or acquired condition, including a personality disorder, affecting the person's emotional or volitional capacity, predisposing the person to the commission of criminal sexual acts in a degree constituting such person a menace to the health and safety of others.

"Oversight" means official direction, guidance, review, inspection, investigation, and information gathering activities conducted for the purposes of program quality assurance by persons or entities within, or external to, the SCC.

"Personality disorder" carries the same definition as found in the DSM-IV-TR and includes psychopathy as assessed using the Hare PCL-R or similar instrument.

"Predatory" means acts a person directs toward:

- (1) Strangers;
 - (2) Individuals with whom a relationship has been established or promoted for the primary purpose of victimization;
- or
- (3) Persons of casual acquaintance with whom no substantial personal relationship exists.

"Professionally qualified person" means:

- (1) **"Psychiatrist"** means a person licensed as a physician in this state, or licensed or certified in another state, in accordance with chapters 18.71 and 18.57 RCW. In addition, the person shall:

(a) Have completed three years of graduate training in a psychiatry program approved by the American Medical Association or the American Osteopathic Association; and

(b) Be certified, or eligible to be certified, by the American Board of Psychiatry and Neurology.

- (2) **"Psychologist"** means a person licensed as a doctor of psychology in this state, or licensed or certified in another state, in accordance with chapter 18.83 RCW;

- (3) **"Clinical practitioner"** means a sex offender treatment provider certified by the department of health under chapter 18.155 RCW.

"Resident" means a person court-detained or court-committed pursuant to chapter 71.09 RCW.

"Secretary" means the secretary of the department of social and health services or the secretary's designee.

"Secure community transition facility" means a residential facility for persons civilly committed and conditionally released to a less restrictive alternative under chapter 71.09 RCW. A secure community transition facility has supervision and security, and either provides or ensures the provision of sex offender treatment services. Secure community transition facilities include, but are not limited to, the facilities established in RCW 71.09.201 and any community-

based facilities established under chapter 71.09 RCW and operated by the secretary or under contract with the secretary.

"Secure facility" means a residential facility for persons court-detained or court-committed under the provisions of chapter 71.09 RCW that includes security measures sufficient to protect the community. Such facilities include total confinement facilities, secure community transition facilities, and any residence used as a court-ordered placement in RCW 71.09.096.

"Sexual predator program" means a department-administered and operated program including the special commitment center (SCC) established for:

- (1) A court-detained person's custody and evaluation; or
- (2) Control, care, and treatment of a court-committed person defined as a sexually violent predator under chapter 71.09 RCW.

"Sexually violent offense" means an act defined under chapter 9A.28 RCW, RCW 9.94A.030 and 71.09.020.

"Sexually violent predator" means any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.

"Superintendent" means the person delegated by the secretary of the department to be responsible for the general operation, program, and facilities of the SCC.

"Total confinement facility" means a facility that provides supervision and sex offender treatment services in a total confinement setting. Total confinement facilities include the special commitment center and any similar facility designated as a secure facility by the secretary.

[Statutory Authority: RCW 71.09.040(4). 03-23-022, § 388-880-010, filed 11/10/03, effective 12/11/03. Statutory Authority: Chapter 71.09 RCW, 2000 c 44, 2001 c 286. 02-02-054, § 388-880-010, filed 12/27/01, effective 1/27/02; 99-21-001, recodified as § 388-880-010, filed 10/6/99, effective 10/6/99. Statutory Authority: RCW 71.09.230. 97-24-054, § 275-155-010, filed 12/1/97, effective 1/1/98. Statutory Authority: 1990 c 3. 90-17-120 (Order 3054), § 275-155-010, filed 8/21/90, effective 9/21/90.]

WAC 388-880-020 Authorization for indefinite commitment to the sexual predator program. A person must be admitted to the custody of the department when, under RCW 71.09.060, a court or jury determines, beyond a reasonable doubt, that the person is a sexually violent predator and commits the person for placement in a secure facility operated by the department for control, care, and treatment.

[Statutory Authority: RCW 71.09.040(4). 03-23-022, § 388-880-020, filed 11/10/03, effective 12/11/03. Statutory Authority: Chapter 71.09 RCW, 2000 c 44, 2001 c 286. 02-02-054, § 388-880-020, filed 12/27/01, effective 1/27/02; 99-21-001, recodified as § 388-880-020, filed 10/6/99, effective 10/6/99. Statutory Authority: RCW 71.09.030 and 71.09.050. 93-17-027 (Order 3609), § 275-155-020, filed 8/11/93, effective 9/11/93. Statutory Authority: 1990 c 3. 90-17-120 (Order 3054), § 275-155-020, filed 8/21/90, effective 9/21/90.]

WAC 388-880-030 Sexual predator program initial evaluation. (1) When a court orders a person transferred to an appropriate facility for an evaluation as to whether the person is a sexually violent predator, pursuant to RCW 71.09.040(4), the department shall, prior to the scheduled commitment hearing or trial, provide an evaluation to the court, and must make a recommendation as to whether the person has

been convicted of or charged with a crime of sexual violence and suffers from a mental abnormality or personality disorder which makes the person more likely than not to engage in predatory acts of sexual violence if not confined in a secure facility.

(2) The evaluation must be conducted in accordance with the criteria set forth in WAC 388-880-033, and must be in the form required by and filed in accordance with WAC 388-880-034 and 388-880-036.

[Statutory Authority: RCW 71.09.040(4). 03-23-022, § 388-880-030, filed 11/10/03, effective 12/11/03. Statutory Authority: Chapter 71.09 RCW, 2000 c 44, 2001 c 286. 02-02-054, § 388-880-030, filed 12/27/01, effective 1/27/02; 99-21-001, recodified as § 388-880-030, filed 10/6/99, effective 10/6/99. Statutory Authority: 1990 c 3. 90-17-120 (Order 3054), § 275-155-030, filed 8/21/90, effective 9/21/90.]

WAC 388-880-031 Sexual predator program annual evaluation. (1) Annually or as required by court order, the department shall conduct an evaluation and examine the mental condition of each person court-committed under chapter 71.09 RCW.

(2) The annual evaluation must include consideration of whether:

- (a) The person currently meets the definition of a sexually violent predator; and
- (b) Conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that would adequately protect the community.

(3) The report of the department shall be in the form of a declaration or certification in compliance with the requirements of RCW 9A.72.085 and shall be prepared by a professionally qualified person as defined herein.

(4) The department shall file this periodic report with the court that detained or committed the person under chapter 71.09 RCW.

(5) A copy of this report shall be served on the prosecuting agency involved in the initial hearing or commitment and upon the detained or committed person and his or her counsel.

[Statutory Authority: RCW 71.09.040(4). 03-23-022, § 388-880-031, filed 11/10/03, effective 12/11/03. Statutory Authority: Chapter 71.09 RCW, 2000 c 44, 2001 c 286. 02-02-054, § 388-880-031, filed 12/27/01, effective 1/27/02.]

WAC 388-880-032 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-880-033 Evaluator—Qualifications. Professionally qualified persons under contract to provide evaluative services must:

- (1) Have demonstrated expertise in conducting evaluations of sex offenders, including diagnosis and assessment of re-offense risk,
- (2) Have demonstrated expertise in providing expert testimony related to sex offenders of other forensic topics, and
- (3) Provide documentation of such qualification to the department.

[Statutory Authority: RCW 71.09.040(4). 03-23-022, § 388-880-033, filed 11/10/03, effective 12/11/03.]

WAC 388-880-034 Evaluator—Pretrial evaluation responsibilities. The evaluation done in accordance with

WAC 388-880-030(1) in preparation for a trial or hearing must be based on the following:

- (1) Examination of the resident, including a forensic interview and a medical examination, if necessary;
- (2) Review of the following records, tests or reports relating to the person:
 - (a) All available criminal records, to include arrests and convictions, and records of institutional custody, including city, county, state and federal jails or institutions, with any records and notes of statements made by the person regarding criminal offenses, whether or not the person was charged with or convicted of the offense;
 - (b) All necessary and relevant court documents;
 - (c) Sex offender treatment records and, when permitted by law, substance abuse treatment program records, including group notes, autobiographical notes, progress notes, psycho-social reports and other material relating to the person's participation in treatment;
 - (d) Psychological and psychiatric testing, diagnosis and treatment, and other clinical examinations, including records of custody in a mental health treatment hospital or other facility;
 - (e) Medical and physiological testing, including plethysmography and polygraphy;
 - (f) Any end of sentence review report, with information for all prior commitments upon which the report or reports were made;
 - (g) All other relevant and necessary records, evaluations, reports and other documents from state or local agencies;
 - (h) Pertinent contacts with collateral informants;
 - (i) Other relevant and appropriate tests that are industry standard practices;
 - (j) All evaluations, treatment plans, examinations, forensic measures, charts, files, reports and other information made for or prepared by the SCC which relate to the resident's care, control, observation, and treatment.

[Statutory Authority: RCW 71.09.040(4). 03-23-022, § 388-880-034, filed 11/10/03, effective 12/11/03.]

WAC 388-880-035 Refusal to participate in pretrial evaluation. If the person refuses to participate in examinations, forensic interviews, psychological testing or any other interviews necessary to conduct the initial evaluation under WAC 388-880-030(1), the evaluator must notify the SCC. The SCC will notify the prosecuting agency for potential court enforcement.

[Statutory Authority: RCW 71.09.040(4). 03-23-022, § 388-880-035, filed 11/10/03, effective 12/11/03.]

WAC 388-880-036 Pretrial evaluation—Reporting.

- (1) The evaluation must be in the form of a declaration or certification in compliance with the requirements of RCW 9A.72.085 and must be prepared by a professionally qualified person.
- (2) The report of the evaluation must include:
 - (a) A description of the nature of the examination;
 - (b) A diagnosis of the mental condition of the person;
 - (c) A determination of whether the person suffers from a mental abnormality or personality disorder;
 - (d) An opinion as to whether the person meets the definition of a sexually violent predator.

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(3) The department shall file the evaluation with the court that detained or committed the person under chapter 71.09 RCW.

(4) A copy of the evaluation must be served on the prosecuting agency involved in the initial hearing or commitment, and upon the court-detained or court-committed person and his or her counsel.

[Statutory Authority: RCW 71.09.040(4). 03-23-022, § 388-880-036, filed 11/10/03, effective 12/11/03.]

WAC 388-880-040 Individual treatment. (1) When the court detains a person or commits a person to the SCC, SCC staff persons shall develop an individual treatment plan (ITP) for the person.

(2) The ITP shall be based upon, but not limited to, the following information as may be available:

- (a) The person's offense history;
 - (b) A psycho-social history;
 - (c) The person's most recent evaluation; and
 - (d) A statement of high risk factors for potential reoffense, as may be ascertained over time.
- (3) The ITP shall include, but not be limited to:
- (a) A description of the person's specific treatment needs in:
 - (i) Sex offender specific treatment;
 - (ii) Substance abuse treatment;
 - (iii) Supports to promote psychiatric stability;
 - (iv) Supports for medical conditions and disability;
 - (v) Social, family, and life skills.
 - (b) An outline of intermediate and long-range treatment goals, with cognitive and behavioral measures for achieving the goals;
 - (c) The treatment strategies for achieving the treatment goals;
 - (d) A description of SCC staff persons' responsibilities; and
 - (e) A general plan and criteria, keyed to the resident's achievement of long-range treatment goals, for recommending to the court whether the person should be released to a less restrictive alternative.

(4) SCC staff persons shall review the person's ITP every six months.

(5) A court-detained person's plan may include access to program services and opportunities available to persons who are court-committed, with the exception that the court-detained person may be restricted in employment and other activities, depending on program resources and incentives reserved for persons who are court-committed and/or actively involved in treatment.

(6) Nothing in this chapter shall exclude a court-detained person from engaging in the sex offender treatment program and, should the person elect to engage in treatment prior to the person's commitment trial:

- (a) The person shall be accorded privileges and access to program services in a like manner as are accorded to a court-committed person in treatment; and
- (b) Shall not, solely by reason of the person's voluntary participation in treatment, be judged nor assumed by staff, administrators or professional persons of the SCC or of the department to meet the definition of a sexually violent predator under chapter 71.09 RCW.

[Statutory Authority: RCW 71.09.040(4). 03-23-022, § 388-880-040, filed 11/10/03, effective 12/11/03. Statutory Authority: Chapter 71.09 RCW, 2000 c 44, 2001 c 286. 02-02-054, § 388-880-040, filed 12/27/01, effective 1/27/02; 99-21-001, recodified as § 388-880-040, filed 10/6/99, effective 10/6/99. Statutory Authority: 1990 c 3. 90-17-120 (Order 3054), § 275-155-040, filed 8/21/90, effective 9/21/90.]

WAC 388-880-042 Resident records—Purposes. (1)

The SCC shall maintain records for each person court-detained for evaluation or court-committed for treatment as a sexually violent predator. Such records shall include:

(a) All evaluations, records, reports, and other documents obtained from other agencies relating to the person prior to the person's detention and/or commitment to the SCC;

(b) All evaluations, clinical examinations, forensic measures, charts, files, reports, and other information made for or prepared by SCC personnel, contracted professionals, or others which relate to the person's care, control, and treatment during the person's detention or commitment to, the SCC.

(2) Records made by contracted professional persons providing treatment or residential services may be maintained in their professional files, subject to contractual arrangement for SCC or department access to those records.

[Statutory Authority: RCW 71.09.040(4). 03-23-022, § 388-880-042, filed 11/10/03, effective 12/11/03. Statutory Authority: Chapter 71.09 RCW, 2000 c 44, 2001 c 286. 02-02-054, § 388-880-042, filed 12/27/01, effective 1/27/02.]

WAC 388-880-044 Resident records—Access. (1)

Upon request and proper showing, the department shall provide to the following persons access to a court-detained or court-committed person for an evaluation and access to all records and reports related to the person's detention, commitment, control, care, and treatment:

- (a) The person's attorney;
- (b) The person's professionally qualified person, if any;
- (c) The prosecuting attorney, or the attorney general, if requested by the prosecuting attorney;
- (d) The professionally qualified person; and
- (e) Any entity, person or agency having lawful access to such records.

(2) Upon documented request by a resident, the SCC shall provide the resident supervised access to all records and reports, or to redacted copies thereof, related to the person's commitment, control, care, and treatment. The SCC may reasonably limit conditions, frequency and duration of the person's access to the person's records and reports.

(3) A policy on access to resident records shall be maintained and published to residents of the SCC.

[Statutory Authority: RCW 71.09.040(4). 03-23-022, § 388-880-044, filed 11/10/03, effective 12/11/03. Statutory Authority: Chapter 71.09 RCW, 2000 c 44, 2001 c 286. 02-02-054, § 388-880-044, filed 12/27/01, effective 1/27/02.]

WAC 388-880-045 Resident records—Retention. (1)

The SCC shall create schedules and requirements, consistent with department policy, for the retention, storage, and disposal of records, documents, evaluations, reports, and other material related to SCC residents, to include:

(a) While a person is currently court-detained or court-committed to the SCC;

(b) Following a court ruling that a person does not meet the definition of a sexually violent predator within chapter 71.09 RCW and upon the person's release from the custody of the department;

(c) Following a resident's unconditional discharge from commitment;

(d) Following a resident's death.

(2) All original records specified herein and held by the SCC shall be retained in the SCC total confinement facility for a period of five years, and in the records center of the Secretary of State for a period consistent with department administrative policy, after a resident's:

(a) Release following a court ruling that the person does not meet the definition of a sexually violent predator within chapter 71.09 RCW;

(b) Unconditional discharge from commitment; or

(c) Death.

[Statutory Authority: RCW 71.09.040(4). 03-23-022, § 388-880-045, filed 11/10/03, effective 12/11/03. Statutory Authority: Chapter 71.09 RCW, 2000 c 44, 2001 c 286. 02-02-054, § 388-880-045, filed 12/27/01, effective 1/27/02.]

WAC 388-880-050 Rights of a person court-detained or court-committed to the special commitment center. (1)

During a person's period of detention or commitment, the department shall:

(a) Apprise the person of the person's right to an attorney and to retain a professionally qualified person to perform an evaluation on the person's behalf;

(b) Provide access to the person and the person's records in accordance with RCW 71.09.080 and WAC 388-880-044.

(2) A person the court detains for evaluation or commits to the SCC shall:

(a) Receive adequate care and individualized treatment;

(b) Be permitted to wear the person's own clothing except as may be required during an escorted leave from the secure facility, and to keep and use the person's own possessions, except when deprivation of possessions is necessary for the person's protection and safety, the protection and safety of others, or the protection of property within the SCC;

(c) Be permitted to accumulate and spend a reasonable amount of money in the person's SCC account;

(d) Have access to reasonable personal storage space within SCC limitations;

(e) Be permitted to have approved visitors within reasonable limitations;

(f) Have reasonable access to a telephone to make and receive confidential calls within SCC limitations; and

(g) Have reasonable access to letter writing material and to:

(i) Receive and send correspondence through the mail within SCC limitations and according to established safeguards against the receipt of contraband material to include, in the resident's presence, opening and inspecting packages and fanning written material; and

(ii) Send written communication regarding the fact of the person's detention or commitment.

(3) A person the court commits to the SCC shall have the following procedural rights to:

(a) Have reasonable access to an attorney and be informed of the name and address of the person's designated attorney;

(b) Petition the court for release from the SCC; and

(c) Receive annual written notice of the person's right to petition the committing court for release. The department's written notice and waiver shall:

(i) Include the option to voluntarily waive the right to petition the committing court for release; and

(ii) Annually be forwarded to the committing court by the department.

[Statutory Authority: RCW 71.09.040(4), 03-23-022, § 388-880-050, filed 11/10/03, effective 12/11/03. Statutory Authority: Chapter 71.09 RCW, 2000 c 44, 2001 c 286, 02-02-054, § 388-880-050, filed 12/27/01, effective 1/27/02; 99-21-001, recodified as § 388-880-050, filed 10/6/99, effective 10/6/99. Statutory Authority: RCW 71.09.030 and 71.09.050, 93-17-027 (Order 3609), § 275-155-050, filed 8/11/93, effective 9/11/93. Statutory Authority: 1990 c 3, 90-17-120 (Order 3054), § 275-155-050, filed 8/21/90, effective 9/21/90.]

WAC 388-880-055 Recommendation for release to a less restrictive alternative (LRA). If the court or jury determines that the person is a sexually violent predator, upon an evaluation which supports a person's unconditional discharge or release to a less restrictive alternative, the secretary or secretary's designee shall authorize the person to petition the court in accordance with RCW 71.09.090.

[Statutory Authority: RCW 71.09.040(4), 03-23-022, § 388-880-055, filed 11/10/03, effective 12/11/03.]

WAC 388-880-060 Sexual predator program reimbursement. (1) The department shall obtain reimbursement under RCW 43.20B.330, 43.20B.335, 43.20B.340, 43.20B.-345, 43.20B.350, 43.20B.355, 43.20B.360, and 43.20B.370 for the cost of care of a person court-committed to a SPP to the extent of the person's ability to pay.

(2) The department shall calculate ability to pay and assess liability under chapter 275-16 WAC.

[Statutory Authority: RCW 71.09.040(4), 03-23-022, § 388-880-060, filed 11/10/03, effective 12/11/03; 99-21-001, recodified as § 388-880-060, filed 10/6/99, effective 10/6/99. Statutory Authority: 1990 c 3, 90-17-120 (Order 3054), § 275-155-060, filed 8/21/90, effective 9/21/90.]

Chapter 388-892 WAC

PURCHASE OF SERVICES—SELECTION CRITERIA—DVR VOCATIONAL REHABILITATION SERVICE CONTRACTS

WAC

388-892-0100	What vocational rehabilitation (VR) services does DVR purchase by contract?
388-892-0110	What are vocational evaluation services?
388-892-0120	What are job placement/retention services?
388-892-0130	What levels of support are available under specialized job placement/retention services?
388-892-0140	What are transitional employment (TE) services?
388-892-0200	How does DVR procure vocational evaluation, job placement/retention and transitional employment services?
388-892-0210	How does an RFQ work?
388-892-0300	What are the uniform qualifications for an initial VR service contract?
388-892-0310	How long does an initial VR service contract last?
388-892-0320	Can an initial VR service contract be granted between RFQs?

388-892-0400	How does a contractor receive a subsequent VR service contract after completing their initial VR service contract?
388-892-0410	What are the additional qualifications for VR service contracts?
388-892-0420	What are the additional qualifications for vocational evaluation services contracts?
388-892-0430	What are the additional qualifications for job placement/retention services contracts?
388-892-0440	What are the additional qualifications for a transitional employment services contract?
388-892-0450	How long does a subsequent VR service contract last?
388-892-0500	What is DVR's payment system for VR service contracts?
388-892-0510	Can VR service contracts be denied or terminated?
388-892-0520	What exceptions does DVR have to contract for vocational evaluation, job placement/retention and/or transitional employment services outside of these rules?

WAC 388-892-0100 What vocational rehabilitation (VR) services does DVR purchase by contract? DVR purchases the following VR services by contract:

- (1) Vocational evaluation services,
- (2) Job placement/retention services,
- (3) Transitional employment services.

[Statutory Authority: RCW 43.20A.310(2), 74.29.020(3) and 74.29.080(8), 03-19-075, § 388-892-0100, filed 9/12/03, effective 10/13/03.]

WAC 388-892-0110 What are vocational evaluation services? There are three types of vocational evaluation services:

- (1) "Brief" vocational assessment services are:

(a) Paper and pencil tests, such as psychometric testing, personality testing, preference and interest inventories that identify an individual's work interests and abilities; and

- (b) Typically completed in one day or less.

- (2) Comprehensive vocational evaluation services:

(a) Consist of tests and/or assessment methods designed to measure and document an individual's interests, values, work related-behaviors, aptitudes, skills, physical capacities, learning styles and training needs;

(b) Are performed using a variety of techniques, i.e., assessment of functional/occupational performance in real or simulated environments, work samples, psychometric testing, preference and interest inventories, personality testing, personal interviews and analysis of prior work experience and transferable skills;

(c) Identify at least three employment options that the individual could successfully perform either with or without training and long-term employment supports; and

(d) May be completed in three days or less but may vary, more or less, to accommodate the unique needs and abilities of individuals receiving this service.

- (3) Situational assessment services are:

(a) Experiences in which individuals perform work in an actual paid employment setting or other realistic work setting to identify an individual's unique work interests and abilities;

(b) Conducted over a negotiated period of time depending on the individual's needs.

[Statutory Authority: RCW 43.20A.310(2), 74.29.020(3) and 74.29.080(8), 03-19-075, § 388-892-0110, filed 9/12/03, effective 10/13/03.]

WAC 388-892-0120 What are job placement/retention services? (1) Job placement/retention services mean referral of an individual to a specific job that results in a com-

petitive employment job placement, training activities that enable an individual to adequately perform essential job functions and provision of services after job placement and training to enable an individual to retain their job for a minimum of ninety calendar days.

(2) There are two types of job placement/retention services—"general" and "specialized."

(a) General job placement/retention services are provided for individuals who need job placement assistance without additional on-the-job supports.

Individuals requiring general job placement/retention services may include, but are not limited to, those who meet one or more of the following conditions:

- (i) Graduated from high school or attained a GED;
- (ii) Successfully completed some post high school training, such as vocational/technical school or college academic program;
- (iii) Have a recent and/or stable work history;
- (iv) Were employed at the time of application for DVR services; or
- (v) Have a high level of gross motor skills and/or cognitive functioning.

(b) Specialized job placement/retention services are provided for individuals who, as determined by DVR, require a high level of support prior to or during the initial phases of job placement and/or additional supports after job placement to achieve satisfactory job performance and retain the job.

Individuals requiring specialized job placement/retention services may include, but not limited to, those who meet one or more of the following conditions:

- (i) Have received SSI/SSDI or other types of public assistance;
- (ii) Have received special education services;
- (iii) Did not graduate from high school or attain a GED;
- (iv) Have little or no work history;
- (v) Have not worked in the previous two years;
- (vi) Experience significant cognitive or sensory impairments; or
- (vii) Have a criminal history and/or are subject to a community protection order.

[Statutory Authority: RCW 43.20A.310(2), 74.29.020(3) and 74.29.080(8). 03-19-075, § 388-892-0120, filed 9/12/03, effective 10/13/03.]

WAC 388-892-0130 What levels of support are available under specialized job placement/retention services? Specialized job placement/retention services include two levels - level 1 and level 2:

(1) Level 1 services are provided for individuals who, as determined by DVR, may require a high level of support prior to or during the initial phases of job placement but do not require ongoing supported employment services to maintain their job after DVR closes the case.

(2) Level 2 services are provided for individuals who, as determined by DVR, require ongoing supported employment services to maintain their job after DVR closes the case.

[Statutory Authority: RCW 43.20A.310(2), 74.29.020(3) and 74.29.080(8). 03-19-075, § 388-892-0130, filed 9/12/03, effective 10/13/03.]

WAC 388-892-0140 What are transitional employment (TE) services? Transitional employment services:

(1) Meet the vocational rehabilitation needs of individuals with severe and persistent mental illness.

(2) Assess and build an individual's skills and abilities in a real work setting.

(3) Utilize the clubhouse programs model/international center for club house development (ICCD).

[Statutory Authority: RCW 43.20A.310(2), 74.29.020(3) and 74.29.080(8). 03-19-075, § 388-892-0140, filed 9/12/03, effective 10/13/03.]

WAC 388-892-0200 How does DVR procure vocational evaluation, job placement/retention and transitional employment services? (1) DVR contracts with qualified service providers for the provision of vocational evaluation, job placement/retention and transitional employment services through a request for qualifications (RFQ) contract procurement process that is administered by DVR.

(2) A qualified provider is one that meets all DVR qualifications for a VR service contract as outlined in the RFQ.

[Statutory Authority: RCW 43.20A.310(2), 74.29.020(3) and 74.29.080(8). 03-19-075, § 388-892-0200, filed 9/12/03, effective 10/13/03.]

WAC 388-892-0210 How does an RFQ work? (1) RFQs are issued on a periodic cycle to be determined by DVR, for example, every two years. The duration of the VR service contracts resulting from the RFQ will be announced in the RFQ. DVR reserves the right to extend the contracts by offering up to three one-year extensions.

(2) DVR may advertise the RFQ in a variety of ways, including but not limited to the DVR website, newspapers, and notices sent to potentially interested contractors.

(3) The scope of work, fee to be paid, and contractor qualifications are defined in a separate RFQ and contract for each specific type of VR service:

- (a) Brief vocational assessment,
- (b) Comprehensive vocational evaluation,
- (c) Situational assessment,
- (d) General job placement/retention,
- (e) Specialized job placement/retention level 1,
- (f) Specialized job placement/retention level 2, and
- (g) Transitional employment.

(4) Service providers, that are interested in obtaining a VR service contract as outlined in the RFQ, are instructed to submit their qualifications.

(5) First time respondents that demonstrate full conformance to the uniform VR service contract qualifications, as outlined in this chapter, may be granted an initial VR service contract.

(6) DVR may limit the number of VR service contracts it issues in a service delivery area as a result of an RFQ.

[Statutory Authority: RCW 43.20A.310(2), 74.29.020(3) and 74.29.080(8). 03-19-075, § 388-892-0210, filed 9/12/03, effective 10/13/03.]

WAC 388-892-0300 What are the uniform qualifications for an initial VR service contract? A VR service contractor must meet all of the following uniform qualifications, as specifically detailed in the DVR RFQ for VR service contracts, to obtain any/all specific types of initial VR service contracts. Such qualifications shall include but not be limited to, qualifications regarding conformance to:

- (1) Federal, state and local laws and DSHS regulations and policies;
- (2) Accessibility;
- (3) Safety and health;
- (4) Liability insurance coverage;
- (5) Having a system in place to report the effectiveness and efficiency of the provider's DVR services;
- (6) Having a system in place to gather and report DVR customer satisfaction;
- (7) DVR code of ethics and standards of practice;
- (8) Having a complaint and dispute resolution process in place for DVR customers;
- (9) Having current background checks in place for personnel serving DVR customers.

[Statutory Authority: RCW 43.20A.310(2), 74.29.020(3) and 74.29.080(8). 03-19-075, § 388-892-0300, filed 9/12/03, effective 10/13/03.]

WAC 388-892-0310 How long does an initial VR service contract last? An initial VR service contract may be granted for a period of up to two years or for a duration as announced in the RFQ.

[Statutory Authority: RCW 43.20A.310(2), 74.29.020(3) and 74.29.080(8). 03-19-075, § 388-892-0310, filed 9/12/03, effective 10/13/03.]

WAC 388-892-0320 Can an initial VR service contract be granted between RFQs? DVR may add VR service contractors between RFQs if DVR determines the contract is needed and the contractor meets all uniform VR service contract qualifications outlined in this chapter.

[Statutory Authority: RCW 43.20A.310(2), 74.29.020(3) and 74.29.080(8). 03-19-075, § 388-892-0320, filed 9/12/03, effective 10/13/03.]

WAC 388-892-0400 How does a contractor receive a subsequent VR service contract after completing their initial VR service contract? (1) To receive subsequent VR service contracts, a contractor must respond to each RFQ by submitting a proposal showing that they:

- (a) Continue to meet all uniform VR service contract qualifications;
- (b) Have met DVR's performance standards established in the prior VR service contract; and
- (c) Meet the additional qualifications for each VR service to be offered.

(2) Contractors that have been granted an initial VR service contract between RFQs have two years from the effective date of their initial VR service contract to meet the additional qualifications outlined in this chapter. If the contractor fails to provide documentation of conformance to the additional qualifications within two years from the effective date of the initial contract, DVR may terminate the existing VR service contract with ten days notice to the contractor.

[Statutory Authority: RCW 43.20A.310(2), 74.29.020(3) and 74.29.080(8). 03-19-075, § 388-892-0400, filed 9/12/03, effective 10/13/03.]

WAC 388-892-0410 What are the additional qualifications for VR service contracts? (1) In addition to the uniform VR service contract qualifications, additional contractor qualifications apply to each specific type of VR service contract.

(2) A separate RFQ is published for each specific type of VR service contract that outlines the additional contractor qualifications that are pertinent to that service.

[Statutory Authority: RCW 43.20A.310(2), 74.29.020(3) and 74.29.080(8). 03-19-075, § 388-892-0410, filed 9/12/03, effective 10/13/03.]

WAC 388-892-0420 What are the additional qualifications for vocational evaluation services contracts? (1) Individuals or organizations providing brief vocational assessment and/or comprehensive vocational evaluation services must maintain conformance to all uniform VR service contract qualifications and be:

(a) Qualified as a certified vocational evaluator (CVE) by the commission on certification of work adjustment and vocational evaluation specialists (CCWAVES); or

(b) Accredited in comprehensive vocational evaluation services by CARF - the rehabilitation accreditation commission; or

(c) Hold a current certification as a certified rehabilitation counselor (CRC) by the commission on rehabilitation counselor certification (CRCC) and have successfully completed three graduate level courses, from an accredited college or university, in vocational evaluation; standardized assessment; psychological testing and measurement; or any combination of the above mentioned coursework.

(2) Individuals or organizations providing situational assessment services must maintain conformance to all uniform VR service contract qualifications, and be:

(a) Qualified as a certified vocational evaluator (CVE) by the commission on certification of work adjustment and vocational evaluation specialists (CCWAVES); or

(b) Accredited in employment planning services by CARF - the rehabilitation accreditation commission; or

(c) Licensed in employment services by the department of social and health services (DSHS)/mental health division (MHD); or

(d) Certified by the International Center for Clubhouse Development (ICCD); or

(e) Hold a current certification as a certified rehabilitation counselor (CRC) by the commission on rehabilitation counselor certification (CRCC) and have successfully completed three graduate level courses, from an accredited college or university, in vocational evaluation; standardized assessment; psychological testing and measurement; or any combination of the above mentioned coursework.

[Statutory Authority: RCW 43.20A.310(2), 74.29.020(3) and 74.29.080(8). 03-19-075, § 388-892-0420, filed 9/12/03, effective 10/13/03.]

WAC 388-892-0430 What are the additional qualifications for job placement/retention services contracts? (1) Organizations that provide any job placement/retention service must maintain conformance to all uniform VR service contract qualifications.

(2) There are no additional qualifications for organizations that provide general job placement/retention services.

(3) Organizations that provide levels 1 or 2 specialized job placement/retention services must also be:

(a) Accredited in community employment services by CARF - the rehabilitation accreditation commission; or

(b) Licensed in employment services by the department of social and health services (DSHS)/mental health division (MHD); or

(c) Certified by the International Center for Clubhouse Development (ICCD).

[Statutory Authority: RCW 43.20A.310(2), 74.29.020(3) and 74.29.080(8). 03-19-075, § 388-892-0430, filed 9/12/03, effective 10/13/03.]

WAC 388-892-0440 What are the additional qualifications for a transitional employment services contract?

Organizations that provide transitional employment services contracts must:

(1) Maintain conformance to all uniform VR service contract qualifications; and

(2) Be certified by the International Center for Clubhouse Development (ICCD).

[Statutory Authority: RCW 43.20A.310(2), 74.29.020(3) and 74.29.080(8). 03-19-075, § 388-892-0440, filed 9/12/03, effective 10/13/03.]

WAC 388-892-0450 How long does a subsequent VR service contract last? All DVR VR service contracts may be granted for a period of up to two years or for a duration as announced in the RFQ.

[Statutory Authority: RCW 43.20A.310(2), 74.29.020(3) and 74.29.080(8). 03-19-075, § 388-892-0450, filed 9/12/03, effective 10/13/03.]

WAC 388-892-0500 What is DVR's payment system for VR service contracts? DVR establishes fixed fees for VR contract services as follows:

(1) DVR identifies geographic VR service delivery areas based on economic cost of living data.

(2) Every two years or on an interval as announced in the contract RFQ, with input received from the service providers, DVR will establish and publish a scheduled of fixed payment fee for each contracted VR service.

(3) All VR service contractors, within each geographic VR service delivery area, are paid the fixed payment fee for each contracted VR service.

[Statutory Authority: RCW 43.20A.310(2), 74.29.020(3) and 74.29.080(8). 03-19-075, § 388-892-0500, filed 9/12/03, effective 10/13/03.]

WAC 388-892-0510 Can VR service contracts be denied or terminated? (1) DVR may decide not to accept a bid or an offer by a person or organization seeking to provide contracted VR services if the bid or offer does not meet minimum RFQ requirements. The DSHS bid protest procedures set forth in the request for qualifications shall be the exclusive administrative remedy for refusal to accept a bid or offer.

(2) VR service contracts may be terminated for cause or convenience at any time by DVR or the contractor in accordance with the terms of the contract. The contractor's admin-

istrative remedies shall be limited to those specified in the contract.

(3) Additionally, DVR may terminate all DVR individual case service delivery plans that are open with the contractor at the time their VR service contract is terminated. Termination provisions are outlined in the VR service contracts.

[Statutory Authority: RCW 43.20A.310(2), 74.29.020(3) and 74.29.080(8). 03-19-075, § 388-892-0510, filed 9/12/03, effective 10/13/03.]

WAC 388-892-0520 What exceptions does DVR have to contract for vocational evaluation, job placement/retention and/or transitional employment services outside of these rules?

DVR may define and contract for the purchase of any vocational rehabilitation services outside of these rules if necessary to meet the vocational rehabilitation needs of any individual or group of DVR customers.

[Statutory Authority: RCW 43.20A.310(2), 74.29.020(3) and 74.29.080(8). 03-19-075, § 388-892-0520, filed 9/12/03, effective 10/13/03.]

Title 390 WAC PUBLIC DISCLOSURE COMMISSION

Chapters

- 390-05** **General policies and definitions.**
- 390-16** **Forms for campaign financing reporting—Contributions.**
- 390-17** **Contribution limitations.**
- 390-18** **Political advertising.**
- 390-19** **Electronic filing.**
- 390-20** **Forms for lobbying reports, elected officials and legislators.**
- 390-37** **Enforcement hearing (adjudicative proceeding) rules.**

Chapter 390-05 WAC

GENERAL POLICIES AND DEFINITIONS

WAC

390-05-400 Changes in dollar amounts.

WAC 390-05-400 Changes in dollar amounts. Pursuant to the requirement in RCW 42.17.690 that the commission biennially revise the dollar amounts found in Initiative 134 to reflect changes in economic conditions, the following revisions are made:

Code Section	Subject Matter	Amount Enacted or Last Revised	2004 Revision
.020	Definition of "Independent Expenditure"	\$625	\$675
.125	Reimbursement of candidate for loan to own campaign	\$3,800	\$4,000
.180(1)	Report— Applicability of provisions to Persons who made contributions	\$12,500	\$13,500

Code Section	Subject Matter	Amount Enacted or Last Revised	2004 Revision
.640(1)	Persons who made independent expenditures	\$625	\$675
	Contribution Limits—		
.640(2)	Candidates for state leg. office	\$625	\$675
	Candidates for other state office	\$1,250	\$1,350
.640(3)	Contribution Limits—		
	State official up for recall or pol comm. supporting recall—		
.640(4)	State Legislative Office	\$625	\$675
	Other State Office	\$1,250	\$1,350
.640(5)	Contribution Limits—		
	Contributions made by political parties and caucus committees		
.640(6)	State parties and caucus committees	.64 per voter	.68 per voter
	County and leg. district parties	.32 per voter	.34 per voter
.640(7)	Limit for all county and leg. district parties to a candidate	.32 per voter	.34 per voter
	Contribution Limits—		
.640(8)	Contributions made by pol. parties and caucus committees to state official up for recall or committee supporting recall		
	State parties and caucuses	.64 per voter	.68 per voter
.640(9)	County and leg. district parties	.32 per voter	.34 per voter
	Limit for all county and leg. district parties to state official up for recall or pol. comm. supporting recall	.32 per voter	.34 per voter
.640(10)	Limits on contributions to political parties and caucus committees		
	To caucus committee	\$625	\$675
.740	To political party	\$3,200	\$3,400
	Contribution must be made by written instrument	\$60	\$65

[Statutory Authority: RCW 42.17.690. 03-22-064, § 390-05-400, filed 11/4/03, effective 1/1/04. Statutory Authority: RCW 42.17.370 and 42.17.690. 01-22-050, § 390-05-400, filed 10/31/01, effective 1/1/02. Statutory Authority: RCW 42.17.370(1). 00-04-058, § 390-05-400, filed 1/28/00, effective 3/1/00. Statutory Authority: RCW 42.17.690. 98-08-069, § 390-05-400, filed 3/30/98, effective 5/1/98; 96-04-021, § 390-05-400, filed 1/30/96, effective 3/1/96.]

Chapter 390-16 WAC

FORMS FOR CAMPAIGN FINANCING REPORTING—CONTRIBUTIONS

WAC

390-16-037	Purpose of campaign expenditures—Reporting.
390-16-041	Forms—Summary of total contributions and expenditures.
390-16-050	Forms for contributions and expenditures of out-of-state political committees.
390-16-055	Repealed.
390-16-205	Expenditures by agents, employees—Reporting.
390-16-245	Pledges.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

390-16-055	Forfeiture of contributions received from out-of-state or federal political committees. [Statutory Authority: RCW 42.17.370(1). 02-12-007, § 390-16-055, filed 5/23/02, effective 6/23/02; 96-05-001, § 390-16-055, filed 2/7/96, effective 3/9/96. Statutory Authority: RCW 42.17.370. 89-20-068, § 390-16-055, filed 10/4/89, effective 11/4/89. Statutory Authority: RCW 42.17.370(1). 86-04-071 (Order 86-01), § 390-16-055, filed 2/5/86; 82-14-016 (Order 82-04), § 390-16-055, filed 6/28/82; 79-09-041 (Order 79-04), § 390-16-055, filed 8/17/79; Order 62, § 390-16-055, filed 8/26/75; Order 29, § 390-16-055, filed 5/27/74.] Repealed by 04-01-133, filed 12/18/03, effective 1/18/04. Statutory Authority: RCW 42.17.370(1).
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WAC 390-16-037 Purpose of campaign expenditures—Reporting. Any person required to report the "purpose" of an expenditure under RCW 42.17.090 (1)(f) and (l), or 42.17.100 (5)(b) shall identify any candidate(s) or ballot proposition(s) that are supported or opposed by the expenditure unless such candidate(s) or ballot proposition(s) have been previously identified in a statement of organization of the person required to be filed under RCW 42.17.040 (2)(f) and (g),

(2) Whenever an expenditure is made to a candidate or a political committee pursuant to an agreement or understanding of any kind regarding how the recipient will use the expenditure, the report shall describe in detail that agreement or understanding, and

(3) Describe in detail the goods and/or services to be provided by the recipient of the expenditure.

Example A: If an expenditure is for a get-out-the-vote campaign, the purpose shall include the following details:

Vendor Name	Purpose	Amount
XYZ Consulting	GOTV—phone bank 28th and 29th Legislative districts	\$1,000

Example B: If an expenditure is for printing, the purpose shall include the following details:

Vendor Name	Purpose	Amount
ABC Printing	5,000 brochures	\$3,000

Example C: If an expenditure is for broadcast political advertisements, the purpose shall include the following details:

Vendor Name	Purpose	Amount
Media King	Television ads	\$50,000
	WZUB TV	\$30,000
	WXXX TV	\$10,000
	WCRB TV	\$10,000

[Statutory Authority: RCW 42.17.370(1), 04-01-134, § 390-16-037, filed 12/18/03, effective 1/18/04; 96-05-001, § 390-16-037, filed 2/7/96, effective 3/9/96; 82-05-001 (Order 82-01), § 390-16-037, filed 2/4/82.]

WAC 390-16-041 Forms—Summary of total contributions and expenditures. (1) The official form for reports of contributions and expenditures by candidates and political committees who use the "full" reporting option is designated "C-4," revised 1/02, and includes Schedule A, revised 1/04, Schedule B, revised 1/04, Schedule C, revised 3/93, and Schedule L, revised 1/02.

(2) Copies of these forms are available at the Commission Office, 711 Capitol Way, Room 206, P.O. Box 40908, Olympia, Washington 98504-0908. Any paper attachments shall be on 8-1/2" x 11" white paper.

Place illustration here.

[Statutory Authority: RCW 42.17.370(1), 04-01-132, § 390-16-041, filed 12/18/03, effective 1/18/04; 02-01-014, § 390-16-041, filed 12/7/01, effective 1/7/02; 99-22-082, § 390-16-041, filed 11/2/99, effective 12/3/99. Statutory Authority: RCW 42.17.370(1) and 42.17.090 (1)(k), 97-06-085, § 390-16-041, filed 3/3/97, effective 4/3/97. Statutory Authority: RCW 42.17.390, 94-05-011, § 390-16-041, filed 2/3/94, effective 3/6/94. Statutory Authority: RCW 42.17.370, 93-09-002, § 390-16-041, filed 4/8/93, effective 5/9/93; 92-18-002, § 390-16-041, filed 8/20/92, effective 9/20/92; 92-05-080, § 390-16-041, filed 2/18/92, effective 3/20/92; 91-22-033, § 390-16-041, filed 10/30/91, effective 11/30/91; 90-16-083, § 390-16-041, filed 7/31/90, effective 8/31/90; 89-20-068, § 390-16-041, filed 10/4/89, effective 11/4/89. Statutory Authority: RCW 42.17.370(1), 86-08-030 (Order 86-02), § 390-16-041, filed 3/26/86; 86-04-071 (Order 86-01), § 390-16-041, filed 2/5/86; 84-05-018 (Order 84-01), § 390-16-041, filed 2/10/84; 82-11-026 (Order 82-03), § 390-16-041, filed 5/10/82; 82-02-007 (Order 81-04), § 390-16-041, filed 12/28/81; Order 91, § 390-16-041, filed 7/22/77; Order 62, § 390-16-041, filed 8/26/75; Order 60, § 390-16-041, filed 7/16/75.]

WAC 390-16-050 Forms for contributions and expenditures of out-of-state political committees. The official form for the report required by RCW 42.17.093 of contributions and expenditures of an out-of-state political committee organized for the purpose of supporting or opposing candidates or ballot propositions in another state that is not otherwise required to report under RCW 42.17.040 through 42.17.090 is designated "C-5," revised 1/04. Copies of this form are available at the Commission Office, Room 206, Evergreen Plaza Building, Olympia, Washington 98504-0908. Any paper attachments shall be on 8 1/2" x 11" white paper.

Place illustration here.

Place illustration here.

[Statutory Authority: RCW 42.17.370(1), 04-01-131, § 390-16-050, filed 12/18/03, effective 1/18/04; 02-12-007, § 390-16-050, filed 5/23/02, effective 6/23/02; 02-03-018, § 390-16-050, filed 1/4/02, effective 2/4/02. Statutory Authority: RCW 42.17.390, 94-05-011, § 390-16-050, filed 2/3/94 effective 3/6/94. Statutory Authority: RCW 42.17.370, 89-20-068, § 390-16-050, filed 10/4/89, effective 11/4/89. Statutory Authority: RCW 42.17.370(1), 86-04-071 (Order 86-01), § 390-16-050, filed 2/5/86; 82-11-026 (Order 82-03), § 390-16-050, filed 5/10/82; Order 77, § 390-16-050, filed 6/2/76; Order 62, § 390-16-050, filed 8/26/75; Order 6, § 390-16-050, filed 3/23/73.]

WAC 390-16-055 Repealed. See Disposition Table at beginning of this chapter.

WAC 390-16-205 Expenditures by agents, employees—Reporting. Expenditures made on behalf of a candidate or political committee by any person, agency, firm, organization, etc. employed or retained for the purpose of organizing, directing, managing or assisting the candidate's or committee's efforts shall be deemed expenditures by the candidate or committee. In accordance with WAC 390-16-037, such expenditures shall be reported by the candidate or committee as if made or incurred by the candidate or committee directly.

Example A: If a campaign committee pays a consultant \$5,000 to prepare and mail a political advertising brochure, all costs associated with the project shall be itemized by identifying each service provided, vendor utilized and amount attributable to each:

Vendor Name	Purpose	Amount
Jones Consulting		\$5,000
	ABC Graphics	\$1,200
	XYZ Printing Co. (5,000 pieces)	\$3,000
	Your Mailhouse	\$800

Or, if Jones Consulting completes the project through a combination of services provided by its principals or employees and subcontractors:

Vendor Name	Purpose	Amount
Jones Consulting		\$5,000
	Graphic design	\$1,200
	XYZ Printing Co. (5,000 pieces)	\$3,000
	Your Mailhouse	\$800

Example B: If a campaign committee pays a consultant to perform tasks such as fund-raising, survey design or campaign plan development, and the consultant does not subcontract with other vendors, the expense shall be reported as follows:

Vendor Name	Purpose	Amount
Jones Consulting	Fund-raising, survey design campaign plan development	\$5,000

[Statutory Authority: RCW 42.17.370(1), 04-01-128, § 390-16-205, filed 12/18/03, effective 1/18/04; Order 74, § 390-16-205, filed 4/26/76.]

WAC 390-16-245 Pledges. (1) A pledge shall not be made or redeemed within twenty-one days of an election specified in RCW 42.17.105(8) if the amount of the pledge or redemption exceeds the maximum amount provided in RCW 42.17.105(8). However, if payment of a pledge is in the possession of the recipient twenty-two or more days before the election, that payment may be deposited into the campaign account within five business days of receipt in accordance with RCW 42.17.060.

(2) If a pledge is made in an election campaign subject to the contribution limits provided in RCW 42.17.640:

(a) Except as provided in WAC 390-17-302, a pledge made with respect to the primary election shall not be made or redeemed after the date of the primary; however, if the payment of a pledge is made on or before the date of the primary, that payment may be deposited into the campaign account within five business days of receipt in accordance with RCW 42.17.060; and

(b) A pledge made with respect to the general election shall not be made or redeemed after the final day of the applicable election cycle; however, if the payment of a pledge is made on or before the final day of the election cycle, that payment may be deposited into the campaign account within five business days of receipt in accordance with RCW 42.17.060.

(3) During the time limit specified in RCW 42.17.710, a state official or a person employed by or acting on behalf of a state official shall not solicit or accept a pledge or the redemption of a pledge for any purpose specified in RCW 42.17.710.

[Statutory Authority: RCW 42.17.370, 03-12-033, § 390-16-245, filed 5/29/03, effective 6/29/03. Statutory Authority: RCW 42.17.390, 94-07-141, § 390-16-245, filed 3/23/94, effective 4/23/94.]

**Chapter 390-17 WAC
CONTRIBUTION LIMITATIONS**

WAC	
390-17-100	Contribution withholding authorizations.
390-17-105	Small contributors of twenty-five dollars or less.
390-17-110	Employee notification of withholding provisions.

WAC 390-17-100 Contribution withholding authorizations. (1) Each employer or other person who withholds or otherwise diverts a portion of wages or salary of a Washington resident or a nonresident whose primary place of work is in the state of Washington

(a) For the purpose of making one or more contributions to any political committee required to report pursuant to RCW 42.17.040, 42.17.050, 42.17.065, 42.17.080 or 42.17.090, or

(b) For use, specifically designated by the contributing employee, for political contributions to candidates for state or local office is required for (a) and (b) to have on file the written authorization of the individual subject to the payroll withholding or diversion of wages.

(2) Forms used for payroll deduction may either conform to the suggested format below or in a different format if it provides the following information:

(a) The name of the individual authorizing the withholding or diversion;

(b) The name of the individual's employer;

- (c) The name of each political committee for which contributions are to be withheld;
- (d) If more than one political committee is specified, the total dollar amount per pay period (or per week, month or year) to be withheld for each committee;
- (e) A statement specifying that the authorization may be revoked at any time and such revocation shall be in writing;
- (f) A statement that reads: "No employer or labor organization may discriminate against an officer or employee in the terms or conditions of employment for (i) the failure to

- contribute to, (ii) the failure in any way to support or oppose, or (iii) in any way supporting or opposing a candidate, ballot proposition, political party, or political committee"; or a statement that informs the employee of the prohibition against employer and labor organization discrimination described in RCW 42.17.680(2);
- (g) The individual's signature; and
- (h) The date on which the form was completed.
- (3) Forms used for payroll deduction may have information in addition to that listed above.

Political Contribution Withholding Authorization

No employer or other person may withhold a portion of a Washington State resident's earnings (or that of a nonresident whose primary place of work is in Washington) in order to make contributions to a political committee that must report to the Public Disclosure Commission or to a candidate for state or local office without written permission from that individual. Completion of this form entitles the entity specified to make such a withholding. This authorization form remains in effect until revoked in writing by the employee.

I, _____, authorize _____

_____ to withhold \$ _____ per/pay period/week/month/year/

_____ Amount _____ Circle One

_____ Name of _____

political committee(s) and/or candidate(s) to receive deductions

If more than one recipient is indicated, each is to receive the following portion of the deduction made: _____.

Signature: _____ **Date:** _____

According to state law, no employer or labor organization may discriminate against an officer or employee in the terms or conditions of employment for (a) the failure to contribute to, (b) the failure in any way to support or oppose, or (c) in any way supporting or opposing a candidate, ballot proposition, political party, or political committee.

[Statutory Authority: RCW 42.17.370, 03-08-052, § 390-17-100, filed 3/28/03, effective 4/28/03; 93-16-064, § 390-17-100, filed 7/30/93, effective 8/30/93.]

WAC 390-17-105 Small contributors of twenty-five dollars or less. (1) To comply with RCW 42.17.680(4), each person or entity who withholds contributions of individuals shall, in lieu of disclosing the names and signatures, substitute unique numerical identifiers for persons making contributions in the amount of twenty-five dollars or less during a calendar or fiscal year on the signed withholding authorization form or on other documents (such as payroll deductions) subject to RCW 42.17.680(4).

(2) Contribution withholding authorization forms or payroll deduction documentation of contributors whose annual aggregate contribution is twenty-five dollars or less during any calendar or fiscal year are not required by the commission to be made available for public inspection or copying when such records display the names, signatures, home addresses, Social Security numbers, or other information capable of personally identifying contributors whose annual aggregate contribution is twenty-five dollars or less during any calendar or fiscal year.

(3) The names, signatures, home addresses, Social Security numbers or other information capable of personally identifying contributors whose annual aggregate contribution to a person or entity is twenty-five dollars or less during any cal-

endar or fiscal year shall not be provided by the commission to the public or made available for public inspection or copying.

(4) Each person or entity who withholds contributions under RCW 42.17.680 shall, upon request, deliver to the commission documents of books and accounts described in RCW 42.17.680(4).

[Statutory Authority: RCW 42.17.370(1), 04-01-129, § 390-17-105, filed 12/18/03, effective 1/18/04.]

WAC 390-17-110 Employee notification of withholding provisions. (1)(a) By June 30, 2003, and at least annually by June 30 thereafter, employees from whom funds are being withheld for contributions to a candidate or political committee under RCW 42.17.680 shall be notified, in writing, of the nondiscriminatory provisions of RCW 42.17.680(2). Employee notification shall include the following language:

"No employer or labor organization may discriminate against an officer or employee in the terms or conditions of employment for:

- (i) The failure to contribute to;
- (ii) The failure in any way to support or oppose; or

(iii) In any way supporting or opposing a candidate, ballot proposition, political party, or political committee."

(b) The written notification shall be provided by the employer or labor organization. The employer or labor organization may agree on which entity shall send the notification.

(2)(a) Pursuant to RCW 42.17.680(3), by June 30, 2003, and at least annually by June 30 thereafter, each employer or other person or entity responsible for the disbursement of funds in payment of wages or salaries shall ensure written notification is directly provided to the employees from whom funds are being withheld for contributions to a candidate or political committee stating that the employee authorization for withholding of wages or salary for such contributions may be revoked at any time. The employer or other person or entity responsible for the disbursement of funds in payment of wages or salaries and the candidate, political committee, or sponsor of the political committee may agree on which of them shall send the notification.

(b) The written notification shall identify where an employee can submit the revocation, which shall be either:

(i) The name and address of employer's contact; or

(ii) The name and address of the person or entity responsible for the disbursement of funds in payment of wages or salaries.

(c) The employee withholding authorization is revoked as of:

(i) The date specified in the revocation; or

(ii) If no date is specified, as of the date the written notification is received by the employer or other person or entity responsible for the disbursement of funds in payment of wages or salaries pursuant to RCW 42.17.680.

(3) "Written notification" means notice provided by mail, e-mail, newsletter, payroll insert or other similar direct communication in writing that is addressed to the employee. Posting information on websites, bulletin boards and other passive communication vehicles shall not constitute notification under RCW 42.17.680. If the written notification appears in a newsletter or similar publication, the notice shall be prominently displayed or announced on the first page of the written communication.

(4) Each employer or other person who provides notice pursuant to subsection (1) or (2) of this section shall maintain a copy of the annual notification and a listing of employees notified for a period of no less than five years.

[Statutory Authority: RCW 42.17.370. 03-08-050, § 390-17-110, filed 3/28/03, effective 4/28/03.]

Chapter 390-18 WAC POLITICAL ADVERTISING

WAC

390-18-010

Political advertising—Identification of sponsor.

WAC 390-18-010 Political advertising—Identification of sponsor. (1) For the purposes of RCW 42.17.510 and this rule, "sponsor" means the candidate, political committee or other person paying for the advertising. If a person acts as an agent for another or is reimbursed by another for the payment, the original source of the payment is the sponsor.

[2004 WAC Supp—page 1858]

(2) With advertising for which no payment is demanded or for which a cost is not readily ascertainable, the sponsor is the candidate, political committee or person who solicits or arranges for the advertising to be displayed or broadcast.

(3) If more than one person sponsors specific advertising, the identity of each sponsor must be shown. However, if a person contributes in cash or in-kind to a candidate or political committee to assist in paying the cost of advertising, it is unnecessary to include that contributor's name as a sponsor provided the contribution is reported in accordance with applicable provisions of chapter 42.17 RCW.

(4) Printed advertising shall clearly state, in an area set apart from any other printed matter, that it has been paid for by the sponsor (Example: (1) Paid for by the XYZ committee, mailing address, city, state, zip code; (2) Vote for John Doe, paid for by John Doe, mailing address, city, state, zip code). However, printed advertising undertaken as an independent expenditure as defined in RCW 42.17.020 shall comply with the "Notice to Voters" and, if relevant, the "Top Five Contributors" provisions of RCW 42.17.510 and provide this information in an area set apart from any other printed matter. Political committees, other than a bona fide political party, that sponsor independent expenditure printed advertising are required to provide the "Top Five Contributors" to that political committee pursuant to WAC 390-18-025.

(5)(a) Political advertising consisting of more than one page but intended to be presented as a single item (i.e. 3-page letter with return envelope) must identify the sponsor on the first page or fold of the advertising. Identification on an enclosed return envelope or the envelope in which the advertising is sent is not sufficient.

(b) Political advertising which is a collection of several items relating to more than one candidate or committee and distributed simultaneously must show the respective sponsor on the respective items.

(6) The name of the sponsor of all radio or television political advertising shall be clearly spoken. However, all radio and television political advertising undertaken as an independent expenditure as defined in RCW 42.17.020 shall comply with the "Notice to Voters" and, if relevant, the "Top Five Contributors" provisions of RCW 42.17.510 and this information shall be clearly spoken. Political committees, other than a bona fide political party, that sponsor independent expenditure radio and television political advertising are required to clearly speak the "Top Five Contributors" to that political committee pursuant to WAC 390-18-025.

[Statutory Authority: RCW 42.17.370. 03-12-034, § 390-18-010, filed 5/29/03, effective 6/29/03. Statutory Authority: RCW 42.17.370(1). 00-22-055, § 390-18-010, filed 10/27/00, effective 11/27/00. Statutory Authority: RCW 42.17.370. 93-16-064, § 390-18-010, filed 7/30/93, effective 8/30/93. Statutory Authority: RCW 42.17.370(1). 85-15-020 (Order 85-03), § 390-18-010, filed 7/9/85.]

Chapter 390-19 WAC ELECTRONIC FILING

WAC

390-19-030

Electronic filing—Reporting threshold.

WAC 390-19-030 Electronic filing—Reporting threshold. (1) The "electronic reporting threshold" that

requires electronic filing of all contribution and expenditure reports is met when a candidate or political committee has expended \$10,000 or more in the preceding calendar year or expects to expend \$10,000 or more in the current calendar year.

(2) It is presumed that a filer "expects to expend" \$10,000 or more when any one of the following first occurs:

(a) A filer spends at least \$10,000;

(b) A filer is a candidate for the same office last sought, the filer's election is in the current calendar year, and his or her campaign expenditures in the previous election for the same office were \$10,000 or more;

(c) A filer's expenditures meet or exceed \$2,500 on or before March 31 of the current calendar year;

(d) A filer's expenditures meet or exceed \$5,000 on or before June 30 of the current calendar year;

(e) A filer's expenditures meet or exceed \$7,500 on or before September 30 of the current calendar year; or

(f) A filer otherwise projects that \$10,000 or more will be spent during the current calendar year.

(3) The following expenditures or transactions are excluded from the electronic reporting threshold calculation:

(a) Expenditures made to pay outstanding debts carried forward from a previous election; and

(b) Surplus funds disposed of in accordance with RCW 42.17.095.

(4) Candidate committees or political committees supporting or opposing ballot propositions that meet, exceed or expect to meet or exceed the electronic reporting threshold shall report electronically for the duration of the campaign.

(5) A report that is filed with the commission electronically need not also be filed with the county auditor or elections officer pursuant to RCW 42.17.080.

[Statutory Authority: RCW 42.17.370(1), 04-01-130, § 390-19-030, filed 12/18/03, effective 1/18/04. Statutory Authority: RCW 42.17.370, 01-22-052, § 390-19-030, filed 10/31/01, effective 1/1/02.]

Chapter 390-20 WAC

FORMS FOR LOBBYING REPORTS, ELECTED OFFICIALS AND LEGISLATORS

WAC

390-20-0101 Forms for lobbyist registration.
390-20-110 Forms for lobbyist employers report.

WAC 390-20-0101 Forms for lobbyist registration.

The official form for lobbyist registration as required by RCW 42.17.150 is designated "L-1," revised 12/03. Copies of this form are available at the commission office, Room 206, Evergreen Plaza Building, Olympia, Washington 98504. Any paper attachments shall be on 8-1/2" x 11" white paper.

Place illustration here.

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[Statutory Authority: RCW 42.17.370. 04-02-028, § 390-20-0101, filed 12/31/03, effective 1/31/04. Statutory Authority: RCW 42.17.370(1). 00-22-060 and 00-24-041, § 390-20-0101, filed 10/27/00 and 11/29/00, effective 11/27/00 and 12/30/00. Statutory Authority: RCW 42.17.370. 91-09-021, § 390-20-0101, filed 4/10/91, effective 5/11/91. Statutory Authority: RCW 42.17.370(1). 87-05-001 (Order 87-01), § 390-20-0101, filed 2/5/87; 85-24-020 (Order 85-05), § 390-20-0101, filed 11/26/85; 82-21-020 (Order 82-07), § 390-20-0101, filed 10/12/82; 78-02-063 (Order 96), § 390-20-0101, filed 1/23/78.]

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

WAC 390-20-110 Forms for lobbyist employers report. The official form for statement by employers of registered lobbyists as required by RCW 42.17.180 is designated "L-3," revised 12/03. Copies of this form are available at the Commission Office 711 Capitol Way, Room 206, Evergreen Plaza Building, PO Box 40908, Olympia, Washington, 98504-0908. Any paper attachments shall be on 8-1/2" x 11" white paper.

Place illustration here.

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[Statutory Authority: RCW 42.17.370. 04-02-028, § 390-20-110, filed 12/31/03, effective 1/31/04. Statutory Authority: RCW 42.17.370(1). 02-03-018, § 390-20-110, filed 1/4/02, effective 2/4/02. Statutory Authority: RCW 42.17.370(1) and 42.17.180 (1)(h). 98-01-062, § 390-20-110, filed 12/11/97, effective 1/11/98. Statutory Authority: RCW 42.17.370(1). 96-01-103, § 390-20-110, filed 12/19/95, effective 1/19/96. Statutory Authority: RCW 42.17.390. 95-01-074A, § 390-20-110, filed 12/16/94, effective 1/16/95. Statutory Authority: RCW 42.17.370. 93-04-072, § 390-20-110, filed 11/29/90, effective 3/1/93; 90-22-018, § 390-20-110, filed 10/29/90, effective 11/29/90. Statutory Authority: RCW 42.17.370(1). 87-05-001 (Order 87-01), § 390-20-110, filed 2/5/87; 85-24-020 (Order 85-05), § 390-20-110, filed 11/26/85; 84-05-018 (Order 84-01), § 390-20-110, filed 2/10/84; Order 62, § 390-20-110, filed 8/26/75.]

Reviser’s note: Notice of Objection: The Joint Administrative Rules Review Committee finds that WAC 390-20-110 has not been modified, amended, withdrawn, or repealed by the Public Disclosure Commission so as to conform with the intent of the Legislature as expressed in RCW 42.17.170 and 42.17.180. Therefore, pursuant to its authority under RCW 34.04.240, this notice of objection is filed.

The Joint Committee finds that WAC 390-20-110 requires the disclosure of information from lobbyists' employers which RCW 42.17.170 specifically excludes from reporting by lobbyists. It is the opinion of the Joint Committee that the Commission is attempting to obtain information from lobbyists' employers which the Commission would not otherwise be able to obtain from lobbyists themselves. This would thwart the express intent of the Legislature that such information is inappropriate for reporting. WAC 390-20-110 would effectively neuter the reporting exemptions in RCW 42.17.170—the Commission would have the information. This is not what the Legislature intended. [Joint Administrative Rules Review Committee, Memorandum, August 16, 1984—Filed August 28, 1984, WSR 84-18-014.]

Chapter 390-37 WAC

ENFORCEMENT HEARING (ADJUDICATIVE PROCEEDING) RULES

WAC

- 390-37-001 Enforcement cases—Jurisdiction.
- 390-37-010 Enforcement procedures—General.
- 390-37-030 Enforcement procedures—Citizen complaints filed with the commission.
- 390-37-040 Enforcement procedures—Procedures for filing complaints with the commission.
- 390-37-041 Enforcement procedures—Allegations submitted to the attorney general's office and/or prosecuting attorneys.
- 390-37-050 Enforcement procedures—Respondent's notice of complaint.
- 390-37-060 Enforcement procedures—Investigation of complaints—Initiation of hearing (adjudicative proceeding).
- 390-37-063 Enforcement procedures—Demand for information—Subpoenas.
- 390-37-070 Enforcement procedures—Complaints dismissed by executive director.
- 390-37-090 Informal settlement—Cases resolvable by stipulation prior to an enforcement hearing (adjudicative proceeding), or by other alternative dispute mechanisms.
- 390-37-100 Enforcement procedures—Conduct of hearings (adjudicative proceedings).
- 390-37-103 Commission options following receipt of a staff report on alleged violations.
- 390-37-105 Prehearing conference—Rule.
- 390-37-120 Enforcement hearings (adjudicative proceedings)—Subpoenas—Discovery—Hearings.
- 390-37-130 Enforcement hearings (adjudicative proceedings)—Depositions and interrogatories—Right to take.
- 390-37-132 Enforcement hearings (adjudicative proceedings)—Depositions and interrogatories—Notice.
- 390-37-134 Depositions and interrogatories in enforcement hearings (adjudicative proceedings)—Protection of parties and deponents.
- 390-37-136 Production of documents and use at hearing (adjudicative proceeding).
- 390-37-140 Brief enforcement hearings (adjudicative proceedings)—Authority.

- 390-37-142 Brief enforcement hearing (adjudicative proceeding)—Procedure.
- 390-37-144 Brief adjudicative proceeding—Administrative review procedures.
- 390-37-150 Reconsideration and judicial review of decisions.
- 390-37-155 Electronic filing brief enforcement hearing penalty schedule.
- 390-37-160 Statement of financial affairs (F-1) penalty schedule.
- 390-37-165 Candidate registration statement (C-1)/candidate statement of financial affairs (F-1) penalty schedule.
- 390-37-170 Lobbyist monthly expense report (L-2) penalty schedule.
- 390-37-175 Lobbyist employer report (L-3) penalty schedule.

WAC 390-37-001 Enforcement cases—Jurisdiction.

The commission enforces the sections of chapter 42.17 RCW concerning campaign financing, lobbyist reporting, reporting of public officials' financial affairs, reporting by public treasurers, political advertising, and campaign contribution limitations. The commission does not enforce the public records provisions of chapter 42.17 RCW because RCW 42.17.340 provides for direct review by the superior courts.

[Statutory Authority: RCW 42.17.370. 03-22-065, § 390-37-001, filed 11/4/03, effective 12/5/03.]

WAC 390-37-010 Enforcement procedures—General.

This chapter provides the procedures for adjudicative proceedings (hearings) in compliance cases under the commission's jurisdiction. The procedures are also governed by RCW 42.17.395, and the adjudicative proceedings provisions of chapter 34.05 RCW. Unless they differ or are otherwise specifically addressed in this chapter, the procedure, are supplemented by the model rules of procedure in chapter 10-08 WAC. In lieu of holding an adjudicative proceeding or issuing an order as a result of such a proceeding, the commission may refer the matter to the attorney general or other law enforcement agency pursuant to RCW 42.17.360(5) and 42.17.395(3).

In addition, the procedures for requesting a hearing on a petition to modify or suspend reporting requirements are provided in RCW 42.17.370(10) and chapters 390-24 and 390-28 WAC.

The policy of the commission shall be to facilitate the resolution of compliance matters in a fair and expeditious manner. The commission encourages the parties to consider alternative resolution or partial resolution procedures such as stipulations under WAC 390-37-090, when appropriate. Informal settlements are encouraged by RCW 34.05.060.

[Statutory Authority: RCW 42.17.370. 03-22-065, § 390-37-010, filed 11/4/03, effective 12/5/03; Order 79, § 390-37-010, filed 6/25/76.]

WAC 390-37-030 Enforcement procedures—Citizen complaints filed with the commission.

(1) When a citizen complaint has been filed with the agency pursuant to WAC 390-37-040, neither the complainant nor any other person shall have special standing to participate or intervene in the investigation or consideration of the complaint by the commission. However, the staff shall give notice to the complainant of any open commission hearings on the matter and the complainant may be called as a witness in any enforcement hearing or investigative proceeding.

(2) The complainant or any other person may submit documentary evidence and/or written factual or legal statements to the staff at any time up to and including the fifth cal-

endar day before the date of any enforcement hearing or proceeding.

[Statutory Authority: RCW 42.17.370. 03-22-065, § 390-37-030, filed 11/4/03, effective 12/5/03; 02-23-001, § 390-37-030, filed 11/6/02, effective 12/7/02. Statutory Authority: RCW 42.17.370(1). 86-04-071 (Order 86-01), § 390-37-030, filed 2/5/86; 84-12-017 (Order 84-03), § 390-37-030, filed 5/25/84; Order 79, § 390-37-030, filed 6/25/76.]

WAC 390-37-040 Enforcement procedures—Procedures for filing complaints with the commission. (1) A complaint filed with the commission, relating to an elected official or a candidate for elective office, shall be in writing and signed by the complainant under oath.

(2) A complaint filed with the commission, other than a complaint specified in subsection (1) of this section, shall be made in writing.

(3) A complaint filed under the provisions of either subsection (1) or (2) of this section shall include:

(a) A statement of the nature of the alleged violation or violations, date, time and place of each occurrence and name of person or persons responsible;

(b) All available documentation and other evidence which the complainant is able to supply to demonstrate a reason for believing that a violation of the sections of chapter 42.17 RCW that are enforced by the commission has occurred; and

(c) The name, address, telephone number, and other contact information for the complainant.

[Statutory Authority: RCW 42.17.370. 03-22-065, § 390-37-040, filed 11/4/03, effective 12/5/03. Statutory Authority: RCW 42.17.370(1). 84-12-017 (Order 84-03), § 390-37-040, filed 5/25/84; Order 79, § 390-37-040, filed 6/25/76.]

WAC 390-37-041 Enforcement procedures—Allegations submitted to the attorney general's office and/or prosecuting attorneys. (1) When a person has notified the attorney general or prosecuting attorney under RCW 42.17.400(4) that there is reason to believe a violation of the sections of chapter 42.17 RCW enforced by the commission has occurred, the statutory time periods are tolled when the attorney general or prosecutor forwards the complaint to the commission.

(2) After the allegations have been forwarded to the commission, commission staff may:

(a) Initiate an investigation;

(b) Submit a report to the commission that may include a recommendation;

(c) Schedule the matter for an adjudicative proceeding before the commission following investigation; and/or

(d) Take any other steps consistent with the agency's authority and resources.

[Statutory Authority: RCW 42.17.370. 03-22-065, § 390-37-041, filed 11/4/03, effective 12/5/03.]

WAC 390-37-050 Enforcement procedures—Respondent's notice of complaint. Within ten business days of receipt by the commission of a complaint which on its face appears to have merit, the commission shall notify the respondent that a complaint has been filed. The notice shall set forth the nature of the complaint and its origin (citizen

complaint, commission or other) and the statutory provision alleged to have been violated.

[Statutory Authority: RCW 42.17.370. 03-22-065, § 390-37-050, filed 11/4/03, effective 12/5/03. Statutory Authority: RCW 42.17.370(1). 79-08-046 (Order 79-03), § 390-37-050, filed 7/19/79; Order 81, § 390-37-050, filed 7/22/76.]

WAC 390-37-060 Enforcement procedures—Investigation of complaints—Initiation of hearing (adjudicative proceeding). (1) Upon receipt of a complaint not obviously unfounded or frivolous, the executive director shall direct an investigation be conducted. If after an initial review of the complaint it is determined that a complete and thorough investigation will require the expenditure of substantial resources, the executive director may request review and concurrence by the commission before continuing the investigation.

(2) The executive director shall initiate an adjudicative proceeding or provide a report to the commission whenever an investigation reveals facts that the executive director has reason to believe are a material violation of the sections of chapter 42.17 RCW under the commission's jurisdiction, and do not constitute substantial compliance.

(3) The respondent shall be notified of the date of the adjudicative proceeding or other consideration by the commission no later than ten calendar days before that date. The notice shall contain the information required by RCW 34.05.434. The complainant shall also be provided a copy of this notice.

(4) It is the policy of the commission during the course of any investigation that all records generated or collected as a result of that investigation are exempt from public inspection and copying under RCW 42.17.310 (1)(d). If a request is made for any such record that implicates the privacy of an individual, written notice of the records request will be provided to the individual in order that such individual may request a protective order from a court under RCW 42.17.-330. Certain documents shall be returned to candidates, campaigns, or political committees as required by RCW 42.17.-365 within seven calendar days of the commission's final action upon completion of an audit or field investigation.

[Statutory Authority: RCW 42.17.370. 03-22-065, § 390-37-060, filed 11/4/03, effective 12/5/03; 93-24-003, § 390-37-060, filed 11/18/93, effective 12/19/93; 91-16-072, § 390-37-060, filed 8/2/91, effective 9/2/91. Statutory Authority: RCW 42.17.370(1). 86-04-071 (Order 86-01), § 390-37-060, filed 2/5/86; 84-12-017 and 84-12-029 (Orders 84-03 and 84-03A), § 390-37-060, filed 5/25/84 and 5/29/84; Order 81, § 390-37-060, filed 7/22/76.]

WAC 390-37-063 Enforcement procedures—Demand for information—Subpoenas. (1) During the course of an audit or an investigation, the executive director may issue a subpoena directed to any person who probably possesses information which is relevant and material to the audit or the investigation. The subpoena shall

(a) Specifically describe the information which is sought, and

(b) Set forth a reasonable time and place for the production of the information, and

(c) Notify the person that if the information is not produced, the executive director will apply to the superior court for an appropriate order or other remedy.

The subpoena may be personally delivered or sent by certified mail, return receipt requested.

(2) The commission may issue a subpoena under RCW 42.17.370(6) and WAC 390-37-120 to compel persons to appear and give testimony and may require the production of any books, papers, correspondence, memorandums or other documents which the commission deems relevant and material.

[Statutory Authority: RCW 42.17.370. 03-18-003, § 390-37-063, filed 8/20/03, effective 9/20/03; 93-24-003, § 390-37-063, filed 11/18/93, effective 12/19/93. Statutory Authority: RCW 42.17.370(1). 86-04-071 (Order 86-01), § 390-37-063, filed 2/5/86; 82-02-007 (Order 81-04), § 390-37-063, filed 12/28/81.]

WAC 390-37-070 Enforcement procedures—Complaints dismissed by executive director. The executive director, with the concurrence of the chair or the chair's designee, at any time prior to consideration by the commission, may dismiss a complaint which on its face, or as shown by investigation, does not show reason to believe that a material violation of the sections of chapter 42.17 RCW that are enforced by the commission has occurred and/or shows that the respondent is in substantial compliance with the relevant statutes or rules.

[Statutory Authority: RCW 42.17.370. 03-22-065, § 390-37-070, filed 11/4/03, effective 12/5/03. Statutory Authority: RCW 42.17.390. 94-05-010, § 390-37-070, filed 2/3/94, effective 3/6/94. Statutory Authority: RCW 42.17.370(1). 86-04-071 (Order 86-01), § 390-37-070, filed 2/5/86; 84-12-017 (Order 84-03), § 390-37-070, filed 5/25/84; Order 81, § 390-37-070, filed 7/22/76.]

WAC 390-37-090 Informal settlement—Cases resolvable by stipulation prior to an enforcement hearing (adjudicative proceeding), or by other alternative dispute mechanisms. (1) RCW 34.05.060 authorizes agencies to establish by rule specific procedures for attempting and executing informal settlement of matters. The following procedures are available for informal dispute resolution prior to an adjudicative proceeding that may make more elaborate proceedings under the Administrative Procedure Act unnecessary.

(a) Any enforcement matter before the commission which has not yet been heard in an adjudicative proceeding may be resolved by settlement. The respondent shall communicate his or her request to the executive director or designee (commission staff), setting forth all pertinent facts and the desired remedy. Settlement negotiations shall be informal and without prejudice to rights of a participant in the negotiations.

(b) When the executive director and respondent agree to terms of any stipulation of facts, violations, and/or penalty, commission staff shall prepare the stipulation for presentation to the commission.

(c) Any proposed stipulation shall be in writing and signed by each party to the stipulation or his or her representative. The executive director shall sign for commission staff. The stipulation shall be recited on the record at the hearing, although attached or referenced documents may be stated by reference and incorporated as a result. The commission has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the commission accepts the stipulation or modifies the stipu-

lation with the agreement of the opposing party, the commission shall enter an order in conformity with the terms of the stipulation. If the commission rejects the stipulation or the opposing party does not agree to the commission's proposed modifications to the stipulation, and if no revised stipulation or staff report is presented to the commission, then an adjudicative proceeding shall be scheduled and held.

(2) Parties are encouraged to be creative in resolving cases without further litigation where appropriate.

(3) Following a stipulation of facts or law, if the commission determines certain sanctions or other steps are required by the respondent as a result of the alternative dispute resolution including stipulations and that it intends to enter an order, and the respondent does not timely raise an objection at the hearing, it shall be presumed that the respondent has waived objections and appeals, and agrees to the entry of the order.

[Statutory Authority: RCW 42.17.370. 03-22-065, § 390-37-090, filed 11/4/03, effective 12/5/03; 91-16-072, § 390-37-090, filed 8/2/91, effective 9/2/91. Statutory Authority: RCW 42.17.370(1). 86-04-071 (Order 86-01), § 390-37-090, filed 2/5/86; 84-12-017 (Order 84-03), § 390-37-090, filed 5/25/84; Order 81, § 390-37-090, filed 7/22/76.]

WAC 390-37-100 Enforcement procedures—Conduct of hearings (adjudicative proceedings). (1) An enforcement hearing (adjudicative proceeding) shall be conducted pursuant to the Administrative Procedure Act (chapter 34.05 RCW). Chapter 390-37 WAC further governs these proceedings, as supplemented by chapter 10-08 WAC. To the extent chapters 390-37 and 10-08 WAC differ, chapter 390-37 WAC controls.

(2) An adjudicative proceeding shall be heard by the commission, except for brief adjudicative proceedings which are conducted by the chair or the chair's designee.

(3) The commission shall have the authority to:

(a) Determine the order of presentation of evidence;

(b) Administer oaths and affirmations;

(c) Rule on procedural matters, objections, and motions;

(d) Rule on offers of proof and receive relevant evidence;

(e) Pursuant to RCW 34.05.449(5), close parts of a hearing to public observation or order the exclusion of witnesses upon a showing of good cause;

(f) Interrogate witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;

(g) Take official notice of facts pursuant to RCW 34.05.452(5);

(h) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;

(i) Permit or require oral argument or briefs and determine the time limits for submission thereof;

(j) Issue an order of default pursuant to RCW 34.05.440;

(k) Take any other action necessary and authorized by any applicable statute or rule;

(l) Waive any requirement of these rules unless a party shows that it would be prejudiced by such a waiver; and

(m) The commission chair or the chair's designee may conduct the procedural aspects of the adjudicative proceeding under (a) through (l) of this subsection, unless a majority of

members present vote to seek a full commission decision on any particular matter.

(4) The commission may decide dispositive motions, and any other matters referred to it by the presiding officer at a prehearing conference.

(5) After an adjudicative proceeding by the commission, the commission may find that:

(a) Respondent did not violate the act, as alleged, and dismiss the case; or

(b) Respondent violated chapter 42.17 RCW, as alleged, and determine the sanction, if any, to be imposed; or

(c) Respondent is in apparent violation of chapter 42.17 RCW, its own remedies are inadequate and enter its order referring the matter to the appropriate law enforcement agency as provided in RCW 42.17.360 and 42.17.395.

(6) Upon the conclusion of and adjudicative proceeding, the commission:

(a) Shall set forth in writing its findings of fact, conclusions of law and decision on the merits of the case and enter an order; and

(b) Shall serve the respondent a copy of the findings of fact, conclusions of law and decision and order.

(7) The executive director is authorized to sign orders on behalf of the commission.

(8) When the commission finds an apparent violation and refers the matter to an enforcement agency, the commission shall give to the respondent written notice of such finding and order of referral.

[Statutory Authority: RCW 42.17.370, 03-22-065, § 390-37-100, filed 11/4/03, effective 12/5/03; 91-16-072, § 390-37-100, filed 8/2/91, effective 9/2/91; 90-16-083, § 390-37-100, filed 7/31/90, effective 8/31/90. Statutory Authority: RCW 42.17.370(1), 86-04-071 (Order 86-01), § 390-37-100, filed 2/5/86; 85-15-020 (Order 85-03), § 390-37-100, filed 7/9/85; 84-12-017 (Order 84-03), § 390-37-100, filed 5/25/84; Order 81, § 390-37-100, filed 7/22/76.]

WAC 390-37-103 Commission options following receipt of a staff report on alleged violations. Upon receipt of a staff report concerning alleged violations of those sections of chapter 42.17 RCW that the commission enforces, the commission may:

(1) Schedule the matter for a hearing (adjudicative proceeding); or

(2) Issue an order; or

(3) In lieu of holding an enforcement hearing (adjudicative proceeding), or issuing an order, refer the matter or apparent violations to the attorney general or other enforcement agency pursuant to RCW 42.17.360(5) and 42.17.395.

[Statutory Authority: RCW 42.17.370, 03-22-065, § 390-37-103, filed 11/4/03, effective 12/5/03.]

WAC 390-37-105 Prehearing conference—Rule. (1) In any prehearing conference prior to an enforcement hearing (adjudicative proceeding), the chair or the chair's designee upon his/her own motion or upon request by one of the parties or their qualified representative, may direct the parties to appear at a specified time and place for a conference to consider:

(a) Identifying and simplifying issues;

(b) The necessity of amendments to the hearing notice;

(c) The possibility of obtaining stipulations, admissions of facts and of documents;

(d) Limiting the number of witnesses; and

(e) Procedural and such other matters as may aid in the conduct of the proceeding.

(2) Prehearing conferences may be presided over by the chair or his/her designee.

(3) Prehearing conferences may be held by telephone conference call or at a time and place specified by the presiding officer.

(4) In a prehearing conference, the presiding officer may hear prehearing motions regarding preliminary matters such as motions *in limine*, discovery motions, and other similar matters. The presiding officer shall not consider dispositive motions in a prehearing conference and such motions will automatically be scheduled for consideration before the commission.

(5) Following the prehearing conference, the presiding officer shall issue an order reciting the action taken and decisions made at the conference and the date on which objections to the order are to be filed and served. If no objection to the order is timely filed with the presiding officer, the order shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

(6) When the chair or his/her designee presides over a prehearing conference, he or she is acting as a quasi-judicial body which relates to a quasi-judicial matter between named parties. Therefore, a prehearing conference is not subject to chapter 42.30 RCW, Open Public Meetings Act.

[Statutory Authority: RCW 42.17.370, 03-22-065, § 390-37-105, filed 11/4/03, effective 12/5/03. Statutory Authority: RCW 42.17.390, 94-05-010, § 390-37-105, filed 2/3/94, effective 3/6/94. Statutory Authority: RCW 42.17.370, 91-16-072, § 390-37-105, filed 8/2/91, effective 9/2/91.]

WAC 390-37-120 Enforcement hearings (adjudicative proceedings)—Subpoenas—Discovery—Hearings.

(1) The commission, or presiding officer, may issue subpoenas for discovery, subpoenas to persons to appear and give testimony, and may require the production of any books, papers, correspondence, memorandums, or other records deemed relevant or material and the commission or presiding officer may issue protective orders as a part of an enforcement hearing. The agency or its legal representative may issue subpoenas as may the attorney of the party against whom action is being taken. Upon request of the commission or presiding officer, all subpoenas must be filed with the commission, together with proof of proper service. Such subpoenas will issue and may be enforced in the form and manner set forth in RCW 34.05.446 and WAC 10-08-120(4). The subpoena may be personally delivered or sent by certified mail, return receipt requested.

(2) The commission, or presiding officer, upon motion or before the time specified in the subpoena for compliance therewith, may:

(a) Quash or modify the subpoena if it is unreasonable and oppressive; or

(b) Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(3) The attendance of witnesses and such production of evidence may be required from any place within the state of

Washington to any location where a hearing is being conducted.

[Statutory Authority: RCW 42.17.370. 03-22-065, § 390-37-120, filed 11/4/03, effective 12/5/03; 91-16-072, § 390-37-120, filed 8/2/91, effective 9/2/91.]

WAC 390-37-130 Enforcement hearings (adjudicative proceedings)—Depositions and interrogatories—Right to take. Unless otherwise provided, any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for use as evidence in the hearing. The deposition of a commissioner, the executive director, or assistant director, may only be taken upon application to the commission, for good cause shown, and only in those circumstances where the statements or depositions of other staff members would not reveal the information, evidence, or details needed by the party for the case. The attendance of witnesses to a deposition may be compelled by use of a subpoena. Depositions shall be taken only in accordance with this rule and the rules on subpoenas.

[Statutory Authority: RCW 42.17.370. 03-22-065, § 390-37-130, filed 11/4/03, effective 12/5/03; 91-16-072, § 390-37-130, filed 8/2/91, effective 9/2/91.]

WAC 390-37-132 Enforcement hearings (adjudicative proceedings)—Depositions and interrogatories—Notice. A party desiring to take the deposition of any person upon oral examination shall give reasonable notice of not less than seven calendar days in writing to the commission and all parties. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined. On motion of a party to whom the notice is served, the commission or its hearing officer may, for cause shown, enlarge or shorten the time. If the parties so stipulate in writing, depositions may be taken at any time or place, upon any notice, and in any manner and when so taken may be used as other depositions.

[Statutory Authority: RCW 42.17.370. 03-22-065, § 390-37-132, filed 11/4/03, effective 12/5/03; 91-16-072, § 390-37-132, filed 8/2/91, effective 9/2/91.]

WAC 390-37-134 Depositions and interrogatories in enforcement hearings (adjudicative proceedings)—Protection of parties and deponents. After notice is served for taking a deposition, upon its own motion or upon motion reasonably made by any party or by the person to be examined and upon notice and for good cause shown, the commission or the presiding officer in a prehearing conference may make an order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or the commission may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression. At any time during the taking of the deposition, on motion of any party or the deponent, and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to

annoy, embarrass, or oppress the deponent or party, the commission or the presiding officer in a prehearing conference may order the officer conducting the examination to cease forthwith from taking the deposition or may limit the scope and manner of the taking of the deposition as above provided. If the order made terminates the examination, it shall be resumed only upon the order of the agency. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.

[Statutory Authority: RCW 42.17.370. 03-18-003, § 390-37-134, filed 8/20/03, effective 9/20/03; 91-16-072, § 390-37-134, filed 8/2/91, effective 9/2/91.]

WAC 390-37-136 Production of documents and use at hearing (adjudicative proceeding). (1) Upon request by either the agency or its legal representative, or the party against whom the enforcement action is being taken or his/her representative, copies of all materials to be presented at the adjudicative proceeding shall be provided to the requester within seven calendar days of the request but, for good cause shown, not less than three business days prior to the date of the hearing.

(2) When exhibits of a documentary character are to be offered into evidence at the adjudicative proceeding, the party offering the exhibit shall provide a minimum of ten copies.

(3) If documentary evidence has not been exchanged prior to the hearing under subsection (1) of this section, the parties shall arrive at the hearing location in sufficient time before the time scheduled for the adjudicative proceeding for the purpose of exchanging copies of exhibits to be introduced.

[Statutory Authority: RCW 42.17.370. 03-22-065, § 390-37-136, filed 11/4/03, effective 12/5/03; 91-16-072, § 390-37-136, filed 8/2/91, effective 9/2/91.]

WAC 390-37-140 Brief enforcement hearings (adjudicative proceedings)—Authority. (1) The commission may provide a brief adjudicative proceeding for violations of the sections of chapter 42.17 RCW that it enforces in which the facts are undisputed, the violations appear to be relatively minor in nature, and a penalty no greater than \$500 will be assessed for the violations. Typical matters to be heard in a brief adjudicative proceeding include, but are not limited to, the following:

- (a) Failure to file or late filing of required reports,
- (b) Failure to report or accurately report campaign contributions or expenditures or funds spent in lobbying,
- (c) Use of public office facilities in election campaigns when the value of public funds expended was minimal,
- (d) Infractions of political advertising law regarding sponsor identification or political party identification.

(2) The commission may utilize a penalty schedule for brief adjudicative proceedings.

(3) Brief adjudicative proceedings are set forth in RCW 34.05.482 through 34.05.494.

[Statutory Authority: RCW 42.17.370. 03-22-065, § 390-37-140, filed 11/4/03, effective 12/5/03; 93-15-004, § 390-37-140, filed 7/7/93, effective 8/7/93; 91-16-072, § 390-37-140, filed 8/2/91, effective 9/2/91.]

WAC 390-37-142 Brief enforcement hearing (adjudicative proceeding)—Procedure. (1) A brief adjudicative proceeding may be presided over by the chair, or a member of the commission designated by the chair.

(2) When a violation, as described in WAC 390-37-140, is alleged, before taking action, the executive director shall send the alleged violator notice, which shall include:

(a) Alleged violation;

(b) The maximum amount of the penalty that can be imposed at the hearing, relevant penalty schedules, and the amount of any proposed fine; and

(c) Person's right to respond either in writing or in person to explain his/her view of the matter.

(3) At the time of the hearing if the presiding officer believes alleged violations are of such magnitude as to merit penalties greater than \$500, the presiding officer shall immediately adjourn the hearing and direct the matter be scheduled for an adjudicative proceeding by the full commission.

(4) At the time any unfavorable action is taken, within ten business days the presiding officer shall serve upon each party a written statement describing the violation, the reasons for the decision, the penalty imposed, and their right to request review by the commission. The executive director is authorized to sign the decision on behalf of the presiding officer.

(5) The written decision of the presiding officer is an initial order. If no review is taken of the initial order, the initial order shall be the final order.

[Statutory Authority: RCW 42.17.370. 03-22-065, § 390-37-142, filed 11/4/03, effective 12/5/03. Statutory Authority: RCW 42.17.390. 94-05-010, § 390-37-142, filed 2/3/94, effective 3/6/94. Statutory Authority: RCW 42.17.370. 93-15-004, § 390-37-142, filed 7/7/93, effective 8/7/93; 91-16-072, § 390-37-142, filed 8/2/91, effective 9/2/91.]

WAC 390-37-144 Brief adjudicative proceeding—Administrative review procedures. (1) The commission shall conduct a review of the initial order upon the written or oral request of a party if the commission receives the request within twenty-one business days after the service of the initial order. "Service" is defined as the date the order was deposited in the U.S. mail per RCW 34.05.010(19), or personally served. The party seeking review shall state the reason for the review, and identify what alleged errors are contained in the initial order.

(2) If the parties have not requested review, the commission may conduct a review of the initial order upon its own motion and without notice to the parties, but it may not take any action on review less favorable to any party than the original order without giving that party notice and an opportunity to explain that party's view of the matter.

(3) The order on review shall be in writing stating the findings made, and the reasons for the decision, and notice that reconsideration and judicial review are available. The order on review shall be entered within twenty business days after the date of the initial order or of the request for review, whichever is later.

(4) If the commission is not scheduled to meet within twenty business days after the date of the initial order or request for review and therefore cannot dispose of the request within that time period, the request is:

(a) Deemed denied under RCW 34.05.491(5) and the initial order becomes final;

(b) Considered a request for reconsideration under WAC 390-37-150; and

(c) Scheduled for consideration and disposition at the next commission meeting at which it is practicable to do so.

[Statutory Authority: RCW 42.17.370. 03-22-065, § 390-37-144, filed 11/4/03, effective 12/5/03; 91-16-072, § 390-37-144, filed 8/2/91, effective 9/2/91.]

WAC 390-37-150 Reconsideration and judicial review of decisions. (1) For purposes of this rule, "decision" means any findings, conclusions, order, or other action by the commission which is reviewable by a court.

(2) A decision may be reconsidered only upon (a) the written request of a party thereby or (b) the motion or written request of a commissioner who voted on the prevailing side when that decision was made.

(3) Such a request for reconsideration shall be filed at the office of the public disclosure commission, or motion made, no later than twenty-one business days after service of the decision of which reconsideration is sought. Copies of the request or motion shall be served on all parties of record at the time the request for reconsideration or motion is filed.

(4) A request or motion for reconsideration shall specify the grounds therefor. Grounds for reconsideration shall be limited to:

(a) A request for review was deemed denied in accordance with WAC 390-37-144(4);

(b) New facts or legal authorities that could not have been brought to the commission's attention with reasonable diligence. If errors of fact are alleged, the requester must identify the specific evidence in the prior proceeding on which the requester is relying. If errors of law are alleged, the requester must identify the specific citation; or

(c) Significant typographical or ministerial errors in the order.

(5) Upon being served with a decision, the respondent may treat that decision as final for the purpose of petitioning for judicial review. The commission may not reconsider any decision after being served with a petition for judicial review.

(6) When a request for reconsideration is served, or motion made, enforcement of the decision of which reconsideration is sought shall be stayed and the decision shall not be final until the commission has acted on the reconsideration.

(7) The commission is deemed to have denied request for reconsideration or motion if, within twenty business days from the date the request or motion is filed, the commission does not either (a) dispose of the request or motion, or (b) serve the parties with written notice specifying the date it will act upon the request or motion.

(8) The commission shall act on the reconsideration request or motion, at the next meeting at which it practicably may do so, by:

(a) Deciding whether to reconsider its decision; and

(b) If it decides to do so, either:

(i) Affirming its decision; or

(ii) Withdrawing or modifying the final order; or

(iii) Setting the matter for further hearing.

Provided, That before a decision may be amended other than by lowering a penalty, the respondent shall be given

notice and an opportunity to be heard if, and in the same manner as, required for the original decision.

[Statutory Authority: RCW 42.17.370. 03-22-065, § 390-37-150, filed 11/4/03, effective 12/5/03; 91-16-072, § 390-37-150, filed 8/2/91, effective 9/2/91. Statutory Authority: RCW 42.17.370(1). 79-08-046 (Order 79-03), § 390-37-150, filed 7/19/79.]

WAC 390-37-155 Electronic filing brief enforcement hearing penalty schedule.

Status	1st Occasion	2nd Occasion	3rd Occasion	4th Occasion
Failed to electronically file by date required.	\$250	\$350	\$500	Full commission consideration

Provisos:

(1) The presiding officer has authority to suspend all or a portion of relevant penalty under the conditions to be determined by that officer.

(2) If on the 3rd occasion, a filer has outstanding penalties or judgments, the matter will be taken to the full commission for consideration.

(3) The presiding officer may direct a matter to the full commission if the officer believes five hundred dollars would be an insufficient penalty or the matter warrants consideration by the full commission.

(4) If previously imposed penalties remain unpaid and exceed the amount this penalty schedule would otherwise prescribe for the current violation, the presiding officer may impose a penalty not to exceed the amount of the outstanding penalty, up to five hundred dollars.

(5) "Occasion" means established violation. At the 4th occasion, among other factors, the commission may consider if any prior violations and penalties were stipulated to by the respondent, in determining the amount of the penalty.

[Statutory Authority: RCW 42.17.370. 03-22-065, § 390-37-155, filed 11/4/03, effective 12/5/03.]

WAC 390-37-160 Statement of financial affairs (F-1) penalty schedule.

Status	1st Occasion	2nd Occasion	3rd Occasion	4th Occasion
Failed to file report by date of enforcement hearing.	\$150	\$300	\$500	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Did not pay settlement amount.	\$100	\$200	\$400	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Provided written explanation or appeared at the hearing to explain mitigating circumstances. Did not pay settlement amount.	\$0 - \$100	\$100 - \$200	\$200 - \$400	Full commission consideration

Provisos:

(1) The presiding officer has authority to suspend all or a portion of relevant penalty under the conditions to be determined by that officer.

(2) If on the 3rd occasion, a filer has outstanding penalties or judgments, the matter will be taken to the full commission for consideration.

(3) The presiding officer may direct a matter to the full commission if the officer believes five hundred dollars would be an insufficient penalty or the matter warrants consideration by the full commission.

(4) If previously imposed penalties remain unpaid and exceed the amount this penalty schedule would otherwise prescribe for the current violation, the presiding officer may impose a penalty not to exceed the amount of the outstanding penalty, up to five hundred dollars.

(5) "Occasion" means established violation. At the 4th occasion, among other factors, the commission may consider if any prior violations and penalties were stipulated to by the respondent, in determining the amount of the penalty.

[Statutory Authority: RCW 42.17.370. 03-22-065, § 390-37-160, filed 11/4/03, effective 12/5/03.]

WAC 390-37-165 Candidate registration statement (C-1)/candidate statement of financial affairs (F-1) penalty schedule.

Status	1st Occasion	2nd Occasion	3rd Occasion	4th Occasion
Failed to file F-1 and/or C-1 by date of enforcement hearing.	\$150 per report	\$300 per report, up to \$500	Full commission consideration	Full commission consideration
Filed reports after hearing notice but before enforcement hearing. Did not pay settlement amount.	\$100 per report	\$200 per report	\$400	Full commission consideration

Status	1st Occasion	2nd Occasion	3rd Occasion	4th Occasion
Filed report after hearing notice but before enforcement hearing. Provided written explanation or appeared at the hearing to explain mitigating circumstances. Did not pay settlement amount.	\$0 - \$100 per report	\$100 - \$200 per report	\$200 - \$400	Full commission consideration

Provisos:

(1) The presiding officer has authority to suspend all or a portion of relevant penalty under the conditions to be determined by that officer.

(2) If on the 3rd occasion, a filer has outstanding penalties or judgments, the matter will be taken to the full commission for consideration.

(3) The presiding officer may direct a matter to the full commission if the officer believes five hundred dollars would be an insufficient penalty or the matter warrants consideration by the full commission.

(4) If previously imposed penalties remain unpaid and exceed the amount this penalty schedule would otherwise prescribe for the current violation, the presiding officer may impose a penalty not to exceed the amount of the outstanding penalty, up to five hundred dollars.

(5) "Occasion" means established violation. At the 4th occasion, among other factors, the commission may consider if any prior violations and penalties were stipulated to by the respondent, in determining the amount of the penalty.

[Statutory Authority: RCW 42.17.370. 03-22-065, § 390-37-165, filed 11/4/03, effective 12/5/03.]

WAC 390-37-170 Lobbyist monthly expense report (L-2) penalty schedule.

Status	1st Occasion	2nd Occasion	3rd Occasion	4th Occasion
Failed to file report by date of enforcement hearing.	\$150	\$300	\$500	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Did not pay settlement amount.	\$100	\$200	\$400	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Provided written explanation or appeared at the hearing to explain mitigating circumstances. Did not pay settlement amount.	\$0 - \$100	\$100 - \$200	\$200 - \$400	Full commission consideration

Provisos:

(1) The presiding officer has authority to suspend all or a portion of relevant penalty under the conditions to be determined by that officer. Except in rare circumstances, the non-suspended portion of the penalty will not be less than the original settlement offer.

(2) If on the 3rd occasion, a filer has outstanding penalties or judgments, the matter will be taken to the full commission for consideration.

(3) The presiding officer may direct a matter to the full commission if the officer believes five hundred dollars would be an insufficient penalty or the matter warrants consideration by the full commission.

(4) If previously imposed penalties remain unpaid and exceed the amount this penalty schedule would otherwise prescribe for the current violation, the presiding officer may impose a penalty not to exceed the amount of the outstanding penalty, up to five hundred dollars.

(5) "Occasion" means established violation. At the 4th occasion, among other factors, the commission may consider if any prior violations and penalties were stipulated to by the respondent, in determining the amount of the penalty.

[Statutory Authority: RCW 42.17.370. 03-22-065, § 390-37-170, filed 11/4/03, effective 12/5/03.]

WAC 390-37-175 Lobbyist employer report (L-3) penalty schedule.

Status	1st Occasion	2nd Occasion	3rd Occasion	4th Occasion
Failed to file report by date of enforcement hearing.	\$150	\$300	\$500	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Did not pay settlement amount.	\$100	\$200	\$400	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Provided written explanation or appeared at the hearing to explain mitigating circumstances. Did not pay settlement amount.	\$0 - \$100	\$100 - \$200	\$200 - \$400	Full commission consideration

Provisos:

(1) The presiding officer has authority to suspend all or a portion of relevant penalty under the conditions to be determined by that officer.

(2) If on the 3rd occasion, a filer has outstanding penalties or judgments, the matter will be taken to the full commission for consideration.

(3) The presiding officer may direct a matter to the full commission if the officer believes five hundred dollars would be an insufficient penalty or the matter warrants consideration by the full commission.

(4) If previously imposed penalties remain unpaid and exceed the amount this penalty schedule would otherwise prescribe for the current violation, the presiding officer may impose a penalty not to exceed the amount of the outstanding penalty, up to five hundred dollars.

(5) "Occasion" means established violation. At the 4th occasion, among other factors, the commission may consider if any prior violations and penalties were stipulated to by the respondent, in determining the amount of the penalty.

[Statutory Authority: RCW 42.17.370. 03-22-065, § 390-37-175, filed 11/4/03, effective 12/5/03.]

Title 391 WAC

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Chapters

391-08	Rules of practice and procedure—Public employment relations commission.
391-25	Representation case rules.
391-35	Unit clarification case rules.
391-45	Unfair labor practice case rules.
391-55	Impasse resolution rules.
391-65	Grievance arbitration rules.
391-95	Union security dispute rules.

Chapter 391-08 WAC**RULES OF PRACTICE AND PROCEDURE—PUBLIC EMPLOYMENT RELATIONS COMMISSION****WAC**

391-08-001
391-08-630
391-08-670

Application and scope of chapter 391-08 WAC.
Agency structure—Substitution for executive director.
Decision numbering—Citation of cases—Indexing of decisions.

WAC 391-08-001 Application and scope of chapter 391-08 WAC. Chapter 391-08 WAC has been added to the Washington Administrative Code by the public employment relations commission pursuant to the authority of section 12, chapter 288, Laws of 1975 1st ex. sess. (RCW 41.59.110); sections 7, 14 and 20, chapter 296, Laws of 1975 1st ex. sess. (RCW 41.58.050, 28B.52.080 and 41.56.090, respectively); and section 232, chapter 354, Laws of 2002 (RCW 41.06.340); and section 15, chapter 356, Laws of 2002 (RCW 41.76.060), to promulgate comprehensive and uniform rules for practice and procedure before the agency. This chapter sets forth general rules applicable to all types of proceedings before the agency, and should be read in conjunction with the provisions of:

(1) Chapter 10-08 WAC, which contains the model rules of procedure promulgated by the chief administrative law judge to regulate adjudicative proceedings under chapters 391-25, 391-35, 391-45 and 391-95 WAC, except:

(a) WAC 10-08-035, which is replaced by detailed requirements in WAC 391-25-070, 391-25-090, 391-35-050, 391-45-050, and 391-95-110;

(b) WAC 10-08-050, which relates to office of administrative hearings procedures inapplicable to proceedings before the public employment relations commission;

(c) WAC 10-08-083, which is replaced by detailed requirements in WAC 391-08-010;

(d) WAC 10-08-110, which is replaced by detailed requirements in WAC 391-08-120;

(e) WAC 10-08-120, which is replaced by detailed requirements in WAC 391-08-040, 391-08-300 and 391-08-310;

(f) WAC 10-08-140, which is limited by WAC 391-08-040, 391-08-300 and 391-08-310;

(g) WAC 10-08-150, which is limited by WAC 391-08-315;

(h) WAC 10-08-211, which is replaced by WAC 391-08-640 and detailed requirements in WAC 391-25-390, 391-25-391, 391-25-590, 391-25-630, 391-25-650, 391-25-660, 391-25-670, 391-35-210, 391-35-250, 391-45-350, 391-45-390, 391-95-270, and 391-95-290;

(i) WAC 10-08-230, which is replaced by detailed requirements in WAC 391-25-150, 391-25-220, 391-25-230, 391-25-250, 391-25-270, 391-35-070, 391-35-080, 391-45-070, 391-45-090, 391-45-260, and 391-95-170; and

(j) WAC 10-08-250, 10-08-251, and 10-08-252 which are replaced by detailed requirements in WAC 391-08-520.

(2) Chapter 391-25 WAC, which regulates representation proceedings.

(3) Chapter 391-35 WAC, which regulates unit clarification proceedings and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300.

(4) Chapter 391-45 WAC, which regulates unfair labor practice proceedings.

(5) Chapter 391-55 WAC, which regulates the resolution of impasses in collective bargaining.

(6) Chapter 391-65 WAC, which regulates grievance arbitration and grievance mediation proceedings.

(7) Chapter 391-95 WAC, which regulates union security nonassociation proceedings.

In the event of a conflict between a general rule in this chapter and a special rule in another chapter applicable to a particular proceeding, the special rule shall govern.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, 03-03-064, § 391-08-001, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 01-14-009, § 391-08-001, filed 6/22/01, effective 8/1/01; 00-14-048, § 391-08-001, filed 6/30/00, effective 8/1/00; 98-14-112, § 391-08-001, filed 7/1/98, effective 8/1/98; 96-07-105, § 391-08-001, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. 90-06-070, § 391-08-001, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 83-24-031 (Order 83-01), § 391-08-001, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-045 (Order 80-4), § 391-08-001, filed 9/30/80, effective 11/1/80; Order 77-1, § 391-08-001, filed 1/27/77.]

WAC 391-08-630 Agency structure—Substitution for executive director. (1) The public employment relations commission and its staff maintain an impartial role in all proceedings pending before the agency.

(2) The commission consists of three citizen members appointed by the governor with the advice and consent of the senate, pursuant to RCW 41.58.010. Commission members serve on a part-time basis only. All commission members represent the interests of the public. The commission reserves to itself a policy-making and appellate function.

(3) The executive director appointed by the commission pursuant to RCW 41.58.015(2) is the full-time agency head, with authority to act in administrative and personnel matters. Authority is also delegated to the executive director to make substantive decisions in certain types of cases.

(4) The commission's professional staff is appointed pursuant to RCW 41.58.015(3). A "multifunctional" staffing pattern is used, whereby individual members of the commission's professional staff are assigned from time to time to conduct any or all of the types of dispute resolution services provided by the agency. Authority is delegated to members of the professional staff to make decisions as "examiner" under chapters 391-45 and 391-95 WAC. The executive director may also delegate authority to members of the professional staff to make decisions in certain situations under chapters 391-25 and 391-35 WAC.

(5) In the event the executive director is disqualified from participation in a decision, the most senior (in terms of length of service with this agency) dispute resolution manager authorized to act as the designee of the executive director to make preliminary rulings on unfair labor practice cases under WAC 391-45-110, who has not been directly involved in the particular circumstances shall make decisions and rulings otherwise required of the executive director. Thereafter, this authority passes to the other dispute resolution managers in agency seniority order.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, 41.58.010 and [41.58].015. 03-03-064, § 391-08-630, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.58.010 and 41.58.015. 98-14-112, § 391-08-630, filed 7/1/98, effective 8/1/98; 90-06-070, § 391-08-630, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 85-19-059 (Resolution No. 85-01), § 391-08-630, filed 9/16/85.]

WAC 391-08-670 Decision numbering—Citation of cases—Indexing of decisions. (1) Each decision issued by the agency in an adjudicative proceeding under the Administrative Procedure Act is assigned a unique number consisting of two or three components, as follows:

(a) The first component, consisting of a number, indicates the sequential number of adjudicative proceedings in which one or more decisions has been issued since the agency commenced operations on January 1, 1976.

(b) The second component (where appropriate) consisting of an alphabetic code in ascending alphabetical order, indicates the second and subsequent decisions issued in the case to which the numerical component was originally assigned.

(c) The third component, consisting of a four-letter alphabetic code, indicates the statute under which the decision was issued:

"CCOL" indicates cases decided under chapter 28B.52 RCW (Collective Bargaining—Academic Personnel in Community Colleges).

"EDUC" indicates cases decided under chapter 41.59 RCW (Educational Employment Relations Act).

"FCBA" indicates cases decided under chapter 41.76 RCW (faculty at public four-year institutions of higher education).

"MRNE" (no longer in use) was formerly used to indicate cases decided under chapter 47.64 RCW, relating to the Washington state ferries system.

"PECB" indicates cases decided under chapter 41.56 RCW (Public Employees' Collective Bargaining Act), including some cases involving port districts.

"PORT" indicates cases decided exclusively under chapter 53.18 RCW (Employment Relations—Collective Bargaining and Arbitration), relating to port districts.

"PRIV" indicates cases decided under chapter 49.08 RCW, relating to private sector employers and employees.

"PSRA" indicates cases decided under RCW 41.06.340 and/or chapter 41.80 RCW (Personnel System Reform Act).

(2) All citations of agency decisions in subsequent agency decisions, in publications of agency decisions, and in briefs and written arguments filed by parties with the agency shall conform to the formats specified in this section:

GENERAL RULE: Citations shall list only the name of the employer *italicized*, the word "Decision" followed by the decision number, and the statute and year the decision was issued (in parenthesis).

Examples:

City of Roe, Decision 1234 (PECB, 1992)

City of Roe, Decision 1234-A (PECB, 1993)

City of Roe, Decision 1234-B (PECB, 1994)

EXCEPTION For decisions in which an employee organization or labor organization was named as the respondent in an unfair labor practice case, the citation shall list the name of the union (in parenthesis) following the name of the employer.

Example:

City of Roe (Doe Union), Decision 2345 (PECB, 1995)

(3) The agency encourages the publication and indexing of its decisions by private firms, but does not contribute financial support to any such firm and declines to declare any private firm as the "official reporter" of agency decisions.

(4) To satisfy the requirements of RCW 42.17.260(5), the agency publishes its decisions, together with a search engine, on its website at: "www.perc.wa.gov".

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, and 34.05.220. 03-11-029, § 391-08-670, filed 5/15/03, effective 6/15/03; 03-03-064, § 391-08-670, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, and 34.05.220. 00-24-044, § 391-08-670, filed 11/30/00, effective 1/1/01; 96-07-105, § 391-08-670, filed 3/20/96, effective 4/20/96.]

Chapter 391-25 WAC REPRESENTATION CASE RULES

WAC

391-25-001	Scope—Contents—Other rules.
391-25-002	Sequence and numbering of rules—Special provisions.
391-25-011	Repealed.
391-25-032	Special provision—Educational employees.
391-25-036	Special provision—State civil service employees.
391-25-037	Special provision—Higher education faculty.
391-25-051	Special provision—Individual providers under home care quality authority.
391-25-076	Special provision—State civil service employees.
391-25-096	Special provision—State civil service employees.
391-25-136	Special provision—State civil service employees.
391-25-137	Special provision—Higher education faculty.
391-25-197	Special provision—Higher education faculty.
391-25-210	Bargaining unit configurations.
391-25-216	Repealed.
391-25-217	Special provision—Higher education faculty.
391-25-396	Special provision—State civil service employees.

391-25-416	Special provision—State civil service employees.
391-25-426	Special provision—State civil service employees.
391-25-427	Special provision—Higher education faculty.
391-25-476	Special provision—State civil service employees.
391-25-496	Special provision—State civil service employees.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

391-25-011	Special provision—Optional coverage of classified employees of institutions of higher education under chapter 41.56 RCW. [Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.-340, 41.76.060 and 41.56.201. 03-03-064, § 391-25-011, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.201. 96-07-105, § 391-25-011, filed 3/20/96, effective 4/20/96.] Repealed by 03-11-029, filed 5/15/03, effective 6/15/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.-340, 41.76.060, and 41.56.201.
391-25-216	Special provision—State civil service employees. [Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.-110, 41.58.050, 41.06.340, 41.76.060. 03-03-064, § 391-25-216, filed 1/14/03, effective 2/14/03.] Repealed by 03-11-029, filed 5/15/03, effective 6/15/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060.

WAC 391-25-001 Scope—Contents—Other rules.

This chapter governs proceedings before the public employment relations commission on petitions for investigation of questions concerning representation of employees under all chapters of the Revised Code of Washington (RCW) administered by the commission. The provisions of this chapter should be read in conjunction with:

(1) Chapter 10-08 WAC, which contains the model rules of procedure promulgated by the chief administrative law judge to regulate adjudicative proceedings under chapter 34.05 RCW, except:

(a) WAC 10-08-035, which is replaced by detailed requirements in WAC 391-25-070 and 391-25-090;

(b) WAC 10-08-050, which relates to office of administrative hearings procedures inapplicable to proceedings before the public employment relations commission;

(c) WAC 10-08-211, which is replaced by detailed requirements in WAC 391-25-390, 391-25-391, 391-25-590, 391-25-630, 391-25-650, 391-25-660, and 391-25-670; and

(d) WAC 10-08-230, which is replaced by detailed requirements in WAC 391-25-150, 391-25-220, 391-25-230, and 391-25-250.

(2) Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission, and which also replaces some provisions of chapter 10-08 WAC.

(3) Chapter 391-35 WAC, which regulates unit clarification proceedings and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300.

(4) Chapter 391-45 WAC, which regulates unfair labor practice proceedings.

(5) Chapter 391-55 WAC, which regulates the resolution of impasses in collective bargaining.

(6) Chapter 391-65 WAC, which regulates grievance arbitration and grievance mediation proceedings.

(7) Chapter 391-95 WAC, which regulates union security nonassociation proceedings.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. 03-03-064, § 391-25-001, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. 01-14-009, § 391-25-001, filed 6/22/01, effective 8/1/01; 96-07-105, § 391-25-001, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. 90-06-072, § 391-25-001, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-001, filed 9/30/80, effective 11/1/80.]

WAC 391-25-002 Sequence and numbering of rules—Special provisions. This chapter of the Washington Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. General rules are set forth in sections with numbers divisible by ten. Where a deviation from the general rule is required for conformity with a particular statute, that special provision is set forth in a separate rule numbered as follows:

(1) Special provisions relating to chapter 41.56 RCW (Public Employees' Collective Bargaining Act) and to chapter 53.18 RCW (port employees) are set forth in WAC sections numbered one digit greater than the general rule on that subject matter.

(2) Special provisions relating to chapter 41.59 RCW (Educational Employment Relations Act) are set forth in WAC sections numbered two digits greater than the general rule on that subject matter.

(3) Special provisions relating to chapter 28B.52 RCW (Collective Bargaining—Academic Personnel in Community Colleges) are set forth in WAC sections numbered three digits greater than the general rule on that subject matter.

(4) Special provisions relating to RCW 41.06.340 and/or chapter 41.80 RCW (Personnel System Reform Act) are set forth in WAC sections numbered six digits greater than the general rule on that subject matter.

(5) Special provisions relating to chapter 41.76 RCW (faculty at public four-year institutions of higher education) are set forth in WAC sections numbered seven digits greater than the general rule on that subject matter.

(6) Special provisions relating to chapter 49.08 RCW (private sector and other employees) are set forth in WAC sections numbered nine digits greater than the general rule on that subject matter.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. 03-03-064, § 391-25-002, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. 01-14-009, § 391-25-002, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. 90-06-072, § 391-25-002, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 83-24-032 (Order 83-02), § 391-25-002, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-002, filed 9/30/80, effective 11/1/80.]

WAC 391-25-011 Repealed. See Disposition Table at beginning of this chapter.

WAC 391-25-032 Special provision—Educational employees. Where there is a valid collective bargaining agreement in effect, no question of representation may be

raised except during the period not more than ninety nor less than sixty days prior to the expiration date of the agreement. In the event that a valid collective bargaining agreement, together with any renewals or extensions thereof, has been or will be in existence for three years, then the question of representation may be raised not more than ninety nor less than sixty days prior to the third anniversary date of the agreement or any renewals or extensions thereof as long as such renewals and extensions do not exceed three years.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060 and 41.59.070(3). 03-03-064, § 391-25-032, filed 1/14/03, effective 2/14/03.]

WAC 391-25-036 Special provision—State civil service employees. For state civil service employees:

(1) The "window" period specified in WAC 391-25-030(1) shall be computed as not more than one hundred twenty nor less than ninety days prior to the stated expiration date of the collective bargaining agreement.

(2) The "protected" period specified in WAC 391-25-030(1)(c) shall be computed as ninety days.

(3) The duration of any collective bargaining agreement negotiated under chapter 41.80 RCW shall not exceed one fiscal biennium.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, 41.80.001 and [41.80].080. 03-03-064, § 391-25-036, filed 1/14/03, effective 2/14/03.]

WAC 391-25-037 Special provision—Higher education faculty. If there is a valid collective bargaining agreement in effect, no question concerning representation may be raised except during the period not more than ninety nor less than sixty days prior to the expiration date of the agreement; provided that in the event a valid collective bargaining agreement, together with any renewals or extensions thereof, has been or will be in existence for more than three years, then a question concerning representation may be raised not more than ninety nor less than sixty days prior to the third anniversary date or any subsequent anniversary date of the agreement.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060 and 41.76.020(2). 03-03-064, § 391-25-037, filed 1/14/03, effective 2/14/03.]

WAC 391-25-051 Special provision—Individual providers under home care quality authority. This rule consolidates special rules applicable to individual providers under chapter 3, Laws of 2002, Initiative Measure No. 775 (I-775) passed by Washington voters in November of 2001. I-775 extended the coverage of chapter 41.56 RCW to "individual providers" defined as a person, including a personal aide, who has contracted with the department of social and health services to provide personal care or respite care services to functionally disabled persons under the Medicaid personal care, community options program entry system, chore services program, or respite care program, or to provide respite care or residential services and support to persons with developmental disabilities under chapter 71A.12 RCW, or to provide respite care as defined in RCW 74.13.270.

(1) The showing of interest requirement in WAC 391-25-110 is modified for the bargaining unit affected by I-775,

to require a ten percent showing of interest for either a petitioner or an intervenor.

(2) The posting of notice requirement in WAC 391-25-140 is inapplicable to the bargaining unit affected by I-775.

(3) The description of bargaining unit requirement of WAC 391-25-190 is limited to a single, statewide unit of individual providers under I-775.

(4) The description of bargaining unit requirement of WAC 391-25-210(2) is limited to a single, statewide unit of individual providers under I-775.

(5) The provisions of WAC 391-25-210(3) relating to alternative units or mergers of units are inapplicable to the bargaining unit affected by I-775.

(6) The posting requirement in WAC 391-25-220(2), relating to investigation statements, is inapplicable to the bargaining unit affected by I-775.

(7) The posting requirement in WAC 391-25-230(2), relating to election agreements, is inapplicable to the bargaining unit affected by I-775.

(8) The cross-check procedures in WAC 391-25-250, 391-25-391, and 391-25-410 are inapplicable to the bargaining unit affected by I-775.

(9) The unit determination election procedures in WAC 391-25-420 are inapplicable to the bargaining unit affected by I-775.

(10) The requirements of WAC 391-25-430, relating to posting of election notices on the employer's premises, is inapplicable to the bargaining unit affected by I-775.

(11) Any representation election for the bargaining unit affected by I-775 shall be conducted by mail ballot under WAC 391-25-470, with the following modifications:

(a) Together with the procedures for casting ballots, the notice supplied to individual providers may describe the collective bargaining rights established by I-775 and agreements reached by a petitioning union and the employer concerning the election process;

(b) The notice and ballot materials supplied to individual providers shall be set forth in English and Spanish;

(c) The ballot materials supplied to individual providers shall include a card return-addressed to the commission, by which individual providers can request ballot materials in Cambodian, Korean, Mandarin, Russian, Tagalog, Ukrainian, or Vietnamese. Upon receipt of a request from an individual provider, the agency shall supply ballot materials to the individual provider in the requested language.

(d) At least twenty-four days shall be provided between the date on which ballot materials are mailed to individual providers and the deadline for return of cast ballots to the commission.

(e) The executive director shall have discretion to vary tally arrangements and procedures from those customarily used, because of the large size of the bargaining unit involved.

(f) The reference in WAC 391-25-470 to WAC 391-25-140 shall be interpreted in light of subsection (2) of this section.

(12) The procedure for on-site elections in WAC 391-25-490 is inapplicable to the bargaining unit affected by I-775.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, 74.39A.240 and [74.39A].270. 03-03-064, § 391-25-051, filed 1/14/03, effective 2/14/03.]

WAC 391-25-076 Special provision—State civil service employees. All representation cases pending before the Washington personnel resources board and/or the department of personnel on June 13, 2002, shall be transferred to and acted upon by the commission under this chapter. Documents filed in conformity with Washington personnel resources board and/or department of personnel rules prior to June 13, 2002, shall be acted upon by the commission unless a deficiency notice is issued and a period of at least twenty-one days is provided for a party to cure a noted defect.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. 03-03-064, § 391-25-076, filed 1/14/03, effective 2/14/03.]

WAC 391-25-096 Special provision—State civil service employees. (1) WAC 391-25-090 is inapplicable to bargaining units of state civil service employees.

(2) Where an employer claims that an employee organization previously certified as the exclusive bargaining representative of state civil service employees has become defunct or has abandoned representation of a bargaining unit, it may file a petition under WAC 391-25-070 to obtain a determination as to whether the employee organization continues to represent the bargaining unit. Instead of a showing of interest under WAC 391-25-110, the employer shall attach affidavits and other documentation as may be available to it to demonstrate the existence of a good faith belief that the employee organization has become defunct or has abandoned representation of the bargaining unit. The documentation provided under this section shall not include signature documents provided to the employer by employees.

(3) An employee organization named in a petition filed under this section shall be given a reasonable opportunity to respond and rebut the allegations in the petition. Ongoing activity as exclusive bargaining representative may be demonstrated by evidence showing that the employee organization has been holding meetings of its members, collecting dues, electing or appointing officers and representatives for the purposes of dealing with the employer, processing grievances, negotiating collective bargaining agreements, or similar activities for and on behalf of employees in the bargaining unit.

(4) If it is determined that the employee organization is defunct or has abandoned its responsibilities for and on behalf of the employees in the bargaining unit, the executive director shall vacate the certification of the employee organization as exclusive bargaining representative. An order issued by the executive director shall be subject to appeal under WAC 391-25-660.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060 and 41.80.070(2). 03-03-064, § 391-25-096, filed 1/14/03, effective 2/14/03.]

WAC 391-25-136 Special provision—State civil service employees. In addition to the information required by WAC 391-25-130, lists of state civil service employees provided in proceedings under RCW 41.06.340 and/or chapter 41.80 RCW shall also contain the job classification and work location of each employee. The employer shall send a copy of the list (excluding employee addresses) to all other parties in the case, at the same time as the list is sent to the agency.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060 and 41.80.080. 03-03-064, § 391-25-136, filed 1/14/03, effective 2/14/03.]

WAC 391-25-137 Special provision—Higher education faculty. In addition to the information required by WAC 391-25-130, lists of higher education faculty provided in proceedings under chapter 41.76 RCW shall also contain the job classification and work location of each employee.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. 03-03-064, § 391-25-137, filed 1/14/03, effective 2/14/03.]

WAC 391-25-197 Special provision—Higher education faculty. The description of bargaining unit requirement of WAC 391-25-190 is limited to a single unit per employer under chapter 41.76 RCW.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060 and 41.76.005(11). 03-03-064, § 391-25-197, filed 1/14/03, effective 2/14/03.]

WAC 391-25-210 Bargaining unit configurations. (1) In proceedings on a petition for "decertification" under WAC 391-25-070 (6)(c) or 391-25-090(2), the parties shall not be permitted to remove positions from or add positions to the existing bargaining unit;

(2) An organization which files a motion for intervention under WAC 391-25-190 shall not be permitted to seek a bargaining unit configuration different than proposed by the original petitioner.

(3) If petitions filed by two or more organizations under this chapter are pending before the agency at the same time and involve any or all of the same employees, the timeliness of the respective petitions and the sufficiency of the respective showings of interest shall be determined separately and the proceedings shall be consolidated for resolution of all issues concerning the description(s) of the bargaining unit(s). A petition filed after the issuance of a notice of election in another proceeding under WAC 391-25-430 or after the commencement of a cross-check in another proceeding under WAC 391-25-410 shall be dismissed as untimely.

(4) A party to proceedings under this chapter shall not be permitted to propose more than one bargaining unit configuration for the same employee or employees, except where a merger of bargaining units is proposed under WAC 391-25-420.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, 41.56.070, 41.59.070, and 41.80.080. 03-11-029, § 391-25-210, filed 5/15/03, effective 6/15/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.070 and 41.59.070. 01-14-009, § 391-25-210, filed 6/22/01, effective 8/1/01; 98-14-112, § 391-25-210, filed 7/1/98, effective 8/1/98; 90-06-072, § 391-25-210, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-046 (Order 80-5), § 391-25-210, filed 9/30/80, effective 11/1/80.]

WAC 391-25-216 Repealed. See Disposition Table at beginning of this chapter.

WAC 391-25-217 Special provision—Higher education faculty. (1) The description of bargaining unit requirement of WAC 391-25-210(2) is limited to a single unit per employer under chapter 41.76 RCW.

[2004 WAC Supp—page 1878]

(2) The provisions of WAC 391-25-210(3) relating to alternative units or mergers of units are inapplicable to the employer-wide bargaining units under chapter 41.76 RCW.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060 and 41.76.005(11). 03-03-064, § 391-25-217, filed 1/14/03, effective 2/14/03.]

WAC 391-25-396 Special provision—State civil service employees. WAC 391-25-391 and the practices and precedents applicable under chapter 41.56 RCW shall also be applicable to state civil service employees.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. 03-03-064, § 391-25-396, filed 1/14/03, effective 2/14/03.]

WAC 391-25-416 Special provision—State civil service employees. As to state civil service employees, authorization documents signed and dated by employees in the bargaining unit no more than six months prior to the filing of the petition shall be honored for purposes of WAC 391-25-410.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. 03-03-064, § 391-25-416, filed 1/14/03, effective 2/14/03.]

WAC 391-25-426 Special provision—State civil service employees. An employee organization that represents two or more bargaining units of state civil service employees may obtain a merger of those units by filing a petition under WAC 391-25-420 (2)(a). If the merged unit is found to be appropriate under WAC 391-25-420 (2)(c)(i) and (ii), the employee organization shall be certified as exclusive bargaining representative without need for unit determination elections.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, and 41.80.070(3). 03-11-029, § 391-25-426, filed 5/15/03, effective 6/15/03.]

WAC 391-25-427 Special provision—Higher education faculty. The unit determination election procedures in WAC 391-25-420 are inapplicable to the employer-wide bargaining units under chapter 41.76 RCW.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060 and 41.76.005(11). 03-03-064, § 391-25-427, filed 1/14/03, effective 2/14/03.]

WAC 391-25-476 Special provision—State civil service employees. The requirement in WAC 391-25-470(2) that lists of voters be surrendered shall not apply to elections concerning state civil service employees covered by chapter 41.06 RCW. Upon request, the agency shall provide the parties involved in the election with the names of employees who voted.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. 03-03-064, § 391-25-476, filed 1/14/03, effective 2/14/03.]

WAC 391-25-496 Special provision—State civil service employees. If the executive director conducts an election involving state civil service employees by on-site balloting procedures, absentee ballots shall be allowed as prescribed in this section.

(1) Upon the request of an individual employee, the agency shall provide a notice and absentee ballot to the individual employee.

(2) To be counted, the absentee ballot must be received at the Olympia office of the commission:

(a) Directly from the employee or from the employee via the United States Postal Service; and

(b) Prior to the close of business on the last day the polls are open for the on-site election.

(3) Whenever absentee ballots are issued, the tally of ballots shall be delayed for one or more days after the last day on which the polls are open for the on-site election, and shall then be conducted in the commission's Olympia office in a manner which preserves the secrecy of the absentee ballots.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060 and 41.80.080. 03-03-064, § 391-25-496, filed 1/14/03, effective 2/14/03.]

Chapter 391-35 WAC

UNIT CLARIFICATION CASE RULES

WAC

391-35-001	Scope—Contents—Other rules.
391-35-002	Sequence and numbering of rules—Special provisions.
391-35-026	Special provision—State civil service employees.
391-35-326	Special provision—State civil service employees.
391-35-327	Special provision—Higher education faculty.
391-35-346	Special provision—State civil service employees.
391-35-347	Special provision—Higher education faculty.
391-35-356	Special provision—State civil service employees.

WAC 391-35-001 Scope—Contents—Other rules.

This chapter governs proceedings before the public employment relations commission on petitions for clarification of existing bargaining units under all chapters of the Revised Code of Washington (RCW) administered by the commission and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300. The provisions of this chapter should be read in conjunction with:

(1) Chapter 10-08 WAC, which contains the model rules of procedure promulgated by the chief administrative law judge to regulate adjudicative proceedings under chapter 34.05 RCW, except:

(a) WAC 10-08-035, which is replaced by detailed requirements in WAC 391-35-050;

(b) WAC 10-08-050, which relates to office of administrative hearings procedures inapplicable to proceedings before the public employment relations commission;

(c) WAC 10-08-211, which is replaced by detailed requirements in WAC 391-35-210 and 391-35-250; and

(d) WAC 10-08-230, which is replaced by detailed requirements in WAC 391-35-070.

(2) Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission, and which also replaces some provisions of chapter 10-08 WAC.

(3) Chapter 391-25 WAC, which regulates representation proceedings.

(4) Chapter 391-45 WAC, which regulates unfair labor practice proceedings.

(5) Chapter 391-55 WAC, which regulates the resolution of impasses in collective bargaining.

(6) Chapter 391-65 WAC, which regulates grievance arbitration and grievance mediation proceedings.

(7) Chapter 391-95 WAC, which regulates union security nonassociation proceedings.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. 03-03-064, § 391-35-001, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. 01-14-009, § 391-35-001, filed 6/22/01, effective 8/1/01; 96-07-105, § 391-35-001, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. 90-06-073, § 391-35-001, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-047 (Order 80-6), § 391-35-001, filed 9/30/80, effective 11/1/80.]

WAC 391-35-002 Sequence and numbering of rules—Special provisions. This chapter of the Washington Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. General rules are set forth in sections with numbers divisible by ten. Where a deviation from the general rule is required for conformity with a particular statute, that special provision is set forth in a separate rule, numbered as follows:

(1) Special provisions relating to chapter 41.56 RCW (Public Employees' Collective Bargaining Act) and to chapter 53.18 RCW (port employees) are set forth in WAC sections numbered one digit greater than the general rule on that subject matter.

(2) Special provisions relating to chapter 41.59 RCW (Educational Employment Relations Act) are set forth in WAC sections numbered two digits greater than the general rule on that subject matter.

(3) Special provisions relating to chapter 28B.52 RCW (Collective Bargaining—Academic Personnel in Community Colleges) are set forth in WAC sections numbered three digits greater than the general rule on that subject matter.

(4) Special provisions relating to RCW 41.06.340 and/or chapter 41.80 RCW (Personnel System Reform Act) are set forth in WAC sections numbered six digits greater than the general rule on that subject matter.

(5) Special provisions relating to chapter 41.76 RCW (faculty at public four-year institutions of higher education) are set forth in WAC sections numbered seven digits greater than the general rule on that subject matter.

(6) Special provisions relating to chapter 49.08 RCW (private sector and other employees) are set forth in WAC sections numbered nine digits greater than the general rule on that subject matter.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. 03-03-064, § 391-35-002, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. 01-14-009, § 391-35-002, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. 90-06-073, § 391-35-002, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 83-24-033 (Order 83-03), § 391-35-002, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-047 (Order 80-6), § 391-35-002, filed 9/30/80, effective 11/1/80.]

WAC 391-35-026 Special provision—State civil service employees. In addition to the circumstances described in

WAC 391-35-020, bargaining units of state civil service employees may be modified under this section until RCW 41.80.050 and 41.80.080 take effect on July 1, 2004.

(1) Bargaining units of state civil service employees in existence on June 13, 2002, shall be subject to being "divided" into separate units of supervisors and nonsupervisory employees under this section.

(a) A petition to have an existing unit divided may be filed by the exclusive bargaining representative, by the employer, or by those parties jointly.

(b) The separation of bargaining units shall be implemented on or before July 1, 2004.

(2) Bargaining units of state civil service employees in existence on June 13, 2002, shall be subject to being "perfected" under this section.

(a) A petition to have an existing bargaining unit perfected may be filed by the exclusive bargaining representative, or by the employer and exclusive bargaining representative jointly.

(b) All of the unit determination criteria set forth in RCW 41.80.070 shall be applicable to proceedings under this section. The history of bargaining in a unit configuration that is fragmentary and/or was based on narrower considerations shall not preclude creation of a "perfected" bargaining unit as to which a community of interests is demonstrated with regard to:

(i) The duties, skills and working conditions of all positions or classifications to be included in the "perfected" bargaining unit; and

(ii) The extent of organization and avoidance of unnecessary fragmentation shall be implemented to avoid stranding of other positions or classifications in units so small as to prejudice their statutory bargaining rights; and

(iii) The required separation of supervisors and non-supervisory employees is implemented based on the delegations of authority then in existence; and

(iv) Two or more existing bargaining units can be merged through the procedure set forth in this section; and

(v) The exclusive bargaining representative demonstrates that it has majority support among any employees to be accreted to the bargaining unit(s) being "perfected."

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. 03-03-064, § 391-35-026, filed 1/14/03, effective 2/14/03.]

WAC 391-35-326 Special provision—State civil service employees. Confidential exclusions for state civil service employees shall be determined under RCW 41.80.005 (4).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060 and 41.80.005(4). 03-03-064, § 391-35-326, filed 1/14/03, effective 2/14/03.]

WAC 391-35-327 Special provision—Higher education faculty. Confidential exclusions for higher education faculty employees shall be determined under RCW 41.76.005 (5) and (10).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060 and 41.76.005 (5) and (10). 03-03-064, § 391-35-327, filed 1/14/03, effective 2/14/03.]

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WAC 391-35-346 Special provision—State civil service employees. Supervisor exclusions for state civil service employees shall be determined under RCW 41.80.005(13) and 41.80.070(1).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, 41.80.005(13) and [41.80].070(1). 03-03-064, § 391-35-346, filed 1/14/03, effective 2/14/03.]

WAC 391-35-347 Special provision—Higher education faculty. Administrator exclusions for higher education faculty employees shall be determined under RCW 41.76.005 (5) and (9).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060 and 41.76.005 (5) and (9). 03-03-064, § 391-35-347, filed 1/14/03, effective 2/14/03.]

WAC 391-35-356 Special provision—State civil service employees. (1) For employees covered by chapter 41.06 RCW who work less than full-time, it shall be presumptively appropriate to include those employees in the same bargaining unit with full-time employees performing similar work.

(2) The presumption set forth in this section is intended to avoid excessive fragmentation and a potential for conflicting work jurisdiction claims which would otherwise exist in separate units of full-time and less than full-time employees.

(3) The presumption set forth in this section shall be subject to modification by adjudication.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, 41.80.005(6) and [41.80].070(1). 03-03-064, § 391-35-356, filed 1/14/03, effective 2/14/03.]

Chapter 391-45 WAC

UNFAIR LABOR PRACTICE CASE RULES

WAC

391-45-001	Scope—Contents—Other rules.
391-45-002	Sequence and numbering of rules—Special provisions.
391-45-056	Special provision—State civil service employees.

WAC 391-45-001 Scope—Contents—Other rules. This chapter governs proceedings before the public employment relations commission on complaints charging unfair labor practices under all chapters of the Revised Code of Washington (RCW) administered by the commission. The provisions of this chapter should be read in conjunction with:

(1) Chapter 10-08 WAC, which contains the model rules of procedure promulgated by the chief administrative law judge to regulate adjudicative proceedings under chapter 34.05 RCW, except:

(a) WAC 10-08-035, which is replaced by detailed requirements in WAC 391-45-050;

(b) WAC 10-08-050, which relates to office of administrative hearings procedures inapplicable to proceedings before the public employment relations commission;

(c) WAC 10-08-211, which is replaced by detailed requirements in WAC 391-45-350 and 391-45-390; and

(d) WAC 10-08-230, which is replaced by detailed requirements in WAC 391-45-070, 391-45-090, and 391-45-260.

(2) Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings

before the public employment relations commission, and which also replaces some provisions of chapter 10-08 WAC.

(3) Chapter 391-25 WAC, which regulates representation proceedings.

(4) Chapter 391-35 WAC, which regulates unit clarification proceedings and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300.

(5) Chapter 391-55 WAC, which regulates the resolution of impasses in collective bargaining.

(6) Chapter 391-65 WAC, which regulates grievance arbitration and grievance mediation proceedings.

(7) Chapter 391-95 WAC, which regulates union security nonassociation proceedings.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. 03-03-064, § 391-45-001, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. 01-14-009, § 391-45-001, filed 6/22/01, effective 8/1/01; 00-14-048, § 391-45-001, filed 6/30/00, effective 8/1/00; 96-07-105, § 391-45-001, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59 and 53.18 RCW. 90-06-074, § 391-45-001, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-048 (Order 80-7), § 391-45-001, filed 9/30/80, effective 11/1/80.]

WAC 391-45-002 Sequence and numbering of rules—Special provisions. This chapter of the Washington Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. General rules are set forth in sections with numbers divisible by ten. Where a deviation from the general rule is required for conformity with a particular statute, that special provision is set forth in a separate rule numbered as follows:

(1) Special provisions relating to chapter 41.56 RCW (Public Employees' Collective Bargaining Act) and to chapter 53.18 RCW (port employees) are set forth in WAC sections numbered one digit greater than the general rule on that subject.

(2) Special provisions relating to chapter 41.59 RCW (Educational Employment Relations Act) are set forth in WAC sections numbered two digits greater than the general rule on that subject matter.

(3) Special provisions relating to chapter 28B.52 RCW (Collective Bargaining—Academic Personnel in Community Colleges) are set forth in WAC sections numbered three digits greater than the general rule on that subject matter.

(4) Special provisions relating to RCW 41.06.340 and/or chapter 41.80 RCW (Personnel System Reform Act) are set forth in WAC sections numbered six digits greater than the general rule on that subject matter.

(5) Special provisions relating to chapter 41.76 RCW (faculty at public four-year institutions of higher education) are set forth in WAC sections numbered seven digits greater than the general rule on that subject matter.

(6) Special provisions relating to chapter 49.08 RCW (Private sector and other employees) are set forth in WAC sections numbered nine digits greater than the general rule on that subject matter.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. 03-03-064, § 391-45-002, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110,

41.58.050. 01-14-009, § 391-45-002, filed 6/22/01, effective 8/1/01; 00-14-048, § 391-45-002, filed 6/30/00, effective 8/1/00. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59 and 53.18 RCW. 90-06-074, § 391-45-002, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 83-24-034 (Order 83-04), § 391-45-002, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-048 (Order 80-7), § 391-45-002, filed 9/30/80, effective 11/1/80.]

WAC 391-45-056 Special provision—State civil service employees. All unfair labor practice cases pending before the Washington personnel resources board and/or the department of personnel on June 13, 2002, shall be transferred to and acted upon by the commission under this chapter. Documents filed in conformity with Washington personnel resources board and/or department of personnel rules prior to June 13, 2002, shall be acted upon by the commission unless a deficiency notice is issued and a period of at least twenty-one days is provided for a party to cure a noted defect.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. 03-03-064, § 391-45-056, filed 1/14/03, effective 2/14/03.]

**Chapter 391-55 WAC
IMPASSE RESOLUTION RULES**

WAC

391-55-001	Scope—Contents—Other rules.
391-55-002	Sequence and numbering of rules—Special provisions.
391-55-200	Interest arbitration—Certification of issues.

WAC 391-55-001 Scope—Contents—Other rules. This chapter governs proceedings before the public employment relations commission relating to the resolution of impasses occurring in collective bargaining under all chapters of the Revised Code of Washington (RCW) administered by the commission. The provisions of this chapter should be read in conjunction with the provisions of:

(1) Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission, and which also replaces some provisions of chapter 10-08 WAC.

(2) Chapter 391-25 WAC, which regulates representation proceedings.

(3) Chapter 391-35 WAC, which regulates unit clarification proceedings and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300.

(4) Chapter 391-45 WAC, which regulates unfair labor practice proceedings.

(5) Chapter 391-65 WAC, which regulates grievance arbitration proceedings.

(6) Chapter 391-95 WAC, which regulates union security nonassociation proceedings.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. 03-03-064, § 391-55-001, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. 01-14-009, § 391-55-001, filed 6/22/01, effective 8/1/01; 99-14-060, § 391-55-001, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-049 (Order 80-8), § 391-55-001, filed 9/30/80, effective 11/1/80.]

WAC 391-55-002 Sequence and numbering of rules—Special provisions. This chapter of the Washington Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. General rules are set forth in sections with numbers divisible by ten. Where a deviation from the general rule is required for conformity with a particular statute, that special provision is set forth in a separate rule numbered as follows:

(1) Special provisions relating to chapter 41.56 RCW (Public Employees' Collective Bargaining Act) and to chapter 53.18 RCW (port employees) are set forth in WAC sections numbered one digit greater than the general rule on that subject matter.

Special provisions relating to bargaining units eligible for interest arbitration are set forth beginning with WAC 391-55-200.

(2) Special provisions relating to chapter 41.59 RCW (Educational Employment Relations Act) are set forth in WAC sections numbered two digits greater than the general rule on that subject matter. Special provisions relating to fact finding are set forth beginning with WAC 391-55-300.

(3) Special provisions relating to chapter 28B.52 RCW (Collective Bargaining—Academic Personnel in Community Colleges) are set forth in WAC sections numbered three digits greater than the general rule on that subject matter.

(4) Special provisions relating to chapter 41.80 RCW (Personnel System Reform Act) are set forth in WAC sections numbered six digits greater than the general rule on that subject matter.

(5) Special provisions relating to chapter 41.76 RCW (faculty at public four-year institutions of higher education) are set forth in WAC sections numbered seven digits greater than the general rule on that subject matter.

(6) Special provisions relating to chapter 49.08 RCW (private sector and other employees) are set forth in WAC sections numbered nine digits greater than the general rule on that subject matter.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, 03-03-064, § 391-55-002, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050, 99-14-060, § 391-55-002, filed 7/1/99, effective 8/1/99; 96-07-105, § 391-55-002, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110, 88-12-055 (Order 88-08), § 391-55-002, filed 5/31/88. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080, 83-24-035 (Order 83-05), § 391-55-002, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040, 80-14-049 (Order 80-8), § 391-55-002, filed 9/30/80, effective 11/1/80.]

WAC 391-55-200 Interest arbitration—Certification of issues. (1) If a dispute involving a bargaining unit eligible for interest arbitration under RCW 41.56.030(7), 41.56.475, 41.56.492 or 74.39A.270 (2)(c) has not been settled after a reasonable period of mediation, and the mediator is of the opinion that his or her further efforts will not result in an agreement, the following procedure shall be implemented:

(a) The mediator shall notify the parties of his or her intention to recommend that the remaining issues in dispute be submitted to interest arbitration.

(b) Within seven days after being notified by the mediator, each party shall submit to the mediator and serve on the other party a written list (including article and section refer-

ences to parties' latest collective bargaining agreement, if any) of the issues that the party believes should be advanced to interest arbitration.

(2) The mediator shall review the lists of issues submitted by the parties.

(a) The mediator shall exclude from certification any issues that have not been mediated.

(b) The mediator shall exclude from certification any issues resolved by the parties in bilateral negotiations or mediation, and the parties may present those agreements as "stipulations" in interest arbitration under RCW 41.56.465 (1)(b), 41.56.475 (2)(b), or 41.56.492 (2)(b).

(c) The mediator may convene further mediation sessions and take other steps to resolve the dispute.

(3) If the dispute remains unresolved after the completion of the procedures in subsections (1) and (2) of this section, interest arbitration shall be initiated, as follows:

(a) Except as provided in (b) of this subsection, the mediator shall forward his or her recommendation and a list of unresolved issues to the executive director, who shall consider the recommendation of the mediator. The executive director may remand the matter for further mediation. If the executive director finds that the parties remain at impasse, the executive director shall certify the unresolved issues for interest arbitration.

(b) For a bargaining unit covered by RCW 41.56.492, the mediator shall certify the unresolved issues for interest arbitration.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, 41.56.450, [41.56].475, [41.56].492 and 74.39A.270, 03-03-064, § 391-55-200, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.450, 41.56.475 and 41.56.492, 99-14-060, § 391-55-200, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.450 and [41.56].492, 96-07-105, § 391-55-200, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040, 80-14-049 (Order 80-8), § 391-55-200, filed 9/30/80, effective 11/1/80.]

Chapter 391-65 WAC

GRIEVANCE ARBITRATION RULES

WAC

391-65-001	Scope—Contents—Other rules.
391-65-002	Sequence and numbering of rules—Special provisions.
391-65-110	Grievance arbitration—Conduct of proceedings.

WAC 391-65-001 Scope—Contents—Other rules.

This chapter governs proceedings before the public employment relations commission relating to arbitration of grievance disputes arising out of the interpretation or application of a collective bargaining agreement under all chapters of the Revised Code of Washington (RCW) administered by the commission. The provisions of this chapter should be read in conjunction with the provisions of:

(1) Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission, and which also replaces some provisions of chapter 10-08 WAC.

(2) Chapter 391-25 WAC, which regulates representation proceedings.

(3) Chapter 391-35 WAC, which regulates unit clarification proceedings and contains some well-established unit

determination standards in a subchapter of rules beginning at WAC 391-35-300.

(4) Chapter 391-45 WAC, which regulates unfair labor practice proceedings.

(5) Chapter 391-55 WAC, which regulates the resolution of impasses in collective bargaining.

(6) Chapter 391-95 WAC, which regulates union security nonassociation proceedings.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. 03-03-064, § 391-65-001, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. 01-14-009, § 391-65-001, filed 6/22/01, effective 8/1/01; 99-14-060, § 391-65-001, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-050 (Order 80-9), § 391-65-001, filed 9/30/80, effective 11/1/80.]

WAC 391-65-002 Sequence and numbering of rules—Special provisions. This chapter of the Washington Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. General rules are set forth in sections with numbers divisible by ten. Where a deviation from the general rule is required for conformity with a particular statute, that special provision is set forth in a separate rule numbered as follows:

(1) Special provisions relating to chapter 41.56 RCW (Public Employees' Collective Bargaining Act) and to chapter 53.18 RCW (port employees) are set forth in WAC sections numbered one digit greater than the general rule on that subject matter.

(2) Special provisions relating to chapter 41.59 RCW (Educational Employment Relations Act) are set forth in WAC sections numbered two digits greater than the general rule on that subject matter.

(3) Special provisions relating to chapter 28B.52 RCW (Collective Bargaining—Academic Personnel in Community Colleges) are set forth in WAC sections numbered three digits greater than the general rule on that subject matter.

(4) Special provisions relating to chapter 41.80 RCW (Personnel System Reform Act) are set forth in WAC sections numbered six digits greater than the general rule on that subject matter.

(5) Special provisions relating to chapter 41.76 RCW (faculty at public four-year institutions of higher education) are set forth in WAC sections numbered seven digits greater than the general rule on that subject matter.

(6) Special provisions relating to chapter 49.08 RCW (private sector and other employees) are set forth in WAC sections numbered nine digits greater than the general rule on that subject matter.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. 03-03-064, § 391-65-002, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. 99-14-060, § 391-65-002, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 83-24-036 (Order 83-06), § 391-65-002, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-050 (Order 80-9), § 391-65-002, filed 9/30/80, effective 11/1/80.]

WAC 391-65-110 Grievance arbitration—Conduct of proceedings. The arbitrator assigned or selected shall conduct the arbitration proceedings in the manner provided in the

collective bargaining agreement under which the dispute arises, subject to the following:

(1) Arbitration cases handled by members of the agency staff shall be kept in the public files of the agency.

(2) The services of a member of the commission staff as arbitrator shall be subject to interruption for reassignment of the staff member to other functions of the agency having a higher priority.

(3) Except as provided in subsections (1) and (2) of this section, all arbitrators shall maintain compliance with the "Code of Professional Responsibility for Arbitrators of Labor-Management Disputes" as last amended with approval of the Federal Mediation and Conciliation Service.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060 and 41.56.125. 03-03-064, § 391-65-110, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.125. 99-14-060, § 391-65-110, filed 7/1/99, effective 8/1/99; 96-07-105, § 391-65-110, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-050 (Order 80-9), § 391-65-110, filed 9/30/80, effective 11/1/80.]

Chapter 391-95 WAC

UNION SECURITY DISPUTE RULES

WAC

391-95-001	Scope—Contents—Other rules.
391-95-010	Notice of union security obligation.

WAC 391-95-001 Scope—Contents—Other rules.

This chapter governs proceedings before the public employment relations commission on disputes concerning the right of nonassociation under the union security provisions of certain chapters of the Revised Code of Washington (RCW) administered by the commission. The provisions of this chapter should be read in conjunction with:

(1) Chapter 10-08 WAC, which contains the model rules of procedure promulgated by the chief administrative law judge to regulate adjudicative proceedings under chapter 34.05 RCW, except:

(a) WAC 10-08-035, which is replaced by detailed requirements in WAC 391-95-110;

(b) WAC 10-08-050, which relates to office of administrative hearings procedures inapplicable to proceedings before the public employment relations commission;

(c) WAC 10-08-211, which is replaced by detailed requirements in WAC 391-95-270 and 391-95-290; and

(d) WAC 10-08-230, which is replaced by detailed requirements in WAC 391-95-170.

(2) Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission, and which also replaces some provisions of chapter 10-08 WAC.

(3) Chapter 391-25 WAC, which regulates representation proceedings.

(4) Chapter 391-35 WAC, which regulates unit clarification proceedings and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300.

(5) Chapter 391-45 WAC, which regulates unfair labor practice proceedings.

(6) Chapter 391-55 WAC, which regulates the resolution of impasses in collective bargaining.

(7) Chapter 391-65 WAC, which regulates grievance arbitration and grievance mediation proceedings.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. 03-03-064, § 391-95-001, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. 01-14-009, § 391-95-001, filed 6/22/01, effective 8/1/01; 00-14-048, § 391-95-001, filed 6/30/00, effective 8/1/00; 96-07-105, § 391-95-001, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59 and 53.18 RCW. 90-06-075, § 391-95-001, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-051 (Order 80-10), § 391-95-001, filed 9/30/80, effective 11/1/80.]

WAC 391-95-010 Notice of union security obligation.

(1) Whenever a collective bargaining agreement negotiated under the provisions of chapter 28B.52, 41.56, 41.59, 41.76, or 41.80 RCW contains a union security provision, the exclusive bargaining representative shall provide each affected employee with a copy of the collective bargaining agreement, and shall specifically advise each employee of his or her obligations under that agreement, including informing the employee of the amount owed, the method used to compute that amount, when such payments are to be made, and the effects of a failure to pay.

(2) Disputes concerning whether an employee is within the bargaining unit covered by a union security provision shall be resolved through unit clarification proceedings under chapter 391-35 WAC, and shall not be a subject of proceedings under this chapter.

(3) Disputes concerning interpretation or application of a union security provision shall be resolved through grievance arbitration or other procedures for interpretation or application of the collective bargaining agreement, and shall not be a subject of proceedings under this chapter.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, 28B.52.045, 41.56.122, 41.59.100, 41.76.045 and 41.80.100. 03-03-064, § 391-95-010, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.045, 41.56.122 and 41.59.100. 00-14-048, § 391-95-010, filed 6/30/00, effective 8/1/00; 90-06-075, § 391-95-010, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. 88-12-058 (Order 88-10), § 391-95-010, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. 80-14-051 (Order 80-10), § 391-95-010, filed 9/30/80, effective 11/1/80.]

Title 392 WAC

PUBLIC INSTRUCTION, SUPERINTENDENT OF

Chapters

392-121	Finance—General apportionment.
392-139	Finance—Maintenance and operation levies.
392-140	Finance—Special allocations, instructions, and requirements.

392-142 Transportation—Replacement and depreciation allocation.

Chapter 392-121 WAC

FINANCE—GENERAL APPORTIONMENT

WAC

392-121-570	Vocational indirect cost limit—Applicable code provisions—Purpose—Effective date.
392-121-571	Vocational indirect cost limit—Definitions.
392-121-573	Vocational indirect cost limit—Calculation of minimum program 31 expenditures.
392-121-574	Vocational indirect cost limit—Preliminary notice to school districts below the minimum expenditure level.
392-121-576	Vocational indirect cost limit—School district requests for review and adjustment.
392-121-578	Vocational indirect cost limit—Recovery of state allocations.

WAC 392-121-570 Vocational indirect cost limit—Applicable code provisions—Purpose—Effective date. (1) WAC 392-121-570 through 392-121-578 define the fifteen percent limit on indirect cost charges to school district state-funded vocational-secondary programs as required by the Biennial Operating Appropriations Act. These rules do not apply to federal vocational funding which is governed by federal policies.

(2) The purpose of these sections is to assure that state allocations for vocational education are expended by school districts to support state vocational programs. The minimum levels defined here are not to be construed as recommended expenditure levels.

(3) These sections are effective for the 2002-03 school year and thereafter.

[Statutory Authority: 2002 c 371 § 502(2) and RCW 28A.150.290. 04-01-058, § 392-121-570, filed 12/11/03, effective 1/11/04.]

WAC 392-121-571 Vocational indirect cost limit—Definitions. As used in WAC 392-121-570 through 392-121-578:

(1) "Program 31" means the vocational-basic-state program as defined in the *Accounting Manual for Public School Districts in the State of Washington*.

(2) "Basic allocation for vocational students" means the amount of money generated by a school district's vocational full-time equivalent enrollment in the general apportionment formula using the state funding formula factors including the grade 4-12 staffing ratios without enhancement, and using the district's average certificated instructional staff mix factor for program 31 staff from the district's S-275 personnel report.

(3) "Enhancement allocation for vocational students" means the additional money above the basic allocation for vocational students generated by a school district's vocational full-time equivalent enrollment as a result of the enhanced state vocational staffing ratio and enhanced nonemployee related cost allocation for vocational students. This enhancement shall be calculated using the district's average certificated instructional staff mix factor for program 31.

(4) "Vocational running start allocation" means the amount generated in the general apportionment formula by a school district's running start students enrolled in vocational courses in a community or technical college pursuant to chapter 392-169 WAC.

[Statutory Authority: 2002 c 371 § 502(2) and RCW 28A.150.290. 04-01-058, § 392-121-571, filed 12/11/03, effective 1/11/04.]

WAC 392-121-573 Vocational indirect cost limit—Calculation of minimum program 31 expenditures. Each school district's minimum program 31 expenditures equal the sum of the following amounts:

- (1) Eighty-five percent of the total basic and vocational enhancement allocations for vocational students;
- (2) Ninety-three percent of the vocational running start allocation; plus
- (3) Any carryover from the prior school year allowed under WAC 392-121-578.

[Statutory Authority: 2002 c 371 § 502(2) and RCW 28A.150.290. 04-01-058, § 392-121-573, filed 12/11/03, effective 1/11/04.]

WAC 392-121-574 Vocational indirect cost limit—Preliminary notice to school districts below the minimum expenditure level. (1) After the close of the school year, and before December 31, the superintendent of public instruction shall compare each school district's program 31 expenditures for the school year as reported on the district's Report F-196 annual year end financial statements to the district's minimum program 31 expenditures.

(2) If a district's program 31 expenditures are less than the minimum, then the superintendent shall notify the district of the results of the calculation including any potential recovery of state funding.

[Statutory Authority: 2002 c 371 § 502(2) and RCW 28A.150.290. 04-01-058, § 392-121-574, filed 12/11/03, effective 1/11/04.]

WAC 392-121-576 Vocational indirect cost limit—School district requests for review and adjustment. (1) After receiving notice of the preliminary notice pursuant to WAC 392-121-574, and before the ensuing January 15, a school district may request review and adjustment to the superintendent's calculations. The request shall be in a form prescribed by the superintendent of public instruction and shall be signed by the school district superintendent or the superintendent's designee.

- (2) Grounds for review and adjustment include:
- (a) Errors in the calculation; or
 - (b) Inaccurate school district data used in the calculation.
- (3) A district requesting review and adjustment due to inaccurate school district data shall submit corrected data pursuant to the superintendent's instructions.
- (4) The superintendent of public instruction shall correct any errors in the calculations or revise the school district data used in the calculations as appropriate.

[Statutory Authority: 2002 c 371 § 502(2) and RCW 28A.150.290. 04-01-058, § 392-121-576, filed 12/11/03, effective 1/11/04.]

WAC 392-121-578 Vocational indirect cost limit—Recovery of state allocations. (1) At the time of the January apportionment calculations after the close of the school year, the superintendent of public instruction shall recalculate each school district's minimum direct expenditures.

(2) If the district's program 31 expenditures are below the minimum program 31 expenditure amount, the district shall be allowed to carry over into the ensuing school year an amount equal to up to ten percent of the minimum expendi-

ture amount excluding any carryover from the prior school year.

(3) The superintendent of public instruction shall recover from the district's general apportionment allocation as a prior year adjustment an amount equal to the lesser of the district's enhancement allocation for vocational students or the following amount:

- (a) The district's minimum program 31 expenditures; minus
- (b) The district's program 31 expenditures plus any allowable carryover.

(2) Recoveries made pursuant to this section shall be adjusted after the January apportionment calculation if revised enrollment, staff mix, or expenditure data submitted by the district and accepted by the superintendent of public instruction materially affects the district's recovery amount.

[Statutory Authority: 2002 c 371 § 502(2) and RCW 28A.150.290. 04-01-058, § 392-121-578, filed 12/11/03, effective 1/11/04.]

Chapter 392-139 WAC

FINANCE—MAINTENANCE AND OPERATION LEVIES

WAC

392-139-008	Effective date.
392-139-310	Determination of excess levy base.
392-139-345	Definition—F-196.
392-139-350	Definition—Revenues in the levy base received as a fiscal agent.

WAC 392-139-008 Effective date. This chapter applies to levy authority and local effort assistance calculations for the 2005 calendar year and thereafter. Levy authority and local effort assistance calculations for prior calendar years are governed by rules in effect as of January 1 of the calendar year.

[Statutory Authority: RCW 84.52.0531(9) and 28A.150.290. 03-21-040, § 392-139-008, filed 10/8/03, effective 11/8/03. Statutory Authority: RCW 28A.150.290(1) and 84.52.0531(9). 02-17-113, § 392-139-008, filed 8/21/02, effective 9/21/02; 01-22-098, § 392-139-008, filed 11/6/01, effective 12/7/01. Statutory Authority: RCW 84.52.0531(9) and 28A.150.290. 00-09-017, § 392-139-008, filed 4/11/00, effective 5/12/00.]

WAC 392-139-310 Determination of excess levy base. The superintendent of public instruction shall calculate each school district's excess levy base as provided in this section.

(1) Sum the following state and federal allocations from the prior school year(s) as determined in subsections (4) and (5) of this section:

- (a) The basic education allocation as defined in WAC 392-139-115 and as reported on the August Report 1191;
- (b) The state and federal categorical allocations for the following:
 - (i) Pupil transportation. Allocations for pupil transportation include allocations for the following accounts:
 - 4199 Transportation - operations; and
 - 4499 Transportation - depreciation.
 - (ii) Special education. Allocations for special education include allocations for the following accounts:
 - 4121 Special education; and
 - 6124 Special education supplemental.

(iii) Education of highly capable students. Allocations for education of highly capable students include allocations identified by account 4174 Highly capable.

(iv) Compensatory education. Allocations for compensatory education include allocations identified by the following accounts:

- 4155 Learning assistance;
- 4165 Transitional bilingual;
- 4166 Student achievement;
- 6151 Disadvantaged;
- 6153 Migrant;
- 6164 Limited English proficiency;
- 6264 Bilingual (direct);
- 6267 Indian education - JOM;
- 6268 Indian education - ED; and
- 6367 Indian education - JOM.

(v) Food services. Allocations for food services include allocations identified by the following accounts:

- 4198 School food services (state);
- 6198 School food services (federal); and
- 6998 USDA commodities.

(vi) Statewide block grant programs. Allocations for statewide block grant programs include allocations identified by the following accounts:

- 4175 Flexible education; and
- 6176 Targeted assistance.

(c) General federal programs. Allocations for general federal programs identified by the following accounts:

- 5200 General purpose direct federal grants - unassigned;
- 6100 Special purpose - OSPI - unassigned;
- 6121 Special education - Medicaid reimbursement;
- 6138 Secondary vocational education;
- 6146 Skills center;
- 6152 School improvement;
- 6154 Reading first;
- 6177 Eisenhower professional development;
- 6200 Direct special purpose grants; and
- 6300 Federal grants through other agencies - unassigned;

and

- 6310 Medicaid administrative match.

(2) Increase the result obtained in subsection (1) of this section by the percentage increase per full-time equivalent student in the state basic education appropriation between the prior school year and the current school year as stated in the state Operating Appropriations Act divided by 0.55.

(3) Revenue accounts referenced in this section are defined in the accounting manual for public school districts in the state of Washington, revised 2002.

(4) The dollar amount of revenues for state and federal categorical allocations identified in this section shall come from the following sources:

(a) The following state and federal categorical allocations are taken from the Report 1197 Column A (Annual Allotment Due):

- 4121 Special education;
- 4155 Learning assistance;
- 4165 Transitional bilingual;
- 4166 Student achievement;
- 4174 Highly capable;
- 4175 Flexible education (2002-03 school year and there-

after);

- 4198 School food services (state);
- 4199 Transportation - operations;
- 4499 Transportation - depreciation;
- 6121 Special education - Medicaid reimbursements;
- 6124 Special education - supplemental;
- 6138 Secondary vocational education;
- 6146 Skills center;
- 6151 Disadvantaged;
- 6152 School improvement;
- 6153 Migrant;
- 6154 Reading first;
- 6164 Limited English proficiency;
- 6176 Targeted assistance;
- 6177 Eisenhower professional development; and
- 6198 School food services (federal).

(b) For the 2004 calendar year, the following state and federal allocations are taken from the F-195 budget including budget extensions.

For the 2005 calendar year and thereafter, the following federal allocations shall be taken from the school district's second prior year F-196 annual financial report:

- 5200 General purpose direct federal grants - unassigned;
- 6100 Special purpose - OSPI - unassigned;
- 6200 Direct special purpose grants;
- 6264 Bilingual (direct);
- 6267 Indian education - JOM;
- 6268 Indian education - ED;
- 6300 Federal grants through other agencies - unassigned;
- 6310 Medicaid administrative match;
- 6367 Indian education - JOM; and
- 6998 USDA commodities.

(5) Effective for levy authority and local effort assistance calculations for the 2005 calendar year and thereafter:

(a) District revenues determined in subsection (4) of this section shall be reduced for revenues received as a fiscal agent. School districts shall report fiscal agent revenues pursuant to instructions provided by the superintendent of public instruction.

(b) The amount determined in subsection (4)(b) of this section, after adjustment for fiscal agent moneys, shall be inflated for one year using the percentage change in the implicit price deflator for personal consumption expenditures for the United States as published for the most recent twelve-month period by the Bureau of Economic Analysis of the Federal Department of Commerce.

(6) State moneys generated by a school district's students and redirected by the superintendent of public instruction to an educational service district at the request of the school district shall be included in the district's levy base.

(7) State basic education moneys generated by a school district's students and allocated directly to a technical college shall be included in the district's levy base.

[Statutory Authority: RCW 84.52.0531(9) and 28A.150.290. 03-21-040, § 392-139-310, filed 10/8/03, effective 11/8/03. Statutory Authority: RCW 28A.150.290(1) and 84.52.0531(9). 02-17-113, § 392-139-310, filed 8/21/02, effective 9/21/02; 01-22-098, § 392-139-310, filed 11/6/01, effective 12/7/01. Statutory Authority: RCW 84.52.0531(9) and 28A.150.290. 00-09-017, § 392-139-310, filed 4/11/00, effective 5/12/00. Statutory Authority: RCW 84.52.0531(a) and 28A.150.290(2). 98-08-096 (Order 98-06), § 392-139-310, filed 4/1/98, effective 5/2/98. Statutory Authority: RCW 84.52.0531(10) and 28A.150.290. 96-19-037 (Order 96-13), § 392-139-310, filed 9/11/96, effective 10/12/96. Statutory Authority: RCW 28A.150.290(2) and 84.52.0531(10). 93-21-092 (Order 93-20), § 392-139-

310, filed 10/20/93, effective 11/20/93; 92-19-124 (Order 92-07), § 392-139-310, filed 9/21/92, effective 10/22/92. Statutory Authority: RCW 28A.41.170 and 84.52.0531(10). 89-23-121 (Order 18), § 392-139-310, filed 11/22/89, effective 12/23/89; 88-03-007 (Order 88-6), § 392-139-310, filed 1/8/88.]

WAC 392-139-345 Definition—F-196. As used in this chapter, "F-196" means the annual school district financial reports filed by the school district with OSPI pursuant to WAC 392-117-035. This document includes the total amounts of revenue recorded from federal sources for the closed school year. These federal revenues reported on the school district's F-196 for the school year are included in the district's excess levy base pursuant to WAC 392-139-310 if they qualify for inclusion and are not reported on the Report 1197. The accounts included in the levy base and reported on the F-196 are listed in WAC 392-139-310 (4)(b).

[Statutory Authority: RCW 84.52.0531(9) and 28A.150.290. 03-21-040, § 392-139-345, filed 10/8/03, effective 11/8/03.]

WAC 392-139-350 Definition—Revenues in the levy base received as a fiscal agent. (1) As used in this chapter, "revenues in the levy base received as a fiscal agent" means revenues included in a district's levy base pursuant to WAC 392-139-310 that are:

- (a) Received by the district as an administrator for a consortium or cooperative for the benefit of students enrolled in other school districts;
- (b) Passed through to another entity for the benefit of students not enrolled in the school district or persons not employed by the school district; or
- (c) Directly expended by the district for the benefit of students not enrolled in the school district or persons not employed by the school district.

(2) For the purposes of this chapter, "revenues in the levy base received as a fiscal agent" do not include:

- (a) Revenues received for the operation of an interdistrict cooperation program authorized pursuant to RCW 28A.335.160 or 28A.225.250 and chapter 392-135 WAC, if levy authority is transferred pursuant to WAC 392-139-330 or 392-139-901; or
- (b) Revenues received by a high school district for serving students from a nonhigh school district pursuant to chapter 28A.545 RCW and chapter 392-132 WAC for which levy authority is transferred pursuant to WAC 392-139-340.

[Statutory Authority: RCW 84.52.0531(9) and 28A.150.290. 03-21-040, § 392-139-350, filed 10/8/03, effective 11/8/03.]

Chapter 392-140 WAC

FINANCE—SPECIAL ALLOCATIONS, INSTRUCTIONS, AND REQUIREMENTS

WAC

392-140-908	K-4 Staff enhancement—Determination of the K-4 certificated staff ratio equivalent of increased K-4 classified instructional assistants.
392-140-912	K-4 Staff enhancement—Determination of K-4 apportionment ratios.
392-140-974	Salary bonus for teachers who attain certification by the national board—Administrative procedures.

WAC 392-140-908 K-4 Staff enhancement—Determination of the K-4 certificated staff ratio equivalent of

increased K-4 classified instructional assistants. For those school districts with an increase in K-4 basic education classified instructional assistants, the superintendent of public instruction shall calculate a K-4 certificated staff ratio equivalent as follows:

- (1) Sum the increase in the district's K-4 basic education classified instructional assistants determined pursuant to WAC 392-140-907;
- (2) Divide the result of subsection (1) of this section by the district's FTE K-4 basic education enrollment;
- (3) Multiply the result of subsection (2) of this section by the ratio of actual average salary for basic education classified instructional assistants to average certificated instructional staff salary for the purpose of apportionment; and
- (4) Multiply the result of subsection (3) of this section by 1000.

[Statutory Authority: RCW 28A.150.290(1) and section 502 (2)(a) of ESSB 6387. 03-03-001, § 392-140-908, filed 1/2/03, effective 2/2/03. Statutory Authority: RCW 28A.150.290(2) and 2001 2nd sp.s. c 7 § 502 (2)(a)(v). 02-09-024, § 392-140-908, filed 4/8/02, effective 5/9/02. Statutory Authority: RCW 28A.150.290(2) and 1999 c 309 § 502 (2)(a)(iii). 00-02-063, § 392-140-908, filed 1/3/00, effective 2/3/00.]

WAC 392-140-912 K-4 Staff enhancement—Determination of K-4 apportionment ratios. The superintendent of public instruction shall determine each school district's ratio of state allocated certificated instructional staff units per one thousand K-4 students for state basic education apportionment as follows:

(1) For the months of September through December, the superintendent shall use the district's estimated K-4 ratio as submitted on Report F-203 Estimates of State Revenue, or as submitted on a letter to the superintendent after submission of Report F-203.

(2) Beginning with the January apportionment payment and each month thereafter, the superintendent shall calculate the district's K-4 apportionment ratio as the greater of (a) or (b) of this subsection:

(a) The district's minimum state-funded K-4 staffing ratio, using FTE enrollment for state apportionment, and calculated as follows:

- (i) Sum the district's K-3 FTE enrollment times 0.049 and the district's fourth grade FTE enrollment times 0.046;
- (ii) Divide the result of (a)(i) of this subsection by the district total K-4 FTE enrollment;
- (iii) Multiply the result of (a)(ii) of this subsection by 1000.

(b) The lesser of:
 (i) 55.4 for the 2001-02 school year and 54.0 for the 2002-03 school year and thereafter; or
 (ii) The sum of the following:

- (A) The district's K-4 certificated instructional staff ratio pursuant to WAC 392-140-910; and
- (B) The lesser of 2.2 for the 2001-02 school year and 0.8 for the 2002-03 school year and thereafter or the district's K-4 staff ratio equivalent of K-6 basic education supplemental contracts for extended learning opportunities pursuant to WAC 392-140-904; and

(C) If the district's K-4 basic education certificated instructional staff ratio is 51.00 or greater, the lesser of 1.3 or the district's K-4 certificated staff ratio equivalent of the

increased K-4 classified instructional assistants pursuant to WAC 392-140-908 if applicable, otherwise zero.

[Statutory Authority: RCW 28A.150.290(1) and section 502 (2)(a) of ESSB 6387. 03-03-001, § 392-140-912, filed 1/2/03, effective 2/2/03. Statutory Authority: RCW 28A.150.290(2) and 2001 2nd sp.s. c 7 § 502 (2)(a)(v). 02-09-024, § 392-140-912, filed 4/8/02, effective 5/9/02. Statutory Authority: RCW 28A.150.290(2) and 1999 c 309 § 502 (2)(a)(iii). 00-02-063, § 392-140-912, filed 1/3/00, effective 2/3/00.]

WAC 392-140-974 Salary bonus for teachers who attain certification by the national board—Administrative procedures. (1) School districts that employ teachers eligible for the salary bonus shall report those employees to the office of superintendent of public instruction by submitting Form SPI 1525 for each individual.

(2) Districts shall document each teacher's eligibility by maintaining on file for audit a copy of the teacher's national board certification notice and, if the teacher is not shown on Report S-275, evidence of employment and duties assigned.

(3) Report forms received by the superintendent of public instruction by the 15th of the month shall be paid in that month's apportionment and displayed on Report 1197, in revenue account 4158.

(4) For each candidate, the superintendent of public instruction shall send the district the amount of the salary bonus set in the operating appropriations act plus an amount for the district's (employer) portion of social security benefits.

(5) The district shall pay the bonus to the employee in a lump sum amount on a supplemental contract pursuant to RCW 28A.400.200.

(6) The salary bonus is excluded from the definition of "earnable compensation" under RCW 41.32.010(10).

[Statutory Authority: RCW 28A.150.290(1) and section 513(11) of ESSB 5404 (the 2003-05 state operating budget). 03-21-100, § 392-140-974, filed 10/17/03, effective 11/17/03. Statutory Authority: RCW 28A.150.290(2) and 2001 c 7 § 514(12). 02-15-023, § 392-140-974, filed 7/9/02, effective 8/9/02.]

Chapter 392-142 WAC

TRANSPORTATION—REPLACEMENT AND DEPRECIATION ALLOCATION

WAC

392-142-010	Purpose.
392-142-090	Repealed.
392-142-120	Repealed.
392-142-125	Definition—Student capacity.
392-142-140	Repealed.
392-142-145	Definition—Useful life.
392-142-150	Repealed.
392-142-155	Definition—School bus categories.
392-142-165	Definition—State-determined purchase price.
392-142-170	Repealed.
392-142-180	Definition—Total school bus replacement payments.
392-142-185	Definition—Imputed interest earnings.
392-142-190	Definition—Salvage value.
392-142-195	Definition—SPI Form 1020.
392-142-200	Repealed.
392-142-212	Obtaining competitive price quotes.
392-142-213	Purchase of school buses by school districts.
392-142-225	Placement of used school buses on state replacement or depreciation schedules.
392-142-230	Repealed.
392-142-235	Repealed.
392-142-240	Calculation of annual state replacement payment for district-owned school buses.
392-142-245	Calculation of annual state depreciation payment for contractor-owned school buses.

392-142-250	Allocation of state replacement or depreciation payment.
392-142-255	Deposit of payments in transportation vehicle fund.
392-142-260	Allowable uses of transportation vehicle fund.
392-142-270	Disposition of school buses.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

392-142-090	Definition—Washington state patrol inspection officer. [Statutory Authority: RCW 28A.41.170 and 28A.41.540. 90-02-077 (Order 21), § 392-142-090, filed 1/2/90, effective 2/2/90.] Repealed by 03-13-049, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 28A.150.290.
392-142-120	Definition—Seating reference point. [Statutory Authority: RCW 28A.41.170 and 28A.41.540. 90-02-077 (Order 21), § 392-142-120, filed 1/2/90, effective 2/2/90.] Repealed by 03-13-049, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 28A.150.290.
392-142-140	Definition—Transmission. [Statutory Authority: RCW 28A.41.170 and 28A.41.540. 90-02-077 (Order 21), § 392-142-140, filed 1/2/90, effective 2/2/90.] Repealed by 03-13-049, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 28A.150.290.
392-142-150	Definition—School bus categories for those buses purchased before September 1, 1982, and after September 1, 1975. [Statutory Authority: RCW 28A.41.170 and 28A.41.540. 90-02-077 (Order 21), § 392-142-150, filed 1/2/90, effective 2/2/90.] Repealed by 03-13-049, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 28A.150.290.
392-142-170	Definition—State-determined specialized equipment price. [Statutory Authority: 1995 1st sp.s. c 10, RCW 28A.150.290 and chapter 28A.160 RCW as amended in ESSB 5408, section 1(6). 95-17-011, § 392-142-170, filed 8/4/95, effective 9/4/95. Statutory Authority: RCW 28A.41.170 and 28A.41.540. 90-02-077 (Order 21), § 392-142-170, filed 1/2/90, effective 2/2/90.] Repealed by 03-13-049, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 28A.150.290.
392-142-200	Definition—SPI Form 1029. [Statutory Authority: RCW 28A.41.170 and 28A.41.540. 90-02-077 (Order 21), § 392-142-200, filed 1/2/90, effective 2/2/90.] Repealed by 03-13-049, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 28A.150.290.
392-142-230	Calculation of annual state depreciation payment for buses purchased after September 1, 1975, and before September 1, 1982. [Statutory Authority: RCW 28A.41.170 and 28A.41.540. 90-02-077 (Order 21), § 392-142-230, filed 1/2/90, effective 2/2/90.] Repealed by 03-13-049, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 28A.150.290.
392-142-235	Allocation of state depreciation payment for school buses purchased after September 1, 1975, and before September 1, 1982. [Statutory Authority: 1990 c 33. 91-16-011 (Order 91-12), § 392-142-235, filed 7/26/91, effective 8/26/91. Statutory Authority: RCW 28A.41.170 and 28A.41.540. 90-02-077 (Order 21), § 392-142-235, filed 1/2/90, effective 2/2/90.] Repealed by 03-13-049, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 28A.150.290.

WAC 392-142-010 Purpose. The purpose of this chapter is to implement RCW 28A.160.200 by developing:

- (1) Student transportation vehicle categories;
- (2) State-determined purchase prices for student transportation vehicle categories;
- (3) Standards for operation and maintenance of school buses;
- (4) A replacement schedule (referred to in the statute as reimbursement schedule) and allocation process for district-owned school buses;
- (5) A depreciation schedule and allocation process for school buses contracted from private carriers; and
- (6) Competitive specifications for each category of school bus.

[Statutory Authority: RCW 28A.150.290. 03-13-049, § 392-142-010, filed 6/12/03, effective 7/13/03. Statutory Authority: 1995 1st sp.s. c 10, RCW 28A.150.290 and chapter 28A.160 RCW as amended in ESSB 5408, section 1(6). 95-17-011, § 392-142-010, filed 8/4/95, effective 9/4/95. Statutory Authority: RCW 28A.41.170 and 28A.41.540. 90-02-077 (Order 21), § 392-142-010, filed 1/2/90, effective 2/2/90. Statutory Authority: RCW 28A.41.170. 83-22-031 (Order 83-16), § 392-142-010, filed 10/26/83.]

WAC 392-142-090 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-142-120 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-142-125 Definition—Student capacity. As used in this chapter, "student capacity" means the number of students designated by the school bus manufacturer that can be seated on a school bus if the vehicle had a maximum complement of seats.

[Statutory Authority: RCW 28A.150.290. 03-13-049, § 392-142-125, filed 6/12/03, effective 7/13/03. Statutory Authority: 1995 1st sp.s. c 10, RCW 28A.150.290 and chapter 28A.160 RCW as amended in ESSB 5408, section 1(6). 95-17-011, § 392-142-125, filed 8/4/95, effective 9/4/95. Statutory Authority: RCW 28A.41.170 and 28A.41.540. 90-02-077 (Order 21), § 392-142-125, filed 1/2/90, effective 2/2/90.]

WAC 392-142-140 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-142-145 Definition—Useful life. As used in this chapter, "useful life" means the number of years that a school bus is expected to be in use as assigned to the category of school bus by the superintendent of public instruction.

[Statutory Authority: RCW 28A.150.290. 03-13-049, § 392-142-145, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 28A.41.170 and 28A.41.540. 90-02-077 (Order 21), § 392-142-145, filed 1/2/90, effective 2/2/90.]

WAC 392-142-150 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-142-155 Definition—School bus categories. As used in this chapter, "school bus categories" means those school bus categories determined annually by the superintendent of public instruction, in consultation with the regional transportation coordinators of the educational service districts, including student capacity, fuel type, and useful life. The superintendent, in consultation with the regional transportation coordinators shall determine placement of buses into specific categories and lifetimes for those types of buses no longer available.

[Statutory Authority: RCW 28A.150.290. 03-13-049, § 392-142-155, filed 6/12/03, effective 7/13/03; 01-17-005, § 392-142-155, filed 8/1/01, effective 9/1/01; 97-17-042 (Order 97-02), § 392-142-155, filed 8/14/97, effective 9/15/97. Statutory Authority: 1996 c 283. 96-16-011 (Order 96-10), § 392-142-155, filed 7/25/96, effective 8/25/96. Statutory Authority: 1995 1st sp.s. c 10, RCW 28A.150.290 and chapter 28A.160 RCW as amended in ESSB 5408, section 1(6). 95-17-011, § 392-142-155, filed 8/4/95, effective 9/4/95. Statutory Authority: RCW 28A.41.170 and 28A.41.540. 91-23-071 (Order 25), § 392-142-155, filed 11/19/91, effective 12/20/91; 90-02-077 (Order 21), § 392-142-155, filed 1/2/90, effective 2/2/90.]

WAC 392-142-165 Definition—State-determined purchase price. As used in this chapter, "state-determined

purchase price" means the state replacement or depreciation rate for school buses which shall be based upon the lowest competitive price quote received from school bus dealers for each category of school bus, documented in modified vendor bid proposals associated with meeting state-supported competitive specifications.

Included in the lowest competitive price quote are:

- (1) Freight to the school district; and
- (2) Cost associated with full payment within thirty days of delivery.

Sales tax is not included as a part of establishing the lowest price quote. Sales tax shall be included in the state-determined purchase price at the highest rate in the state as provided annually by the department of revenue.

[Statutory Authority: RCW 28A.150.290. 03-13-049, § 392-142-165, filed 6/12/03, effective 7/13/03. Statutory Authority: 1995 1st sp.s. c 10, RCW 28A.150.290 and chapter 28A.160 RCW as amended in ESSB 5408, section 1(6). 95-17-011, § 392-142-165, filed 8/4/95, effective 9/4/95. Statutory Authority: RCW 28A.41.170 and 28A.41.540. 91-23-071 (Order 25), § 392-142-165, filed 11/19/91, effective 12/20/91; 90-02-077 (Order 21), § 392-142-165, filed 1/2/90, effective 2/2/90.]

WAC 392-142-170 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-142-180 Definition—Total school bus replacement payments. As used in this chapter, "total school bus replacement payments" means the sum of all state school bus replacement payments for prior school years made for an individual school bus.

[Statutory Authority: RCW 28A.150.290. 03-13-049, § 392-142-180, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 28A.41.170 and 28A.41.540. 90-02-077 (Order 21), § 392-142-180, filed 1/2/90, effective 2/2/90.]

WAC 392-142-185 Definition—Imputed interest earnings. As used in this chapter, "imputed interest earnings" means the sum of interest which is assumed to be earned on moneys assumed to be available in the transportation vehicle fund from state payments and accumulated interest earnings. The rate used shall be the average of the treasury bill rate for ninety-day notes during the previous state fiscal year calculated on the basis of simple interest.

[Statutory Authority: RCW 28A.150.290. 03-13-049, § 392-142-185, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 28A.41.170 and 28A.41.540. 90-02-077 (Order 21), § 392-142-185, filed 1/2/90, effective 2/2/90.]

WAC 392-142-190 Definition—Salvage value. As used in this chapter, for those school buses purchased after September 1, 1982, "salvage value" means the state-determined purchase price for the year the school bus was placed on the state replacement schedule divided by the useful life and multiplied by twenty-five percent.

[Statutory Authority: RCW 28A.150.290. 03-13-049, § 392-142-190, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 28A.41.170 and 28A.41.540. 90-02-077 (Order 21), § 392-142-190, filed 1/2/90, effective 2/2/90.]

WAC 392-142-195 Definition—SPI Form 1020. As used in this chapter, "SPI Form 1020" means that form prepared and distributed by the superintendent of public instruction and used by school districts to notify the superintendent

of public instruction of the acquisition or disposition of a school bus.

[Statutory Authority: RCW 28A.150.290. 03-13-049, § 392-142-195, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 28A.41.170 and 28A.41.540. 90-02-077 (Order 21), § 392-142-195, filed 1/2/90, effective 2/2/90.]

WAC 392-142-200 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-142-212 Obtaining competitive price quotes. The superintendent of public instruction shall annually request competitive price quotations from school bus dealers for state-supported specifications for all school bus categories. The lowest price quote will be determined using only the base quote price as stated for the state-supported base bus without options. The request for price quotes will at least include:

(1) A modified vendor bid proposal for one representative state-supported school bus in each category as defined in WAC 392-142-155.

(a) A list of selected state-supported specifications; and
(b) A list of vendor options which may be purchased at the school district's discretion and expense.

(2) A requirement that each school bus dealer submit a statement of assurance that school districts may purchase school buses at the quoted price for a period of one year.

[Statutory Authority: RCW 28A.150.290. 03-13-049, § 392-142-212, filed 6/12/03, effective 7/13/03. Statutory Authority: 1995 1st sp.s. c 10, RCW 28A.150.290 and chapter 28A.160 RCW as amended in ESSB 5408, section 1(6). 95-17-011, § 392-142-212, filed 8/4/95, effective 9/4/95.]

WAC 392-142-213 Purchase of school buses by school districts. (1) School districts may purchase school buses directly from the school bus dealer who has provided the lowest competitive price quote in each school bus category without regard to RCW 28A.335.190.

(2) School districts that do not purchase school buses in accordance with subsection (1) of this section may conduct their own competitive bid process in accordance with RCW 28A.335.190. School districts that choose to conduct their own bid shall:

(a) Use vendor bid proposal forms provided by the superintendent of public instruction.

(b) Prepare a summary of all bids received for retention in school district files and submission to the superintendent of public instruction.

(3) School buses which have been acquired by school districts or educational service districts, in accordance with subsection (1) or (2) of this section, are entitled to reimbursement payments for school bus replacement in accordance with this chapter.

[Statutory Authority: RCW 28A.150.290. 03-13-049, § 392-142-213, filed 6/12/03, effective 7/13/03. Statutory Authority: 1995 1st sp.s. c 10, RCW 28A.150.290 and chapter 28A.160 RCW as amended in ESSB 5408, section 1(6). 95-17-011, § 392-142-213, filed 8/4/95, effective 9/4/95.]

WAC 392-142-225 Placement of used school buses on state replacement or depreciation schedules. A used school bus shall be placed on the state replacement or depreciation schedule as if it had been issued a school bus operation permit on the first of September in the year of manufac-

ture, including an estimate by the superintendent of public instruction of:

(1) Prior school years total state replacement or depreciation payments;

(2) Imputed interest earnings (if purchased by a school district); and

(3) Salvage value (if purchased by a school district).

[Statutory Authority: RCW 28A.150.290. 03-13-049, § 392-142-225, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 28A.41.170 and 28A.41.540. 90-02-077 (Order 21), § 392-142-225, filed 1/2/90, effective 2/2/90.]

WAC 392-142-230 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-142-235 Repealed. See Disposition Table at beginning of this chapter.

WAC 392-142-240 Calculation of annual state replacement payment for district-owned school buses. The superintendent of public instruction shall calculate each school district's annual state replacement payment for district-owned school buses as follows:

(1) For district-owned school buses issued a school bus operation permit prior to the fifteenth of the month of the current school year:

(a) Place each school bus in the appropriate school bus category set forth in WAC 392-142-155;

(b) Divide the state determined purchase price by the useful lifetime in months as determined in (a) of this subsection; and

(c) Multiply the result obtained in (b) of this subsection by the number of months remaining in the school year.

(2) For school buses issued a school bus operation permit prior to the current school year:

(a) Place each school bus in the appropriate school bus category set forth in WAC 392-142-155;

(b) Divide the state determined purchase price by the useful lifetime in months determined in (a) of this subsection;

(c) Multiply the result obtained in (b) of this subsection by the total number of months the school bus has been on the replacement schedule including the months for the current school year;

(d) Subtract from the result obtained in (c) of this subsection the total school bus replacement payments made in prior school years;

(e) Subtract from the result obtained in (c) of this subsection the imputed interest earnings; and

(f) Subtract from the result obtained in (e) of this subsection the salvage value of the school bus if the current school year is the final year of the vehicle's useful life.

[Statutory Authority: RCW 28A.150.290. 03-13-049, § 392-142-240, filed 6/12/03, effective 7/13/03. Statutory Authority: 1995 1st sp.s. c 10, RCW 28A.150.290 and chapter 28A.160 RCW as amended in ESSB 5408, section 1(6). 95-17-011, § 392-142-240, filed 8/4/95, effective 9/4/95. Statutory Authority: RCW 28A.150.290 and 28A.160-130-200. 93-13-083 (Order 93-10), § 392-142-240, filed 6/18/93, effective 7/19/93. Statutory Authority: RCW 28A.41.170 and 28A.41.540. 90-02-077 (Order 21), § 392-142-240, filed 1/2/90, effective 2/2/90.]

WAC 392-142-245 Calculation of annual state depreciation payment for contractor-owned school buses. The

superintendent of public instruction shall calculate each school district's state depreciation payment for contractor-owned school buses as follows:

(1) For contractor-owned school buses issued a school bus operation permit prior to the fifteenth of the month of the current school year:

(a) Place each bus in the appropriate school bus category set forth in WAC 392-142-155;

(b) Divide the state determined purchase price by the useful lifetime in months determined in (a) of this subsection; and

(c) Multiply the result obtained in (b) of this subsection by the number of months remaining in the school year.

(2) For contractor-owned school buses issued a school bus operation permit in a prior school year:

(a) Place each school bus in the appropriate school bus category set forth in WAC 392-142-155; and

(b) Divide the state-determined purchase price at the time the school bus was purchased by the useful lifetime for the appropriate school bus category set forth in WAC 392-142-155.

[Statutory Authority: RCW 28A.150.290. 03-13-049, § 392-142-245, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 28A.41.170 and 28A.41.540. 90-02-077 (Order 21), § 392-142-245, filed 1/2/90, effective 2/2/90.]

WAC 392-142-250 Allocation of state replacement or depreciation payment. The superintendent of public instruction shall apportion school bus replacement or depreciation payments each school year calculated as follows:

(1) Pursuant to WAC 392-142-240 in:

(a) The September apportionment payment for those school buses issued school bus operating permits in prior school years; or

(b) The first apportionment payment after the issuance of the school bus operating permit for school buses purchased in the current school year; or

(2) Pursuant to WAC 392-142-245 according to the schedule set forth in RCW 28A.510.250.

[Statutory Authority: RCW 28A.150.290. 03-13-049, § 392-142-250, filed 6/12/03, effective 7/13/03. Statutory Authority: 1990 c 33. 91-16-011 (Order 91-12), § 392-142-250, filed 7/26/91, effective 8/26/91. Statutory Authority: RCW 28A.41.170 and 28A.41.540. 90-02-077 (Order 21), § 392-142-250, filed 1/2/90, effective 2/2/90.]

WAC 392-142-255 Deposit of payments in transportation vehicle fund. School districts shall deposit proceeds for the rent, sale, or lease of school buses and replacement payments allocated pursuant to WAC 392-142-240 in the transportation vehicle fund. School districts shall not deposit school bus depreciation payments allocated pursuant to WAC 392-142-245 in the transportation vehicle fund. For school buses placed on the reimbursement system between September 1, 1975, and August 31, 1980, the superintendent of public instruction shall recover ninety percent of the net proceeds of the sale of such vehicles by deduction from the next annual reimbursement allocation. For school buses placed on the reimbursement system between September 1, 1980, and August 31, 1982, the superintendent of public instruction shall recover one hundred percent of the net proceeds of the sale of such vehicles by deduction from the next annual reimbursement allocation.

[Statutory Authority: RCW 28A.150.290. 03-13-049, § 392-142-255, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 28A.41.170 and 28A.41.540. 90-02-077 (Order 21), § 392-142-255, filed 1/2/90, effective 2/2/90.]

WAC 392-142-260 Allowable uses of transportation vehicle fund. School districts shall use moneys in the transportation vehicle fund for the following purposes:

(1) The purchase of school buses;

(2) Performing major repairs of a school bus receiving prior approval by the superintendent of public instruction. Repairs costing less than twenty-five percent of the current state determined purchase price for that type and category of vehicle shall not be considered a major repair.

(3) The transfer of moneys from the transportation vehicle fund to the debt service fund exclusively for the payment of debt and interest incurred by the transportation vehicle fund shall not be considered to be a transfer of moneys from the transportation vehicle fund to any other fund within the meaning of RCW 28A.160.130.

[Statutory Authority: RCW 28A.150.290. 03-13-049, § 392-142-260, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 28A.41.170 and 28A.41.540. 91-23-071 (Order 25), § 392-142-260, filed 11/19/91, effective 12/20/91. Statutory Authority: Chapter 28A.530 and HB 1224. 91-23-042 (Order 21), § 392-142-260, filed 11/14/91, effective 12/15/91. Statutory Authority: RCW 28A.41.170 and 28A.41.540. 90-02-077 (Order 21), § 392-142-260, filed 1/2/90, effective 2/2/90.]

WAC 392-142-270 Disposition of school buses. Each school district shall notify the superintendent of public instruction of the disposition of a school bus on SPI Form 1020 within thirty days of this action.

[Statutory Authority: RCW 28A.150.290. 03-13-049, § 392-142-270, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 28A.41.170 and 28A.41.540. 90-02-077 (Order 21), § 392-142-270, filed 1/2/90, effective 2/2/90.]

Title 415 WAC

RETIREMENT SYSTEMS, DEPARTMENT OF

Chapters

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GENERAL PROVISIONS

WAC

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WAC 415-02-140 What is excess compensation and how is it calculated? (1) What is excess compensation? Excess compensation refers to certain payments from an employer to an employee, if the payment is used in the calculation of the employee's retirement allowance. If used in the calculation of an employee's retirement allowance, the following payments are excess compensation:

- A cash out of unused annual leave in excess of two hundred forty hours;
- A cash out of other forms of leave, including sick leave and holiday leave;
- A payment for a personal expense, if the payment qualifies as reportable compensation in the employee's own retirement system;
- That portion of any payment, such as an overtime or incentive payment, that exceeds twice the employee's regular rate of pay for the period of time that the overtime or incentive payment applies; and
- Any termination or severance payment.

(2) How is the amount of excess compensation calculated? The department:

- Determines the increased amount of retirement benefits related to the excess compensation;
- Obtains the actuarial factor based on age for the monthly benefit per one dollar of accumulation to defined benefit plan (see WAC 415-02-340);
- Divides the benefit increase due to excess compensation by the actuarial factor; and
- Uses the result for the excess compensation billing.

(3) How does the payment of excess compensation affect employers? The department will bill an employer for any increase in an employee's retirement benefit resulting from the excess compensation. The employer must pay the present value of the amount by which the employee's pension is increased.

(4) Examples:

(a) Example 1: Excess compensation arising from cash out of sick leave (PERS Plan 1):

Denise is a 59 year old public employees' retirement system Plan 1 member and retires with thirty years of service. She will be cashing out \$8,000 in sick leave. Denise earned her two highest years of pay during her last two years of employment; therefore, the department will use these years to compute her average final compensation (AFC).

Year 1 - \$59,000 Salary

Year 2 - \$61,000 Salary + \$8,000 sick leave cash out

Q: Did Denise receive excess compensation?

A: Yes. Under subsection (1)(b) of this section, the \$8,000 sick leave cash out is excess compensation.

Q: Does the excess compensation increase Denise's retirement allowance?

A: Yes. Denise's retirement allowance increases by \$200/month as shown:

Without the excess compensation (cash out):

AFC = $(\$59,000 + \$61,000)/2 = \$60,000$

Retirement allowance = $2\% \times \$60,000 \times 30 \text{ years} = \$36,000/\text{year}$
 (\$3,000/month)

With the excess compensation (cash out):

AFC = $(\$59,000 + \$61,000 + \$8,000)/2 = \$64,000$

Retirement allowance = $2\% \times \$64,000 \times 30 \text{ years} = \$38,400/\text{year}$
 (\$3,200/month)

Difference in retirement allowances:

$\$3,200/\text{month} - \$3,000/\text{month} = \$200/\text{month}$

Q: How much must the employer pay to fund the additional retirement costs?

A: The employer must pay \$24,565.50, as shown:

Using an annuity factor of 0.0081415¹:

$$\frac{\$200/\text{month}}{0.0081415} = \$24,565.50$$

¹Based on Denise's age of 59. The factor can be found in the table in WAC 415-02-340.

(b) Example 2: Excess compensation arising from cash out of leave (TRS Plan 1):

George is a teachers' retirement system Plan 1 member who has 28 years of service and is retiring at age 55 from a school district. The collective bargaining agreement provides two days of personal holiday leave per year and allows for the cash out at retirement of any unused balance of personal holiday leave. Personal leave days are defined as "other forms of leave" under subsection (1)(b) of this section. The following example shows the computation of excess compensation:

Year 1 - \$52,500 Salary

Year 2 - \$54,000 Salary + \$900 for four days of personal leave cash out

Q: Did George receive excess compensation?

A: Yes. Under subsection (1)(b) of this section, the \$900 leave cash out is excess compensation.

Q: Does the excess compensation increase George's retirement allowance?

A: Yes. George's retirement allowance increases by \$21/month as shown:

Without the excess compensation (cash out):

AFC = $(\$52,500 + \$54,000)/2 = \$53,250$
 Retirement allowance = $2\% \times \$53,250 \times 28 \text{ years} = \$29,820$
 (\$2,485/month)

With the excess compensation (cash out):

AFC = $(\$52,500 + \$54,000 + \$900)/2 = \$53,700$
 Retirement allowance = $2\% \times \$53,700 \times 28 \text{ years} = \$30,072$
 (\$2,506/month)

Difference in retirement allowances:

\$2,506/month - \$2,485/month = \$21/month

Q: How much must the employer pay to fund the additional retirement costs?

A: The employer must pay \$2,802.28, as shown:

Using an annuity factor of 0.0074939²:
 $\frac{\$21/\text{month}}{0.0074939} = \$2,802.28$

²Based on George's age of 55. The factor can be found in the table in WAC 415-02-340.

(c) Example 3: Excess compensation from bonus.

Susan is retiring at age 65 in PERS Plan 2. She worked on a special project in February. Her employer awarded Susan with a bonus for February of \$15,083.33. The department will compute Susan's excess compensation as follows:

Year 1 - \$59,000 Salary
Year 2 - \$61,000 Salary + \$15,083.33 bonus for services provided in the month of February.

Q: Is there excess compensation?

A: Yes. There is \$4,916.67 in excess compensation, as shown:

Regular monthly rate: $\$61,000/12 = \$5,083.33/\text{month}$
 Twice February's monthly rate: $2 \times \$5,083.33 = \$10,166.66$
 Excess compensation: $\$15,083.33 - \$10,166.66 = \$4,916.67$

Q: Does the excess compensation increase Susan's retirement allowance?

A: Yes. It increases by \$122.91/month, as shown:

Without excess compensation (portion of bonus):

AFC = $(\$59,000 + \$61,000 + \$15,083.33 - \$4,916.67)/2 = \$65,083.33$
 Retirement allowance years = $2\% \times \$65,083.33 \times 30 \text{ years} = \$39,050/\text{year} (\$3,254.17/\text{month})$

With the excess compensation (portion of bonus):

AFC = $(\$59,000 + \$61,000 + \$15,083.33)/2 = \$67,541.67$
 Retirement allowance years = $2\% \times \$67,541.67 \times 30 \text{ years} = \$40,525/\text{year} (\$3,377.08/\text{month})$

Difference in retirement allowances:

\$3,377.08/month - \$3,254.17/month = \$122.91/month

Q: How much must the employer pay to fund the additional retirement costs?

A: The employer must pay \$16,962.93, as shown:

Using an annuity factor of 0.0072458:

$\frac{\$122.91/\text{month}}{0.0072458} = \$16,962.93$

[Statutory Authority: RCW 41.50.050(5) and 41.50.150. 03-06-043, § 415-02-140, filed 2/27/03, effective 4/1/03.]

WAC 415-02-310 How does the department use my age in calculating benefits? This section provides an overview of the several different ways in which the department uses age in calculating benefits. The department may use your age to determine your retirement date, early retirement factors to apply, survivor factors, or cost of living adjustment factors.

(1) **Present value:** The department uses a rounding method to determine your age when calculating what your future lifetime monthly benefit is worth in present-day dollars. If the number of months in your age is under six months, the department will round down. If the number is six months or more, the department will round up. See WAC 415-02-340 for more information about the present value calculations.

Example 1:

At the time that the department is calculating Sharon's age in making a present value calculation, Sharon is 55 years, 5 months and 26 days old. The department will round down and use 55 as Sharon's age.

Example 2:

At the time that the department is calculating Donna's age in making a present value calculation, Donna is 54 years and 7 months old. The department will round up and use 55 as Donna's age.

(2) **Early retirement:** The department uses the difference between your "fully eligible retirement date" and your actual retirement date in calculating any actuarial reductions to your benefits. See WAC 415-02-320 for more information about early retirement.

(a) Step 1: Determine the fully eligible retirement date.

(i) The department first calculates the date on which you would have been fully eligible to retire.

(ii) **All plans** (except for LEOFF Plan 1, TRS Plan 1, WSPRS Plans 1 and 2, JRF and JRS): You can retire the first day of the month following your meeting the age requirement for retirement if you are otherwise eligible.

Example: Jake was born on May 12, 1934. On May 12, 1999, Jake reaches age 65 and has met the age requirement for retirement. Provided that he is otherwise eligible, Jake's retirement date is June 1, 1999.

(iii) **LEOFF Plan 1, TRS Plan 1, WSPRS Plans 1 and 2, JRF, and JRS:** If a retirement date other than the first of the month is allowed, you can retire on the day you meet the age requirement, or the following day (depending on the plan).

Example: If Jake is a member of this type of plan, he could retire May 12th or 13th, 1999 (his birthday or the day after his birthday).

(b) **Step 2: Determine the difference.** The department next calculates the difference between your fully eligible retirement date and your actual retirement date by subtracting the actual retirement year and month from the fully eligible retirement year and month. (Days are not used in the calculation.)

(i) **Example:**

Fully eligible date: 06/01/99
 Minus actual retirement date: 08/01/95
 Difference: 3 years, 10 months

(ii) **Example:**

Fully eligible date: 05/25/99
 Minus actual retirement date: 08/01/95
 Difference: 3 years, 9 months

(c) **Step 3: Determine the early retirement factor.** The department uses the difference calculated in step 2 to determine the early retirement factor (ERF) used to calculate your benefit as described in WAC 415-02-320.

(3) **Optional COLA Factor for PERS Plan 1 and TRS Plan 1.** The department uses the rounding method described in the "present value" subsection in this section to calculate your age when determining the optional COLA factor. See WAC 415-02-360 for a description of the optional COLA factor calculation.

(4) **Calculating age to use in determining the survivor option factor.** At retirement, if you select a survivor option, the department must calculate the difference between your age and your beneficiary's age. See WAC 415-02-380 for more information about survivor options.

(a) **Step 1:** The department calculates your age and your beneficiary's age at the time of your retirement.

(b) **Step 2:** The department rounds the ages, using the same method described in the "present value" subsection in this section.

(c) **Step 3:** The department subtracts your beneficiary's age from your age.

(2) **Option 1 benefit factor table.**

Age	Factor	Reduction	Age	Factor	Reduction
20	99.8876%	0.1%	50	99.1060%	0.9%
21	99.8851%	0.1%	51	99.0237%	1.0%
22	99.8825%	0.1%	52	98.9288%	1.1%
23	99.8794%	0.1%	53	98.8184%	1.2%
24	99.8757%	0.1%	54	98.6970%	1.3%
25	99.8710%	0.1%	55	98.5566%	1.4%
26	99.8650%	0.1%	56	98.3876%	1.6%
27	99.8575%	0.1%	57	98.1977%	1.8%
28	99.8480%	0.2%	58	97.9853%	2.0%
29	99.8362%	0.2%	59	97.7388%	2.3%
30	99.8220%	0.2%	60	97.4759%	2.5%
31	99.8053%	0.2%	61	97.1849%	2.8%
32	99.7858%	0.2%	62	96.8657%	3.1%
33	99.7638%	0.2%	63	96.5199%	3.5%
34	99.7413%	0.3%	64	96.1340%	3.9%
35	99.7184%	0.3%	65	95.7405%	4.3%
36	99.6951%	0.3%	66	95.3342%	4.7%

Example:

Member's age: 60
 Minus beneficiary's age: 49
 11

Result: The department will use the survivor option factor for a beneficiary who is 11 years younger than the member.

Example:

Member's age: 65
 Minus beneficiary's age: 67
 -2

Result: The department will use the survivor option factor for a beneficiary who is two years older than the member.

(5) **Terms used**

- (a) JRF - Judicial retirement fund.
- (b) JRS - Judicial retirement system.
- (c) LEOFF - Law enforcement officers' and fire fighters' system.
- (d) PERS - Public employees' retirement system.
- (e) SERS - School employees' retirement system.
- (f) TRS - Teachers' retirement system.
- (g) WSPRS - Washington state patrol retirement system.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.45 RCW. 03-06-044, § 415-02-310, filed 2/27/03, effective 4/1/03.]

WAC 415-02-345 TRS Plan 1 Option 1 benefit factors. (1) **What is a TRS Plan 1 Option 1 benefit factor?** At the time of retirement, a TRS Plan 1 member may choose to receive an Option 1, standard allowance, which is a slightly reduced lifetime monthly benefit. This option allows the final unpaid monthly benefit and any remaining balance of contributions to be paid in a lump sum to the retiree's estate or named beneficiary at the time of the retiree's death. The reduction to the monthly benefit is based on an Option 1 factor and is applied against the annuity portion of the monthly benefit. The factor that is used is determined by the age of the member at the time of retirement. For more information about the Option 1, standard allowance, see RCW 41.32.530 (1)(a).

Age	Factor	Reduction		Age	Factor	Reduction
37	99.6712%	0.3%		67	94.8664%	5.1%
38	99.6461%	0.4%		68	94.4041%	5.6%
39	99.6195%	0.4%		69	93.9285%	6.1%
40	99.5908%	0.4%		70	93.3893%	6.6%
41	99.5597%	0.4%		71	92.8393%	7.2%
42	99.5255%	0.5%		72	92.2534%	7.7%
43	99.4881%	0.5%		73	91.5922%	8.4%
44	99.4474%	0.6%		74	90.9422%	9.1%
45	99.4018%	0.6%		75	90.2102%	9.8%
46	99.3542%	0.6%		76	89.4917%	10.5%
47	99.2994%	0.7%		77	88.7582%	11.2%
48	99.2421%	0.8%		78	85.9377%	14.1%
49	99.1781%	0.8%		79	85.8097%	14.2%
				80	86.1255%	13.9%

[Statutory Authority: RCW 41.50.050(5), 03-24-051, § 415-02-345, filed 11/26/03, effective 1/1/04.]

WAC 415-02-350 What are cost of living adjustments (COLA) and how are they calculated? (1) What is a cost of living adjustment (COLA)? A retiree's, beneficiary's, or ex-spouse's benefit is a fixed amount. The benefit's value can change in the years after retirement because of inflation or other factors. A COLA automatically adjusts benefits based on the cost of living changes.

(2) **What retirement plans include COLAs?** With one exception, all retirement plans that the department administers provide one or more of the types of COLAs listed in subsection (3) of this section. The judges retirement fund (JRF) (chapter 2.12 RCW) does not provide a COLA.

(3) **What are the types of COLAs?**

(a) **Auto COLA**

The auto COLA is an option members can select at retirement. Members who choose this option have their benefits actuarially reduced at retirement to provide for an automatic annual adjustment in the benefit for the members' lives. The auto COLA has no age requirement and is based on the annual Consumer Price Index (CPI)¹ change up to a maximum of 3% times the monthly benefit. The annual adjustment for the uniform COLA is independent from the auto COLA or any other COLA.

¹ CPI for the Seattle-Tacoma-Bremerton, Washington area for urban wage earners and clerical workers compiled by the Bureau of Labor Statistics, United States Department of Labor.

(b) **Base COLA**

The base COLA is applied in July (April for LEOFF Plan 1) of each year and adjusts the benefit based on the change in the CPI for Seattle.

(c) **Uniform COLA**

The uniform COLA is an annual adjustment to the benefit, based on years of service, payable to:

(i) Retirees, beneficiaries, or ex-spouses age 66 or older who have been retired for at least one year by July 1st of each year; and

(ii) Retirees, beneficiaries, or ex-spouses of any age whose retirement is calculated under the minimum formula.

(4) **How are COLAs calculated?** The retirement statutes for all department administered systems explain how the COLAs are calculated. Refer to the following table to find your plan:

RETIREMENT SYSTEM	PLAN	COLA TYPE	STATUTE
JUDICIAL		Base	RCW 2.10.170
LEOFF	Plan 1	Base	RCW 41.26.240
LEOFF	Plan 2	Base	RCW 41.26.440
PERS	Plan 1	Uniform	RCW 41.40.197
PERS	Plan 1	Optional Auto	RCW 41.40.188 (1)(c)
PERS	Plan 2	Base	RCW 41.40.640
PERS	Plan 3	Base	RCW 41.40.840
SERS	Plans 2 and 3	Base	RCW 41.35.210
TRS	Plan 1	Uniform	RCW 41.32.489
TRS	Plan 1	Optional Auto	RCW 41.32.530 (1)(d)
TRS	Plan 2	Base	RCW 41.32.770
TRS	Plan 3	Base	RCW 41.32.845
WSPRS	Plans 1 and 2	Base	RCW 43.43.260

(5) **Who provides the amounts used in the calculations?**

(a) The amount of change for each COLA is provided annually by the office of the state actuary (OSA) to the department. Questions concerning how a specific amount is calculated should be directed to OSA.

(b) Based upon the amounts that OSA provides, the department calculates the COLA applied to a benefit.

(c) Questions concerning eligibility and COLA formulas should be directed to the department. Please see WAC 415-06-100 for information on contacting the department.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.45 RCW. 03-06-044, § 415-02-350, filed 2/27/03, effective 4/1/03.]

WAC 415-02-370 Service credit purchase factors. RCW 41.50.165(2) and chapter 415-10 WAC allow a member to purchase service credit by paying the actuarial value of the resulting increase in his or her benefit. This section provides the actuarial factor tables that the department uses to calculate the lump sum costs for the purchase. For more information on the factors and their use, please read chapter 415-10 WAC.

(1) **What are the factors for calculating the lump sum costs of purchasing service credit?** There are three factors that may be used to calculate the cost of purchasing service credit:

(a) **Factor 1** represents the pension accrual rate, the annuity price (value of future benefit payments), increases in average final compensation, future salary increases and interest discount between the member's age at the time of the service credit purchase and the normal retirement age.

(b) **Factor 2** represents the cost of lowering the normal retirement age by one year.

(c) **Factor 3** represents future salary increases and interest discount between the member's age at the time of the service credit purchase and the normal retirement age.

(2) **What is "normal retirement age"?** Normal retirement age (NRA) is the earliest projected age at which a member will be eligible to retire with unreduced benefits under the requirements of his or her system and plan. The requirements are different among plans; please consult your plan for specific, detailed information.

LEOFF Plan 1: RCW 41.26.090(1)
 LEOFF Plan 2: RCW 41.26.430(1)

PERS Plan 1: RCW 41.40.180
 PERS Plan 2: RCW 41.40.630(1)
 PERS Plan 3: RCW 41.40.820(1)
 SERS Plan 2: RCW 41.35.420(1)
 SERS Plan 3: RCW 41.35.680(1)
 TRS Plan 1: RCW 41.32.480
 TRS Plan 2: RCW 41.32.765(1)
 TRS Plan 3: RCW 41.32.875(1)
 WSPRS Plan 1: RCW 43.43.250(2)
 WSPRS Plan 2: RCW 43.43.250(2)

(3) **What is "Months to NRA"?** This means the number of months from the member's age when the service credit is purchased to the member's NRA. The number of months to NRA is used to find the applicable factor(s) in Table 1 and Table 3 for calculating the service purchase credit cost.

(4) **Table - Factor 1.** Factor 1 is used in the calculation of the service credit purchase cost for a member in any PERS, TRS, SERS, LEOFF, or WSPRS plan.

FACTOR 1

Months to NRA	LEOFF 1	LEOFF 2	PERS 1	PERS 2/3	SERS 2/3	TRS 1	TRS 2/3	WSPRS 1	WSPRS 2
0	0.3245	0.2922	0.2115	0.2300	0.2445	0.2112	0.2454	0.3026	0.2815
1	0.3236	0.2914	0.2109	0.2294	0.2438	0.2106	0.2447	0.3018	0.2807
2	0.3227	0.2906	0.2104	0.2288	0.2432	0.2101	0.2441	0.3010	0.2800
3	0.3219	0.2898	0.2098	0.2281	0.2425	0.2095	0.2434	0.3001	0.2792
4	0.3210	0.2890	0.2092	0.2275	0.2419	0.2089	0.2427	0.2993	0.2785
5	0.3201	0.2882	0.2087	0.2269	0.2412	0.2084	0.2421	0.2985	0.2777
6	0.3192	0.2874	0.2081	0.2263	0.2406	0.2078	0.2414	0.2977	0.2770
7	0.3183	0.2867	0.2075	0.2257	0.2399	0.2072	0.2407	0.2969	0.2762
8	0.3174	0.2859	0.2070	0.2251	0.2392	0.2067	0.2401	0.2961	0.2754
9	0.3166	0.2851	0.2064	0.2244	0.2386	0.2061	0.2394	0.2952	0.2747
10	0.3157	0.2843	0.2058	0.2238	0.2379	0.2055	0.2387	0.2944	0.2739
11	0.3148	0.2835	0.2053	0.2232	0.2373	0.2050	0.2381	0.2936	0.2732
12	0.3139	0.2827	0.2047	0.2226	0.2366	0.2044	0.2374	0.2928	0.2724
13	0.3131	0.2819	0.2041	0.2220	0.2360	0.2038	0.2368	0.2920	0.2717
14	0.3122	0.2812	0.2036	0.2214	0.2353	0.2033	0.2361	0.2912	0.2709
15	0.3114	0.2804	0.2030	0.2208	0.2347	0.2027	0.2355	0.2904	0.2702
16	0.3105	0.2797	0.2025	0.2202	0.2340	0.2022	0.2348	0.2896	0.2695
17	0.3097	0.2789	0.2019	0.2196	0.2334	0.2016	0.2342	0.2888	0.2687
18	0.3088	0.2782	0.2014	0.2190	0.2327	0.2011	0.2335	0.2880	0.2680
19	0.3080	0.2774	0.2008	0.2184	0.2321	0.2005	0.2329	0.2873	0.2673
20	0.3072	0.2766	0.2002	0.2178	0.2315	0.2000	0.2323	0.2865	0.2665
21	0.3063	0.2759	0.1997	0.2172	0.2308	0.1994	0.2316	0.2857	0.2658
22	0.3055	0.2751	0.1991	0.2166	0.2302	0.1989	0.2310	0.2849	0.2651
23	0.3046	0.2744	0.1986	0.2160	0.2295	0.1983	0.2303	0.2841	0.2643
24	0.3038	0.2736	0.1980	0.2154	0.2289	0.1978	0.2297	0.2833	0.2636
25	0.3030	0.2729	0.1975	0.2148	0.2283	0.1973	0.2291	0.2825	0.2629
26	0.3021	0.2721	0.1969	0.2142	0.2277	0.1967	0.2285	0.2818	0.2622
27	0.3013	0.2714	0.1964	0.2137	0.2270	0.1962	0.2278	0.2810	0.2614
28	0.3005	0.2706	0.1959	0.2131	0.2264	0.1957	0.2272	0.2803	0.2607
29	0.2997	0.2699	0.1953	0.2125	0.2258	0.1951	0.2266	0.2795	0.2600
30	0.2988	0.2691	0.1948	0.2119	0.2252	0.1946	0.2260	0.2788	0.2593
31	0.2980	0.2684	0.1943	0.2113	0.2246	0.1941	0.2254	0.2780	0.2586
32	0.2972	0.2677	0.1937	0.2107	0.2240	0.1935	0.2248	0.2772	0.2579
33	0.2964	0.2669	0.1932	0.2102	0.2233	0.1930	0.2241	0.2765	0.2571
34	0.2955	0.2662	0.1927	0.2096	0.2227	0.1925	0.2235	0.2757	0.2564

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Months to NRA	LEOFF 1	LEOFF 2	PERS 1	PERS 2/3	SERS 2/3	TRS 1	TRS 2/3	WSPRS 1	WSPRS 2
35	0.2947	0.2654	0.1921	0.2090	0.2221	0.1919	0.2229	0.2750	0.2557
36	0.2939	0.2647	0.1916	0.2084	0.2215	0.1914	0.2223	0.2742	0.2550
37	0.2931	0.2640	0.1911	0.2078	0.2209	0.1909	0.2217	0.2735	0.2543
38	0.2923	0.2633	0.1906	0.2073	0.2203	0.1904	0.2211	0.2727	0.2536
39	0.2915	0.2625	0.1900	0.2067	0.2197	0.1898	0.2205	0.2720	0.2530
40	0.2907	0.2618	0.1895	0.2061	0.2191	0.1893	0.2199	0.2712	0.2523
41	0.2899	0.2611	0.1890	0.2056	0.2185	0.1888	0.2193	0.2705	0.2516
42	0.2891	0.2604	0.1885	0.2050	0.2179	0.1883	0.2187	0.2697	0.2509
43	0.2884	0.2597	0.1880	0.2044	0.2173	0.1878	0.2181	0.2690	0.2502
44	0.2876	0.2590	0.1875	0.2039	0.2167	0.1873	0.2175	0.2683	0.2495
45	0.2868	0.2582	0.1869	0.2033	0.2161	0.1867	0.2169	0.2675	0.2489
46	0.2860	0.2575	0.1864	0.2027	0.2155	0.1862	0.2163	0.2668	0.2482
47	0.2852	0.2568	0.1859	0.2022	0.2149	0.1857	0.2157	0.2660	0.2475
48	0.2844	0.2561	0.1854	0.2016	0.2143	0.1852	0.2151	0.2653	0.2468
49	0.2836	0.2554	0.1849	0.2011	0.2137	0.1847	0.2145	0.2646	0.2461
50	0.2829	0.2547	0.1844	0.2005	0.2131	0.1842	0.2139	0.2639	0.2455
51	0.2821	0.2540	0.1839	0.2000	0.2126	0.1837	0.2134	0.2631	0.2448
52	0.2813	0.2533	0.1834	0.1994	0.2120	0.1832	0.2128	0.2624	0.2441
53	0.2806	0.2526	0.1829	0.1989	0.2114	0.1827	0.2122	0.2617	0.2435
54	0.2798	0.2519	0.1824	0.1983	0.2108	0.1822	0.2116	0.2610	0.2428
55	0.2790	0.2513	0.1819	0.1978	0.2103	0.1817	0.2110	0.2603	0.2421
56	0.2783	0.2506	0.1814	0.1973	0.2097	0.1812	0.2104	0.2596	0.2415
57	0.2775	0.2499	0.1809	0.1967	0.2091	0.1807	0.2099	0.2588	0.2408
58	0.2767	0.2492	0.1804	0.1962	0.2085	0.1802	0.2093	0.2581	0.2401
59	0.2760	0.2485	0.1799	0.1956	0.2080	0.1797	0.2087	0.2574	0.2395
60	0.2752	0.2478	0.1794	0.1951	0.2074	0.1792	0.2081	0.2567	0.2388
61	0.2745	0.2471	0.1789	0.1946	0.2068	0.1787	0.2075	0.2560	0.2381
62	0.2737	0.2465	0.1784	0.1940	0.2063	0.1782	0.2070	0.2553	0.2375
63	0.2730	0.2458	0.1780	0.1935	0.2057	0.1778	0.2064	0.2546	0.2368
64	0.2722	0.2451	0.1775	0.1930	0.2052	0.1773	0.2059	0.2539	0.2362
65	0.2715	0.2445	0.1770	0.1925	0.2046	0.1768	0.2053	0.2532	0.2355
66	0.2707	0.2438	0.1765	0.1919	0.2041	0.1763	0.2048	0.2525	0.2349
67	0.2700	0.2431	0.1760	0.1914	0.2035	0.1758	0.2042	0.2519	0.2342
68	0.2693	0.2425	0.1755	0.1909	0.2029	0.1753	0.2036	0.2512	0.2336
69	0.2685	0.2418	0.1751	0.1904	0.2024	0.1749	0.2031	0.2505	0.2329
70	0.2678	0.2411	0.1746	0.1898	0.2018	0.1744	0.2025	0.2498	0.2323
71	0.2670	0.2405	0.1741	0.1893	0.2013	0.1739	0.2020	0.2491	0.2316
72	0.2663	0.2398	0.1736	0.1888	0.2007	0.1734	0.2014	0.2484	0.2310
73	0.2656	0.2391	0.1731	0.1883	0.2002	0.1729	0.2009	0.2477	0.2304
74	0.2648	0.2385	0.1727	0.1878	0.1996	0.1724	0.2003	0.2470	0.2297
75	0.2641	0.2378	0.1722	0.1872	0.1991	0.1720	0.1998	0.2464	0.2291
76	0.2634	0.2372	0.1717	0.1867	0.1985	0.1715	0.1992	0.2457	0.2285
77	0.2627	0.2365	0.1713	0.1862	0.1980	0.1710	0.1987	0.2450	0.2279
78	0.2619	0.2359	0.1708	0.1857	0.1974	0.1705	0.1981	0.2443	0.2272
79	0.2612	0.2352	0.1703	0.1852	0.1969	0.1701	0.1976	0.2437	0.2266
80	0.2605	0.2346	0.1699	0.1847	0.1964	0.1696	0.1971	0.2430	0.2260
81	0.2598	0.2339	0.1694	0.1841	0.1958	0.1691	0.1965	0.2423	0.2254
82	0.2590	0.2333	0.1689	0.1836	0.1953	0.1686	0.1960	0.2416	0.2247
83	0.2583	0.2326	0.1685	0.1831	0.1947	0.1682	0.1954	0.2410	0.2241
84	0.2576	0.2320	0.1680	0.1826	0.1942	0.1677	0.1949	0.2403	0.2235
85	0.2569	0.2314	0.1675	0.1821	0.1937	0.1672	0.1944	0.2396	0.2229
86	0.2562	0.2307	0.1671	0.1816	0.1931	0.1668	0.1938	0.2390	0.2223
87	0.2555	0.2301	0.1666	0.1811	0.1926	0.1663	0.1933	0.2383	0.2217
88	0.2548	0.2295	0.1662	0.1806	0.1921	0.1659	0.1928	0.2377	0.2211
89	0.2541	0.2289	0.1657	0.1801	0.1916	0.1654	0.1922	0.2370	0.2205
90	0.2534	0.2282	0.1653	0.1796	0.1910	0.1650	0.1917	0.2364	0.2199
91	0.2528	0.2276	0.1648	0.1792	0.1905	0.1645	0.1912	0.2357	0.2193
92	0.2521	0.2270	0.1643	0.1787	0.1900	0.1641	0.1906	0.2351	0.2187
93	0.2514	0.2264	0.1639	0.1782	0.1895	0.1636	0.1901	0.2344	0.2181

Months to NRA	LEOFF 1	LEOFF 2	PERS 1	PERS 2/3	SERS 2/3	TRS 1	TRS 2/3	WSPRS 1	WSPRS 2
94	0.2507	0.2257	0.1634	0.1777	0.1889	0.1632	0.1896	0.2338	0.2175
95	0.2500	0.2251	0.1630	0.1772	0.1884	0.1627	0.1890	0.2331	0.2169
96	0.2493	0.2245	0.1625	0.1767	0.1879	0.1623	0.1885	0.2325	0.2163
97	0.2486	0.2239	0.1621	0.1762	0.1874	0.1619	0.1880	0.2319	0.2157
98	0.2479	0.2233	0.1616	0.1757	0.1869	0.1614	0.1875	0.2312	0.2151
99	0.2473	0.2227	0.1612	0.1753	0.1864	0.1610	0.1870	0.2306	0.2146
100	0.2466	0.2221	0.1608	0.1748	0.1859	0.1605	0.1865	0.2300	0.2140
101	0.2459	0.2215	0.1603	0.1743	0.1854	0.1601	0.1860	0.2294	0.2134
102	0.2452	0.2209	0.1599	0.1738	0.1849	0.1596	0.1855	0.2287	0.2128
103	0.2446	0.2202	0.1595	0.1734	0.1843	0.1592	0.1849	0.2281	0.2122
104	0.2439	0.2196	0.1590	0.1729	0.1838	0.1588	0.1844	0.2275	0.2116
105	0.2432	0.2190	0.1586	0.1724	0.1833	0.1583	0.1839	0.2269	0.2111
106	0.2425	0.2184	0.1582	0.1719	0.1828	0.1579	0.1834	0.2262	0.2105
107	0.2419	0.2178	0.1577	0.1715	0.1823	0.1574	0.1829	0.2256	0.2099
108	0.2412	0.2172	0.1573	0.1710	0.1818	0.1570	0.1824	0.2250	0.2093
109	0.2405	0.2166	0.1569	0.1705	0.1813	0.1566	0.1819	0.2244	0.2087
110	0.2399	0.2160	0.1564	0.1701	0.1808	0.1562	0.1814	0.2238	0.2082
111	0.2392	0.2155	0.1560	0.1696	0.1803	0.1557	0.1809	0.2232	0.2076
112	0.2386	0.2149	0.1556	0.1692	0.1798	0.1553	0.1804	0.2226	0.2070
113	0.2379	0.2143	0.1552	0.1687	0.1793	0.1549	0.1799	0.2220	0.2065
114	0.2373	0.2137	0.1547	0.1683	0.1788	0.1545	0.1794	0.2214	0.2059
115	0.2366	0.2131	0.1543	0.1678	0.1784	0.1541	0.1790	0.2207	0.2053
116	0.2360	0.2125	0.1539	0.1673	0.1779	0.1537	0.1785	0.2201	0.2048
117	0.2353	0.2120	0.1535	0.1669	0.1774	0.1532	0.1780	0.2195	0.2042
118	0.2347	0.2114	0.1530	0.1664	0.1769	0.1528	0.1775	0.2189	0.2036
119	0.2340	0.2108	0.1526	0.1660	0.1764	0.1524	0.1770	0.2183	0.2031
120	0.2334	0.2102	0.1522	0.1655	0.1759	0.1520	0.1765	0.2177	0.2025
121	0.2328	0.2096	0.1518	0.1650	0.1754	0.1516	0.1760	0.2171	0.2019
122	0.2321	0.2091	0.1514	0.1646	0.1749	0.1512	0.1755	0.2165	0.2014
123	0.2315	0.2085	0.1509	0.1641	0.1745	0.1507	0.1751	0.2159	0.2008
124	0.2309	0.2079	0.1505	0.1637	0.1740	0.1503	0.1746	0.2153	0.2003
125	0.2302	0.2074	0.1501	0.1632	0.1735	0.1499	0.1741	0.2147	0.1997
126	0.2296	0.2068	0.1497	0.1628	0.1730	0.1495	0.1736	0.2141	0.1992
127	0.2290	0.2062	0.1493	0.1623	0.1726	0.1491	0.1732	0.2136	0.1986
128	0.2283	0.2057	0.1489	0.1619	0.1721	0.1487	0.1727	0.2130	0.1981
129	0.2277	0.2051	0.1484	0.1614	0.1716	0.1482	0.1722	0.2124	0.1975
130	0.2271	0.2045	0.1480	0.1610	0.1711	0.1478	0.1717	0.2118	0.1970
131	0.2264	0.2040	0.1476	0.1605	0.1707	0.1474	0.1713	0.2112	0.1964
132	0.2258	0.2034	0.1472	0.1601	0.1702	0.1470	0.1708	0.2106	0.1959
133	0.2252	0.2028	0.1468	0.1597	0.1697	0.1466	0.1703	0.2100	0.1954
134	0.2246	0.2023	0.1464	0.1592	0.1693	0.1462	0.1699	0.2095	0.1948
135	0.2240	0.2017	0.1460	0.1588	0.1688	0.1458	0.1694	0.2089	0.1943
136	0.2234	0.2012	0.1456	0.1584	0.1684	0.1454	0.1690	0.2083	0.1938
137	0.2228	0.2006	0.1452	0.1579	0.1679	0.1450	0.1685	0.2078	0.1933
138	0.2222	0.2001	0.1448	0.1575	0.1675	0.1446	0.1681	0.2072	0.1927
139	0.2215	0.1995	0.1445	0.1571	0.1670	0.1443	0.1676	0.2066	0.1922
140	0.2209	0.1990	0.1441	0.1566	0.1665	0.1439	0.1671	0.2061	0.1917
141	0.2203	0.1984	0.1437	0.1562	0.1661	0.1435	0.1667	0.2055	0.1912
142	0.2197	0.1979	0.1433	0.1558	0.1656	0.1431	0.1662	0.2049	0.1906
143	0.2191	0.1973	0.1429	0.1553	0.1652	0.1427	0.1658	0.2044	0.1901
144	0.2185	0.1968	0.1425	0.1549	0.1647	0.1423	0.1653	0.2038	0.1896
145	0.2179	0.1963	0.1421	0.1545	0.1642	0.1419	0.1648	0.2032	0.1891
146	0.2173	0.1957	0.1417	0.1541	0.1638	0.1415	0.1644	0.2027	0.1886
147	0.2167	0.1952	0.1413	0.1536	0.1633	0.1412	0.1639	0.2021	0.1881
148	0.2161	0.1947	0.1409	0.1532	0.1629	0.1408	0.1635	0.2016	0.1876
149	0.2155	0.1941	0.1405	0.1528	0.1624	0.1404	0.1630	0.2010	0.1871
150	0.2149	0.1936	0.1401	0.1524	0.1620	0.1400	0.1626	0.2005	0.1866
151	0.2144	0.1931	0.1398	0.1520	0.1615	0.1396	0.1621	0.1999	0.1860
152	0.2138	0.1925	0.1394	0.1516	0.1611	0.1392	0.1617	0.1994	0.1855

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Months to NRA	LEOFF 1	LEOFF 2	PERS 1	PERS 2/3	SERS 2/3	TRS 1	TRS 2/3	WSPRS 1	WSPRS 2
153	0.2132	0.1920	0.1390	0.1511	0.1606	0.1389	0.1612	0.1988	0.1850
154	0.2126	0.1915	0.1386	0.1507	0.1602	0.1385	0.1608	0.1983	0.1845
155	0.2120	0.1909	0.1382	0.1503	0.1597	0.1381	0.1603	0.1977	0.1840
156	0.2114	0.1904	0.1378	0.1499	0.1593	0.1377	0.1599	0.1972	0.1835
157	0.2108	0.1899	0.1374	0.1495	0.1589	0.1373	0.1595	0.1967	0.1830
158	0.2103	0.1894	0.1371	0.1491	0.1584	0.1369	0.1590	0.1961	0.1825
159	0.2097	0.1888	0.1367	0.1487	0.1580	0.1366	0.1586	0.1956	0.1820
160	0.2091	0.1883	0.1363	0.1483	0.1576	0.1362	0.1582	0.1951	0.1815
161	0.2086	0.1878	0.1360	0.1479	0.1572	0.1358	0.1577	0.1945	0.1810
162	0.2080	0.1873	0.1356	0.1475	0.1567	0.1354	0.1573	0.1940	0.1805
163	0.2074	0.1868	0.1352	0.1470	0.1563	0.1351	0.1569	0.1935	0.1800
164	0.2069	0.1863	0.1349	0.1466	0.1559	0.1347	0.1564	0.1929	0.1795
165	0.2063	0.1857	0.1345	0.1462	0.1555	0.1343	0.1560	0.1924	0.1790
166	0.2057	0.1852	0.1341	0.1458	0.1550	0.1339	0.1556	0.1919	0.1785
167	0.2052	0.1847	0.1338	0.1454	0.1546	0.1336	0.1551	0.1913	0.1780
168	0.2046	0.1842	0.1334	0.1450	0.1542	0.1332	0.1547	0.1908	0.1775
169	0.2040	0.1837	0.1330	0.1446	0.1538	0.1328	0.1543	0.1903	0.1770
170	0.2035	0.1832	0.1327	0.1442	0.1534	0.1325	0.1539	0.1898	0.1765
171	0.2029	0.1827	0.1323	0.1438	0.1529	0.1321	0.1534	0.1892	0.1761
172	0.2024	0.1822	0.1319	0.1434	0.1525	0.1318	0.1530	0.1887	0.1756
173	0.2018	0.1817	0.1316	0.1430	0.1521	0.1314	0.1526	0.1882	0.1751
174	0.2013	0.1812	0.1312	0.1426	0.1517	0.1311	0.1522	0.1877	0.1746
175	0.2007	0.1808	0.1308	0.1423	0.1513	0.1307	0.1518	0.1872	0.1742
176	0.2001	0.1803	0.1305	0.1419	0.1509	0.1303	0.1514	0.1867	0.1737
177	0.1996	0.1798	0.1301	0.1415	0.1504	0.1300	0.1509	0.1861	0.1732
178	0.1990	0.1793	0.1297	0.1411	0.1500	0.1296	0.1505	0.1856	0.1727
179	0.1985	0.1788	0.1294	0.1407	0.1496	0.1293	0.1501	0.1851	0.1723
180	0.1979	0.1783	0.1290	0.1403	0.1492	0.1289	0.1497	0.1846	0.1718
181	0.1974	0.1778	0.1287	0.1399	0.1488	0.1285	0.1493	0.1841	0.1713
182	0.1968	0.1773	0.1283	0.1395	0.1484	0.1282	0.1489	0.1836	0.1709
183	0.1963	0.1769	0.1280	0.1392	0.1480	0.1278	0.1485	0.1831	0.1704
184	0.1958	0.1764	0.1276	0.1388	0.1476	0.1275	0.1481	0.1826	0.1699
185	0.1952	0.1759	0.1273	0.1384	0.1472	0.1271	0.1477	0.1821	0.1695
186	0.1947	0.1754	0.1269	0.1380	0.1468	0.1268	0.1473	0.1816	0.1690
187	0.1942	0.1749	0.1266	0.1377	0.1463	0.1264	0.1469	0.1812	0.1685
188	0.1936	0.1744	0.1263	0.1373	0.1459	0.1261	0.1465	0.1807	0.1681
189	0.1931	0.1740	0.1259	0.1369	0.1455	0.1257	0.1461	0.1802	0.1676
190	0.1926	0.1735	0.1256	0.1365	0.1451	0.1254	0.1457	0.1797	0.1671
191	0.1920	0.1730	0.1252	0.1362	0.1447	0.1250	0.1453	0.1792	0.1667
192	0.1915	0.1725	0.1249	0.1358	0.1443	0.1247	0.1449	0.1787	0.1662
193	0.1910	0.1720	0.1246	0.1354	0.1439	0.1244	0.1445	0.1782	0.1657
194	0.1905	0.1716	0.1242	0.1351	0.1435	0.1240	0.1441	0.1777	0.1653
195	0.1899	0.1711	0.1239	0.1347	0.1432	0.1237	0.1437	0.1773	0.1648
196	0.1894	0.1706	0.1235	0.1343	0.1428	0.1234	0.1433	0.1768	0.1644
197	0.1889	0.1702	0.1232	0.1340	0.1424	0.1230	0.1429	0.1763	0.1639
198	0.1884	0.1697	0.1228	0.1336	0.1420	0.1227	0.1425	0.1758	0.1635
199	0.1879	0.1692	0.1225	0.1332	0.1416	0.1224	0.1422	0.1753	0.1630
200	0.1874	0.1688	0.1222	0.1329	0.1412	0.1220	0.1418	0.1748	0.1626
201	0.1868	0.1683	0.1218	0.1325	0.1409	0.1217	0.1414	0.1744	0.1621
202	0.1863	0.1678	0.1215	0.1321	0.1405	0.1214	0.1410	0.1739	0.1617
203	0.1858	0.1674	0.1211	0.1318	0.1401	0.1210	0.1406	0.1734	0.1612
204	0.1853	0.1669	0.1208	0.1314	0.1397	0.1207	0.1402	0.1729	0.1608
205	0.1848	0.1664	0.1205	0.1310	0.1393	0.1204	0.1398	0.1724	0.1604
206	0.1843	0.1660	0.1201	0.1307	0.1389	0.1200	0.1394	0.1720	0.1599
207	0.1838	0.1655	0.1198	0.1303	0.1386	0.1197	0.1391	0.1715	0.1595
208	0.1833	0.1651	0.1195	0.1300	0.1382	0.1194	0.1387	0.1710	0.1591
209	0.1828	0.1646	0.1192	0.1296	0.1378	0.1191	0.1383	0.1706	0.1586
210	0.1823	0.1642	0.1188	0.1293	0.1374	0.1187	0.1379	0.1701	0.1582
211	0.1818	0.1637	0.1185	0.1289	0.1370	0.1184	0.1375	0.1696	0.1578

Months to NRA	LEOFF 1	LEOFF 2	PERS 1	PERS 2/3	SERS 2/3	TRS 1	TRS 2/3	WSPRS 1	WSPRS 2
212	0.1813	0.1633	0.1182	0.1285	0.1366	0.1181	0.1371	0.1692	0.1573
213	0.1808	0.1628	0.1179	0.1282	0.1363	0.1178	0.1368	0.1687	0.1569
214	0.1803	0.1624	0.1175	0.1278	0.1359	0.1174	0.1364	0.1682	0.1565
215	0.1798	0.1619	0.1172	0.1275	0.1355	0.1171	0.1360	0.1678	0.1560
216	0.1793	0.1615	0.1169	0.1271	0.1351	0.1168	0.1356	0.1673	0.1556
217	0.1788	0.1611	0.1166	0.1268	0.1347	0.1165	0.1352	0.1668	0.1552
218	0.1783	0.1606	0.1163	0.1264	0.1344	0.1162	0.1349	0.1664	0.1547
219	0.1779	0.1602	0.1159	0.1261	0.1340	0.1158	0.1345	0.1659	0.1543
220	0.1774	0.1597	0.1156	0.1257	0.1337	0.1155	0.1341	0.1655	0.1539
221	0.1769	0.1593	0.1153	0.1254	0.1333	0.1152	0.1338	0.1650	0.1535
222	0.1764	0.1588	0.1150	0.1250	0.1330	0.1149	0.1334	0.1646	0.1530
223	0.1759	0.1584	0.1147	0.1247	0.1326	0.1146	0.1330	0.1641	0.1526
224	0.1754	0.1580	0.1144	0.1244	0.1322	0.1143	0.1327	0.1636	0.1522
225	0.1750	0.1575	0.1140	0.1240	0.1319	0.1139	0.1323	0.1632	0.1518
226	0.1745	0.1571	0.1137	0.1237	0.1315	0.1136	0.1319	0.1627	0.1513
227	0.1740	0.1566	0.1134	0.1233	0.1312	0.1133	0.1316	0.1623	0.1509
228	0.1735	0.1562	0.1131	0.1230	0.1308	0.1130	0.1312	0.1618	0.1505
229	0.1730	0.1558	0.1128	0.1227	0.1304	0.1127	0.1308	0.1614	0.1501
230	0.1726	0.1554	0.1125	0.1223	0.1301	0.1124	0.1305	0.1609	0.1497
231	0.1721	0.1549	0.1122	0.1220	0.1297	0.1121	0.1301	0.1605	0.1493
232	0.1716	0.1545	0.1119	0.1217	0.1294	0.1118	0.1298	0.1601	0.1489
233	0.1712	0.1541	0.1116	0.1213	0.1290	0.1115	0.1294	0.1596	0.1485
234	0.1707	0.1537	0.1113	0.1210	0.1287	0.1112	0.1291	0.1592	0.1481
235	0.1702	0.1533	0.1109	0.1207	0.1283	0.1108	0.1287	0.1588	0.1477
236	0.1698	0.1529	0.1106	0.1203	0.1279	0.1105	0.1284	0.1583	0.1473
237	0.1693	0.1524	0.1103	0.1200	0.1276	0.1102	0.1280	0.1579	0.1469
238	0.1688	0.1520	0.1100	0.1197	0.1272	0.1099	0.1277	0.1575	0.1465
239	0.1684	0.1516	0.1097	0.1193	0.1269	0.1096	0.1273	0.1570	0.1461
240	0.1679	0.1512	0.1094	0.1190	0.1265	0.1093	0.1270	0.1566	0.1457
241	0.1674	0.1508	0.1091	0.1187	0.1262	0.1090	0.1267	0.1562	0.1453
242	0.1670	0.1504	0.1088	0.1184	0.1258	0.1087	0.1263	0.1557	0.1449
243	0.1665	0.1500	0.1085	0.1180	0.1255	0.1084	0.1260	0.1553	0.1445
244	0.1661	0.1496	0.1082	0.1177	0.1251	0.1081	0.1256	0.1549	0.1441
245	0.1656	0.1492	0.1079	0.1174	0.1248	0.1078	0.1253	0.1545	0.1437
246	0.1652	0.1488	0.1076	0.1171	0.1244	0.1075	0.1249	0.1540	0.1433
247	0.1647	0.1483	0.1074	0.1168	0.1241	0.1073	0.1246	0.1536	0.1429
248	0.1642	0.1479	0.1071	0.1165	0.1238	0.1070	0.1243	0.1532	0.1425
249	0.1638	0.1475	0.1068	0.1161	0.1234	0.1067	0.1239	0.1528	0.1421
250	0.1633	0.1471	0.1065	0.1158	0.1231	0.1064	0.1236	0.1523	0.1417
251	0.1629	0.1467	0.1062	0.1155	0.1227	0.1061	0.1232	0.1519	0.1413
252	0.1624	0.1463	0.1059	0.1152	0.1224	0.1058	0.1229	0.1515	0.1409
253	0.1620	0.1459	0.1056	0.1149	0.1221	0.1055	0.1226	0.1511	0.1405
254	0.1615	0.1455	0.1053	0.1146	0.1217	0.1052	0.1222	0.1507	0.1401
255	0.1611	0.1451	0.1051	0.1142	0.1214	0.1049	0.1219	0.1503	0.1398
256	0.1607	0.1447	0.1048	0.1139	0.1211	0.1046	0.1216	0.1499	0.1394
257	0.1602	0.1443	0.1045	0.1136	0.1208	0.1043	0.1212	0.1495	0.1390
258	0.1598	0.1439	0.1042	0.1133	0.1204	0.1040	0.1209	0.1491	0.1386
259	0.1594	0.1435	0.1039	0.1130	0.1201	0.1038	0.1206	0.1486	0.1383
260	0.1589	0.1431	0.1036	0.1127	0.1198	0.1035	0.1202	0.1482	0.1379
261	0.1585	0.1427	0.1034	0.1123	0.1195	0.1032	0.1199	0.1478	0.1375
262	0.1581	0.1423	0.1031	0.1120	0.1191	0.1029	0.1196	0.1474	0.1371
263	0.1576	0.1419	0.1028	0.1117	0.1188	0.1026	0.1192	0.1470	0.1368
264	0.1572	0.1415	0.1025	0.1114	0.1185	0.1023	0.1189	0.1466	0.1364
265	0.1568	0.1411	0.1022	0.1111	0.1182	0.1020	0.1186	0.1462	0.1360
266	0.1563	0.1407	0.1019	0.1108	0.1178	0.1017	0.1182	0.1458	0.1357
267	0.1559	0.1404	0.1017	0.1105	0.1175	0.1015	0.1179	0.1454	0.1353
268	0.1555	0.1400	0.1014	0.1102	0.1172	0.1012	0.1176	0.1450	0.1349
269	0.1551	0.1396	0.1011	0.1099	0.1169	0.1009	0.1173	0.1446	0.1346
270	0.1546	0.1392	0.1008	0.1096	0.1165	0.1006	0.1169	0.1442	0.1342

General Provisions

415-02-370

Months to NRA	LEOFF 1	LEOFF 2	PERS 1	PERS 2/3	SERS 2/3	TRS 1	TRS 2/3	WSPRS 1	WSPRS 2
271	0.1542	0.1389	0.1006	0.1093	0.1162	0.1004	0.1166	0.1439	0.1338
272	0.1538	0.1385	0.1003	0.1090	0.1159	0.1001	0.1163	0.1435	0.1335
273	0.1534	0.1381	0.1000	0.1087	0.1156	0.0998	0.1160	0.1431	0.1331
274	0.1529	0.1377	0.0997	0.1084	0.1152	0.0995	0.1156	0.1427	0.1327
275	0.1525	0.1374	0.0995	0.1081	0.1149	0.0993	0.1153	0.1423	0.1324
276	0.1521	0.1370	0.0992	0.1078	0.1146	0.0990	0.1150	0.1419	0.1320
277	0.1517	0.1366	0.0989	0.1075	0.1143	0.0987	0.1147	0.1415	0.1316
278	0.1513	0.1362	0.0986	0.1072	0.1140	0.0985	0.1144	0.1411	0.1313
279	0.1509	0.1359	0.0984	0.1069	0.1137	0.0982	0.1141	0.1408	0.1309
280	0.1505	0.1355	0.0981	0.1066	0.1134	0.0979	0.1138	0.1404	0.1306
281	0.1501	0.1351	0.0978	0.1063	0.1131	0.0977	0.1135	0.1400	0.1302
282	0.1497	0.1347	0.0975	0.1060	0.1128	0.0974	0.1132	0.1396	0.1299
283	0.1492	0.1344	0.0973	0.1058	0.1124	0.0971	0.1128	0.1392	0.1295
284	0.1488	0.1340	0.0970	0.1055	0.1121	0.0969	0.1125	0.1388	0.1291
285	0.1484	0.1336	0.0967	0.1052	0.1118	0.0966	0.1122	0.1385	0.1288
286	0.1480	0.1332	0.0964	0.1049	0.1115	0.0963	0.1119	0.1381	0.1284
287	0.1476	0.1329	0.0962	0.1046	0.1112	0.0961	0.1116	0.1377	0.1281
288	0.1472	0.1325	0.0959	0.1043	0.1109	0.0958	0.1113	0.1373	0.1277
289	0.1468	0.1321	0.0956	0.1040	0.1106	0.0955	0.1110	0.1369	0.1273
290	0.1464	0.1318	0.0954	0.1037	0.1103	0.0953	0.1107	0.1365	0.1270
291	0.1460	0.1314	0.0951	0.1035	0.1100	0.0950	0.1104	0.1362	0.1266
292	0.1456	0.1311	0.0949	0.1032	0.1097	0.0948	0.1101	0.1358	0.1263
293	0.1452	0.1307	0.0946	0.1029	0.1094	0.0945	0.1098	0.1354	0.1259
294	0.1448	0.1304	0.0944	0.1026	0.1091	0.0943	0.1095	0.1350	0.1256
295	0.1444	0.1300	0.0941	0.1023	0.1088	0.0940	0.1092	0.1347	0.1252
296	0.1440	0.1296	0.0938	0.1020	0.1085	0.0937	0.1089	0.1343	0.1249
297	0.1436	0.1293	0.0936	0.1018	0.1082	0.0935	0.1086	0.1339	0.1245
298	0.1432	0.1289	0.0933	0.1015	0.1079	0.0932	0.1083	0.1335	0.1242
299	0.1428	0.1286	0.0931	0.1012	0.1076	0.0930	0.1080	0.1332	0.1238
300	0.1424	0.1282	0.0928	0.1009	0.1073	0.0927	0.1077	0.1328	0.1235
301	0.1420	0.1279	0.0925	0.1006	0.1070	0.0924	0.1074	0.1324	0.1232
302	0.1416	0.1275	0.0923	0.1004	0.1067	0.0922	0.1071	0.1321	0.1228
303	0.1413	0.1272	0.0920	0.1001	0.1064	0.0919	0.1068	0.1317	0.1225
304	0.1409	0.1268	0.0918	0.0998	0.1061	0.0917	0.1065	0.1314	0.1222
305	0.1405	0.1265	0.0915	0.0996	0.1058	0.0914	0.1062	0.1310	0.1218
306	0.1401	0.1261	0.0913	0.0993	0.1055	0.0912	0.1059	0.1307	0.1215
307	0.1397	0.1258	0.0910	0.0990	0.1053	0.0909	0.1057	0.1303	0.1212
308	0.1393	0.1255	0.0908	0.0988	0.1050	0.0907	0.1054	0.1299	0.1208
309	0.1390	0.1251	0.0905	0.0985	0.1047	0.0904	0.1051	0.1296	0.1205
310	0.1386	0.1248	0.0903	0.0982	0.1044	0.0902	0.1048	0.1292	0.1202
311	0.1382	0.1244	0.0900	0.0980	0.1041	0.0899	0.1045	0.1289	0.1198
312	0.1378	0.1241	0.0898	0.0977	0.1038	0.0897	0.1042	0.1285	0.1195
313	0.1374	0.1238	0.0896	0.0974	0.1035	0.0895	0.1039	0.1281	0.1192
314	0.1370	0.1234	0.0893	0.0972	0.1032	0.0892	0.1036	0.1278	0.1189
315	0.1367	0.1231	0.0891	0.0969	0.1030	0.0890	0.1034	0.1274	0.1185
316	0.1363	0.1227	0.0888	0.0966	0.1027	0.0887	0.1031	0.1271	0.1182
317	0.1359	0.1224	0.0886	0.0964	0.1024	0.0885	0.1028	0.1267	0.1179
318	0.1355	0.1220	0.0883	0.0961	0.1021	0.0882	0.1025	0.1264	0.1176
319	0.1352	0.1217	0.0881	0.0958	0.1019	0.0880	0.1022	0.1260	0.1173
320	0.1348	0.1214	0.0879	0.0956	0.1016	0.0878	0.1019	0.1257	0.1170
321	0.1344	0.1210	0.0876	0.0953	0.1013	0.0875	0.1017	0.1253	0.1166
322	0.1340	0.1207	0.0874	0.0950	0.1010	0.0873	0.1014	0.1250	0.1163
323	0.1337	0.1203	0.0871	0.0948	0.1008	0.0870	0.1011	0.1246	0.1160
324	0.1333	0.1200	0.0869	0.0945	0.1005	0.0868	0.1008	0.1243	0.1157
325	0.1329	0.1197	0.0867	0.0942	0.1002	0.0866	0.1005	0.1240	0.1154
326	0.1326	0.1194	0.0864	0.0940	0.0999	0.0863	0.1003	0.1236	0.1151
327	0.1322	0.1190	0.0862	0.0937	0.0997	0.0861	0.1000	0.1233	0.1147
328	0.1319	0.1187	0.0860	0.0935	0.0994	0.0859	0.0997	0.1230	0.1144
329	0.1315	0.1184	0.0857	0.0932	0.0991	0.0856	0.0995	0.1226	0.1141

Months to NRA	LEOFF 1	LEOFF 2	PERS 1	PERS 2/3	SERS 2/3	TRS 1	TRS 2/3	WSPRS 1	WSPRS 2
330	0.1312	0.1181	0.0855	0.0930	0.0988	0.0854	0.0992	0.1223	0.1138
331	0.1308	0.1178	0.0853	0.0927	0.0986	0.0852	0.0989	0.1220	0.1135
332	0.1304	0.1175	0.0850	0.0924	0.0983	0.0849	0.0987	0.1216	0.1132
333	0.1301	0.1171	0.0848	0.0922	0.0980	0.0847	0.0984	0.1213	0.1128
334	0.1297	0.1168	0.0846	0.0919	0.0977	0.0845	0.0981	0.1210	0.1125
335	0.1294	0.1165	0.0843	0.0917	0.0975	0.0842	0.0979	0.1206	0.1122
336	0.1290	0.1162	0.0841	0.0914	0.0972	0.0840	0.0976	0.1203	0.1119
337	0.1286	0.1159	0.0839	0.0912	0.0969	0.0838	0.0973	0.1200	0.1116
338	0.1283	0.1156	0.0836	0.0909	0.0967	0.0835	0.0971	0.1196	0.1113
339	0.1279	0.1152	0.0834	0.0907	0.0964	0.0833	0.0968	0.1193	0.1110
340	0.1276	0.1149	0.0832	0.0904	0.0962	0.0831	0.0965	0.1190	0.1107
341	0.1272	0.1146	0.0830	0.0902	0.0959	0.0829	0.0963	0.1187	0.1104
342	0.1269	0.1143	0.0827	0.0899	0.0957	0.0826	0.0960	0.1183	0.1101
343	0.1265	0.1140	0.0825	0.0897	0.0954	0.0824	0.0957	0.1180	0.1098
344	0.1262	0.1137	0.0823	0.0895	0.0951	0.0822	0.0955	0.1177	0.1095
345	0.1258	0.1133	0.0821	0.0892	0.0949	0.0820	0.0952	0.1174	0.1092
346	0.1255	0.1130	0.0818	0.0890	0.0946	0.0817	0.0949	0.1170	0.1089
347	0.1251	0.1127	0.0816	0.0887	0.0944	0.0815	0.0947	0.1167	0.1086
348	0.1248	0.1124	0.0814	0.0885	0.0941	0.0813	0.0944	0.1164	0.1083
349	0.1245	0.1121	0.0812	0.0883	0.0938	0.0811	0.0941	0.1161	0.1080
350	0.1241	0.1118	0.0809	0.0880	0.0936	0.0808	0.0939	0.1158	0.1077
351	0.1238	0.1115	0.0807	0.0878	0.0933	0.0806	0.0936	0.1154	0.1074
352	0.1235	0.1112	0.0805	0.0875	0.0931	0.0804	0.0934	0.1151	0.1071
353	0.1231	0.1109	0.0803	0.0873	0.0928	0.0802	0.0931	0.1148	0.1068
354	0.1228	0.1106	0.0800	0.0870	0.0926	0.0799	0.0929	0.1145	0.1065
355	0.1225	0.1103	0.0798	0.0868	0.0923	0.0797	0.0926	0.1142	0.1063
356	0.1221	0.1100	0.0796	0.0866	0.0920	0.0795	0.0923	0.1139	0.1060
357	0.1218	0.1097	0.0794	0.0863	0.0918	0.0793	0.0921	0.1135	0.1057
358	0.1215	0.1094	0.0791	0.0861	0.0915	0.0790	0.0918	0.1132	0.1054
359	0.1211	0.1091	0.0789	0.0858	0.0913	0.0788	0.0916	0.1129	0.1051
360	0.1208	0.1088	0.0787	0.0856	0.0910	0.0786	0.0913	0.1126	0.1048
361	0.1205	0.1085	0.0785	0.0854	0.0908	0.0784	0.0911	0.1123	0.1045
362	0.1201	0.1082	0.0783	0.0851	0.0905	0.0782	0.0908	0.1120	0.1042
363	0.1198	0.1079	0.0781	0.0849	0.0903	0.0780	0.0906	0.1117	0.1040
364	0.1195	0.1076	0.0779	0.0847	0.0900	0.0778	0.0903	0.1114	0.1037
365	0.1191	0.1073	0.0777	0.0844	0.0898	0.0776	0.0901	0.1111	0.1034
366	0.1188	0.1070	0.0775	0.0842	0.0895	0.0774	0.0898	0.1108	0.1031
367	0.1185	0.1067	0.0772	0.0840	0.0893	0.0771	0.0896	0.1105	0.1028
368	0.1181	0.1064	0.0770	0.0837	0.0891	0.0769	0.0894	0.1102	0.1025
369	0.1178	0.1061	0.0768	0.0835	0.0888	0.0767	0.0891	0.1099	0.1023
370	0.1175	0.1058	0.0766	0.0833	0.0886	0.0765	0.0889	0.1096	0.1020
371	0.1171	0.1055	0.0764	0.0830	0.0883	0.0763	0.0886	0.1093	0.1017
372	0.1168	0.1052	0.0762	0.0828	0.0881	0.0761	0.0884	0.1090	0.1014
373	0.1165	0.1049	0.0760	0.0826	0.0879	0.0759	0.0882	0.1087	0.1011
374	0.1162	0.1046	0.0758	0.0824	0.0876	0.0757	0.0879	0.1084	0.1008
375	0.1159	0.1044	0.0756	0.0821	0.0874	0.0755	0.0877	0.1081	0.1006
376	0.1156	0.1041	0.0754	0.0819	0.0871	0.0753	0.0874	0.1078	0.1003
377	0.1153	0.1038	0.0752	0.0817	0.0869	0.0751	0.0872	0.1075	0.1000
378	0.1150	0.1035	0.0750	0.0815	0.0866	0.0749	0.0869	0.1072	0.0997
379	0.1146	0.1032	0.0747	0.0813	0.0864	0.0746	0.0867	0.1070	0.0995
380	0.1143	0.1029	0.0745	0.0811	0.0862	0.0744	0.0865	0.1067	0.0992
381	0.1140	0.1027	0.0743	0.0808	0.0859	0.0742	0.0862	0.1064	0.0989
382	0.1137	0.1024	0.0741	0.0806	0.0857	0.0740	0.0860	0.1061	0.0986
383	0.1134	0.1021	0.0739	0.0804	0.0854	0.0738	0.0857	0.1058	0.0984
384	0.1131	0.1018	0.0737	0.0802	0.0852	0.0736	0.0855	0.1055	0.0981
385	0.1128	0.1015	0.0735	0.0800	0.0850	0.0734	0.0853	0.1052	0.0978
386	0.1125	0.1012	0.0733	0.0798	0.0847	0.0732	0.0850	0.1049	0.0976
387	0.1122	0.1010	0.0731	0.0795	0.0845	0.0730	0.0848	0.1046	0.0973
388	0.1119	0.1007	0.0729	0.0793	0.0843	0.0728	0.0846	0.1043	0.0970

General Provisions

415-02-370

Months to NRA	LEOFF 1	LEOFF 2	PERS 1	PERS 2/3	SERS 2/3	TRS 1	TRS 2/3	WSPRS 1	WSPRS 2
389	0.1116	0.1004	0.0727	0.0791	0.0840	0.0726	0.0843	0.1040	0.0968
390	0.1113	0.1001	0.0725	0.0789	0.0838	0.0724	0.0841	0.1037	0.0965
391	0.1109	0.0999	0.0723	0.0787	0.0836	0.0722	0.0839	0.1035	0.0962
392	0.1106	0.0996	0.0721	0.0785	0.0833	0.0720	0.0836	0.1032	0.0960
393	0.1103	0.0993	0.0719	0.0782	0.0831	0.0718	0.0834	0.1029	0.0957
394	0.1100	0.0990	0.0717	0.0780	0.0829	0.0716	0.0832	0.1026	0.0954
395	0.1097	0.0988	0.0715	0.0778	0.0826	0.0714	0.0829	0.1023	0.0952
396	0.1094	0.0985	0.0713	0.0776	0.0824	0.0712	0.0827	0.1020	0.0949
397	0.1091	0.0982	0.0711	0.0774	0.0822	0.0710	0.0825	0.1017	0.0946
398	0.1088	0.0980	0.0709	0.0772	0.0820	0.0708	0.0823	0.1014	0.0944
399	0.1085	0.0977	0.0707	0.0769	0.0817	0.0706	0.0820	0.1012	0.0941
400	0.1082	0.0974	0.0705	0.0767	0.0815	0.0704	0.0818	0.1009	0.0939
401	0.1079	0.0972	0.0703	0.0765	0.0813	0.0702	0.0816	0.1006	0.0936
402	0.1076	0.0969	0.0701	0.0763	0.0811	0.0700	0.0814	0.1003	0.0934
403	0.1074	0.0966	0.0700	0.0761	0.0809	0.0699	0.0812	0.1001	0.0931
404	0.1071	0.0964	0.0698	0.0759	0.0807	0.0697	0.0810	0.0998	0.0928
405	0.1068	0.0961	0.0696	0.0756	0.0804	0.0695	0.0807	0.0995	0.0926
406	0.1065	0.0958	0.0694	0.0754	0.0802	0.0693	0.0805	0.0992	0.0923
407	0.1062	0.0956	0.0692	0.0752	0.0800	0.0691	0.0803	0.0990	0.0921
408	0.1059	0.0953	0.0690	0.0750	0.0798	0.0689	0.0801	0.0987	0.0918
409	0.1056	0.0950	0.0688	0.0748	0.0796	0.0687	0.0799	0.0984	0.0916
410	0.1053	0.0948	0.0686	0.0746	0.0794	0.0685	0.0797	0.0982	0.0913
411	0.1050	0.0945	0.0685	0.0744	0.0791	0.0684	0.0794	0.0979	0.0911
412	0.1047	0.0943	0.0683	0.0742	0.0789	0.0682	0.0792	0.0976	0.0908
413	0.1044	0.0940	0.0681	0.0740	0.0787	0.0680	0.0790	0.0974	0.0906
414	0.1041	0.0938	0.0679	0.0738	0.0785	0.0678	0.0788	0.0971	0.0903
415	0.1039	0.0935	0.0677	0.0736	0.0783	0.0676	0.0786	0.0968	0.0901
416	0.1036	0.0932	0.0675	0.0734	0.0781	0.0674	0.0784	0.0966	0.0899
417	0.1033	0.0930	0.0674	0.0732	0.0778	0.0673	0.0781	0.0963	0.0896
418	0.1030	0.0927	0.0672	0.0730	0.0776	0.0671	0.0779	0.0960	0.0894
419	0.1027	0.0925	0.0670	0.0728	0.0774	0.0669	0.0777	0.0958	0.0891
420	0.1024	0.0922	0.0668	0.0726	0.0772	0.0667	0.0775	0.0955	0.0889
421	0.1021	0.0919	0.0666	0.0724	0.0770	0.0665	0.0773	0.0952	0.0887
422	0.1018	0.0917	0.0664	0.0722	0.0768	0.0663	0.0771	0.0950	0.0884
423	0.1016	0.0914	0.0663	0.0720	0.0766	0.0662	0.0769	0.0947	0.0882
424	0.1013	0.0912	0.0661	0.0718	0.0764	0.0660	0.0767	0.0945	0.0879
425	0.1010	0.0909	0.0659	0.0716	0.0762	0.0658	0.0765	0.0942	0.0877
426	0.1007	0.0907	0.0657	0.0714	0.0760	0.0656	0.0763	0.0940	0.0874
427	0.1005	0.0904	0.0655	0.0713	0.0757	0.0654	0.0760	0.0937	0.0872
428	0.1002	0.0902	0.0653	0.0711	0.0755	0.0652	0.0758	0.0934	0.0870
429	0.0999	0.0899	0.0652	0.0709	0.0753	0.0651	0.0756	0.0932	0.0867
430	0.0996	0.0897	0.0650	0.0707	0.0751	0.0649	0.0754	0.0929	0.0865
431	0.0994	0.0894	0.0648	0.0705	0.0749	0.0647	0.0752	0.0927	0.0862
432	0.0991	0.0892	0.0646	0.0703	0.0747	0.0645	0.0750	0.0924	0.0860
433	0.0988	0.0890	0.0644	0.0701	0.0745	0.0643	0.0748	0.0921	0.0858
434	0.0986	0.0887	0.0642	0.0699	0.0743	0.0641	0.0746	0.0919	0.0855
435	0.0983	0.0885	0.0641	0.0697	0.0741	0.0640	0.0744	0.0916	0.0853
436	0.0980	0.0883	0.0639	0.0695	0.0739	0.0638	0.0742	0.0914	0.0851
437	0.0978	0.0880	0.0637	0.0693	0.0737	0.0636	0.0740	0.0911	0.0848
438	0.0975	0.0878	0.0635	0.0691	0.0735	0.0634	0.0738	0.0909	0.0846
439	0.0972	0.0876	0.0634	0.0690	0.0733	0.0633	0.0735	0.0906	0.0844
440	0.0970	0.0873	0.0632	0.0688	0.0731	0.0631	0.0733	0.0904	0.0841
441	0.0967	0.0871	0.0630	0.0686	0.0729	0.0629	0.0731	0.0901	0.0839
442	0.0964	0.0869	0.0628	0.0684	0.0727	0.0627	0.0729	0.0899	0.0837
443	0.0962	0.0866	0.0627	0.0682	0.0725	0.0626	0.0727	0.0896	0.0834
444	0.0959	0.0864	0.0625	0.0680	0.0723	0.0624	0.0725	0.0894	0.0832
445	0.0956	0.0862	0.0623	0.0678	0.0721	0.0622	0.0723	0.0892	0.0830
446	0.0954	0.0859	0.0622	0.0676	0.0719	0.0621	0.0721	0.0889	0.0827
447	0.0951	0.0857	0.0620	0.0675	0.0717	0.0619	0.0719	0.0887	0.0825

Months to NRA	LEOFF 1	LEOFF 2	PERS 1	PERS 2/3	SERS 2/3	TRS 1	TRS 2/3	WSPRS 1	WSPRS 2
448	0.0949	0.0855	0.0618	0.0673	0.0715	0.0617	0.0717	0.0884	0.0823
449	0.0946	0.0852	0.0617	0.0671	0.0713	0.0616	0.0715	0.0882	0.0821
450	0.0944	0.0850	0.0615	0.0669	0.0711	0.0614	0.0713	0.0879	0.0818
451	0.0941	0.0848	0.0613	0.0667	0.0709	0.0612	0.0712	0.0877	0.0816
452	0.0938	0.0845	0.0612	0.0665	0.0707	0.0611	0.0710	0.0875	0.0814
453	0.0936	0.0843	0.0610	0.0664	0.0705	0.0609	0.0708	0.0872	0.0812
454	0.0933	0.0841	0.0608	0.0662	0.0703	0.0607	0.0706	0.0870	0.0809
455	0.0931	0.0838	0.0607	0.0660	0.0701	0.0606	0.0704	0.0867	0.0807
456	0.0928	0.0836	0.0605	0.0658	0.0699	0.0604	0.0702	0.0865	0.0805
457	0.0925	0.0834	0.0603	0.0656	0.0697	0.0602	0.0700	0.0863	0.0803
458	0.0923	0.0831	0.0602	0.0654	0.0695	0.0601	0.0698	0.0860	0.0801
459	0.0920	0.0829	0.0600	0.0653	0.0694	0.0599	0.0696	0.0858	0.0798
460	0.0918	0.0827	0.0598	0.0651	0.0692	0.0598	0.0694	0.0856	0.0796
461	0.0915	0.0824	0.0597	0.0649	0.0690	0.0596	0.0692	0.0853	0.0794
462	0.0913	0.0822	0.0595	0.0647	0.0688	0.0595	0.0690	0.0851	0.0792
463	0.0910	0.0820	0.0593	0.0645	0.0686	0.0593	0.0689	0.0849	0.0790
464	0.0908	0.0817	0.0592	0.0643	0.0684	0.0591	0.0687	0.0846	0.0788
465	0.0905	0.0815	0.0590	0.0642	0.0683	0.0590	0.0685	0.0844	0.0785
466	0.0903	0.0813	0.0588	0.0640	0.0681	0.0588	0.0683	0.0842	0.0783
467	0.0900	0.0810	0.0587	0.0638	0.0679	0.0587	0.0681	0.0839	0.0781
468	0.0898	0.0808	0.0585	0.0636	0.0677	0.0585	0.0679	0.0837	0.0779
469	0.0896	0.0806	0.0583	0.0634	0.0675	0.0583	0.0677	0.0835	0.0777
470	0.0893	0.0804	0.0582	0.0633	0.0673	0.0582	0.0675	0.0832	0.0775
471	0.0891	0.0801	0.0580	0.0631	0.0672	0.0580	0.0674	0.0830	0.0773
472	0.0888	0.0799	0.0579	0.0629	0.0670	0.0579	0.0672	0.0828	0.0771
473	0.0886	0.0797	0.0577	0.0628	0.0668	0.0577	0.0670	0.0826	0.0769
474	0.0883	0.0795	0.0576	0.0626	0.0666	0.0576	0.0668	0.0823	0.0767
475	0.0881	0.0793	0.0574	0.0624	0.0664	0.0574	0.0666	0.0821	0.0764
476	0.0879	0.0791	0.0572	0.0623	0.0662	0.0572	0.0664	0.0819	0.0762
477	0.0876	0.0788	0.0571	0.0621	0.0661	0.0571	0.0663	0.0817	0.0760
478	0.0874	0.0786	0.0569	0.0619	0.0659	0.0569	0.0661	0.0814	0.0758
479	0.0871	0.0784	0.0568	0.0618	0.0657	0.0568	0.0659	0.0812	0.0756
480	0.0869	0.0782	0.0566	0.0616	0.0655	0.0566	0.0657	0.0810	0.0754

(5) **Tables - Factor 2 and Factor 3.** Factors 2 and 3 will be used in the calculation of the service credit purchase cost only for a member in PERS Plan 1, TRS Plan 1, WSPRS Plan 1, or WSPRS Plan 2 and only if the service credit purchase would allow the member to retire earlier.

FACTOR 2

Plan	Factor 2
PERS 1	0.00434
TRS 1	0.00383
WSPRS 1	0.00489
WSPRS 2	0.00460

FACTOR 3

Months to NRA	Factor 3
0	1.0000
1	0.9973
2	0.9946
3	0.9919
4	0.9892
5	0.9865
6	0.9838
7	0.9811

Months to NRA	Factor 3
8	0.9784
9	0.9757
10	0.9730
11	0.9703
12	0.9676
13	0.9650
14	0.9624
15	0.9597
16	0.9571
17	0.9545
18	0.9519
19	0.9493
20	0.9467
21	0.9440
22	0.9414
23	0.9388
24	0.9362
25	0.9337
26	0.9311
27	0.9286
28	0.9261
29	0.9236
30	0.9210
31	0.9185

Months to NRA	Factor 3
32	0.9160
33	0.9135
34	0.9109
35	0.9084
36	0.9059
37	0.9034
38	0.9010
39	0.8985
40	0.8961
41	0.8936
42	0.8912
43	0.8887
44	0.8863
45	0.8838
46	0.8814
47	0.8789
48	0.8765
49	0.8741
50	0.8718
51	0.8694
52	0.8670
53	0.8647
54	0.8623
55	0.8599
56	0.8576
57	0.8552
58	0.8528
59	0.8505
60	0.8481
61	0.8458
62	0.8435
63	0.8412
64	0.8389
65	0.8366
66	0.8343
67	0.8321
68	0.8298
69	0.8275
70	0.8252
71	0.8229
72	0.8206
73	0.8184
74	0.8162
75	0.8139
76	0.8117
77	0.8095
78	0.8073
79	0.8051
80	0.8029
81	0.8006
82	0.7984
83	0.7962
84	0.7940
85	0.7919
86	0.7897
87	0.7876
88	0.7854
89	0.7833
90	0.7811
91	0.7790

Months to NRA	Factor 3
92	0.7769
93	0.7747
94	0.7726
95	0.7704
96	0.7683
97	0.7662
98	0.7641
99	0.7621
100	0.7600
101	0.7579
102	0.7558
103	0.7538
104	0.7517
105	0.7496
106	0.7475
107	0.7455
108	0.7434
109	0.7414
110	0.7394
111	0.7374
112	0.7354
113	0.7334
114	0.7314
115	0.7293
116	0.7273
117	0.7253
118	0.7233
119	0.7213
120	0.7193
121	0.7174
122	0.7154
123	0.7135
124	0.7115
125	0.7096
126	0.7076
127	0.7057
128	0.7038
129	0.7018
130	0.6999
131	0.6979
132	0.6960
133	0.6941
134	0.6922
135	0.6904
136	0.6885
137	0.6866
138	0.6847
139	0.6829
140	0.6810
141	0.6791
142	0.6772
143	0.6754
144	0.6735
145	0.6717
146	0.6698
147	0.6680
148	0.6662
149	0.6644
150	0.6625
151	0.6607

Months to NRA	Factor 3
152	0.6589
153	0.6571
154	0.6552
155	0.6534
156	0.6516
157	0.6498
158	0.6481
159	0.6463
160	0.6446
161	0.6428
162	0.6411
163	0.6393
164	0.6375
165	0.6358
166	0.6340
167	0.6323
168	0.6305
169	0.6288
170	0.6271
171	0.6254
172	0.6237
173	0.6220
174	0.6203
175	0.6186
176	0.6169
177	0.6152
178	0.6135
179	0.6118
180	0.6101
181	0.6084
182	0.6068
183	0.6051
184	0.6035
185	0.6018
186	0.6002
187	0.5985
188	0.5969
189	0.5952
190	0.5936
191	0.5919
192	0.5903
193	0.5887
194	0.5871
195	0.5855
196	0.5839
197	0.5823
198	0.5807
199	0.5792
200	0.5776
201	0.5760
202	0.5744
203	0.5728
204	0.5712
205	0.5697
206	0.5681
207	0.5666
208	0.5650
209	0.5635
210	0.5619
211	0.5604

Months to NRA	Factor 3
212	0.5589
213	0.5573
214	0.5558
215	0.5542
216	0.5527
217	0.5512
218	0.5497
219	0.5482
220	0.5467
221	0.5452
222	0.5437
223	0.5423
224	0.5408
225	0.5393
226	0.5378
227	0.5363
228	0.5348
229	0.5333
230	0.5319
231	0.5304
232	0.5290
233	0.5275
234	0.5261
235	0.5246
236	0.5232
237	0.5217
238	0.5203
239	0.5188
240	0.5174
241	0.5160
242	0.5146
243	0.5132
244	0.5118
245	0.5104
246	0.5090
247	0.5077
248	0.5063
249	0.5049
250	0.5035
251	0.5021
252	0.5007
253	0.4993
254	0.4980
255	0.4966
256	0.4953
257	0.4939
258	0.4926
259	0.4912
260	0.4898
261	0.4885
262	0.4871
263	0.4858
264	0.4844
265	0.4831
266	0.4818
267	0.4805
268	0.4792
269	0.4779
270	0.4766
271	0.4752

Months to NRA	Factor 3
272	0.4739
273	0.4726
274	0.4713
275	0.4700
276	0.4687
277	0.4674
278	0.4662
279	0.4649
280	0.4636
281	0.4624
282	0.4611
283	0.4598
284	0.4586
285	0.4573
286	0.4560
287	0.4548
288	0.4535
289	0.4523
290	0.4510
291	0.4498
292	0.4486
293	0.4474
294	0.4461
295	0.4449
296	0.4437
297	0.4425
298	0.4412
299	0.4400
300	0.4388
301	0.4376
302	0.4364
303	0.4353
304	0.4341
305	0.4329
306	0.4317
307	0.4305
308	0.4293
309	0.4282
310	0.4270
311	0.4258
312	0.4246
313	0.4235
314	0.4223
315	0.4212
316	0.4200
317	0.4189
318	0.4177
319	0.4166
320	0.4155
321	0.4143
322	0.4132
323	0.4120
324	0.4109
325	0.4098
326	0.4087
327	0.4075
328	0.4064
329	0.4053
330	0.4042
331	0.4031

Months to NRA	Factor 3
332	0.4020
333	0.4008
334	0.3997
335	0.3986
336	0.3975
337	0.3964
338	0.3954
339	0.3943
340	0.3932
341	0.3922
342	0.3911
343	0.3900
344	0.3890
345	0.3879
346	0.3868
347	0.3858
348	0.3847
349	0.3837
350	0.3826
351	0.3816
352	0.3805
353	0.3795
354	0.3784
355	0.3774
356	0.3764
357	0.3753
358	0.3743
359	0.3732
360	0.3722
361	0.3712
362	0.3702
363	0.3692
364	0.3682
365	0.3672
366	0.3662
367	0.3651
368	0.3641
369	0.3631
370	0.3621
371	0.3611
372	0.3601
373	0.3591
374	0.3582
375	0.3572
376	0.3562
377	0.3553
378	0.3543
379	0.3533
380	0.3524
381	0.3514
382	0.3504
383	0.3495
384	0.3485
385	0.3476
386	0.3466
387	0.3457
388	0.3447
389	0.3438
390	0.3428
391	0.3419

Months to NRA	Factor 3
392	0.3410
393	0.3400
394	0.3391
395	0.3381
396	0.3372
397	0.3363
398	0.3354
399	0.3344
400	0.3335
401	0.3326
402	0.3317
403	0.3308
404	0.3299
405	0.3289
406	0.3280
407	0.3271
408	0.3262
409	0.3253
410	0.3244
411	0.3236
412	0.3227
413	0.3218
414	0.3209
415	0.3201
416	0.3192
417	0.3183
418	0.3174
419	0.3166
420	0.3157
421	0.3148
422	0.3140
423	0.3131
424	0.3123
425	0.3114
426	0.3106
427	0.3097
428	0.3088
429	0.3080
430	0.3071
431	0.3063
432	0.3054
433	0.3046
434	0.3037
435	0.3029
436	0.3021
437	0.3013
438	0.3004
439	0.2996
440	0.2988
441	0.2980
442	0.2971
443	0.2963
444	0.2955
445	0.2947
446	0.2939
447	0.2931
448	0.2923
449	0.2915
450	0.2907
451	0.2900

Months to NRA	Factor 3
452	0.2892
453	0.2884
454	0.2876
455	0.2868
456	0.2860
457	0.2852
458	0.2844
459	0.2837
460	0.2829
461	0.2821
462	0.2813
463	0.2806
464	0.2798
465	0.2790
466	0.2782
467	0.2775
468	0.2767
469	0.2759
470	0.2752
471	0.2744
472	0.2737
473	0.2729
474	0.2722
475	0.2714
476	0.2707
477	0.2699
478	0.2692
479	0.2684
480	0.2677

[Statutory Authority: RCW 41.50.050(5), 41.50.165. 03-15-006, § 415-02-370, filed 7/3/03, effective 8/3/03.]

WAC 415-02-380 Survivor options factors. (1) What is a "surviving beneficiary"? A surviving beneficiary is a person you designate who will receive benefit payments for the duration of his or her life, beginning at your death.

(2) Will selecting a surviving beneficiary affect my retirement benefits? Yes. Retirees who select a surviving beneficiary retirement option receive smaller benefit payments than those retirees who do not select this option.

(3) Does it matter if I am married? Yes. If you are married, you must provide your spouse's written consent to the option you select (except in LEOFF Plan 1). If you are married, and you and your spouse do not give written consent to an option, the department will pay you a joint and fifty percent survivor benefit and record your spouse as the beneficiary. For details, please review:

- LEOFF Plan 1: RCW 41.26.162 WAC 415-104-202
- LEOFF Plan 2: RCW 41.26.460(2) WAC 415-104-211 and 415-104-215
- PERS Plan 1: RCW 41.40.188(2) WAC 415-108-324 and 415-108-326
- PERS Plan 2: RCW 41.40.660(2) WAC 415-108-324 and 415-108-326
- PERS Plan 3: RCW 41.40.845(2) WAC 415-108-324 and 415-108-326
- SERS Plans 2/3: RCW 41.35.220(2) WAC 415-110-324 and 415-110-326
- TRS Plan 1: RCW 41.32.530(2) WAC 415-112-710 to 415-112-727
- TRS Plan 2: RCW 41.32.785(2) WAC 415-112-710 to 415-112-727

TRS Plan 3: RCW 41.32.851(2) WAC 415-112-710 to 415-112-727
 WSPRS Plan 2: RCW 43.43.271(2) WAC 415-103-225

(4) Why does the surviving beneficiary's age matter?

The surviving beneficiary's age is used in determining the amount of the payments. The younger the surviving beneficiary, the longer he or she is expected to receive payments. The monthly benefit must be reduced accordingly.

(5) What are the survivor options?

The survivor options are described in detail within each plan. For details, please see the list in subsection (3) of this section.

To summarize:

- Option 2 - Joint and 100 percent survivorship
- Option 3 - Joint and 50 percent survivorship
- Option 4 - Joint and 66.67 percent survivorship

(6) Examples

(a) Example (a):

Kendra, a PERS Plan 2 member, chooses Option 3 (joint and 50 percent survivorship) at retirement. She names her nephew, Steve, as her surviving beneficiary. This means that Steve would receive half of Kendra's benefit amount after Kendra's death. Steve is 30 years younger than Kendra. PERS would use the survivor option factor table ("member older") to calculate the adjustment. With a 30-year age difference

(member minus beneficiary), the value corresponding to PERS Plan 2 and Option 3 is 0.753. This value, 0.753, is multiplied against the amount Kendra would have received under Option 1. Kendra's retirement benefits will be reduced to about 75% of her Option 1 level.

(b) Example (b):

Mark, a LEOFF Plan 2 member, chooses Option 2 (joint and 100 percent survivorship) at retirement. He names his wife, Susan, as his surviving beneficiary. This means Susan would receive the same benefit amount Mark had received prior to his death. Mark is five years younger than Susan. LEOFF would use the survivor option factors table ("member younger") to calculate the adjustment for the age difference. With a 5-year age difference (member minus beneficiary), the value corresponding to LEOFF Plan 2 and Option 2 is 0.894. This value, 0.894, will be multiplied against the amount Mark would have received under Option 1. Mark's retirement benefits will be reduced to about 89 percent of his Option 1 level.

(7) Table - Member older (PERS and SERS)

Survivor option factor: Member older than beneficiary

Age difference: Member age minus beneficiary age

Age Difference	PERS 1 Opt. 2 100%	PERS 1 Opt. 3 50%	PERS 1 Opt. 4 66 2/3%	PERS 2/3 Opt. 2 100%	PERS 2/3 Opt. 3 50%	PERS 2/3 Opt. 4 66 2/3%	SERS 2/3 Opt. 2 100%	SERS 2/3 Opt. 3 50%	SERS 2/3 Opt. 4 66 2/3%
0	.870	.930	.909	.791	.883	.850	.799	.888	.857
1	.862	.926	.904	.778	.875	.840	.773	.872	.836
2	.857	.923	.900	.767	.868	.832	.760	.864	.826
3	.844	.915	.890	.758	.863	.825	.748	.856	.816
4	.840	.913	.887	.751	.858	.819	.741	.851	.811
5	.836	.910	.884	.743	.853	.813	.734	.846	.805
6	.831	.908	.881	.736	.848	.807	.726	.841	.799
7	.818	.900	.871	.728	.843	.801	.719	.836	.793
8	.814	.897	.867	.721	.838	.795	.712	.832	.787
9	.809	.895	.864	.713	.833	.789	.705	.827	.782
10	.805	.892	.861	.706	.828	.783	.698	.822	.776
11	.802	.890	.858	.699	.823	.777	.692	.818	.771
12	.787	.881	.847	.693	.818	.772	.685	.813	.766
13	.784	.879	.845	.686	.814	.766	.679	.809	.760
14	.780	.876	.842	.680	.809	.761	.673	.805	.755
15	.777	.874	.839	.673	.805	.756	.667	.800	.750
16	.773	.872	.836	.667	.801	.751	.662	.796	.746
17	.770	.870	.834	.662	.796	.746	.656	.792	.741
18	.767	.868	.832	.656	.792	.741	.651	.789	.737
19	.764	.866	.829	.651	.788	.736	.646	.785	.732
20	.762	.865	.827	.645	.785	.732	.641	.781	.728
21	.759	.863	.825	.640	.781	.728	.637	.778	.724
22	.756	.861	.823	.636	.777	.724	.632	.775	.720
23	.754	.860	.821	.631	.774	.720	.628	.771	.717
24	.752	.858	.820	.627	.771	.716	.624	.768	.713
25	.750	.857	.818	.622	.767	.712	.620	.765	.710
26	.748	.856	.817	.618	.764	.709	.616	.762	.707
27	.746	.855	.815	.615	.761	.705	.613	.760	.703
28	.744	.853	.814	.611	.758	.702	.609	.757	.700
29	.743	.852	.812	.607	.756	.699	.606	.755	.697
30	.741	.851	.811	.604	.753	.696	.603	.752	.695
31	.740	.850	.810	.601	.751	.693	.600	.750	.692
32	.738	.849	.809	.598	.748	.690	.597	.748	.690
33	.737	.849	.808	.595	.746	.688	.594	.745	.687
34	.736	.848	.807	.592	.744	.685	.592	.743	.685
35	.735	.847	.806	.589	.742	.683	.589	.741	.683
36	.734	.846	.805	.587	.740	.680	.587	.740	.680
37	.733	.846	.804	.584	.738	.678	.585	.738	.678
38	.732	.845	.804	.582	.736	.676	.582	.736	.677
39	.731	.844	.803	.580	.734	.674	.580	.734	.675
40	.730	.844	.802	.578	.732	.672	.578	.733	.673

(8) Table - Member younger (PERS and SERS)

Survivor option factors: Member younger than beneficiary
 Age difference: Member age minus beneficiary age

Age Difference	PERS 1 Opt. 2 100%	PERS 1 Opt. 3 50%	PERS 1 Opt. 4 66 2/3%	PERS 2/3 Opt. 2 100%	PERS 2/3 Opt. 3 50%	PERS 2/3 Opt. 4 66 2/3%	SERS 2/3 Opt. 2 100%	SERS 2/3 Opt. 3 50%	SERS 2/3 Opt. 4 66 2/3%
-20	.958	.978	.971	.939	.969	.959	.949	.974	.965
-19	.955	.977	.970	.935	.967	.956	.946	.972	.963
-18	.952	.976	.968	.931	.964	.953	.942	.970	.961
-17	.949	.974	.966	.927	.962	.950	.938	.968	.958
-16	.947	.973	.964	.922	.959	.947	.934	.966	.955
-15	.944	.971	.962	.917	.957	.943	.930	.964	.952
-14	.940	.969	.959	.912	.954	.940	.926	.961	.949
-13	.937	.968	.957	.907	.951	.936	.921	.959	.946
-12	.934	.966	.955	.902	.948	.932	.917	.956	.943
-11	.930	.964	.953	.896	.945	.928	.912	.954	.939
-10	.927	.962	.950	.890	.942	.924	.907	.951	.936
-9	.923	.960	.948	.884	.938	.919	.901	.948	.932
-8	.920	.958	.945	.878	.935	.915	.896	.945	.928
-7	.916	.956	.942	.871	.931	.910	.890	.942	.924
-6	.912	.954	.940	.865	.927	.905	.885	.939	.920
-5	.908	.952	.937	.858	.924	.901	.879	.935	.916
-4	.901	.948	.931	.848	.918	.893	.873	.932	.911
-3	.896	.945	.928	.840	.913	.887	.863	.927	.905
-2	.889	.941	.923	.826	.905	.877	.853	.920	.897
-1	.879	.935	.916	.805	.892	.861	.834	.909	.883
0	.870	.930	.909	.791	.883	.850	.799	.888	.857

(9) Table - Member older (LEOFF Plan 2 and WSPRS Plan 2)

Survivor option factors: Member older than beneficiary
 Age difference: Member age minus beneficiary age

Age Difference	LEOFF 2 Option 2 100%	LEOFF 2 Option 3 50%	LEOFF 2 Option 4 66 2/3%	WSP 2 Option 2 100%	WSP 2 Option 3 50%	WSP 2 Option 4 66 2/3%
0	0.870	0.930	0.909	0.870	0.930	0.909
1	0.865	0.927	0.905	0.865	0.927	0.905
2	0.860	0.924	0.902	0.860	0.924	0.902
3	0.855	0.922	0.898	0.855	0.922	0.898
4	0.850	0.919	0.894	0.850	0.919	0.894
5	0.845	0.916	0.891	0.845	0.916	0.891
6	0.840	0.913	0.887	0.840	0.913	0.887
7	0.835	0.910	0.883	0.835	0.910	0.883
8	0.830	0.907	0.880	0.830	0.907	0.880
9	0.825	0.904	0.876	0.825	0.904	0.876
10	0.821	0.902	0.873	0.821	0.902	0.873
11	0.816	0.899	0.870	0.816	0.899	0.870
12	0.812	0.896	0.866	0.812	0.896	0.866
13	0.808	0.894	0.863	0.808	0.894	0.863
14	0.803	0.891	0.860	0.803	0.891	0.860
15	0.799	0.888	0.857	0.799	0.888	0.857
16	0.795	0.886	0.854	0.795	0.886	0.854
17	0.792	0.884	0.851	0.792	0.884	0.851
18	0.788	0.881	0.848	0.788	0.881	0.848
19	0.784	0.879	0.845	0.784	0.879	0.845
20	0.781	0.877	0.842	0.781	0.877	0.842
21	0.777	0.875	0.840	0.777	0.875	0.840
22	0.774	0.873	0.837	0.774	0.873	0.837
23	0.771	0.871	0.835	0.771	0.871	0.835
24	0.768	0.869	0.832	0.768	0.869	0.832
25	0.765	0.867	0.830	0.765	0.867	0.830
26	0.763	0.865	0.828	0.763	0.865	0.828
27	0.760	0.864	0.826	0.760	0.864	0.826
28	0.757	0.862	0.824	0.757	0.862	0.824
29	0.755	0.860	0.822	0.755	0.860	0.822
30	0.753	0.859	0.820	0.753	0.859	0.820
31	0.750	0.857	0.818	0.750	0.857	0.818
32	0.748	0.856	0.817	0.748	0.856	0.817
33	0.746	0.855	0.815	0.746	0.855	0.815
34	0.744	0.853	0.814	0.744	0.853	0.814
35	0.742	0.852	0.812	0.742	0.852	0.812
36	0.741	0.851	0.811	0.741	0.851	0.811
37	0.739	0.850	0.809	0.739	0.850	0.809
38	0.737	0.849	0.808	0.737	0.849	0.808
39	0.736	0.848	0.807	0.736	0.848	0.807
40	0.734	0.847	0.806	0.734	0.847	0.806

(10) Table - Member younger (LEOFF Plan 2 and WSPRS Plan 2)

Survivor option factors: Member younger than beneficiary
 Age difference: Member age minus beneficiary age

Age Difference	LEOFF 2 Option 2 100%	LEOFF 2 Option 3 50%	LEOFF 2 Option 4 66 2/3%	WSP 2 Option 2 100%	WSP 2 Option 3 50%	WSP 2 Option 4 66 2/3%
-20	0.953	0.976	0.968	0.953	0.976	0.968
-19	0.950	0.974	0.966	0.950	0.974	0.966
-18	0.947	0.973	0.964	0.947	0.973	0.964
-17	0.944	0.971	0.962	0.944	0.971	0.962
-16	0.940	0.969	0.959	0.940	0.969	0.959
-15	0.937	0.967	0.957	0.937	0.967	0.957
-14	0.933	0.965	0.954	0.933	0.965	0.954
-13	0.929	0.963	0.952	0.929	0.963	0.952
-12	0.925	0.961	0.949	0.925	0.961	0.949
-11	0.921	0.959	0.946	0.921	0.959	0.946
-10	0.917	0.957	0.943	0.917	0.957	0.943
-9	0.913	0.954	0.940	0.913	0.954	0.940
-8	0.908	0.952	0.937	0.908	0.952	0.937
-7	0.904	0.949	0.934	0.904	0.949	0.934
-6	0.899	0.947	0.930	0.899	0.947	0.930
-5	0.894	0.944	0.927	0.894	0.944	0.927
-4	0.890	0.942	0.924	0.890	0.942	0.924
-3	0.885	0.939	0.920	0.885	0.939	0.920
-2	0.880	0.936	0.916	0.880	0.936	0.916
-1	0.875	0.933	0.913	0.875	0.933	0.913
0	0.870	0.930	0.909	0.870	0.930	0.909

(11) Table - Member younger (TRS)

Survivor option factors: Member younger than beneficiary
 Age difference: Member age minus beneficiary age

Age Difference	TRS 1 Option 2 100%	TRS 1 Option 3 50%	TRS 1 Option 4 66 2/3%	TRS 2/3 Option 2 100%	TRS 2/3 Option 3 50%	TRS 2/3 Option 4 66 2/3%
-20	0.968	0.984	0.979	0.952	0.975	0.967
-19	0.966	0.983	0.977	0.949	0.974	0.965
-18	0.964	0.982	0.976	0.945	0.972	0.963
-17	0.962	0.981	0.974	0.942	0.970	0.960
-16	0.960	0.979	0.973	0.938	0.968	0.958
-15	0.957	0.978	0.971	0.934	0.966	0.955
-14	0.955	0.977	0.969	0.929	0.963	0.952
-13	0.952	0.976	0.968	0.925	0.961	0.949
-12	0.950	0.974	0.966	0.921	0.959	0.946
-11	0.947	0.973	0.964	0.916	0.956	0.942
-10	0.944	0.971	0.962	0.911	0.953	0.939
-9	0.942	0.970	0.960	0.906	0.951	0.935
-8	0.939	0.968	0.958	0.900	0.948	0.931
-7	0.936	0.967	0.956	0.895	0.945	0.927
-6	0.933	0.965	0.954	0.889	0.941	0.923
-5	0.927	0.962	0.950	0.884	0.938	0.919
-4	0.923	0.960	0.947	0.877	0.934	0.914
-3	0.918	0.957	0.944	0.865	0.928	0.906
-2	0.913	0.955	0.941	0.855	0.922	0.899
-1	0.907	0.951	0.936	0.839	0.912	0.887
0	0.898	0.946	0.930	0.815	0.898	0.869

(12) Table - Member older (TRS)

Survivor option factors: Member older than beneficiary
 Age difference: Member age minus beneficiary age

Age Difference	TRS 1 Option 2 100%	TRS 1 Option 3 50%	TRS 1 Option 4 66 2/3%	TRS 2/3 Option 2 100%	TRS 2/3 Option 3 50%	TRS 2/3 Option 4 66 2/3%
0	0.898	0.946	0.930	0.815	0.898	0.869
1	0.892	0.943	0.925	0.801	0.889	0.858
2	0.888	0.941	0.922	0.790	0.883	0.849
3	0.877	0.935	0.915	0.781	0.877	0.842
4	0.873	0.932	0.912	0.772	0.871	0.835
5	0.869	0.930	0.909	0.765	0.867	0.830
6	0.858	0.924	0.901	0.758	0.862	0.824
7	0.855	0.922	0.898	0.751	0.858	0.819
8	0.851	0.920	0.896	0.744	0.853	0.813
9	0.848	0.918	0.893	0.737	0.849	0.808
10	0.845	0.916	0.891	0.730	0.844	0.802
11	0.842	0.914	0.889	0.724	0.840	0.797
12	0.839	0.912	0.887	0.717	0.835	0.792

Age Difference	TRS 1 Option 2 100%	TRS 1 Option 3 50%	TRS 1 Option 4 66 2/3%	TRS 2/3 Option 2 100%	TRS 2/3 Option 3 50%	TRS 2/3 Option 4 66 2/3%
13	0.836	0.911	0.884	0.711	0.831	0.787
14	0.824	0.904	0.875	0.705	0.827	0.782
15	0.821	0.902	0.873	0.699	0.823	0.777
16	0.819	0.900	0.871	0.694	0.819	0.773
17	0.816	0.899	0.869	0.688	0.815	0.768
18	0.814	0.897	0.868	0.683	0.812	0.764
19	0.812	0.896	0.866	0.678	0.808	0.760
20	0.809	0.895	0.864	0.673	0.805	0.755
21	0.807	0.893	0.863	0.668	0.801	0.751
22	0.805	0.892	0.861	0.664	0.798	0.748
23	0.803	0.891	0.860	0.660	0.795	0.744
24	0.802	0.890	0.858	0.655	0.792	0.740
25	0.800	0.889	0.857	0.651	0.789	0.737
26	0.798	0.888	0.856	0.648	0.786	0.734
27	0.797	0.887	0.855	0.644	0.783	0.731
28	0.796	0.886	0.854	0.640	0.781	0.728
29	0.794	0.885	0.853	0.637	0.778	0.725
30	0.793	0.885	0.852	0.634	0.776	0.722
31	0.792	0.884	0.851	0.631	0.774	0.719
32	0.791	0.883	0.850	0.628	0.771	0.717
33	0.790	0.882	0.849	0.625	0.769	0.714
34	0.789	0.882	0.848	0.622	0.767	0.712
35	0.788	0.881	0.848	0.620	0.765	0.710
36	0.787	0.881	0.847	0.617	0.763	0.708
37	0.786	0.880	0.846	0.615	0.762	0.706
38	0.785	0.880	0.846	0.613	0.760	0.704
39	0.785	0.879	0.845	0.611	0.758	0.702
40	0.784	0.879	0.845	0.609	0.757	0.700

(13) Table - Member younger (LEOFF Plan 1)

Survivor option factors: Member younger than beneficiary

Age difference: Member age minus beneficiary age

Age Difference	Option 2 100%	Option 3 50%	Option 4 66 2/3 %
-20	0.958	0.978	0.971
-19	0.955	0.977	0.969
-18	0.952	0.975	0.967
-17	0.949	0.974	0.965
-16	0.946	0.972	0.963
-15	0.942	0.970	0.961
-14	0.939	0.969	0.959
-13	0.935	0.967	0.956
-12	0.932	0.965	0.953
-11	0.928	0.963	0.951
-10	0.924	0.960	0.948
-9	0.920	0.958	0.945
-8	0.916	0.956	0.942
-7	0.911	0.954	0.939
-6	0.907	0.951	0.936
-5	0.902	0.949	0.933
-4	0.898	0.946	0.929
-3	0.893	0.943	0.926
-2	0.888	0.941	0.922
-1	0.883	0.938	0.919

(14) Table - Member older (LEOFF Plan 1)

Survivor option factors: Member older than beneficiary
Age difference: Member age minus beneficiary age

Age Difference	Option 2 100%	Option 3 50%	Option 4 66 2/3%
0	0.878	0.935	0.915
1	0.873	0.932	0.912

Age Difference	Option 2 100%	Option 3 50%	Option 4 66 2/3%
2	0.868	0.930	0.908
3	0.864	0.927	0.905
4	0.859	0.924	0.901
5	0.854	0.921	0.898
6	0.849	0.918	0.894
7	0.844	0.915	0.890
8	0.839	0.913	0.887
9	0.835	0.910	0.883
10	0.830	0.907	0.880
11	0.826	0.905	0.877
12	0.821	0.902	0.873
13	0.817	0.899	0.870
14	0.813	0.897	0.867
15	0.809	0.894	0.864
16	0.805	0.892	0.861
17	0.801	0.889	0.858
18	0.797	0.887	0.855
19	0.793	0.885	0.852
20	0.790	0.882	0.849
21	0.786	0.880	0.847
22	0.783	0.878	0.844
23	0.780	0.876	0.841
24	0.777	0.874	0.839
25	0.774	0.872	0.837
26	0.771	0.871	0.834
27	0.768	0.869	0.832
28	0.765	0.867	0.830
29	0.763	0.865	0.828
30	0.760	0.864	0.826
31	0.758	0.862	0.824
32	0.756	0.861	0.823
33	0.753	0.859	0.821
34	0.751	0.858	0.819

Age Difference	Option 2 100%	Option 3 50%	Option 4 66 2/3%
35	0.749	0.857	0.818
36	0.747	0.855	0.816
37	0.745	0.854	0.815
38	0.744	0.853	0.813
39	0.742	0.852	0.812
40	0.740	0.851	0.810

[Statutory Authority: RCW 41.50.050(5), 41.26.162, 41.26.164, chapter 41.45 RCW. 03-12-014, § 415-02-380, filed 5/27/03, effective 7/1/03. Statutory Authority: RCW 41.50.050(5) and chapter 41.45 RCW. 03-02-087, § 415-02-380, filed 12/31/02, effective 2/1/03; 02-18-048, § 415-02-380, filed 8/28/02, effective 9/1/02.]

WAC 415-02-500 Property division in dissolution orders¹. This section applies to all retirement plans that the department of retirement systems (department) administers. This section also directs you to additional sections as needed for your particular situation.

(1) **What can a court do?** A court can divide your retirement account between you and your ex-spouse through a property division dissolution order or later amendment. A court can do this by either:

(a) Awarding an interest² in your account to your ex-spouse by using WAC 415-02-510 or 415-02-530; or

(b) Splitting³ your account into two separate accounts (one for you and one for your ex-spouse) by using WAC 415-02-520 or 415-02-540, but only if you are vested, that is, have enough service credit to receive a service retirement when you meet the age requirement for your retirement system and plan.

(2) **Which section should I use?** Consult the following table for direction to the section to use in developing your property division dissolution order. Different sections are provided depending on whether your property division dissolution order is going to provide an interest to your ex-spouse or whether you are splitting your retirement account with your ex-spouse.

If you are in this system and plan:	And the following is true:	Use this section:
Any	You need general information and rules about drafting dissolution orders related to your retirement plan and system.	415-02-500
JRF, JRS, LEOFF Plan 1, and WSPRS Plan 1	You are drafting a dissolution order. (We recommend that you contact the department for assistance because some exceptions may apply.)	415-02-510
LEOFF Plan 2, PERS Plan 1 or 2, SERS Plan 2, and TRS Plan 1 or 2, WSPRS Plan 2	You are not vested and you are drafting a dissolution order; or You are vested and you are drafting a dissolution order that awards an interest in your account to your ex-spouse.	415-02-510

If you are in this system and plan:	And the following is true:	Use this section:
	You are vested and you are drafting a dissolution order that splits your benefit into two separate accounts (for you and your ex-spouse).	415-02-520
PERS Plan 3, SERS Plan 3, and TRS Plan 3	You do not have enough service credit to receive a service retirement, when eligible, and you are drafting a dissolution order; or You have enough service credit to receive a service retirement, when eligible, and you are drafting a dissolution order that awards an interest in your account to your ex-spouse.	415-02-530
	You are vested and you are drafting a dissolution order that splits your benefit into two separate accounts (for you and your ex-spouse).	415-02-540
PERS Plan 2, SERS Plan 2, and TRS Plan 2	The department has already accepted your property division order, and you are considering a transfer to Plan 3.	415-02-550

(3) **What are the requirements for dissolution orders and amendments that provide for a property division of my retirement account?** The order must:

- (a) Be entered by a court of competent jurisdiction;
- (b) Be filed with the department within ninety days of the court's entry of the order;
- (c) Establish the right of your ex-spouse to a portion of your retirement;
- (d) Provide the name and date of birth of your ex-spouse;
- (e) Incorporate the applicable language in this section and one of the following: WAC 415-02-510, 415-02-540, 415-02-520, or 415-02-550; and
- (f) Indicate which WAC section was used in support of the order.

(4) **What else, besides a copy of the dissolution order, must my ex-spouse and I provide to the department?** You must provide address(es) and Social Security numbers for both you and your ex-spouse before the department will honor a dissolution order or amendment. This information can be submitted in a cover letter, in another document, or by other means arranged with the department.

(5) **I belong to more than one retirement plan. Does the order have to be written any differently?** The order must include specific provisions for each plan.

(a) Example for providing an interest to an ex-spouse (RCW 41.50.670 and WAC 415-02-510): Paul belongs to both TRS Plan 2 and PERS Plan 2. His preretirement dissolution order gives an interest in his retirement accounts to his ex-spouse. The order should include the language provided in:

(i) WAC 415-02-510(2) and 415-02-510 to divide Paul's TRS Plan 2 monthly retirement benefits and accumulated contributions.

(ii) WAC 415-02-510(2) and 415-02-510 to divide Paul's PERS Plan 2 monthly retirement benefits and accumulated contributions.

(b) Example for splitting an account with an ex-spouse: Mary belongs to both TRS Plan 2 and PERS Plan 2. Her pre-retirement dissolution order provides for splitting her retirement accounts with her ex-spouse. The order should include the language provided in:

(i) WAC 415-02-520 (5)(a) for preretirement splits to divide Mary's TRS Plan 2 retirement account.

(ii) WAC 415-02-520 (5)(a) for preretirement splits to divide Mary's PERS Plan 2 retirement account.

(6) What happens if my ex-spouse misses the ninety-day deadline for filing a copy of the dissolution order with the department?

(a) RCW 51.50.670(6) requires the "obligee" (ex-spouse) to file a copy of the dissolution order with the department within ninety days of the order's entry with court of record.

(b) The department will accept an order after the ninety-day deadline but will not make retroactive payments or split your defined contribution account retroactively.

(7) How will the department divide the "after-tax" and "tax-deferred" dollars in my retirement account between my ex-spouse and me? Depending on your plan and how long you have been a member, your retirement account may include both "after-tax" and "tax-deferred" dollars. The department will divide the "after-tax" and "tax-deferred" dollars based on the amount(s) awarded to your ex-spouse, unless the dissolution order states otherwise.

Example: At the time of John's marriage dissolution, he had \$50,000 total contributions in his retirement account with \$20,000 in after-taxed dollars and \$30,000 in tax-deferred dollars. The dissolution order awards 50% of his accumulated contributions to his ex-spouse, Susan. Therefore, the department will give Susan \$10,000 of after-tax dollars and \$15,000 of tax-deferred dollars.

(8) If I am in a retirement plan that offers survivor options, can the court order me to name my ex-spouse as a survivor to receive survivor benefits? Yes. To do so, the dissolution order must include the language in RCW 41.50-790(1).

(9) Is there a minimum benefit amount that the department will pay to my ex-spouse if the property division dissolution order splits my retirement account with my ex-spouse? The answer is different depending on if the department accepts the property division dissolution order **BEFORE** or **AFTER** you retire.

(a) **BEFORE** retirement split: Yes. If the court order splits your account with your ex-spouse, and your ex-spouse's monthly benefit is less than the monthly minimum benefit amount for your retirement plan, the department may make a lump sum payment in the amount of the present value of the monthly benefit to the ex-spouse instead of paying monthly benefits. The department will **NOT** make the lump sum payment until your ex-spouse meets the age requirement for a normal retirement for your system and plan.

(b) **AFTER** retirement split: No. The department will pay the amount specified in the dissolution order as the ex-spouse's monthly benefit amount even if it is less than the minimum monthly benefit amount for your system and plan.

(10) Is there a maximum payment amount that the department will pay to my ex-spouse? Yes. A court may not order the department to pay more than seventy-five percent of your monthly retirement payments to your ex-spouse. See RCW 41.50.670(4).

(11) How much is the fee the department charges for making payments directly to my ex-spouse? The department charges seventy-five dollars for making the first disbursement and six dollars for each subsequent disbursement. The department will divide the fees evenly between you and your ex-spouse. See RCW 41.50.680.

(12) What happens to my account if I return to retirement system membership? Please contact the department for information if you are in this situation.

(13) What language should the property division order use to divide my deferred compensation program (DCP) account? Refer to WAC 415-501-495 or contact DCP for information about your DCP account and your marriage dissolution.

(14) How do I contact the department for additional assistance? Complete information is available in WAC 415-06-100 (How do I contact the department?).

(15) Where can I find examples of completed property division dissolution orders? Following are examples of the required language from the statutes and WAC sections that must be used in a dissolution order. The information in **bold italics** will be dictated by your own circumstances.

(a) **Example 1.** Jane Doe (a nonvested member of PERS Plan 2) and her husband, John Doe, decide to divorce. **WAC 415-02-510** applies to Jane's membership status. Jane and John complete the paragraphs in RCW 41.50.670(2) and WAC 415-02-510(2) as follows:

Defined Benefits:

RCW 41.50.670(2), paragraph two, and WAC 415-02-510(2)

If ***Jane Doe*** (the obligor) receives periodic retirement payments as defined in RCW 41.50.500, the department of retirement systems shall pay to ***John Doe*** (the obligee), *N/A* dollars from such payments or ***a fraction where the numerator is equal to 24 (the number of months in which service credit was earned while the marital community was in existence), and the denominator is equal to the number of months of service credit earned by the obligor at the time of retirement X 50*** percent of such payments.

If the obligor's debt is expressed as a percentage of his or her periodic retirement payment and the obligee does not have a survivorship interest in the obligor's benefit, the amount received by the obligee

shall be the percentage of the periodic retirement payment that the obligor would have received had he or she selected a standard allowance.

Accumulated Contributions:

RCW 41.50.670(2), paragraph three, and WAC 415-02-510(2)

If *Jane Doe* (the obligor) requests or has requested a withdrawal of accumulated contributions as defined in RCW 41.50.500, or becomes eligible for a lump sum death benefit, the department of retirement systems shall pay to *John Doe* (the obligee) **\$5,700** dollars plus interest at the rate paid by the Department of Retirement Systems on member contributions. Such interest will accrue from the date of this order's entry with court of record.

(b) **Example 2:** Binh Nguyen (a TRS Plan 3 retiree) and his wife, Lan Nguyen, are obtaining a property division dissolution order that splits his retirement account. When he retired, Binh had selected Lan to receive survivor benefits. WAC 415-02-540 applies, and the couple completes the required paragraphs.

Defined Benefits:

WAC 415-02-540(12)

The Department of Retirement Systems (department) shall create a **defined benefit account** for Lan Nguyen (ex-spouse) in the Teachers' Retirement System Plan 3 (name of retirement system and plan) and pay him or her **\$350** (amount) for his or her life. To pay for this benefit, Binh Nguyen's (member's) **monthly defined benefit** payment will be reduced for life. This provision shall become effective no more than 30 days after the department's acceptance of the order.

Defined Contributions:

WAC 415-02-540(9)

The Department of Retirement Systems (department) shall split Binh Nguyen's (member's) **defined contribution account** in the Teachers' Retirement System Plan 3 (name of retirement system and plan) and create a separate account for Lan Nguyen (ex-spouse). The amount of **\$25,000** (amount) shall be transferred from Binh Nguyen's (member's) **defined contribution account** to Lan Nguyen's (ex-spouse's) new account. This provision shall become effective no more than 30 days after the department's acceptance of the order.

(16) **Terms used:**

- (a) Department's acceptance - A dissolution order that fully complies with the department of retirement systems' requirements and with chapter 41.50 RCW.
- (b) Dissolution order - RCW 41.50.500.
- (c) Ex-spouse - WAC 415-02-030.
- (d) JRF - Judicial retirement fund.
- (e) JRS - Judicial retirement system.
- (f) LEOFF - Law enforcement officers' and fire fighters' system.
- (g) Obligee - RCW 41.50.500(5).
- (h) Obligor - RCW 41.50.500(6).
- (i) PERS - Public employees' retirement system.
- (j) Plan 3 retirement systems - WAC 415-111-100.
- (k) SERS - School employees' retirement system.
- (l) Split account - WAC 415-02-030.
- (m) Survivor benefits - WAC 415-02-030.
- (n) TRS - Teachers' retirement system.
- (o) Vested - The length of service by system and plan required for a service retirement when the age requirement is met.
- (p) WSPRS - Washington state patrol retirement system.

Footnotes for section:

- ¹ "Dissolution order" means any judgment, decree, or order of spousal maintenance, property division, or court-approved property settlement incident to a decree of divorce, dissolution, invalidity, or legal separation issued by the superior court of the state of Washington or a judgment, decree, or other order of spousal support issued by a court of competent jurisdiction in another state or country, that has been registered or otherwise made enforceable in this state. RCW 41.50.500(3) (2002).
- ² When a court awards an interest in your retirement account, the department is required to pay a portion of your monthly retirement benefit payments or a portion of your contributions to your ex-spouse.
- ³ When a court splits your retirement account, the department will establish a separate account for your ex-spouse. Once the account has been established, your account and your ex-spouse's account are not tied in any way.

[Statutory Authority: RCW 41.50.050(5), 41.50.500, [41.50.]670-[41.50.]710, [41.50.]790 and 2002 c 158. 03-12-014, § 415-02-500, filed 5/27/03, effective 7/1/03.]

WAC 415-02-510 How can a property division dissolution order give my ex-spouse an interest¹ in my Plan 1 or Plan 2 retirement account? (1) Who may use this section?

(a) You **MUST** use this section if you are a member of LEOFF Plan 1, WSPRS Plan 1, JRF or JRS, or a nonvested member of LEOFF Plan 2, PERS Plans 1 or 2, SERS Plan 2, TRS Plans 1 or 2, or WSPRS Plan 2.

(b) You **MAY** use this section if you are a vested member of LEOFF Plan 2, PERS Plans 1 or 2, SERS Plan 2, TRS Plans 1 or 2, or WSPRS Plan 2. If you are splitting your retirement account with your ex-spouse, use WAC 415-02-520.

(2) **What language must the property division dissolution order or amendment include?** The order must include the language in RCW 41.50.670(2), provided below.

The order or amendment must state either a specific dollar amount or percentage of the benefit. It cannot state both. (See example in WAC 415-02-500(15).)

If _____ (the obligor) receives periodic retirement payments as defined in RCW 41.50.500, the department of retirement systems shall pay to _____ (the obligee) _____ dollars from such payments or _____ percent of such payments. If the obligor's debt is expressed as a percentage of his or her periodic retirement payment and the obligee does not have a survivorship interest in the obligor's benefit, the amount received by the obligee shall be the percentage of the periodic retirement payment that the obligor would have received had he or she selected a standard allowance.

If _____ (the obligor) requests or has requested a withdrawal of accumulated contributions as defined in RCW 41.50.500, or becomes eligible for a lump sum death benefit, the department of retirement systems shall pay to _____ (the obligee) _____ dollars plus interest at the rate paid by the department of retirement systems on member contributions. Such interest to accrue from the date of this order's entry with the court of record.

(3) How will my account be affected if the department accepts the property division dissolution order *BEFORE* I retire?

(a) Your ex-spouse will not receive any payments from the department until you terminate your employment or retire.

(b) If you terminate your employment and request a withdrawal of your accumulated contributions, the department will pay your ex-spouse his or her share when you receive your payment. If you terminate your employment and do not request a withdrawal of contributions, your ex-spouse will be unable to receive his or her share until you withdraw your accumulated contributions.

(c) If you die before retirement, the department will pay your ex-spouse his or her share of your accumulated contributions in a lump-sum payment.

(4) How will my account be affected if the department accepts the property division dissolution order *AFTER* I retire?

(a) If included in the dissolution order, the department will begin paying your ex-spouse his or her portion of your monthly retirement benefit the first month after the department has accepted the order.

(b) If your ex-spouse dies before you, the portion of your monthly benefit being paid to him or her will be paid to you.

(c) If you die before your ex-spouse, payments to your ex-spouse stop unless the department accepted the order at least thirty days before you retired and the order required the department to name your ex-spouse as a survivor beneficiary (if allowed by your retirement system and plan). See RCW 41.50.700(1) and 41.50.790.

(d) If you are a member of LEOFF Plan 1 or WSPRS Plan 1 and if one of the provisions in RCW 41.50.700(3) applies:

(i) Your ex-spouse may be eligible to receive payments for the life of your surviving spouse; or

(ii) If you are a member of LEOFF Plan 1, your ex-spouse may be eligible to receive payments for his or her lifetime.

(5) Is there a maximum payment amount that a property division dissolution order can award to my ex-spouse? Yes. See RCW 41.50.670(4) and WAC 415-02-500(10) for information.

(6) If the property division dissolution order directs the department to make payments to my ex-spouse, how will the payments be made? The department will make the required payments as specified in the dissolution order directly to your ex-spouse.

(7) How much is the fee the department charges for making payments directly to my ex-spouse? See RCW 41.50.680 and WAC 415-02-500(11) for information.

(8) What happens if I transfer to Plan 3 after the department has accepted my property division dissolution order or most recent amendment? See WAC 415-02-550 for information.

(9) Can I amend my existing order to remove my ex-spouse as my survivor beneficiary? Yes. To remove your ex-spouse as your survivor beneficiary, you must submit a "conformed copy" of the court order splitting your account. A conformed copy is a copy of the order that has been signed by the judge or commissioner on or after July 1, 2003, and filed with the court. Removing your ex-spouse as survivor beneficiary will change your retirement benefit. See WAC 415-02-520(8) for the language that must be used.

(10) Terms used:

(a) Department's acceptance - Order that fully complies with the department of retirement systems' requirements and with chapter 41.50 RCW.

(b) Accumulated contributions - WAC 415-02-030.

(c) Dissolution order - RCW 41.50.500.

(d) Ex-spouse - WAC 415-02-030.

(e) JRF - Judicial retirement fund.

(f) JRS - Judicial retirement system.

(g) LEOFF - Law enforcement officers' and fire fighters' retirement system.

(h) Obligee - RCW 41.50.500(5).

(i) Obligor - RCW 41.50.500(6).

(j) PERS - Public employees' retirement system.

(k) Plan 3 retirement systems - WAC 415-111-100.

(l) SERS - School employees' retirement system.

(m) Split accounts - WAC 415-02-030.

(n) Survivor benefits - WAC 415-02-030.

(o) TRS - Teachers' retirement system.

(p) Vested - The length of service by system and plan required for a service retirement when the age requirement is met.

(q) WSPRS - Washington state patrol retirement system.

Footnote to section:

¹ When a court awards an interest in your retirement account, the department is required to pay a portion of your monthly retirement benefit payments or a portion of your contributions to your ex-spouse.

[Statutory Authority: RCW 41.50.050(5), 41.50.500, [41.50.]670-[41.50.]710, [41.50.]790 and 2002 c 158. 03-12-014, § 415-02-510, filed 5/27/03, effective 7/1/03.]

WAC 415-02-520 How can my Plan 1 or Plan 2 retirement account be split¹ by a property division dissolution order? (1) Who may use this section? Vested members of LEOFF Plan 2, PERS Plans 1 or 2, TRS Plans 1 or 2,

SERS Plan 2, or WSPRS Plan 2 who have or will have a property division dissolution order or amendment dated on or after July 1, 2003². If your ex-spouse will be receiving an interest in your account, use WAC 415-02-510.

(2) **What are the rules for splitting my account?** If you and your ex-spouse are eligible, the department will split **your** retirement account into two separate accounts—one for you, and one for your ex-spouse. The rules for splitting your account are different depending on whether your dissolution order or most recent amendment is dated **BEFORE** or **AFTER** retirement.

(3) **How will my account be affected if the department accepts the property division dissolution order BEFORE my retirement?**

(a) The department will split your retirement account into two completely separate accounts and create an account for your ex-spouse under his or her Social Security number for the amount awarded in the dissolution order.

(b) The department will pay each of you out of your separate accounts either a monthly retirement benefit payment or a withdrawal of contributions.

(c) If you retire and receive a monthly retirement benefit payment, your monthly payment will have a permanent reduction to account for the amount awarded as a monthly payment to your ex-spouse.

(d) Your monthly benefit payment will be payable over your lifetime, and your ex-spouse's monthly payment will be payable over his or her lifetime.

(e) You will have the right to pick a survivor option for your monthly benefit payment.

(f) Your ex-spouse will not have the right to pick a survivor option for his or her monthly payment but may name a beneficiary to receive any final death payment that may be due.

(g) If you terminate employment, whatever decision you make about your accumulated contributions will have no effect upon your ex-spouse's separate account.

(h) When you or your ex-spouse dies, there will be no impact to the other person's retirement account because the accounts are independent from one another.

(i) Your ex-spouse may begin receiving monthly payments when he or she reaches retirement age for your retirement plan, or the first day of the month following the department's acceptance of the order, whichever is later. The retirement age for an ex-spouse receiving a benefit from TRS Plan 1 and PERS Plan 1 is age sixty; from PERS Plan 2, SERS Plan 2, and TRS Plan 2 it is age sixty-five; from LEOFF Plan 2 it is age fifty-three; and from WSPRS Plan 2 it is age fifty-five. Your age or retirement eligibility has no effect on when your ex-spouse is eligible to begin receiving his or her monthly benefit. Your ex-spouse must apply for his or her monthly payment according to the rules for your system and plan.

(j) Your ex-spouse may withdraw his or her share of the accumulated contributions at any time before receiving a monthly retirement benefit. Regardless of whether your ex-spouse withdraws or receives a monthly payment, your monthly benefit payment will be permanently reduced to account for your ex-spouse's share of your retirement account.

(4) **Is there a limit to the amount of contributions I can award to my ex-spouse?** Yes. The amount of contributions awarded to an ex-spouse, cannot be greater than the **percentage** of the member's monthly benefit used to determine the amount of the monthly benefit awarded to the ex-spouse.

Example:

Accumulated contributions earned during the marriage period:	\$50,000
Member's monthly benefit:	\$1,000
Percentage of member's monthly benefit awarded to ex-spouse:	50%
Monthly benefit awarded to ex-spouse:	\$500 (50% of \$1,000)

Contributions awarded to ex-spouse: \$25,000 (50% of 50,000)

(5) **What happens if my retirement account was split and then I retire early?**

(a) If you are eligible and decide to retire early, or must retire early because of a disability, your monthly retirement benefit payment will be reduced by an early retirement factor (ERF). See WAC 415-02-320.

(b) To determine the reduction to your benefit because of your preretirement split (see subsection (3)(c) of this section), the adjustment to the amount awarded to your ex-spouse in the dissolution order will be reduced by the ERF used to reduce your benefit.

Example: You are a member of PERS Plan 2 and retire for disability two years before you are eligible for a service retirement. The dissolution order awarded your ex-spouse a monthly benefit of five hundred dollars.

Your defined benefit before ERF is applied:	\$2,500	
ERF (factor for retiring two years early)	0.82	
Your base benefit:	\$2,050	(\$2500 x 0.82 ERF)
Adjustment for divorce split:	- \$410	(ex-spouse's \$500 x 0.82 (ERF))
The defined benefit you will receive:	\$1640	(\$2050 - \$410)

Your ex-spouse will receive the full monthly amount (\$500) that was awarded to him or her in the dissolution order, regardless of your benefit amount.

(6) **What language must be used for a property division dissolution order or amendment that is accepted by the department BEFORE my retirement?**

(a) The order must include the language provided below. Do **not** use the language in RCW 41.50.670(2). The exact dollar amount of your ex-spouse's monthly benefit must be specified. Do not use formulas or percentages.

The Department of Retirement Systems (department) shall create an account for _____(ex-spouse) in the _____(name of retirement system and plan) and transfer \$_____from _____'s (member's) accumulated contributions account into _____'s (ex-spouse's) account. If _____(ex-spouse) does not withdraw the contributions and becomes eligible, the department will pay him or her \$_____(amount) as a monthly payment for his or her life. If _____(member) retires and receives a monthly retirement benefit payment, the payment will be permanently reduced to account for _____'s (ex-spouse's) monthly

payment. This provision shall become effective no more than 30 days after the department's acceptance of the order.

(b) If you are a member of PERS Plan 1 or TRS Plan 1, the amount of service credit awarded to your ex-spouse must be specified in the order if he or she is awarded a portion of gainsharing payments and cost-of-living adjustments. Because gainsharing payments and cost-of-living adjustments are based on service credit, the following paragraph must be included:

If _____ (ex-spouse) receives a monthly retirement payment, the department shall use _____ (number) months of service credit to calculate future gainsharing payments, if any, and cost-of-living adjustments when he or she becomes eligible.

(7) How will my account be affected if the department accepts the property division dissolution order AFTER my retirement?

(a) The department will split your retirement account **only if** you selected your ex-spouse to receive survivor benefits at the time you retired. If you did not select your ex-spouse to receive survivor benefits at the time you retired, you cannot use this section. You **must** use WAC 415-02-510.

(b) If you selected your ex-spouse to receive survivor benefits at the time you retired, the rules in subsection (3)(a) through (f) of this section will apply.

(c) At the time the department splits your account, your ex-spouse will be removed as the survivor beneficiary on your account.

(d) Regardless of his or her age, your ex-spouse will begin receiving a monthly benefit the first month after the department has accepted the dissolution order.

(8) If the property division dissolution order is dated AFTER my retirement, how will my monthly retirement benefit payment be calculated after the split?

(a) The dissolution order must state the exact dollar amount your ex-spouse is to receive as his or her separate monthly benefit. The following describes how the new amount of your benefit will be calculated, assuming your ex-spouse was awarded a monthly benefit of one thousand dollars in the dissolution order.

Step 1 The department will determine the single life benefit of your current monthly benefit payment by dividing your current monthly benefit payment by the survivor option factor (see WAC 415-02-380) in effect at the time of the split.

Example:

Current monthly benefit = \$1679.38
 Option factor = 0.9400000
 Single life benefit amount = $\$1679.38 / 0.9400000 = \1786.57

Step 2 The single life benefit (\$1786.57) is divided by your annuity factor (see WAC 415-02-360) to determine the current present value of the single life benefit amount. The annuity factor the department uses is the factor for your age as of the date of the split.

Example:

Your age at time of the split = 61 years old
 Annuity factor for age 61 = 0.0084149

Present value of single life benefit = $\$1786.57 / 0.0084149 = \$212,310.31$

Step 3 The department then determines the present value of your ex-spouse's share by dividing your ex-spouse's monthly benefit amount (as awarded in the dissolution order) by your ex-spouse's annuity factor. The annuity factor is the factor for your ex-spouse's age as of date of the split.

Example:

Ex-spouse's monthly benefit amount = \$1000
 Ex-spouse's age at time of the split = 67
 Annuity factor for age 67 = 0.0095028
 Present value of your ex-spouse's monthly benefit = $\$1000 / 0.0095028 = \$105,232.14$

Step 4 Next, the department subtracts your ex-spouse's present value from the single life benefit present value. The result is the present value of the benefit you will receive.

Example:

Present value of single life benefit = \$212,310.31
 Less present value of ex-spouse's benefit = $-\$105,232.14$
 Your present value = \$107,078.17

Step 5 The department determines your new monthly benefit amount by multiplying your present value by your annuity factor.

Example:

Your present value = \$107,078.17
 Annuity factor = 0.0084149
 Your new monthly benefit amount = $\$107,078.17 \times 0.0084149 = \901.05

(b) The department determines the percentage of the total present value each of you will receive by dividing each of your present value amounts by the single life benefit present value amount.

Example:

Your percentage of the single life benefit present value: $\$107,078.17 / \$212,310.31 = .5043$
 Your ex-spouse's percentage of the single life benefit present value: $\$105,232.14 / \$212,310.31 = .4957$

(9) What language must be used in a property division dissolution order or amendment that is accepted by the department AFTER my retirement?

(a) The order must include the language provided below. Do **not** use the language in RCW 41.50.670(2). The exact dollar amount of your ex-spouse's monthly benefit must be specified. Do not use formulas or percentages.

The Department of Retirement Systems (department) shall create an account for _____ (ex-spouse) in the _____ (name of retirement system and plan) and pay him or her \$ _____ (amount) as a monthly benefit payment for his or her life. To pay for this benefit, _____'s (retiree's) monthly retirement benefit payment will be reduced for his or her life. If (retiree) has any unused contributions remaining in his or her account, \$ _____ (amount) shall be transferred to _____'s (ex-spouse's) account. This provision shall become effective

no more than 30 days after the department's acceptance of the order.

(b) If the member is in PERS Plan 1 or TRS Plan 1, the amount of service credit awarded to the ex-spouse must be specified in the order if he or she is entitled to a portion of gainsharing payments and cost-of-living adjustments. Because gainsharing payments and cost-of-living adjustments are based on service credit, the following paragraph must be included:

If _____ (ex-spouse) receives a monthly retirement payment, the department shall use _____ (number) months of service credit to calculate future gainsharing payments, if any, and cost-of-living adjustments when he or she becomes eligible.

(10) **Is there a maximum payment amount that the department will pay to my ex-spouse?** Yes. See RCW 41.50.670(4) or WAC 415-02-500(10) for information.

(11) **Can I amend an existing order that has awarded an interest in my account to my ex-spouse under WAC 415-02-520 and remove my ex-spouse as my survivor beneficiary?** Yes. To remove your ex-spouse as your survivor beneficiary, you must submit a "conformed copy" of the court order splitting your account. A conformed copy is a copy of the order that has been signed by the judge or commissioner on or after July 1, 2003, and filed with the court. Removing your ex-spouse as survivor beneficiary will change your retirement benefit. See WAC 415-02-520(8) for the language that must be used.

Example:

Julio and May were married when Julio retired. Julio chose survivor Option 2 (joint and one hundred percent survivorship) when he retired. This meant that if Julio died, May would receive monthly survivor benefits. Two years after Julio's retirement, the couple divorced. The court awarded "one hundred percent of retirement benefits" to Julio. Julio later learned that this award did not change the survivor option. Julio can return to court and obtain an order stating that May is to receive "\$0" as the dollar amount for her separate monthly benefit. The order must use the language in WAC 415-02-520(8) and be signed by the court no sooner than July 1, 2003.

(12) **How much is the fee the department charges for making payments directly to my ex-spouse?** See RCW 41.50.680 and WAC 415-02-500(11) for information.

(13) **What happens if I transfer to Plan 3 after the property division dissolution order has been filed with the department?** See WAC 415-02-550 for information.

(14) Terms used:

(a) Department's acceptance - Order that fully complies with the department of retirement systems requirements and RCW 41.50.500.

(b) Dissolution order - RCW 41.50.500.

(c) Ex-spouse - WAC 415-02-030.

(d) LEOFF - Law enforcement officers' and fire fighters' system.

(e) PERS - Public employees' retirement system.

(f) Plan 3 retirement systems - WAC 415-111-100.

(g) SERS - School employees' retirement system.

(h) Split account - WAC 415-02-030.

(i) Survivor benefits - WAC 415-02-030.

(j) TRS - Teachers' retirement system.

(k) Vested - The length of service, by system and plan, required to receive a service retirement when age requirements are met.

(l) WSPRS - Washington state patrol retirement system.

Footnotes to section:

¹ When a court splits your retirement account, the department will establish a separate account for your ex-spouse. Once the account is established, your account and your ex-spouse's account are not tied in any way.

² If an ex-spouse was not listed as the member's survivor beneficiary at retirement, then no postretirement property division dissolution order (or postretirement amendment) may split the member's retirement account using WAC 415-02-520.

[Statutory Authority: RCW 41.50.050(5), 41.50.500, [41.50.]670 et seq., [41.50.]790, 03-24-049, § 415-02-520, filed 11/26/03, effective 1/1/04. Statutory Authority: RCW 41.50.050(5), 41.50.500, [41.50.]670-[41.50.]710, [41.50.]790 and 2002 c 158, 03-12-014, § 415-02-520, filed 5/27/03, effective 7/1/03.]

WAC 415-02-530 How can a property division dissolution order give my ex-spouse an interest¹ in part of my Plan 3 retirement account? (1) Who may use this section?

(a) You **MUST** use this section if you are a member of TRS Plan 3, PERS Plan 3 or SERS Plan 3 and do not have enough service credit to receive a service retirement from the defined benefit portion of your retirement plan when you meet the age requirement.

(b) You **MAY** use this section if you are a member of TRS Plan 3, PERS Plan 3 or SERS Plan 3, and have earned enough service to receive a service retirement from the defined benefit portion of your retirement plan when you meet the age requirement. If you are splitting your retirement account with your ex-spouse, use WAC 415-02-540.

(2) **What language must the property division dissolution order or amendment include to pay a portion of my defined monthly retirement benefit to my ex-spouse?** The order must use the language in RCW 41.50.670(2), provided below. The order or amendment must state either a specific dollar amount or percentage of the benefit. It cannot state both.

If _____ (the obligor) receives periodic retirement payments as defined in RCW 41.50.500, the department of retirement systems shall pay to _____ (the obligee) _____ dollars from such payments or _____ percent of such payments. If the obligor's debt is expressed as a percentage of his or her periodic retirement payment and the obligee does not have a survivorship interest in the obligor's benefit, the amount received by the obligee shall be the percentage of the periodic retirement payment that the obligor would have received had he or she selected a standard allowance.

(3) **How will the defined benefit portion of my retirement account be affected if the department accepts the property division dissolution order BEFORE I retire?**

(a) Your ex-spouse will not receive any payments from your defined benefit portion until you retire.

(b) If you or your ex-spouse dies before you retire, the portion of your defined benefit account awarded to your ex-spouse in the dissolution order ends.

(4) How will the defined benefit portion of my retirement account be affected if the department accepts the property division dissolution order *AFTER* I retire?

(a) If included in the dissolution order, the department will begin paying your ex-spouse his or her portion of your defined benefit payment the first month after the department has accepted the order.

(b) If your ex-spouse dies before you, the portion of your defined benefit payment being paid to him or her will be paid to you.

(c) If you die before your ex-spouse, payments to your ex-spouse stop unless the department accepted the order at least thirty days before you retired and it required the department to name your ex-spouse as a survivor beneficiary. See RCW 41.50.700(1) and 41.50.790.

(5) Is there a maximum payment amount of the defined benefit portion of my retirement account that the property division dissolution order can award to my ex-spouse? Yes. See RCW 41.50.670(4) and WAC 415-02-500(10) for information.

(6) Can I amend my existing order to remove my ex-spouse as my survivor beneficiary? Yes. To remove your ex-spouse as your survivor beneficiary, you must submit a "conformed copy" of the court order splitting your account. A conformed copy is a copy of the order that has been signed by the judge or commissioner on or after July 1, 2003, and filed with the court. Removing your ex-spouse as survivor beneficiary will change your retirement benefit. See WAC 415-02-540 (9) and (13) for the language that must be used.

(7) If the property division dissolution order directs the department to make payments to my ex-spouse, how will the payments be made? The department will make the required payments as specified in the dissolution order directly to your ex-spouse.

(8) How much is the fee the department charges for making payment directly to my ex-spouse? See RCW 41.50.680 and WAC 415-02-500(11).

(9) If the department accepts the property division dissolution order *BEFORE* I retire, how will the department divide my defined contribution account with my ex-spouse?

(a) The amount the dissolution order awards to *your ex-spouse* will be deducted from *your* account and set up in a separate account for your ex-spouse under his or her Social Security number.

(b) *You* and *your ex-spouse* will manage your individual portions of the account independently from one another.

(c) *You* must continue to contribute to your account during your employment.

(d) *Your ex-spouse* may not contribute to his or her account.

(10) What options does my ex-spouse have in managing his or her separate defined contribution account? Your ex-spouse may:

(a) Transfer money between the state-managed (WSIB) or the self-directed (SELF) investment programs; and

(b) Transfer money among the investment options in the SELF-directed program.

(11) How will the department make distributions to both my ex-spouse and me on each of our defined contribution accounts?

(a) When you separate from employment or retire, the funds in your defined contribution account will be disbursed to you according to your distribution choice.

(b) Your ex-spouse must begin distribution from his or her account at the same time that you request distribution from your account.

(c) Both you and your ex-spouse have the same distribution options as outlined in WAC 415-111-310.

(d) If *you* die *before* a distribution has been made from your defined contribution account, your beneficiary(ies) must apply for a lump sum distribution of the funds in your account.

(e) If *you* die *before* a distribution has been made from your defined contribution account, your ex-spouse must begin receiving distribution of his or her funds at that time according to the distribution options in WAC 415-111-310.

(f) If *your ex-spouse* dies *before* a distribution has been made from his or her defined contribution account, your ex-spouse's beneficiary(ies) must apply for a lump sum distribution of the funds in his or her account.

(g) If *you* die *after* you begin receiving funds from your defined contribution account but before your funds have been exhausted, the remaining balance of the funds will be disbursed to your designated beneficiary(ies).

(h) If *your ex-spouse* dies *after* receiving funds from his or her account but before the funds have been exhausted, the remaining balance of the funds will be disbursed to your ex-spouse's designated beneficiary.

(12) What language must the dissolution order or most recent amendment include to pay a portion of my defined contribution account to my ex-spouse? The language provided in the following paragraph must be used. The order or amendment must state a specific dollar amount.

The Department of Retirement Systems (department) shall divide _____'s (member's) **defined contribution account** in the _____(retirement system and plan) and create a separate account for _____(ex-spouse). The amount of \$_____ shall be transferred from _____'s (member's) **defined contribution account** to _____'s (ex-spouse) new account. This provision shall become effective no more than 30 days after the department's acceptance of the order.

(13) If the department accepts the property division dissolution order *AFTER* I retire, how will the department divide my defined contribution account with my ex-spouse? If your defined contribution account has not been exhausted at the time the department accepts the dissolution order, the department will divide the remaining funds as specified in the dissolution order according to subsections (9) through (12) of this section.

(14) Terms used:

(a) Department's acceptance - Order that fully complies with the department of retirement systems' requirements and chapter 41.50 RCW.

(b) Dissolution order - RCW 41.50.500.

(c) Ex-spouse - WAC 415-02-030.

(d) Obligee - RCW 41.50.500(5).

(e) Obligor - RCW 41.50.500(6).

(f) Plan 3 retirement systems - WAC 415-111-100.

(g) Split accounts - WAC 415-02-030.

(h) Survivor benefits - WAC 415-02-030.

Footnote to section:

¹ When a court awards an interest in your retirement account, the department is required to pay a portion of your monthly retirement benefit payments or a portion of your contributions to your ex-spouse.

[Statutory Authority: RCW 41.50.050(5), 41.50.500, [41.50.]670-[41.50.]710, [41.50.]790 and 2002 c 158. 03-12-014, § 415-02-530, filed 5/27/03, effective 7/1/03.]

WAC 415-02-540 How can my Plan 3 retirement account be split¹ by a property division dissolution order?

(1) **Who may use this section?** You may use this section if:

(a) You are a member of TRS Plan 3, SERS Plan 3 or PERS Plan 3;

(b) You have enough service credit to receive a defined benefit payment when you meet the age requirement for your system; and

(c) You have or will have a property division dissolution order or amendment dated on or after July 1, 2003². If your ex-spouse will be receiving an interest in your account, use WAC 415-02-530.

(2) **What are the rules for splitting my account?** If you and your ex-spouse are eligible, the department will split both portions of *your* retirement account (defined benefit and defined contributions) into two separate accounts - one for you, and one for your ex-spouse. The rules for splitting your account are different depending on whether your dissolution order or most recent amendment is dated *before* or *after* retirement.

(3) **How will the defined benefit portion of my retirement account be affected if the department accepts the property division dissolution order *BEFORE* I retire?**

(a) The department will split *your* defined benefit account into two completely separate accounts and create an account for your ex-spouse for the amount awarded in the defined benefit portion of the dissolution order under your ex-spouse's Social Security number.

(b) The department will pay each of you a defined benefit, when eligible, out of your separate accounts.

(c) The amount awarded to your ex-spouse as his or her defined benefit payment will be a permanent reduction to your defined benefit payment amount.

(d) Your defined benefit payment will be payable over your lifetime, and your ex-spouse's defined benefit payment will be payable over his or her lifetime.

(e) You will have the right to pick a survivor option for your defined benefit payment for your own account.

(f) Your ex-spouse will not have the right to pick a survivor option for his or her defined benefit payment but may name a beneficiary to receive any final death payment that may be due.

(g) You may begin receiving your defined benefit payment when eligible according to the rules for your system.

(h) Your ex-spouse may begin receiving monthly payments when he or she reaches age sixty-five, or the first day of the month following the department's acceptance of the order, whichever is later. Your ex-spouse must apply for retirement according to the rules for your system and plan. Your age or retirement eligibility has no effect on when your ex-spouse is eligible to begin receiving his or her monthly benefit.

(i) When you or your ex-spouse dies, there will be no impact to the other person's retirement account, because the accounts are independent from one another.

(4) **What happens to my defined benefit if my account was split and then I retire early?**

(a) If you are eligible and decide to retire early, or must retire early because of a disability, your monthly retirement benefit payment will be reduced by an early retirement factor (ERF). See WAC 415-02-320.

(b) To determine the reduction to your benefit because of your preretirement split (see subsection (3)(c) of this section), the adjustment to the amount awarded to your ex-spouse in the dissolution order will be reduced by the ERF used to reduce your benefit.

Example: You are a member of TRS Plan 3 and retire for disability five years before you are eligible for a service retirement. The dissolution order awarded your ex-spouse a monthly benefit of two hundred fifty dollars.

Your defined benefit before ERF is applied:	\$1,000	
ERF (factor for retiring two years early)	0.61	
Your base benefit:	\$610	(\$1,000 x 0.61 ERF)
Adjustment for divorce split:	-\$152.50	(ex-spouse's \$250 x 0.61 (ERF))
The defined benefit you will receive:	\$457.50	(\$610 - \$152.50)

Your ex-spouse will receive the full monthly amount (\$250) that was awarded to him or her in the dissolution order, regardless of your benefit amount.

(5) **What language must be used in a property division dissolution order that the department accepts *BEFORE* I retire to pay a portion of my monthly defined benefit payment to my ex-spouse?** The order must use the language provided below. Do not use the language in RCW 41.50.670(2). The exact dollar amount of your ex-spouse's defined monthly benefit payment must be specified. Do not use formulas or percentages.

The Department of Retirement Systems (department) shall create a **defined benefit monthly account** for _____ (ex-spouse) in the _____ (name of retirement system and plan). When _____ (ex-spouse) becomes eligible for monthly payments, [s]he (upon application) will begin to receive \$_____ per month for the remainder of his/her lifetime. When _____ (member) becomes eligible for monthly payments, [s]he (upon application) will begin to receive the calculated monthly benefit less the amount herein specified for _____ (ex-spouse). This provision shall become effective no more than 30 days after the department's acceptance of the order.

(6) **If ordered in the dissolution order, how will the department split my preretirement defined contribution account?**

(a) The amount the dissolution order awards to your ex-spouse will be deducted from your defined contribution account and set up in a separate account for your ex-spouse under his or her Social Security number.

(b) You and your ex-spouse will manage your separate accounts independently from one another.

(c) You must continue to contribute to your account during your employment.

(d) Your ex-spouse may not contribute to his or her account.

(7) What options does my ex-spouse have in managing his or her separate defined contribution account? Your ex-spouse may:

(a) Transfer money between investment programs (state-managed (WSIB) or self-directed (SELF)); and

(b) Transfer money among the investment options in the SELF-directed program.

(8) How will the department make distributions to my ex-spouse and me out of our defined contribution accounts?

(a) *You* must be separated from employment before funds in your account can be distributed according to your distribution choice.

(b) *Your ex-spouse* may begin receiving distribution of the funds in his or her account at any time according to his or her distribution choice.

(c) Both you and your ex-spouse will have the same distribution options as outlined in WAC 415-111-310.

(d) If *you* die before a distribution has been made from your defined contribution account, your beneficiary(ies) must apply for a lump sum death benefit from your account.

(e) If *your ex-spouse* dies before a distribution has been made from his or her account, your ex-spouse's beneficiary(ies) must apply for a lump sum death payment from his or her account.

(f) If *you* die after you begin receiving funds but before the funds in your account have been exhausted, the balance will be paid to your designated beneficiary(ies).

(g) If *your ex-spouse* dies after receiving funds but before the funds in his or her account have been exhausted, the balance will be paid to your ex-spouse's designated beneficiary(ies).

(9) What language must be used in a property division dissolution order to award a portion of my defined contribution account to my ex-spouse? The order must include the language provided in the following paragraph. The exact dollar amount to transfer to your ex-spouse's defined contribution account must be specified. Do not use formulas or percentages. (See example in WAC 415-02-500 (15)(b)).

The Department of Retirement Systems (department) shall split _____(member's) **defined contribution account** in the _____(name of retirement system and plan) and create a separate account for _____(ex-spouse). The amount of \$ _____(amount) shall be transferred from _____'s (member's) **defined contribution account** to _____'s (ex-spouse's) new account. This provision shall become effective no more than 30 days after the department's acceptance of the order.

(10) Can I amend an existing order that has awarded an interest in my account to my ex-spouse under WAC 415-02-530 and remove my ex-spouse as my survivor beneficiary? Yes. To remove your ex-spouse as your survivor beneficiary, you must submit a "conformed copy" of the court order splitting your account. A conformed copy is a copy of the order that has been signed by the judge or commissioner on or after July 1, 2003, and filed with the court. Removing your ex-spouse as survivor beneficiary will

change your retirement benefit. See WAC 415-02-540 (9) and (13) for the language that must be used.

Example:

Julio and May were married when Julio retired. Julio chose survivor Option 2 (joint and one hundred percent survivorship) when he retired. This meant that if Julio died, May would receive monthly survivor benefits. Two years after Julio's retirement, the couple divorced. The court awarded "one hundred percent of retirement benefits" to Julio. Julio later learned that this award did not change the survivor option. Julio can return to court and obtain an order stating that May is to receive "\$0" as the dollar amount for her separate monthly benefit. The order must use the language in WAC 415-02-540 and be signed by the court no sooner than July 1, 2003.

(11) If the dissolution order or amendment is dated AFTER my retirement, how will my defined monthly retirement benefit payment be split?

(a) The department will split your defined monthly retirement benefit payment *only if* you selected your ex-spouse to receive a survivor benefit at the time you retired. If you did not select your ex-spouse to receive a survivor benefit at the time you retired, you cannot use this section. You *must* use WAC 415-02-530.

(b) If you selected your ex-spouse to receive survivor benefits at the time you retired, the rules in subsection (3)(a) through (f) of this section will apply.

(c) At the time the department splits your account, your ex-spouse will be removed as the survivor beneficiary on your account.

(d) Regardless of his or her age, your ex-spouse will begin receiving a monthly benefit payment the first month after the department accepts the property division dissolution order.

(12) If the dissolution order or amendment is dated AFTER my retirement, how will my monthly retirement benefit be calculated after the split?

(a) The dissolution order must state the exact dollar amount your ex-spouse is to receive as his or her separate monthly benefit. The following describes how the new amount of your benefit will be calculated assuming your ex-spouse was awarded a monthly benefit of six hundred dollars in the dissolution order.

Step 1 The department will determine the single life benefit of your current monthly benefit payment by dividing your currently monthly benefit payment by the survivor option factor (see WAC 415-02-380) in effect at the time of the split.

Example:

Currently monthly benefit = \$1200

Option factor = 0.865

Single life benefit amount = $\$1200/0.865 = \1387.28

Step 2 The single life benefit (\$1387.28) is divided by your annuity factor (see WAC 415-02-340) to determine the current present value of the single life benefit amount. The annuity factor the department uses is the factor for your age as of the date of the split.

Example:

Your age at time of the split = 61 years old
 Annuity factor for age 61 = 0.0065448
 Present value of single life benefit = \$1387.28/
 0.0065448 = \$211,966.75

Step 3 The department then determines the present value of your ex-spouse's share by dividing your ex-spouse's monthly benefit amount (as awarded in the dissolution order) by your ex-spouse's annuity factor. The annuity factor is the factor for your ex-spouse's age as of date of the split.

Example:

Ex-spouse's monthly benefit amount = \$600
 Ex-spouse's age at time of the split = 67
 Annuity factor for age 67 = 0.0076715
 Present value of your ex-spouse's monthly benefit =
 \$600/0.0076715 = \$78,211.56

Step 4 Next, the department subtracts your ex-spouse's present value from the single life benefit present value. The result is the present value of the benefit you will receive.

Example:

Present value of single life benefit = \$211,966.75
 Less present value of ex-spouse's benefit = -78,211.56
 Your present value = \$133,755.19

Step 5 The department determines your new monthly benefit amount by multiplying your present value by your annuity factor.

Example:

Your present value = \$133,755.19
 Annuity factor = 0.0065448
 Your new monthly benefit amount = \$133,755.19 x
 0.0065448 = \$875.40

(b) The department determines the percentage of the total present value each of you will receive by dividing each of your present value amounts by the single life benefit present value amount.

Example:

Your percentage of the single life benefit present value:
 $\$133,755.19/\$211,966.75 = .6310$
 Your ex-spouse's percentage of the single life benefit present value:
 $\$78,211.56/\$211,966.75 = .3690$

(13) **What language must the postretirement property division dissolution order or most recent amendment include to split my monthly defined benefit payment with my ex-spouse?** Do not use the language in RCW 41.50.670 (2). The order must include the language provided in the following paragraph. The exact dollar amount of your ex-spouse's monthly benefit payment must be specified. Do not use formulas or percentages. (See example in WAC 415-02-500 (15)(b).)

The Department of Retirement Systems (department) shall create a **defined benefit account** for _____ (ex-spouse) in the _____ (name of retirement system and plan) and pay him or her \$_____ (amount) for his

or her life. To pay for this benefit, _____ (member's) **monthly defined benefit** payment will be reduced for life. This provision shall become effective no more than 30 days after the department's acceptance of the order.

(14) **How will the department split my postretirement defined contribution account?** If your defined contribution account has not been fully disbursed at the time of the dissolution order, the department will split the remaining portion of your defined contribution according to the provisions of subsections (6) through (9) of this section.

(15) **Is there a maximum payment that a property division dissolution order can award to my ex-spouse?** Yes. See RCW 41.50.670(4) and WAC 415-02-500(10) for information.

(16) **How much is the fee the department charges for making payments directly to my ex-spouse?** See RCW 41.50.680 and WAC 415-02-500(11) for information.

(17) **Terms used:**

- (a) Department's acceptance - A dissolution order that fully complies with the department of retirement systems' requirements and chapter 41.50 RCW.
- (b) Dissolution order - RCW 41.50.500.
- (c) Ex-spouse - WAC 415-02-030.
- (d) Split accounts - WAC 415-02-030.
- (e) Survivor benefits - WAC 415-02-030.
- (f) Plan 3 retirement systems - WAC 415-111-100.
- (g) TRS - Teachers' retirement system.

Footnotes to section:

- ¹ When a court splits your retirement account, the department will establish a separate account for your ex-spouse. Once the account is established, your account and your ex-spouse's account are not tied in any way.
- ² If an ex-spouse was not listed as the member's survivor beneficiary at retirement, then no postretirement property division order (or postretirement amendment) may split the member's retirement account using WAC 415-02-540.

[Statutory Authority: RCW 41.50.050(5), 41.50.500, [41.50.]670 et seq., [41.50.]790. 03-24-049, § 415-02-540, filed 11/26/03, effective 1/1/04. Statutory Authority: RCW 41.50.050(5), 41.50.500, [41.50.]670-[41.50.]710, [41.50.]790 and 2002 c 158. 03-12-014, § 415-02-540, filed 5/27/03, effective 7/1/03.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

WAC 415-02-550 What happens to my defined contributions if I transfer to Plan 3 after the department of retirement systems accepts my property division dissolution order? (1) **Who may use this section?** You may use this section if you were a member of PERS Plan 2, SERS Plan 2, or TRS Plan 2 and **first** obtained a property division dissolution order using the language in RCW 41.50.670(2) and WAC 415-02-510 or 415-02-520, and **then** transfer to Plan 3.¹

(2) **What happens if the property division dissolution order (using the language in RCW 41.50.670(2) and WAC 415-02-510) did not split my account?** Refer to WAC 415-03-530 for information about your defined benefit account and about your and your ex-spouse's defined contribution accounts after you transfer to Plan 3.

(3) What happens if the property dissolution order used the language in WAC 415-02-520 and *did* split my account?

(a) Your *ex-spouse's* account will remain in Plan 2. Your ex-spouse is ineligible to transfer to Plan 3.

(b) The balance of your accumulated contributions remaining in your Plan 2 account after it was split will be transferred to your Plan 3 defined contributions account. (Refer to chapter 415-111 WAC for information about your defined contribution account.)

(4) How will gainsharing be applied to my account? Gainsharing is not applied to Plan 2 member accounts. If gainsharing is applied after you have transferred to Plan 3, only you will receive the gainsharing amount.

(5) Terms used:

- (a) Dissolution order - RCW 41.50.500.
- (b) Ex-spouse - WAC 415-02-030.
- (c) Gainsharing - Chapter 41.31 RCW (Plan 1); chapter 41.31A RCW (Plan 3); WAC 415-02-030; 415-111-440.
- (d) PERS - Public employees' retirement system.
- (e) Plan 3 retirement systems - WAC 415-111-100.
- (f) SERS - School employees' retirement system.
- (g) Split accounts - WAC 415-02-030.
- (h) TRS - Teachers' retirement system.

Footnote to section:

¹ The section does not apply to retirees, because retirees cannot transfer to Plan 3.

[Statutory Authority: RCW 41.50.050(5), 41.50.500, [41.50.]670-[41.50.]710, [41.50.]790 and 2002 c 158. 03-12-014, § 415-02-550, filed 5/27/03, effective 7/1/03.]

WAC 415-02-700 Are fallen heroes' survivor benefits nontaxable? (1) What is the fallen heroes tax exemption?

The department makes survivor benefit annuity payments to qualified survivor beneficiaries of public safety officers killed in the line of duty. All or part of the annuity benefit paid may be nontaxable under applicable federal law¹. **Lump sum payments do not qualify** for nontaxable treatment under this provision of law.

(a) **Who is covered?** Deceased public safety officers who were members of the public employees' retirement system (PERS), the law enforcement officers' and fire fighters' retirement system (LEOFF), or the Washington state patrol retirement system (WSPRS). If the deceased officer was a member of another plan, please contact the department or your tax advisor to discuss the matter.

(b) What time period is covered?

MEMBER'S DATE OF DEATH	SURVIVOR BENEFIT PAYMENT DATE
On or after January 1, 1997	On or after January 1, 1997
On or before December 31, 1996	On or after January 1, 2002

(2) Can I rely on the department's determination of whether the payments are nontaxable? No.

(a) The department does not guarantee that payments should or should not be designated as exempt from federal income tax.

(b) The department does not guarantee that it was correct in withholding or not withholding taxes from survivor benefit payments to you.

(c) The department does not:

- (i) Represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will occur because of its nontaxable determination; or
- (ii) Assume any liability for your compliance with the Internal Revenue Code.

(d) You should consult with your own tax advisor regarding all questions of federal or state income, payroll, personal property or other tax consequences regarding any payments you receive from the department.

(3) How will the department determine whether to withhold or not withhold from your survivor benefit annuity payment for income tax purposes?

(a) If you receive survivor benefit annuity payments because of the death of a public safety officer killed in the line of duty, and you are the public safety officer's spouse, ex-spouse, or child, the department will not withhold taxes **on the portion** of your survivor benefit payments attributable to the officer's service as a public safety officer.

(b) The department will compare the service credits associated with the member's employment as a public safety officer to the member's overall service credit to determine the portion of the survivor benefit payment that qualifies.

(c) **Examples:** In the following examples, assume that the plan administrator has determined that the death of the member qualifies under the fallen heroes tax exemption provision. Assume that the monthly survivor benefit payable is \$2000.

Example 1. Joe was employed as a law enforcement officer. He spent his entire career in law enforcement from July 1, 1976, until his death on June 10, 2003 (324 months).
 Total service credit = 324 months
 Service credit as public safety officer = 324 months
 $324 / 324 = 1.0$
 $1.0 \times \$2,000 = \$2,000$
\$2,000 is not subject to withholding

Example 2. Brian was employed as a research analyst for a state agency from July 1, 1976, to May 30, 1995 (227 months service credit). He was employed in a public safety officer position for another state agency from June 1, 1995, until his death on June 10, 2003 (97 months service credit).
 Total service credit = 324 months
 Service credit as public safety officer = 97 months
 $97 / 324 = .299383$
 $.299383 \times \$2,000 = \598.77
\$598.77 is not subject to withholding

Example 3. Susan was hired on July 1, 1976, as a research analyst for a state agency. She terminated that employment on May 30, 1995 (227 months service credit). Susan was hired into a public safety officer position on June 1, 2003, for another state agency. She died on June 4, 2003.
 Total service credit = 227.25 months
 Service credit as public safety officer = .25 months
 $.25 / 227.25 = .001100$
 $.001100 \times \$2,000 = \2.20
\$2.20 is not subject to withholding

(d) **What are the exceptions?** Subsection (3)(a) of this section shall not apply with respect to the death of any public safety officer if:

(i) The death was caused by the intentional misconduct of the officer or by the officer's intention to bring about his or her own death;

(ii) The officer was voluntarily intoxicated at the time of death;

(iii) The officer was performing his or her duties in a grossly negligent manner at the time of death; or

(iv) The payment is to an individual whose actions were a substantial contributing factor to the death of the officer.

(4) **Who will decide whether to withhold money for income tax from your survivor benefit payments?**

(a) The plan administrator will make the decision.

(b) If you disagree with the plan administrator's decision, you may petition for review under chapter 415-04 WAC.

(5) **What types of evidence will the department use in making the decision regarding whether to withhold taxes from the survivor payments?**

(a) Cause of death stated on the certified death certificate;

(b) Facts surrounding the public safety officer's death;

(c) The deceased public safety officer's job description;

(d) The deceased's membership records;

(e) Materials that the survivor submits for consideration; and

(f) Any other relevant evidence.

(6) **Examples:**

(a) **Police officer:** Charles is a police officer who works for a police department in a large Washington city. He receives a call to report to duty because a riot has started downtown. Charles drives to the riot scene and is killed getting out of his car from a bullet fired by a rioter. The department will not withhold taxes on survivor benefit payments.

(b) **Fire fighter:** Elaine is a fire fighter who attends a barbecue party on the Fourth of July. During the party, the barbecue falls over and the garage catches on fire. Elaine grabs a hose and puts out the fire, but dies from smoke inhalation in the process. The department would review the evidence and circumstances to determine whether Elaine would be considered to be "on duty" at the time of her death. If Elaine was not on duty, the department will withhold taxes on survivor benefit payments.

(c) **Park ranger:** Bobbi is a park ranger employed by the state parks and recreation commission. Her job duties include administration, development, maintenance, and visitor services, in addition to law enforcement, within a state park or park area. She is required to have knowledge of fire prevention and suppression methods and equipment. Although Bobbi is commissioned to enforce laws, her principal job functions do not include criminal law enforcement or crime control. The department would withhold taxes on payments to her survivors unless Bobbi was actually engaged in crime control, enforcement of criminal law, or fire suppression at the time of her death.

(7) **Definitions used;² these definitions apply to this WAC section ONLY.**

(a) **Chaplain** - any individual serving as an officially recognized or designated member of a legally organized fire department or legally organized police department, or an offi-

cially recognized or designated public employee of a legally organized fire or police department who was responding to a fire, rescue, or police emergency.

(b) **Child** - any natural, illegitimate, adopted, or posthumous child or stepchild of a deceased public safety officer who, at the time of the public safety officer's death, is:

(i) Eighteen years of age or under;

(ii) Over eighteen years of age and a student as defined in Section 8101 of Title 5, United States Code; or

(iii) Over eighteen years of age and incapable of self-support because of physical or mental disability;

(c) **Fire fighter** - an individual serving as an officially recognized or designated member of a legally organized fire department and an officially recognized or designated public employee member of a rescue squad or ambulance crew.

(d) **Intoxication** - a disturbance of mental or physical faculties resulting from the introduction of alcohol into the body as evidenced by:

(i) A postmortem blood alcohol level of .20 per centum or greater;

(ii) A postmortem blood alcohol level of at least .10 per centum but less than .20 per centum unless the department receives convincing evidence that the public safety officer was not acting in an intoxicated manner immediately prior to his death; or

(iii) Resulting from drugs or other substances in the body.

(e) **Law enforcement officer** - an individual involved in crime and juvenile delinquency control or reduction, or enforcement of the laws, including, but not limited to, police, corrections, probation, parole, and judicial officers.

(f) **Line of duty** means:

(i) Any action which an officer whose primary function is crime control or reduction, enforcement of the criminal law, or suppression of fires is obligated or authorized by rule, regulations, condition of employment or service, or law to perform, including those social, ceremonial, or athletic functions to which the officer is assigned, or for which the officer is compensated, by the public agency he or she serves. For other officers, "line of duty" means any action the officer is so obligated or authorized to perform in the course of controlling or reducing crime, enforcing the criminal law, or suppressing fires; and

(ii) Any action which an officially recognized or designated public employee member of a rescue squad or ambulance crew is obligated or authorized by rule, regulation, condition of employment or service, or law to perform.

(g) **Public agency** - any unit of government that meets the definition of "employer" in any retirement plan that the department administers.

(h) **Public safety officer:**

(i) Regardless of full-time or part-time status, an individual serving a public agency in an official capacity as a law enforcement officer, fire fighter, chaplain, or member of a rescue squad or ambulance crew; or

(ii) An individual who is performing official duties in cooperation with the Federal Emergency Management Agency in an area, if those official duties:

(A) Are related to a major disaster or emergency that has been, or is later, declared to exist with respect to the area

under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.); and

(B) Are determined by the head of the agency to be hazardous duties.

(i) **Rescue** - the provision of first response emergency medical treatment, transportation of persons in medical distress and under emergency conditions to medical care facilities, or search and rescue assistance in locating and extracting from danger persons lost, missing, or in imminent danger of bodily harm.

Footnotes to section:

¹ The "Omnibus Crime Control and Safe Streets Act of 1968," Act June 19, 1969, P.L. 90-351, which appears generally as 42 USCS §§ 3701 et seq., including Title 26 U.S.C. Sec. 101(h) as amended by the Fallen Hero Survivor Benefit Fairness Act of 2001.

² These definitions duplicate, as closely as possible, those in 42 USCS § 3796b (2003), the applicable federal definition section. Provisions not applicable to any plans administered by the department have been deleted.

[Statutory Authority: RCW 41.50.050(5), 41.04.393. 03-18-031, § 415-02-700, filed 8/26/03, effective 10/1/03.]

WAC 415-02-710 What is the \$150,000 death benefit? (1) What is the \$150,000 death benefit? This is a benefit consistent with workers' compensation law, Title 51 RCW, for LEOFF, PERS, SERS, TRS, and WSPRS members who die as a result of injuries sustained in the course of employment. The benefit may be nontaxable under applicable federal law.

(2) **Who is covered?** Deceased members of LEOFF, PERS, SERS, TRS, and WSPRS. If the deceased was a member of another plan, please contact the department.

(3) **Who will determine eligibility for the benefit?** The Washington state department of labor and industries (L&I) will determine eligibility consistent with Title 51 RCW and applicable retirement statutes in chapter 41.26 RCW (LEOFF), chapter 41.40 RCW (PERS), chapter 41.35 RCW (SERS), chapter 41.32 RCW (TRS), or chapter 43.43 RCW (WSPRS).

(4) **Who will receive the \$150,000 death benefit?**

(a) **LEOFF Plan 2, PERS, SERS, TRS, and WSPRS Plan 2:** The person(s) the member designated as his or her beneficiary(ies) for his or her retirement plan will receive the benefit *unless* the member designated a *different* beneficiary(ies) for the \$150,000 death benefit. If the member did not designate a beneficiary for either the plan or death benefit, then the member's death benefit shall be paid to the member's surviving spouse as if in fact the spouse had been nominated by written designation, or if there is no surviving spouse, then to the member's estate.

(b) **LEOFF Plan 1 and WSPRS Plan 1:** In these plans, the member's surviving spouse is automatically the beneficiary for the member's retirement plan. The member may designate a different person(s) for the \$150,000 death benefit. If the member did not designate a beneficiary for either the plan or death benefit, then the member's death benefit shall be paid to the member's surviving spouse as if in fact the spouse had been nominated by written designation, or if there is no surviving spouse, then to the member's estate.

(5) **How do I apply for the benefit?** To apply:

(a) Obtain an application from the department of retirement systems (DRS).

(b) Submit a correctly completed application to DRS. DRS will submit the application to L&I.

(6) **How will I receive the benefit?** L&I will notify you and DRS of approval or disapproval of eligibility. DRS will either send you the lump sum payment or send it directly to your bank, depending on your preference.

(7) **How will DRS treat the \$150,000 payment for tax purposes?**

(a) DRS will treat the payment as nontaxable.

(b) DRS does not guarantee that payments should or should not be designated as exempt from federal income tax.

(c) DRS does not guarantee that it was correct in withholding or not withholding taxes from the death benefit payment.

(d) DRS does not:

(i) Represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will occur because of its nontaxable determination; or

(ii) Assume any liability for your compliance with the Internal Revenue Code.

(e) You should consult with your own tax advisor regarding all questions of federal or state income, payroll, personal property or other tax consequences regarding any payments you receive from the department.

(8) Terms used:

(a) LEOFF - Law enforcement officers' and fire fighters' retirement system.

(b) PERS - Public employees' retirement system.

(c) SERS - School employees' retirement system.

(d) TRS - Teachers' retirement system.

(e) WSPRS - Washington state patrol retirement system.

[Statutory Authority: RCW 41.50.050(5), 41.04.017, 41.26.048, 41.32.053, 41.35.115, 41.40.0932, 43.43.285. 03-24-050, § 415-02-710, filed 11/26/03, effective 1/1/04.]

Chapter 415-06 WAC

PUBLIC RECORDS

WAC

415-06-100

How do I contact the department?

WAC 415-06-100 How do I contact the department?

(1) Mailing address: Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380.

(2) Street address: 6835 Capitol Blvd., Tumwater, WA 98501.

(3) Phone numbers: (360) 664-7000 or toll-free (outside Olympia area) 1 (800) 547-6657, or TDD (for the hearing impaired) (360) 586-5450.

(4) E-mail address: recep@drs.wa.gov.

(5) Website: <http://www.drs.wa.gov>.

[Statutory Authority: RCW 41.50.050(5) and 42.17.250. 03-24-052, § 415-06-100, filed 11/26/03, effective 12/27/03. Statutory Authority: RCW 41.50.050(5), 41.50.055(5), 34.05.220 (1)(b), 42.17.250. 01-18-017, § 415-06-100, filed 8/24/01, effective 9/24/01; Order 4, § 415-06-100, filed 7/27/77.]

Chapter 415-10 WAC

PURCHASE OF SERVICE CREDIT AFTER STATUTORY DEADLINE RCW 41.50.165

WAC

415-10-020	Definitions.
415-10-030	Calculation of cost to purchase service credit in certain plans.
415-10-040	Calculation of cost to purchase service credit for members of PERS Plan 1, TRS Plan 1 or WSPRS Plan 1 or 2.

WAC 415-10-020 Definitions. As used in this chapter:

(1) **Average earnings** means:

(a) In PERS Plan 1, TRS Plan 1 or WSPRS Plan 1: The average of your two highest consecutive years of compensation as of the date of your service credit purchase.

(b) In Plan 2 or Plan 3: The average of your five highest consecutive years of compensation as of the date of your service credit purchase.

(c) In LEOFF Plan 1: The basic salary attached to your position at the date of your service credit purchase.

(2) **Factors** means the actuarial cost factors calculated by the state actuary and adopted by the department that are used in the formulas for calculating the cost of a service credit purchase. See WAC 415-02-370 for additional information about the service credit purchase factors.

(3) **LEOFF** means the law enforcement officers' and fire fighters' retirement system established under chapter 41.26 RCW.

(4) **PERS** means the public employees' retirement system established under chapter 41.40 RCW.

(5) **SERS** means the school employees' retirement system established under chapter 41.35 RCW.

(6) **Service credit being purchased** means the number of service credit months or service credit years you are purchasing.

(7) **TRS** means the teachers' retirement system established under chapter 41.32 RCW.

(8) **WSPRS** means the Washington state patrol retirement system established under chapter 43.43 RCW.

(9) **Years of earlier retirement** equals the number of years or fractions of years you will be able to retire earlier as a result of your purchase of service credit.

(10) **Years of service** equals the total anticipated years of service you will have accrued at retirement, including the additional service credit you purchase under this section.

[Statutory Authority: RCW 41.50.050(5), 41.50.165. 03-15-006, § 415-10-020, filed 7/3/03, effective 8/3/03. Statutory Authority: RCW 41.50.050(5) and chapter 41.45 RCW. 02-03-120, § 415-10-020, filed 1/23/02, effective 3/1/02. Statutory Authority: Chapter 41.50 RCW. 00-22-049, § 415-10-020, filed 10/27/00, effective 11/27/00. Statutory Authority: RCW 41.50.050 and 41.50.165. 97-01-014, § 415-10-020, filed 12/6/96, effective 1/6/97.]

WAC 415-10-030 Calculation of cost to purchase service credit in certain plans. If you are a member of LEOFF Plan 1 or 2, PERS Plan 2 or 3, TRS Plan 2 or 3, or SERS Plan 2 or 3, the department will calculate the actuarial value of the service credit you purchase under RCW 41.50.165(2) using the following formula:

Service Credit Purchase Cost =

Average Earnings x Service Credit Being Purchased x Factor 1

This represents the cost of the additional retirement allowance you will receive by including the additional service credit from your purchase into your retirement benefit calculation.

Example: Purchase of additional service credit.

Ron is an active PERS Plan 2 member who currently has 18 years of service. Ron turned age 61 last month. His average earnings are \$50,000. Ron would like to purchase 3 years of service that he previously withdrew but did not restore before the deadline.

The department will first determine Ron's normal retirement age to identify the appropriate factor from the Factor 1 tableⁱ to use in the formula for calculating the service credit purchase cost. Normal retirement age (NRA) is the earliest age at which a member will be eligible to retire with unreduced benefits under the requirements of his or her system and plan. Ron's NRA will come when he is age 65 and has 21 years of serviceⁱⁱ. Since he is currently age 61, Ron is 4 years (48 months) to normal retirement age. So, the department will use the factor 0.2016 from the Factor 1 table, which is factor for 48 months to NRA under PERS Plan 2.

The department will then calculate the cost of purchasing the service credit using the Service Credit Purchase Cost formula:

$$\text{Cost} = \text{Average Earnings} \times \text{Service Credit Being Purchased} \times \text{Factor 1}$$

The cost of Ron's purchase would be calculated as follows:

$$\text{Cost} = \$50,000 \times 3 \text{ (years purchased)} \times 0.2016 \text{ (48 months to NRA)} = \$30,240$$

Ron's total cost to purchase 3 years of service credit is \$30,240.

Footnotes to section:

ⁱSee WAC 415-02-370.

ⁱⁱRon would first qualify under the PERS Plan 2 eligibility rule of being age 65 or older with at least 5 years of service.

[Statutory Authority: RCW 41.50.050(5), 41.50.165. 03-15-006, § 415-10-030, filed 7/3/03, effective 8/3/03; 02-03-120, § 415-10-030, filed 1/23/02, effective 3/1/02. Statutory Authority: Chapter 41.50 RCW. 00-22-049, § 415-10-030, filed 10/27/00, effective 11/27/00. Statutory Authority: RCW 41.50.050 and 41.50.165. 97-01-014, § 415-10-030, filed 12/6/96, effective 1/6/97.]

WAC 415-10-040 Calculation of cost to purchase service credit for members of PERS Plan 1, TRS Plan 1 or WSPRS Plan 1 or 2. If you are a member of PERS 1, TRS 1 or WSPRS Plan 1 or 2, the department will calculate the actuarial value of the service credit you purchase under RCW 41.50.165(2) using the following three part formula:

<u>Part 1 Cost =</u>	<u>Part 2 Cost =</u>
Average Earnings	Average Earnings
x	x
Service Credit Being Purchased	Years of Service
x	x
Factor 1	Years of Earlier Retirement
	x

(a) The retiree does not have a spouse who qualifies as an eligible surviving spouse (see subsection (2) of this section);

(b) The retiree's monthly benefit is not subject to a property settlement agreement from a court decree of dissolution or legal separation; and

(c) The retiree has not previously selected a flexible survivor option.

(6) **What steps must one take to add a flexible survivor option?** To add a flexible survivor option, the retiree must:

(a) Make the choice during the one year window, on or after the date of the first anniversary and before the second anniversary of the marriage;

(b) Provide the department with proof of the birth date of the spouse and a copy of a marriage certificate as proof of the marriage; and

(c) Properly and in a timely manner complete and file the correct forms with the department.

(7) **What happens if the survivor dies before the retiree?** If the spouse dies before the retiree, the retiree's monthly retirement allowance increases, effective the first day of the following month, to the amount that the retiree would have received had the retiree not chosen a flexible survivor option plus any cost-of-living adjustments (COLA) the retiree received prior to the spouse's death.

(8) **What happens to the eligible surviving children's share if the retiree selects a flexible survivor option?** There is *no* impact to the benefit provided to surviving children if the retiree selects a flexible survivor option.

(9) **Actuarial information.** See chapter 415-02 WAC starting with WAC 415-02-300 for the tables, schedules, and factors the department uses for calculating retirement allowances.

Terms used in this section:

(a) Child or children - RCW 41.26.030(7).

(b) Eligible surviving child - RCW 41.26.160 and 41.26.161.

(c) Eligible surviving spouse - RCW 41.26.161 and 41.26.162.

(d) Surviving spouse - RCW 41.26.030(6).

[Statutory Authority: RCW 41.50.050(5), 41.26.162, 41.26.164, chapter 41.45 RCW. 03-12-014, § 415-104-202, filed 5/27/03, effective 7/1/03.]

WAC 415-104-211 Married LEOFF Plan 2 member's benefit selection—Spousal consent required. (1) A LEOFF Plan 2 member, if married, must provide the spouse's written consent to the option selected under WAC 415-104-215. If a married LEOFF Plan 2 member does not provide spousal consent, the department will pay the retired member a joint and one-half survivor benefit allowance and record the member's spouse as the survivor, in compliance with RCW 41.26.460(2).

(2) Spousal consent is not needed to enforce a marital dissolution order requiring the department to pay an ex-spouse under RCW 41.50.790.

(3) "Spousal consent" means that the married member's spouse consents to the retirement option selected by the member. The spouse's notarized signature on a completed retirement application filed with the department constitutes spousal consent.

[Statutory Authority: RCW 41.50.050(5) and 41.26.460. 03-12-014, § 415-104-211, filed 5/27/03, effective 7/1/03. Statutory Authority: RCW 41.50.050. 99-16-075, § 415-104-211, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 2.10.146, 41.26.460, 41.32.530, 41.50.050, 41.32.785, 41.40.188 and 41.40.660. 96-01-047, § 415-104-211, filed 12/14/95, effective 1/14/96. Statutory Authority: RCW 34.05.050 and 1990 c 249. 91-03-014, § 415-104-211, filed 1/7/91, effective 2/7/91.]

WAC 415-104-215 Retirement benefit options—LEOFF Plan 2. RCW 41.26.460 enables the department to provide retiring LEOFF Plan 2 members with four retirement benefit options. The member must choose an option when applying for service or disability retirement.

(1) **Option One: Benefit option without survivor features (standard allowance).** The department pays the retiree a monthly retirement allowance actuarially based solely on the single life of the member, in accordance with RCW 41.26.430 (service) or 41.26.470 (disability). When the retiree dies, all benefits cease. Any remaining balance of the retiree's accumulated contributions will be paid to:

(a) Such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or

(c) The member's estate; or

(d) If there is neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(2) **Benefit options with a survivor feature.**

(a) A retiring member is allowed to select from several retirement options which create an actuarially equivalent benefit that includes a survivor feature. The survivor feature entitles the survivor to receive a monthly allowance after the retiree dies. If the member chooses one of the survivor options, the monthly benefit the member will receive is actuarially reduced to offset the cost of the survivor feature. After the retiree dies, the department pays the survivor an allowance for the duration of his or her life. If the retiree and the survivor both die before the retiree's accumulated contributions are exhausted, any remaining balance of the retiree's accumulated contributions will be paid to:

(i) Such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or

(ii) If there is no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or

(iii) The member's estate; or

(iv) If there is neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(b) **Option Two (joint and whole allowance).** When the retiree dies, the department pays the survivor a monthly retirement allowance equal to the gross monthly allowance received by the retiree.

(c) **Option Three (joint and one-half allowance).** When the retiree dies, the department pays the survivor one-half of the amount of the retiree's gross monthly retirement allowance.

(d) **Option Four (joint and two-thirds allowance).**

(i) Option Four is available to members retiring on or after January 1, 1996.

(ii) When the retiree dies, the department pays the survivor two-thirds (66.667%) of the retiree's gross monthly retirement allowance.

(3) If a member retires on or after June 6, 1996, the department is required to pay an ex-spouse survivor benefits pursuant to a marital dissolution order that complies with RCW 41.50.790.

(4) Benefit increases when survivor predeceases retiree (pop-up provision).

(a) This subsection applies to members retiring on or after January 1, 1996, who select a benefit option with a survivor feature (Option Two, Three, or Four).

(b) If the survivor dies before the retiree, the retiree's monthly retirement allowance increases, effective the first day of the following month, to:

(i) The amount that would have been received had the retiree chosen Option One; plus

(ii) Any cost-of-living adjustments the retiree received prior to the survivor's death based on the original option selection.

(c) Pop-up recalculation example:

Plan Two: Agnes retires in 1996 (Year 0). She would like Beatrice, her daughter, to receive a monthly allowance after Agnes dies. Therefore, Agnes selects a retirement benefit option with a survivor feature. As a result her monthly allowance is reduced from \$2,000 (standard allowance) to \$1,750. Unfortunately, Beatrice dies in January 2001 (Year 5). Under the "pop-up" provision, Agnes' monthly benefit will increase to \$2,191.05, the amount she would have received had she chosen Option One (standard allowance) plus her accumulated COLA's:

Year	Option One (Standard Allow.)	Survivor Option (2,3,4) plus COLAs	COLA incr. (3% max) (inelig.)	\$ Increase
0 (1996)	2,000.00	1,750.00	(inelig.)	0.00
1 (1997)		1,750.00	.02	35.00
2 (1998)		1,785.00	.03	53.55
3 (1999)		1,838.55	.025	45.96
4 (2000)		1,884.51	.03	56.54
5 (2001)	2,000.00	1,941.05	—	—
			Total COLA's	191.05
Original Option One Benefit Amount \$2000		+ Total COLA's	= New Benefit Amount	
		+ \$191.05	= \$2,191.05*	

* In the future (i.e., Year 5), Agnes' COLA will be based on the increased benefit amount (\$2,191.05).

(d) If the survivor dies and the retiree's benefit increases under this section, and thereafter the retiree also dies before all employee contributions are exhausted, any remaining balance of the retiree's accumulated contributions will be paid to:

(i) Such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or

(ii) If there is no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or

(iii) The member's estate; or

(iv) If there is neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(5) Any retiree who retired before January 1, 1996, and who elected to receive a benefit option with a survivor feature

under subsection (2) of this section is entitled to receive a retirement allowance adjustment if the retiree meets the following conditions:

(a) The retiree's designated beneficiary predeceases or has predeceased the retiree; and

(b) The retiree provides the department proper proof of the designated beneficiary's death.

The retiree is not required to apply for the increased benefit provided in this subsection. The adjusted retirement allowance will be effective on July 1, 1998, or the first day of the month following the date of death of the designated beneficiary, whichever comes last. The adjustment is computed as described in RCW 41.26.460 (3)(c) for Plan 2 retirees.

(6) Postretirement benefit options.

(a) **Postretirement marriage option.** Members who select the standard allowance (Option One) at the time of retirement and marry after retirement may subsequently select a survivor option with their new spouse as survivor beneficiary, provided that:

(i) The retiree's monthly benefit is not subject to a property settlement agreement from a court decree of dissolution or legal separation;

(ii) The selection is made either:

(A) During a one year window, on or after the date of the first anniversary and before the second anniversary of the postretirement marriage; or

(B) Before June 1, 2002, if the postretirement marriage occurred before June 1, 2001;

(iii) The retiree provides a marriage certificate as proof of the postretirement marriage and provides proof of the birthdate of the new spouse; and

(iv) A member may exercise this option one time only.

(b) **Removal of a nonspouse survivor option.** Members who selected a nonspouse as survivor beneficiary at the time of retirement may remove that survivor designation and have the benefit adjusted to a standard allowance. A member may exercise this option one time only.

(c) Selection (a) or (b) of this subsection will become effective the first of the month following the department's receipt of the required paperwork.

(7) **Survivor.** For the purposes of this provision, "survivor" means a person nominated by the member to receive a monthly benefit allowance after the member dies. A member nominates the survivor at the time of retirement by filing a completed and notarized form provided by the department.

[Statutory Authority: RCW 41.50.050(5) and 41.26.460. 03-12-014, § 415-104-215, filed 5/27/03, effective 7/1/03. Statutory Authority: RCW 41.50.050(5), 41.26.460, 41.32.530, 41.32.785, 41.32.851, 41.35.220, 41.40.188, 41.40.660, 41.40.845. 01-10-045, § 415-104-215, filed 4/26/01, effective 6/1/01. Statutory Authority: RCW 41.50.050. 99-16-075, § 415-104-215, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 2.10.146, 41.26.460, 41.32.530, 41.50.050, 41.32.785, 41.40.188 and 41.40.660. 96-01-047, § 415-104-215, filed 12/14/95, effective 1/14/96. Statutory Authority: RCW 34.05.050 and 1990 c 249. 91-03-014, § 415-104-215, filed 1/7/91, effective 2/7/91.]

WAC 415-104-245 Am I required to meet minimum medical and health standards in order to establish or reestablish Plan 1 membership? (1) You may be required to meet minimum medical and health standards in order to establish or reestablish Plan 1 membership.

You are required to meet minimum medical and health standards codified in WAC 415-104-500 through 415-104-755, if you:

(a) Were first employed as a law enforcement officer or fire fighter on or after August 1, 1971, and before October 1, 1977; and

(b) Have been separated from service for more than six months for reasons other than a disability leave, a disability retirement, or an authorized leave of absence.

(2) If you are an elected sheriff or an appointed police or fire chief, you are exempt from the age requirement of the standards.

(3) If you are required to meet the minimum medical and health standards, your employer will enroll you in Plan 1 provisionally, depending on the results of your physical examination.

(a) If you are required to meet the minimum medical and health standards, your employer will begin reporting you in LEOFF Plan 1 from the first day of your employment. Your enrollment in Plan 1, however, is provisional depending upon the results of your medical examination.

(b) Your employer is responsible for having you examined by a physician or surgeon appointed by the local disability board and for paying the cost of your examination. Your employer will send a copy of your examination report to the department along with a certification letter of whether you have met the standards.

(4) If you are denied Plan 1 membership because you did not meet minimum medical and health standards, you will enter membership in Plan 2.

(a) The department will review your examination report and if you meet the minimum medical and health standards you will be reported in membership in Plan 1.

(b) If you do not meet the standards, your employer must stop reporting you to the department in Plan 1 and report you in Plan 2. The department will transfer your membership from Plan 1 to Plan 2 retroactively to the beginning of your term of employment.

(5) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Employer" - RCW 41.26.030.

(b) "Fire fighter" - RCW 41.26.030.

(c) "Full time" - WAC 415-104-011.

(d) "Fully compensated" - WAC 415-104-011.

(e) "Law enforcement officer" - RCW 41.26.030.

(f) "Member" - RCW 41.26.030.

(g) "Minimum medical and health standards" - WAC 415-104-500 through 415-104-755.

(h) "Plan 1 and Plan 2" - WAC 415-104-011.

[Statutory Authority: RCW 41.50.050(5), 41.26.035, 41.26.045 - [41.26.047, 04-02-003, § 415-104-245, filed 12/24/03, effective 1/1/04. Statutory Authority: RCW 41.50.050, 95-16-053, § 415-104-245, filed 7/25/95, effective 8/25/95.]

WAC 415-104-299 Basic salary table. The following table will help you determine whether certain types of payments are basic salary under LEOFF Plan 1 or 2. Be sure to read the referenced rule to ensure that you have correctly identified the payment in question. The department determines basic salary based upon the nature of the payment, not the name applied to it. See WAC 415-104-311 (Plan 1) and WAC 415-104-360 (Plan 2).

Type of Payment	LEOFF 1 Basic Salary?	LEOFF 2 Basic Salary?
Additional Duty Pay	Yes - WAC 415-104-3205	Yes - WAC 415-104-360
Allowances (i.e. uniform)	No - WAC 415-104-3404	No - WAC 415-104-390
Basic Monthly Rate	Yes - WAC 415-104-3200	Yes - WAC 415-104-360
Cafeteria Plans	No - WAC 415-104-3303	Yes - WAC 415-104-367
Deferred Wages Attached to Position	Yes - WAC 415-104-3201(1)	Yes - WAC 415-104-363(1)
Deferred Wages not attached to a Position	No - WAC 415-104-3306	No - WAC 415-104-363(2)
Disability Payments	No - WAC 415-104-340	No - WAC 415-104-380
Education Attainment Pay	No - WAC 415-104-3301	Yes - WAC 415-104-375
Employer taxes/contributions	No - WAC 415-104-3401	No - WAC 415-104-383
Fringe Benefits, including insurance	No - WAC 415-104-3402	No - WAC 415-104-385
Illegal Payments	No - WAC 415-104-3403	No - WAC 415-104-387
Leave Cash Outs/Severance	No - WAC 415-104-3304	No - WAC 415-104-401
Longevity	Yes - WAC 415-104-311	Yes - WAC 415-104-375
Overtime	No - WAC 415-104-3305	Yes - WAC 415-104-370
Paid Leave	Yes - WAC 415-104-3203	Yes - WAC 415-104-373
Payments in Lieu of Excluded Items	No - WAC 415-104-350	No - WAC 415-104-405
Performance Bonuses	No - WAC 415-104-3302	Yes - WAC 415-104-377
Retroactive Salary Increase	Yes - WAC 415-104-3202	Yes - WAC 415-104-365
Reimbursements	No - WAC 415-104-3404	No - WAC 415-104-390
Retirement or Termination Bonuses	No - WAC 415-104-3406	No - WAC 415-104-395
Shift Differential	Yes - WAC 415-104-3204	Yes - WAC 415-104-379
Special Salary or Wages	No - WAC 415-104-330	Yes - WAC 415-104-375
Standby Pay	No - WAC 415-104-3405	No - WAC 415-104-393
Tuition/Fee Reimbursement	No - WAC 415-104-3404	No - WAC 415-104-390
Workers' Compensation	Not Applicable	No - WAC 415-104-380

[Statutory Authority: RCW 41.50.050(5) and chapter 41.26 RCW, 03-06-042, § 415-104-299, filed 2/27/03, effective 4/1/03. Statutory Authority: RCW 41.50.050, 99-16-075, § 415-104-299, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.50.050 and 41.50.055, 97-01-016, § 415-104-299, filed 12/6/96, effective 1/6/97.]

WAC 415-104-3402 Fringe benefits are not LEOFF Plan 1 basic salary. Fringe benefits provided by an employer are not a salary or wage, and therefore do not qualify as basic salary for LEOFF Plan 1. Fringe benefits include but are not limited to:

- (1) Employer retirement contributions;
- (2) Any type of insurance such as medical, dental, or life insurance; and any employer contribution to meet the premium or charge for the insurance; or
- (3) Any payments by the employer into a private fund to provide health or welfare benefits for members and/or their dependents.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.26 RCW. 03-06-042, § 415-104-3402, filed 2/27/03, effective 4/1/03. Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-3402, filed 12/6/96, effective 1/6/97.]

WAC 415-104-385 Fringe benefits are not LEOFF Plan 2 basic salary. Fringe benefits provided by an employer are not a salary or wage and therefore do not qualify as basic salary for LEOFF Plan 2. Fringe benefits include, but are not limited to:

- (1) Employer retirement contributions;
- (2) Any type of insurance such as medical, dental or life insurance; and any employer contribution to meet the premium or charge for the insurance; or
- (3) Any employer payments into a private fund to provide health or welfare benefits for the member (or the member and the member's dependents), with the exception of compensation paid pursuant to a bona fide cafeteria plan, flexible benefit plan or similar arrangement as described in WAC 415-104-367.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.26 RCW. 03-06-042, § 415-104-385, filed 2/27/03, effective 4/1/03. Statutory Authority: RCW 41.50.050 and 41.50.055. 97-01-016, § 415-104-385, filed 12/6/96, effective 1/6/97.]

Chapter 415-108 WAC

PUBLIC EMPLOYEES' RETIREMENT SYSTEM

WAC

415-108-425	How do I determine if I have choice rights or transfer rights to PERS Plan 3?
415-108-443	PERS reportable compensation table.
415-108-475	Fringe benefits.
415-108-550	Elected officials—Eligibility and application for retirement service membership.
415-108-560	Appointed officials—Eligibility and application for retirement service membership.
415-108-575	How is the compensation adjustment for elected officials computed?

WAC 415-108-425 How do I determine if I have choice rights or transfer rights to PERS Plan 3? (1) Definitions:

- (a) **"Concurrently employed"** means you are employed at the same time, in eligible positions, by a Phase 1 employer and by a Phase 2 employer.
- (b) **"Exercising choice rights"** means choosing Plan 2 or Plan 3 or defaulting into Plan 3.
- (c) **"Phase 1 employer"** means state agencies and institutes of higher education.
- (d) **"Phase 2 employer"** means all other employers.

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(e) **"Phase 1 transfer period"** is the period from March 1, 2002, through and including August 31, 2002.

(f) **"Phase 2 transfer period"** is the period from September 1, 2002, through and including May 31, 2003.

(2) **What determines if I have "choice rights" or "transfer rights"?** Your current employment status and your employment history will be used to determine if you have choice rights or transfer rights. If your employment status changes, your rights must be reevaluated. A change in your employment status, such as separating from employment or becoming reemployed, may change your rights.

(3) **What are "choice rights" and how are they applied?** "Choice rights" refers to your right, within a ninety-day period, to make an irrevocable choice to become a member of Plan 2 or Plan 3.

(a) You will be reported in Plan 2 until you exercise choice rights.

(b) You must make a choice within ninety days of your first day of employment in an eligible position.

(c) You will be defaulted into Plan 3 if you continue employment past the ninety-day choice period without making a choice.

(d) You may exercise choice rights only once.

(4) **Do I have "choice rights"?**

(a) You have choice rights if your initial PERS membership began on or after March 1, 2002, with a Phase 1 employer in an eligible position.

(i) If you separate from employment and did not exercise your choice rights, you retain choice rights if you are reemployed in an eligible position with a Phase 1 employer.

(ii) If you separate from employment and did not exercise your choice rights, and you are not employed by a Phase 2 employer during Phase 2, you retain choice rights if you begin another period of employment in an eligible position with a Phase 2 employer after May 31, 2003.

(b) You have choice rights if your initial PERS membership began on or after September 1, 2002, with a Phase 2 employer in an eligible position. If you separate from employment and did not exercise your choice rights, you retain choice rights if you begin another period of employment in an eligible position with a Phase 1 or Phase 2 employer.

(c) You have choice rights if you transferred from membership in PERS to membership in the school employees' retirement system and then became employed in an eligible PERS position on or after March 1, 2002, with a Phase 1 employer or on or after September 1, 2002, with a Phase 2 employer.

(5) **What are "transfer rights" and how are they applied?** "Transfer rights" refers to your right as a Plan 2 member to transfer into Plan 3 during an applicable transfer period to your employment type.

(a) You are not required to exercise transfer rights. If you have transfer rights, you will remain in Plan 2 unless you decide to transfer to Plan 3.

(b) If you do not transfer to Plan 3 during the Phase 1 or the Phase 2 transfer periods, you will not qualify to receive the additional transfer payment under RCW 41.40.795 or retroactive gainsharing payment under RCW 41.31A.040.

(6) **Do I have transfer rights?**

(a) You have transfer rights if you:

- (i) Are a Plan 2 member;
 - (ii) Are employed in an eligible position by a Phase 1 employer during the Phase 1 transfer period; and
 - (iii) Were not eligible for choice rights under subsection (4)(a) or (c) of this section.
- (b) You have transfer rights if you:
- (i) Are a Plan 2 member;
 - (ii) Are employed in an eligible position by a Phase 2 employer during the Phase 2 transfer period; and
 - (iii) Were not eligible for choice rights under subsection (4)(b) or (c) of this section.

(7) **What are "January transfer rights" and how are they applied?** "January transfer rights" refers to a Plan 2 member's right to transfer to Plan 3 during any January after the close of a transfer period.

(a) If you are employed by a Phase 1 employer, in an eligible position, the first January you can transfer is January 2003.

(b) If you are employed by a Phase 2 employer, in an eligible position, the first January you can transfer is January 2004.

(c) You must earn service credit in the January in which you transfer.

(8) **Do I have January transfer rights?**

(a) You have January transfer rights if you were eligible for transfer rights and did not transfer to PERS Plan 3 **during** the transfer period that applied to you.

(b) You have January transfer rights if you:

(i) Were employed in an eligible position with a Phase 1 employer **before** the Phase 1 transfer period, or were employed in an eligible position by a Phase 2 employer **before** the Phase 2 transfer period;

(ii) Were not employed by a Phase 1 employer **during** the Phase 1 transfer period;

(iii) Were not employed by a Phase 2 employer **during** the Phase 2 transfer period; and

(iv) Are employed by a Phase 1 employer in an eligible position that you began **after** the Phase 1 transfer period ended, or are employed by a Phase 2 employer in an eligible position that you began **after** the Phase 2 transfer period ended.

(9) **What happens after I become a Plan 3 member?**

Once you choose Plan 3 or default to Plan 3 or transfer to Plan 3, you will remain a Plan 3 member. You will not have any additional transfer rights or choice rights to exercise.

(10) **What rules apply to me if I am concurrently employed?** If you are, or become concurrently employed during the Phase 1 transfer period in an eligible position, you will have transfer rights but must wait until the Phase 2 transfer period to transfer. If you separate from one of the employers, your membership rights must be reevaluated.

Examples: *The examples are written, for the most part, for a Phase 1 employer. Use the Phase 2 transfer period (September 1, 2002, through and including May 31, 2003) to apply the rules to a Phase 2 employer.*

Plan Choice Rights:

Example 1: Pat starts working for a state agency in an eligible position (Phase 1 employer) as of:

A. April 1, 2002. Since Pat has not previously been a member of PERS, Pat has ninety days to make a **plan choice** for Plan 2 or Plan 3. See subsection (3)(b) of this section.

B. After forty-five days, Pat leaves service without making a choice, and then returns in an eligible position one year later. Pat has a new ninety day period in which to make his **plan choice**. See subsection (4)(a)(i) of this section.

C. Pat chooses Plan 3 within his ninety days. Pat is now a Plan 3 member regardless of future employment. See subsection (9) of this section.

D. Instead of choosing Plan 3, Pat lets his ninety day plan choice period go by with out choosing Plan 2 or Plan 3. Pat is defaulted into Plan 3 and is now a Plan 3 member regardless of future employment. See subsections (3)(c) and (9) of this section.

Transfer Rights:

Example 2:

A. Chris has been a Plan 2 member since 1977. Chris is working at a state agency (Phase 1 employer) as of March 1, 2002. Since Chris was a member prior to the start of Plan 3, Chris has the right to **transfer** to Plan 3 in the transfer period (March 1, 2002, through August 31, 2002). See subsection (6)(a) of this section.

B. However, Chris **did not make a decision** to transfer prior to the close of the Phase 1 **transfer period**. If Chris remains employed for a Phase 1 employer, the right to transfer to Plan 3 is limited to January of each year. See subsection (8)(a) of this section.

C. In this variation, Chris was a Plan 2 member from March 1, 1987, through February 1, 2002. Chris returns on October 15, 2002, for a state agency (Phase 1 employer). Since Chris returned to service **after** the transfer period (March 1, 2002, through August 31, 2002), Chris only has the right to transfer to Plan 3 in January of each year. See subsection (8)(b) of this section.

Irrevocable Choice Rule:

Example 3: Mike starts working for a state agency (Phase 1 employer) as of April 1, 2002. Since Mike has not previously been a member of PERS, he has ninety days to make a **plan choice** for Plan 2 or Plan 3. Mike chooses Plan 3 within his ninety days. Mike is now a Plan 3 member regardless of future employment. See subsection (9) of this section.

Example 4: Pat starts working for a state agency (Phase 1 employer) as of April 1, 2002. Since Pat has not previously been a member of PERS, he has ninety days to make a **plan choice** for Plan 2 or Plan 3. Pat chooses Plan 2 within his ninety days. Pat is now a Plan 2 member who can no longer have a **plan choice** regardless of future employment. See subsection (3)(d) of this section.

Concurrent Employment in Phase 1 and 2:

Example 5: Using example 2A, Chris also accepts employment for a county (Phase 2 employer) on April 1, 2002, **prior to transferring** to Plan 3. Since Chris is concurrently employed at a Phase 1 and a Phase 2 employer, Chris must wait for the Phase 2 window before he can transfer to Plan 3. See subsection (10) of this section.

[Statutory Authority: RCW 41.50.050(5), 41.40.785, and 2000 c 247. 03-15-007, § 415-108-425, filed 7/3/03, effective 8/1/03. Statutory Authority: RCW 41.50.050(5) and 41.40.785. 02-03-120, § 415-108-425, filed 1/23/02, effective 3/1/02.]

WAC 415-108-443 PERS reportable compensation table. The following table will help you determine whether

certain types of payments are reportable compensation under PERS Plans 1, 2, or 3. Be sure to read the referenced rule to ensure that you have correctly identified the payment in question. The department determines reportable compensation based upon the nature of the payment, not the name applied to it. See WAC 415-108-445.

Type of Payment	PERS 1 Reportable Compensation?	PERS 2 or 3 Reportable Compensation?
Annual Leave Cash Outs	Yes - WAC 415-108-456	No - WAC 415-108-456
Assault Pay (State Emp.)	Yes - WAC 415-108-468	Yes - WAC 415-108-468
Base Rate	Yes - WAC 415-108-451	Yes - WAC 415-108-451
Car Allowances	No - WAC 415-108-485 ¹	No - WAC 415-108-485
Cafeteria Plans	Yes - WAC 415-108-455	Yes - WAC 415-108-455
Deferred Wages	Yes - WAC 415-108-459	Yes - WAC 415-108-459
Disability Payments	No - WAC 415-108-477	No - WAC 415-108-477
Disability: Salary lost while on disability leave	Yes - WAC 415-108-468 RCW 41.40.038	Yes - WAC 415-108-468 RCW 41.40.038
Employer Provided Vehicle	No - WAC 415-108-480 ²	No - WAC 415-108-480
Employer taxes/contributions	No - WAC 415-108-459	No - WAC 415-108-459
Fringe Benefits, including insurance	No - WAC 415-108-475	No - WAC 415-108-475
Illegal Payments	No - WAC 415-108-482	No - WAC 415-108-482
Legislative Leave	Yes - WAC 415-108-464	Yes - WAC 415-108-464
Longevity/Education Attainment Pay	Yes - WAC 415-108-451	Yes - WAC 415-108-451
Nonmoney Maintenance	Yes - WAC 415-108-470 ³	No - WAC 415-108-470
Optional Payments	No - WAC 415-108-483	No - WAC 415-108-483
Payments in Lieu of Excluded Items	No - WAC 415-108-463	No - WAC 415-108-463
Performance Bonuses	Yes - WAC 415-108-453	Yes - WAC 415-108-453

¹A portion of the value of an employer car allowance may be reportable. See WAC 415-108-485.

²A portion of the value of an employer provided vehicle may be reportable in Plan 1 only. See WAC 415-108-480.

³A portion of the value of nonmoney maintenance provided may be reportable in Plan 1 only. See WAC 415-108-470.

Type of Payment	PERS 1 Reportable Compensation?	PERS 2 or 3 Reportable Compensation?
Retroactive Salary Increase	Yes - WAC 415-108-457	Yes - WAC 415-108-457
Reimbursements	No - WAC 415-108-484	No - WAC 415-108-484
Reinstatement Payments	Yes - WAC 415-108-467	Yes - WAC 415-108-467
Retirement or Termination Bonuses	No - WAC 415-108-487	No - WAC 415-108-487
Severance Pay - Earned Over Time	Yes - WAC 415-108-458	No - WAC 415-108-458
Severance Pay - Not Earned Over Time	No - WAC 415-108-488	No - WAC 415-108-488
Shared Leave - State Emp.	Yes - WAC 415-108-468	Yes - WAC 415-108-468
Shared Leave - Local Government Employees	No - WAC 415-108-468	No - WAC 415-108-468
Sick Leave Cash Outs - State Employees	No - WAC 415-108-456	No - WAC 415-108-456
Sick Leave Cash Out - Local Government Employees	Yes - WAC 415-108-456	No - WAC 415-108-456
Standby Pay	Yes - WAC 415-108-469	Yes - WAC 415-108-469
Time Off with Pay	Yes - WAC 415-108-456 WAC 415-108-465	Yes - WAC 415-108-456 WAC 415-108-465
Union Leave ⁴	Yes - WAC 415-108-466	Yes - WAC 415-108-466
Workers' Compensation	No - WAC 415-108-479	No - WAC 415-108-479

⁴Only specific types of union leave are reportable. See WAC 415-108-466.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.40 RCW. 03-06-042, § 415-108-443, filed 2/27/03, effective 4/1/03. Statutory Authority: RCW 41.50.050(5), 41.40.010(8), chapter 41.40 RCW. 02-03-120, § 415-108-443, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050. 98-09-059, § 415-108-443, filed 4/17/98, effective 5/18/98.]

WAC 415-108-475 Fringe benefits. Fringe benefits provided by an employer are not a salary or wage, and there-

fore are not reportable compensation. Fringe benefits include, but are not limited to:

- (1) Employer retirement contributions;
- (2) Any type of insurance such as medical, dental or life insurance; and any employer contribution to meet the premium or charge for the insurance; or
- (3) Any employer payments into a private fund to provide health or welfare benefits for the member (or the member and the member's dependents), with the exception of compensation paid pursuant to a bona fide cafeteria plan, flexible benefit plan or similar arrangement as described in WAC 415-108-459.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.40 RCW. 03-06-042, § 415-108-475, filed 2/27/03, effective 4/1/03. Statutory Authority: RCW 41.50.050. 99-14-008, § 415-108-475, filed 6/24/99, effective 7/25/99; 98-09-059, § 415-108-475, filed 4/17/98, effective 5/18/98.]

WAC 415-108-550 Elected officials—Eligibility and application for retirement service membership. (1) **Definition:** For the purposes of this section and WAC 415-108-570, and pursuant to RCW 41.40.010 (25)(b), 41.40.010 (9)(a), 41.40.023 and 41.40.035, "elected" officials means individuals elected to any state, local or political subdivision office or individuals appointed to any vacant elective office.

(2) **Voluntary application for membership:** Under RCW 41.40.023 (3)(a), elected officials are exempt from mandatory retirement system membership. You have the option to apply for membership during your current term of elected office. To apply for membership, submit a written application directly to the department. When the department approves your application, you will be entitled to establish membership effective the first day of your current term of elected service. Once membership is established, you will be required to pay the employee contributions from the first day of your current term of elected service with interest as determined by the department.

(3) If you are not currently a retiree and when the department approves your application, you may establish membership retroactive to the first day of any previous elected term or terms of office. Your plan membership that you established under subsection (2) of this section remains the same. To exercise this option, you must apply to the department pursuant to subsection (2) of this section. When the department approves the application, you must:

- (a) Pay the required employee contributions for such previous term or terms of elected service with interest as determined by the department; and
- (b) Pay the required employer contributions for such previous term or terms of elected service with interest as determined by the department. The employer may, in its discretion, pay the required employer contributions plus interest in lieu of your paying this amount.

(4)(a) If you are a retiree and you become an elected official, you may establish membership prospectively from the first day of the month following the date the department accepts your application.

(b) If you chose not to establish membership, the reemployment provisions of RCW 41.40.037 and WAC 415-108-710 will apply to you.

(5) **Multiple positions:** If you are employed in an eligible position at the time of election to office and will hold multiple positions concurrently, you may:

(a) Apply to the department to participate in membership pursuant to your elected position as provided in subsection (2) of this section; or

(b) Choose not to participate pursuant to your elected position while continuing membership through the non-elected position.

(6) **Membership length:** Except as provided under RCW 41.40.023 (3)(b), once you become a member of the retirement system you shall remain a member until you separate from all eligible public employment pursuant to RCW 41.40.150. It is not a separation if:

(a) Your term of office ends and you begin another term of office in the same or a different position for the same employer without a break in service; or

(b) You resign from your elected position and you are later reappointed to the same position during the same term.

(7) This section codifies the department's long-standing administrative practice in relation to elected officials. The department will apply this section to service by elected officials which occurred prior to the effective date of this section.

[Statutory Authority: RCW 41.50.050(5), 41.40.023, 41.40.037. 03-08-090, § 415-108-550, filed 4/2/03, effective 5/1/03. Statutory Authority: RCW 41.50.050. 94-12-014, § 415-108-550, filed 5/23/94, effective 6/23/94.]

WAC 415-108-560 Appointed officials—Eligibility and application for retirement service membership. (1) For the purposes of this section and WAC 415-108-570, an "appointed" official is a person who meets the criteria in RCW 41.40.010 (25)(b) and is not excluded by the criteria in RCW 41.40.035.

(2) **Voluntary application for membership:** Under RCW 41.40.023 (3)(a), appointed officials are exempt from mandatory retirement system membership. You have the option to apply for membership during your current term of appointed service. To apply for membership, submit a written application directly to the department. When the department approves your application you will be entitled to establish membership effective the first day of your current term of appointed service. Once membership is established, you will be required to pay the employee contributions for your current term of appointed service with interest as determined by the department.

(3) If you are not currently a retiree and when the department approves your application, you may establish membership retroactive to the first day of any previous appointed term or terms of office. Your plan membership that you established under subsection (2) of this section remains the same. To exercise this option, you must apply to the department pursuant to subsection (3) of this section. When the department approves the application you must:

(a) Pay the required employee contributions for such previous term or terms of appointed service with interest as determined by the department; and

(b) Pay the required employer contributions for such previous term or terms of appointed service with interest as determined by the department. The employer may, in its discretion, pay the required employer contributions plus interest in lieu of your paying this amount.

(c) "Current term of appointed service" includes an appointed official's entire current term of service. If you have not been appointed to a position with a set term of office,

"current term of appointed service" includes all uninterrupted service in your current appointed position.

(4)(a) If you are a retiree and you become an appointed official, you may establish membership prospectively from the first day of the month following the date the department accepts your application.

(b) If you choose not to establish membership, the reemployment provisions of RCW 41.40.037 and WAC 415-108-710 will apply to you.

(5) **Multiple positions:** If you are employed in an eligible position at the time of appointment to office and will hold the two positions concurrently you may:

(a) Apply to the department to participate in membership pursuant to your appointed position as provided in subsection (2) of this section; or

(b) Choose not to participate pursuant to your appointed position while continuing membership through the nonappointive position.

(6) **Membership length:** Once you become a member of the retirement system you shall remain a member until you separate from all eligible public employment pursuant to RCW 41.40.150. It is not a separation if:

(a) Your term of office ends, and you begin another term of office in the same or a different position for the same employer without a break in service; or

(b) You resign from your appointed position and you are later reappointed to the position during the same term.

(7) This section codifies the department's long-standing administrative practice in relation to appointed officials. The department will apply this section to service by appointed officials which occurred prior to the effective date of this section.

[Statutory Authority: RCW 41.50.050(5), 41.40.023, 41.40.037. 03-08-090, § 415-108-560, filed 4/2/03, effective 5/1/03. Statutory Authority: RCW 41.50.050. 94-12-014, § 415-108-560, filed 5/23/94, effective 6/23/94.]

WAC 415-108-575 How is the compensation adjustment for elected officials computed? (1) This section provides the department's inflation adjustment under RCW 41.40.023 (3)(b) regarding elected officials.

(2) The department uses the criteria in RCW 41.26.240¹ in making annual inflation adjustments to the fifteen thousand dollar compensation threshold stated in RCW 41.40.023 (3)(b).

(3) The department adjusts the compensation threshold on April 1st of each year.²

(4) The department makes this information available upon request. For further information, please contact the department. Please see WAC 415-06-100 for contact information.

Footnotes to section:

¹ The department uses this LEOFF statute because the statute explains how to use the Consumer Price Index for Seattle in making these annual adjustments.

² In 2001 the threshold was \$19,263. In 2002 the threshold was \$19,948.

[Statutory Authority: RCW 41.50.050(5), 41.40.023, 41.40.037. 03-08-090, § 415-108-575, filed 4/2/03, effective 5/1/03.]

Chapter 415-110 WAC

SCHOOL EMPLOYEES' RETIREMENT SYSTEM

WAC

415-110-443	SERS reportable compensation table.
415-110-475	Fringe benefits.
415-110-575	How is the compensation adjustment for elected officials computed?

WAC 415-110-443 SERS reportable compensation table. The following table will help you determine whether certain types of payments are reportable compensation under SERS Plan 2 or 3. Be sure to read the referenced rule to ensure that you have correctly identified the payment in question. The department determines reportable compensation based upon the nature of the payment, not the name applied to it. See WAC 415-110-445.

Type of Payment	SERS Plan 2 and Plan 3 Reportable Compensation?
Annual Leave Cash Outs	No - WAC 415-110-456
Assault Pay	No - WAC 415-110-468
Base Rate	Yes - WAC 415-110-451
Car Allowances	No - WAC 415-110-485
Cafeteria Plans	Yes - WAC 415-110-455
Deferred Wages	Yes - WAC 415-110-459
Disability Payments	No - WAC 415-110-477
Disability Retirees	No - RCW 41.35.440/ RCW 41.35.690 (until requirements are met)
Disability: Salary lost while on disability leave	Yes - WAC 415-110-468 RCW 41.35.070
Employer Provided Vehicle	No - WAC 415-110-480
Employer Contributions	No - WAC 415-110-459
Fringe Benefits, including insurance	No - WAC 415-110-475
Illegal Payments	No - WAC 415-110-482
Legislative Leave	Yes - WAC 415-110-464
Longevity/Education Attainment Pay	Yes - WAC 415-110-451
Nonmoney Maintenance	No - WAC 415-110-470
Optional Payments	No - WAC 415-110-483
Payments in Lieu of Excluded Items	No - WAC 415-110-463
Performance Bonuses	Yes - WAC 415-110-453
Retroactive Salary Increase	Yes - WAC 415-110-457
Reimbursements	No - WAC 415-110-484
Reinstatement Payments	Yes - WAC 415-110-467
Retirement or Termination Bonuses	No - WAC 415-110-487
Severance Pay - Earned Over Time	No - WAC 415-110-458
Severance Pay - Not Earned Over Time	No - WAC 415-110-488
Shared Leave - School/ ESD Employees	Yes - WAC 415-110-468
Sick Leave Cash Outs - School/ESD Employees	No - WAC 415-110-456
Standby Pay	Yes - WAC 415-110-469
Time Off With Pay	Yes - WAC 415-110-456 WAC 415-110-465
Union Leave	Yes - WAC 415-110-466 ^{1/}
Workers' Compensation	No - WAC 415-110-479

^{1/} Only specific types of union leave are reportable. See WAC 415-110-466.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.35 RCW. 03-06-042, § 415-110-443, filed 2/27/03, effective 4/1/03. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-443, filed 12/12/00, effective 1/12/01.]

WAC 415-110-475 Fringe benefits. Fringe benefits provided by an employer are not a salary or wage, and therefore are not reportable compensation. Fringe benefits include, but are not limited to:

- (1) Employer retirement contributions;
- (2) Any type of insurance such as medical, dental or life insurance; and any employer contribution to meet the premium or charge for the insurance; or
- (3) Any employer payments into a private fund to provide health or welfare benefits for the member (or the member and the member's dependents), with the exception of compensation paid pursuant to a bona fide cafeteria plan, flexible benefit plan or similar arrangement as described in WAC 415-110-455.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.35 RCW. 03-06-042, § 415-110-475, filed 2/27/03, effective 4/1/03. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-110-475, filed 12/12/00, effective 1/12/01.]

WAC 415-110-575 How is the compensation adjustment for elected officials computed? (1) This section provides the department's inflation adjustment under RCW 41.35.030 (2)(b) regarding elected officials.

(2) The department uses the criteria in RCW 41.26.240¹ in making annual inflation adjustments to the fifteen thousand dollar compensation threshold stated in RCW 41.35.030 (2)(b).

(3) The department adjusts the compensation threshold on April 1st of each year.²

(4) The department makes this information available upon request. For further information, please contact the department. Please see WAC 415-06-100 for contact information.

Footnotes to section:

¹ The department uses this LEOFF statute because the statute explains how to use the Consumer Price Index for Seattle in making these annual adjustments.

² In 2001 the threshold was \$19,263. In 2002 the threshold was \$19,948.

[Statutory Authority: RCW 41.50.050(5), 41.40.023, 41.40.037. 03-08-090, § 415-110-575, filed 4/2/03, effective 5/1/03.]

Chapter 415-111 WAC

PLAN 3—DEFINED CONTRIBUTION PLANS

WAC

- 415-111-220 How do I choose a defined contribution rate?
- 415-111-310 Defined contribution account distribution (withdrawal).
- 415-111-450 Repealed.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

- 415-111-450 How does a court-ordered division of property affect my Plan 3 account? [Statutory Authority: RCW 41.50.050(5), 41.50.060, 41.50.770, 41.50.780, 2001 c

42. 02-12-084, § 415-111-450, filed 6/4/02, effective 7/5/02. Statutory Authority: RCW 41.50.050(5), 41.50.670 through 41.50.720. 02-03-120, § 415-111-450, filed 1/23/02, effective 3/1/02.] Repealed by 03-12-014, filed 5/27/03, effective 7/1/03. Statutory Authority: RCW 41.50.050(5) and 41.50.670.

WAC 415-111-220 How do I choose a defined contribution rate? (1) **Contribution rates:** If you are a member of the Teachers' Retirement System (TRS) Plan 3, the School Employees' Retirement System (SERS) Plan 3, or the Public Employees' Retirement System (PERS) Plan 3, you are required to contribute from your compensation according to one of the following rate structures:

	Base Rate	Additional Rate	Total Contribution Rate
Option A			
All ages	5.0%	0.0%	5.0%
Option B			
Up to age 35	5.0%	0.0%	5.0%
Age 35 to 44	5.0%	1.0%	6.0%
Age 45 and above	5.0%	2.5%	7.5%
Option C			
Up to age 35	5.0%	1.0%	6.0%
Age 35 to 44	5.0%	2.5%	7.5%
Age 45 and above	5.0%	3.5%	8.5%
Option D			
All ages	5.0%	2.0%	7.0%
Option E			
All ages	5.0%	5.0%	10.0%
Option F			
All ages	5.0%	10.0%	15.0%

(2) **How do I make the choice?** Under WAC 415-111-110, it is your responsibility to complete the correct form for choosing a contribution rate and submitting the form in a timely manner to your employer as directed on the form.

(3) **Where do I get the form to make my choice?** Your employer must provide the appropriate form to choose a contribution rate if you are enrolling in Plan 3 or transferring from Plan 2 to Plan 3.

(4) **When do I have to choose?** You must choose a contribution rate within ninety calendar days from your date of hire in an eligible position. However, if you are transferring from Plan 2 to Plan 3, you must choose a contribution rate at the same time you transfer. The ninety-day period does not apply to a member transferring from Plan 2 to Plan 3.

(5) **When do contributions begin?**

(a) Once you choose a contribution rate, contributions will begin the first day of the pay cycle in which you make the choice.

(b) If the employer advises the department that you should be reported into Plan 3 membership retroactively, the ninety-day period starts from the date it is discovered that you should have been reported. The department will decide which date to use.

(6) **What if I work for more than one employer?** If you are a Plan 3 member working in eligible positions for

more than one employer, you may select a different contribution rate with each employer.

(7) **What happens if I do not make a choice?** Under RCW 41.34.040, you will be assigned a base rate of 5% (Option A) if:

(a) You are a new employee or changing your employer, and do not choose a contribution rate within the ninety-day election period described in subsection (4) of this section; or

(b) You are transferring from Plan 2 to Plan 3 and do not choose a contribution rate at the time of transfer. Contributions required under subsection (a) or (b) will begin the first day of the pay cycle in which you are assigned to Option A.

(8) **Can I change my contribution rate?**

(a) Except as provided in (c) of this subsection, once you choose a contribution rate or are assigned the base rate of 5% (Option A), you cannot change your contribution rate unless you change employers.

(b) Each time you change employers, you must choose a new contribution rate within ninety days or you will be assigned a base rate of 5% (Option A). No contributions will be taken until you choose a rate or until the ninety-day period has elapsed, whichever occurs first.

(c) Each January, TRS Plan 3 members may change their contribution rate option by providing written notification to their employer as described in WAC 415-111-110(1).

[Statutory Authority: RCW 41.50.050(5) and 41.34.040, 04-02-004, § 415-111-220, filed 12/24/03, effective 1/1/04; 01-15-038, § 415-111-220, filed 7/13/01, effective 7/26/01. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-111-220, filed 12/12/00, effective 1/12/01.]

WAC 415-111-310 Defined contribution account distribution (withdrawal). (1) How do I request a distribution (withdrawal) of funds from my defined contribution account?

(a) You must separate from all eligible employment;

(b) The department must receive the notice of separation from your employer(s) through the retirement transmittal system; and

(c) You must submit the appropriate, completed form requesting a defined contribution distribution to the department's designated recordkeeper as directed on the form. See WAC 415-111-110.

(2) **Can I receive an expedited distribution?**

(a) If you are terminally ill and eligible, the department will arrange for payment to you within ten work days. To be eligible for an expedited payment:

(i) You must separate from all eligible employment;

(ii) The department must receive the notice of separation from your employer(s);

(iii) You or your beneficiaries must submit documentation to the department verifying your terminal illness; and

(iv) You must submit the appropriate, completed form requesting a defined contribution distribution to the department's designated recordkeeper as directed on the form (see WAC 415-111-110).

(b) If you have an emergency, the department will consider your request for expedited payment and arrange for expedited payment to you whenever possible. To be eligible for consideration:

(i) You must separate from all eligible employment;

(ii) The department must receive the notice of separation from your employer(s);

(iii) You must submit the appropriate, completed form requesting a defined contribution distribution to the department's designated recordkeeper as directed on the form (see WAC 415-111-110); and

(iv) You or your beneficiaries must submit documentation to the department verifying and explaining your emergency. The department will consider only unforeseeable emergencies or serious illnesses or death of you or a close family or household member.

(c) If you are invested in a self-directed option, the Plan 3 recordkeeper will distribute your entire self-directed account balance, less any applicable tax withholding.

(d) If you are invested in the Total Asset Portfolio (TAP), the Plan 3 recordkeeper will distribute 80% of your estimated TAP account balance, less any applicable tax withholding. You will be paid the balance of your account after the final valuation has been made.

(3) **Can I still receive my defined contribution distribution if I have returned to work before receiving my funds?** If you return to work in an eligible position after all the criteria in subsection (1) of this section are met, you may receive distribution from your defined contribution account.

(4) **What are my options for distributing my defined contribution funds?** You have the following options for distributions from your Plan 3 defined contribution account. Options for both the WSIB and the SELF-directed investment programs are combined where applicable.

(a) **Lump sum cash distribution. In either program,** you may request the entire amount of your funds in a single lump-sum payment.

(b) **Direct rollover. In either program,** you may have some or all of your funds rolled over to an eligible retirement plan or individual retirement account (IRA). If you choose a partial rollover, the remaining funds that were not rolled over will be distributed to you as a lump sum, unless you create a personal payment schedule under (d) of this subsection.

(c) **Scheduled payments. In either program,** subject to the distribution requirements of IRC section 401 (a)(9), you may request that your funds be distributed in equal payments over a specified period of time, or that a specific dollar amount be paid on a monthly basis until the account is exhausted. You may also request equal payments over your lifetime or the lifetimes of you and your beneficiary. Scheduled payments for the WSIB program are made monthly only. Scheduled payments for the SELF-directed program are made monthly, quarterly, semiannually and annually. Both programs have a minimum payment requirement of one hundred dollars per month.

(d) **Personalized payment plan. In either program,** you may create a personalized payment plan using any part of one or more of the distribution options provided in (a), (b), and (c) of this subsection (see examples below).

(e) **Annuity purchase. For the SELF-directed program only,** you may request to have your funds used to purchase an annuity from an insurance company which pays a benefit for your lifetime or the lifetimes of you and your beneficiary.

(5) **Market fluctuations.** Your defined contribution account is subject to actual investment earnings (both gains

and losses). These gains or losses will be used to adjust the value of your account. The defined contribution payment plans are subject to the same market fluctuations. As a result, the funding of your selected payment plan may last longer than anticipated due to market gains, or end earlier than anticipated due to market losses.

EXAMPLE (WSIB - Partial rollover with payments until account exhausted):

Pat has \$10,000 in the WSIB investment program. Pat wants to rollover \$2,000 of the total to an IRA, but does not want to receive the remainder of the account in a lump sum payment as provided by the partial direct rollover option. Pat selects the personalized payment schedule option and requests to do a partial rollover of \$2,000 and receive the remaining \$8,000 in equal monthly payments of \$125 until the account is exhausted (approximately 64 months).

EXAMPLE (Self - Partial rollover with payments for fixed period):

Chris has \$10,000 in the self-directed investment program. Chris wants to rollover \$3,000 of the total to an IRA, but does not want to receive the remainder of the account in a lump sum payment as provided by the partial direct rollover option. Chris selects the personalized payment schedule option and requests to do a partial rollover of \$3,000 and receive the remaining \$7,000 in quarterly payments of \$250 over the next 7 years (28 quarters).

Summary of Distribution Options	
SELF	WSIB
Lump Sum Cash Distribution Direct Rollover	Lump Sum Cash Distribution Direct Rollover
-entire account -partial amount -remaining funds can be distributed in a lump-sum payment or by a personalized payment schedule (see below).	-entire account -partial amount -remaining funds can be distributed in a lump-sum payment or by a personalized payment schedule (see below).
Scheduled Payments	Scheduled Payments
-equal payments -monthly, quarterly, semiannual or annual -specified period of time, or -until the account is exhausted -payments can be combined life expectancy of you and a beneficiary.	-equal payments -monthly payments only -specified period of time, or -until the account is exhausted -payments can be combined life expectancy of you and a beneficiary.

Annuity Purchase	Not available for WSIB program
-purchase an annuity from an insurance company -set up to pay benefits for -your lifetime, or -lifetimes of you and your beneficiary.	
In addition to the above, you may set up:	In addition to the above, you may set up:
Personalized Payment Plan	Personalized Payment Plan
-customized for your needs -available for options above.	-customized for your needs -available for options above.

(6) **Minimum required distribution.** Beginning on April 1 of the calendar year following the year in which you turn age 70 1/2, you are required to withdraw a minimum amount from your defined contributions annually. If you are still working at age 70 1/2, distribution will be required to begin immediately upon retirement.

(7) See RCW 41.34.070 for additional information.

[Statutory Authority: RCW 41.50.050(5), 41.34.070(3). 03-19-120, § 415-111-310, filed 9/17/03, effective 11/1/03. Statutory Authority: RCW 41.50.050(5) and 41.34.070. 02-03-120, § 415-111-310, filed 1/23/02, effective 3/1/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. 01-01-059, § 415-111-310, filed 12/12/00, effective 1/12/01.]

WAC 415-111-450 Repealed. See Disposition Table at beginning of this chapter.

**Chapter 415-112 WAC
TEACHERS' RETIREMENT SYSTEM**

WAC

415-112-445 TRS reportable compensation table.
415-112-480 Fringe benefits.

WAC 415-112-445 TRS reportable compensation table. The following table will help you determine whether certain types of payments are reportable compensation under TRS Plan 1, 2, or 3. Be sure to read the referenced rule to ensure that you have correctly identified the payment in question. The department determines reportable compensation based upon the nature of the payment, not the name applied to it. See WAC 415-112-450.

Type of Payment	TRS 1 Reportable Compensation?	TRS 2/3 Reportable Compensation?
Annual Leave Cash Outs	Yes - WAC 415-112-4605	No - WAC 415-112-4605
Base Contract	Yes - WAC 415-112-4601	Yes - WAC 415-112-4601
Car Allowances	No - WAC 415-112-41301 ¹	No - WAC 415-112-41301
Cafeteria Plans	Yes - WAC 415-112-4604	Yes - WAC 415-112-4604
Deferred Wages	Yes - WAC 415-112-4609	Yes - WAC 415-112-4609
Disability Payments	No - WAC 415-112-482	No - WAC 415-112-482
Employer Provided Vehicle	No - WAC 415-112-413 ²	No - WAC 415-112-413
Evening/Summer School	Yes - WAC 415-112-4601	Yes - WAC 415-112-4601

Extracurricular Contracts	Yes - WAC 415-112-4601	Yes - WAC 415-112-4601
Employer taxes/contributions	No - WAC 415-112-4609	No - WAC 415-112-4609
Fringe Benefits, including insurance	No - WAC 415-112-480	No - WAC 415-112-480
Illegal Payments	No - WAC 415-112-485	No - WAC 415-112-485
Legislative Leave	Yes - WAC 415-112-471	Yes - WAC 415-112-471
Longevity/Education Attainment Pay	Yes - WAC 415-112-4601	Yes - WAC 415-112-4601
Nonmoney Maintenance	Yes - WAC 415-112-412 ³	No - WAC 415-112-412
Optional Payments	No - WAC 415-112-487	No - WAC 415-112-487
Payments in Lieu of Excluded Items	No - WAC 415-112-470	No - WAC 415-112-470
Performance Bonuses	Yes - WAC 415-112-4603	Yes - WAC 415-112-4603
Retroactive Salary Increase	Yes - WAC 415-112-4607	Yes - WAC 415-112-4607

¹A portion of the value of an employer car allowance may be reportable in Plan 1 only. See WAC 415-112-41301.

²A portion of the value of an employer provided vehicle may be reportable in Plan 1 only. See WAC 415-112-413.

³A portion of the value of nonmoney maintenance provided may be reportable in Plan 1 only. See WAC 415-112-412.

Type of Payment	TRS 1 Reportable Compensation?	TRS 2/3 Reportable Compensation?
Reimbursements	No - WAC 415-112-489	No - WAC 415-112-489
Reinstatement Payments	Yes - WAC 415-112-477	Yes - WAC 415-112-477
Retirement or Termination Bonuses	No - WAC 415-112-490	No - WAC 415-112-490
Severance Pay - Earned Over Time	Yes - WAC 415-112-4608	No - WAC 415-112-4608
Severance Pay - Not Earned Over Time	No - WAC 415-112-491	No - WAC 415-112-491
Sick Leave Cash Outs	No - WAC 415-112-4605	No - WAC 415-112-4605
Supplemental Contracts	Yes - WAC 415-112-4601	Yes - WAC 415-112-4601 ⁴
Time Off with Pay	Yes - WAC 415-112-473 WAC 415-112-4605	Yes - WAC 415-112-473 WAC 415-112-4605
Union Leave ⁵	Yes - WAC 415-112-475	Yes - WAC 415-112-475
Workers' Compensation	No - WAC 415-112-483	No - WAC 415-112-483

⁴ Reportable only if member is employed in an eligible position.

⁵ Only specific types of union leave are reportable. See WAC 415-112-475.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.32 RCW. 03-06-042, § 415-112-445, filed 2/27/03, effective 4/1/03. Statutory Authority: RCW 41.50.050. 98-09-059, § 415-112-445, filed 4/17/98, effective 5/18/98; 97-03-016, § 415-112-445, filed 1/6/97, effective 2/6/97.]

WAC 415-112-480 Fringe benefits. Fringe benefits provided by an employer are not a salary or wage, and therefore are not reportable compensation. Fringe benefits include, but are not limited to:

- (1) Employer retirement contributions;
- (2) Any type of insurance such as medical, dental or life insurance; and any employer contribution to meet the premium or charge for the insurance; or
- (3) Any employer payments into a private fund to provide health or welfare benefits for the member (or the member and the member's dependents), with the exception of compensation paid pursuant to a bona fide cafeteria plan, flexible benefit plan or similar arrangement as described in WAC 415-112-4604.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.32 RCW. 03-06-042, § 415-112-480, filed 2/27/03, effective 4/1/03. Statutory Authority: RCW 41.50.050. 97-03-016, § 415-112-480, filed 1/6/97, effective 2/6/97.]

[2004 WAC Supp—page 1940]

Chapter 415-600 WAC

DEPENDENT CARE ASSISTANCE SALARY REDUCTION PROGRAM OVERVIEW

WAC

415-600-210	How do I enroll in DCAP?
415-600-260	What is "earned income" for purposes of DCAP?
415-600-310	Do my expenses qualify for DCAP reimbursement?
415-600-410	How do I request reimbursement for DCAP expenses?

WAC 415-600-210 How do I enroll in DCAP? (1)

You enroll in the dependent care salary reduction assistance program (DCAP) by submitting a completed salary reduction agreement (SRA) form to the department of retirement systems (DRS).

(2) SRA forms are available through DRS or its website at <http://www.drs.wa.gov/forms>.

(3) You may enroll in DCAP:

- (a) During the open-enrollment period;
- (b) Within sixty days of becoming an eligible employee;

or

(c) At any time you have a qualifying change in status as set forth in WAC 415-600-240.

(4) The open enrollment period is the month of November for the following plan year.

(5) The enrollment process is complete on the date DRS approves your completed SRA.

[Statutory Authority: RCW 41.50.050(5) and 41.04.600 - 41.04.635. 03-19-121, § 415-600-210, filed 9/17/03, effective 9/20/03. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C. 01-21-091, § 415-600-210, filed 10/22/01, effective 11/22/01.]

WAC 415-600-260 What is "earned income" for purposes of DCAP? (1) Except as set forth in subsection (2) of this section, earned income for DCAP purposes includes wages, salaries, tips and other employee compensation, plus the amount of the taxpayer's net earnings from self-employment for the taxable year.

(2) If your spouse is either a full-time student or physically or mentally incapable of self-care, your spouse's earned income is deemed to be:

(a) Two hundred fifty dollars per month, if you have one qualifying person for whom care is provided; or

(b) Five hundred dollars per month, if you have two or more qualifying persons for whom care is provided.

[Statutory Authority: RCW 41.50.050(5) and 41.04.600 - 41.04.635. 03-19-121, § 415-600-260, filed 9/17/03, effective 9/20/03. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C. 01-21-091, § 415-600-260, filed 10/22/01, effective 11/22/01.]

WAC 415-600-310 Do my expenses qualify for DCAP reimbursement? (1) You may be reimbursed for dependent care expenses for the well-being and protection of a qualifying person, provided that the expenses are incurred to enable you and your spouse to be gainfully employed.

(a) Only expenses incurred on days you work may be reimbursed.

(b) If you are married, only expenses incurred on days you and your spouse both work may be reimbursed, provided that:

(i) If your spouse is a full-time student, expenses incurred on days you work and your spouse attends school may be reimbursed.

(ii) If your spouse is physically or mentally incapable of self-care, expenses incurred on days you work may be reimbursed.

(2) You may be reimbursed only for expenses incurred during the plan year for which you are enrolled. If you enroll after January 1 of the plan year, you may be reimbursed only for expenses incurred on or after the first day of the month following the month in which DRS approves your salary reduction agreement.

(3) Only the cost of care may be reimbursed. The following expenses may be reimbursed, subject to the limitations stated in subsection (4) of this section.

(a) Expenses for care of a qualifying person in the participant's home, including feeding, administration of medicine, general supervision, and incidental household services; and

(b) Expenses for care of the following qualifying persons outside the participant's home:

(i) A dependent of the participant, age twelve or younger, with respect to whom the participant is entitled to a federal tax deduction.

(ii) Any other qualifying person who regularly spends eight hours or more per day in the participant's home.

(4) The following limitations apply to the reimbursement of expenses:

(a) Expenses for food, clothing, and entertainment are reimbursable ONLY IF these expenses cannot be separated from the cost of care.

(b) Expenses for care in a dependent care center (as defined in Internal Revenue Code (IRC) Section 21(b)) are reimbursable ONLY IF the facility complies with all federal, state, and local laws and regulations.

(c) Expenses for schooling are reimbursable ONLY IF:

(i) The schooling is at a prekindergarten level; and

(ii) The expenses cannot reasonably be separated from the cost of care.

(d) Payments to a person for whom you or your spouse may claim a dependency exemption for federal income tax purposes are not reimbursable.

(e) Payments to a nondependent child, as defined in IRC Section 151 (c)(3), are not reimbursable unless the child will be age nineteen or older by December 31 of the plan year.

(f) Summer camp expenses, when the child stays overnight, are not reimbursable.

(g) Amounts paid by an employer of your spouse or by an educational institution where your spouse is enrolled as a student are not reimbursable.

[Statutory Authority: RCW 41.50.050(5) and 41.04.600 - 41.04.635. 03-19-121, § 415-600-310, filed 9/17/03, effective 9/20/03. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C. 01-21-091, § 415-600-310, filed 10/22/01, effective 11/22/01.]

WAC 415-600-410 How do I request reimbursement for DCAP expenses? (1) You must use the DRS reimbursement claim forms to submit claims for dependent care expenses.

(2) DRS will mail a supply of reimbursement claim forms to you upon confirmation of your enrollment. You can obtain additional forms by phone or on the DRS website, at <http://www.drs.wa.gov/forms>.

(3) You may submit reimbursement claim forms as often as you wish.

(4) The reimbursement claim form must be completed, signed, and accompanied by bills, invoices, receipts, or a statement signed by the provider. The department cannot accept canceled checks or credit card statements as verification. All documentation must show the amounts of dependent care expenses and periods of service for which you seek reimbursement.

(5) DRS must receive claims for expenses incurred during a given plan year on or before March 31 of the following year.

[Statutory Authority: RCW 41.50.050(5) and 41.04.600 - 41.04.635. 03-19-121, § 415-600-410, filed 9/17/03, effective 9/20/03. Statutory Authority: RCW 41.50.050(5), 41.04.600 through 41.04.645 and 26 U.S.C. 01-21-091, § 415-600-410, filed 10/22/01, effective 11/22/01.]

Title 434 WAC

SECRETARY OF STATE

**Chapters
434-208**

Elections.

- 434-209 Selection and notification of persons by secretary of state for citizens' commission for salaries of elected officials.
- 434-219 Presidential preference primary.
- 434-240 Absentee voting.
- 434-262 Canvassing and certification of primaries and elections.
- 434-670 The Washington state archives local records grant program.

Chapter 434-208 WAC

ELECTIONS

(Formerly chapter 434-08 WAC)

WAC

434-208-100 Registering to vote—Nontraditional address.

WAC 434-208-100 Registering to vote—Nontraditional address. No person registering to vote, who meets all the qualifications of a registered voter in the state of Washington, shall be disqualified because of a nontraditional physical address being used as a residence address. Nontraditional addresses may include shelters, parks or other identifiable locations which the voter deems to be his/her residence. Voters using such an address will be registered and precinct based on the location provided. Voters without a traditional address will be registered at the county courthouse, city hall or other public building near the area that the voter considers his/her residence. Registering at a nontraditional address will not disqualify a voter from requesting ongoing absentee voter status provided the voter designates a valid mailing address.

[Statutory Authority: RCW 29.04.080. 03-15-054, § 434-208-100, filed 7/11/03, effective 8/11/03.]

Chapter 434-209 WAC

SELECTION AND NOTIFICATION OF PERSONS BY SECRETARY OF STATE FOR CITIZENS' COMMISSION FOR SALARIES OF ELECTED OFFICIALS

(Formerly chapter 434-09 WAC)

WAC

- 434-209-040 Repealed.
- 434-209-050 Conducting the selection of names by lot.
- 434-209-060 Notifying persons selected by lot.
- 434-209-080 Names of selected persons to governor.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

- 434-209-040 Transmitting and compiling the data file of records of registered voters. [Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-209-040, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 43.03.305. 87-06-009 (Order 87-02), § 434-09-040, filed 2/19/87.] Repealed by 03-23-094, filed 11/17/03, effective 12/18/03. Statutory Authority: RCW 43.03.305.

WAC 434-209-040 Repealed. See Disposition Table at beginning of this chapter.

[2004 WAC Supp—page 1942]

WAC 434-209-050 Conducting the selection of names by lot. No later than May 20 of the year of selection, the secretary of state shall arrange for the random selection of approximately an equal number of names of registered voters from each congressional district that requires appointment of a new commissioner. The secretary of state may employ a properly programmed electronic data processing system or device to make the random selection of registered voters as required by this section.

[Statutory Authority: RCW 43.03.305. 03-23-094, § 434-209-050, filed 11/17/03, effective 12/18/03. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-209-050, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 43.03.305. 87-06-009 (Order 87-02), § 434-09-050, filed 2/19/87.]

WAC 434-209-060 Notifying persons selected by lot.

(1) No later than May 31 of the year of selection, the secretary of state shall notify by nonforwardable 1st class mail each person selected by lot under WAC 434-209-050. The notification shall contain a response form and prestamped, self-addressed return envelope. The notification shall include the statutory qualifications for membership on the commission as specified in RCW 43.03.305 and describe the duties of the position under RCW 43.03.310. The notification shall request the person selected to confirm on the form whether or not they meet the statutory qualifications to serve on the commission and to indicate if they are willing to serve on the commission in the specified capacity. Each person shall be requested to return the form no later than June 10 of that year. Any selected person, by appropriate indication on the form, may decline to serve on the commission. The secretary of state shall take as conclusive indication that the person has declined to serve if the form is not received by the secretary of state on or before June 10 of that year. The notification shall include an appropriate notice of this deadline.

(2) The secretary of state shall compile a list by congressional district of each qualified person who has responded to the notification, confirmed that they meet the specified qualifications and are willing to serve on the commission as requested in subsection (1) of this section.

[Statutory Authority: RCW 43.03.305. 03-23-094, § 434-209-060, filed 11/17/03, effective 12/18/03. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-209-060, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 43.03.305. 87-06-009 (Order 87-02), § 434-09-060, filed 2/19/87.]

WAC 434-209-080 Names of selected persons to governor. No later than July 1 of the year of selection, the secretary of state shall forward to the governor the certified list of the names of the first registered voter selected from each congressional district under WAC 434-209-070. In the event that one of the persons certified to the governor declines appointment, the secretary of state shall forward to the governor the name of the next registered voter from the same congressional district on the list compiled under WAC 434-209-070.

[Statutory Authority: RCW 43.03.305. 03-23-094, § 434-209-080, filed 11/17/03, effective 12/18/03. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-209-080, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 43.03.305. 87-06-009 (Order 87-02), § 434-09-080, filed 2/19/87.]

Chapter 434-219 WAC
PRESIDENTIAL PREFERENCE PRIMARY
 (Formerly chapter 434-75 WAC)

effective 2/24/96; 91-18-012, § 434-75-350, filed 8/26/91, effective 9/26/91.] Repealed by 03-23-093, filed 11/17/03, effective 12/18/03. Statutory Authority: RCW 29.19.070.

WAC

- 434-219-010 Repealed.
- 434-219-020 Definitions.
- 434-219-030 Repealed.
- 434-219-040 Repealed.
- 434-219-080 Petition process for ballot access.
- 434-219-100 Verification of signatures by secretary of state.
- 434-219-130 Repealed.
- 434-219-150 Ballot request form used at the polling place.
- 434-219-160 Political party and unaffiliated ballots—Arrangement.
- 434-219-170 Order of political parties.
- 434-219-180 Ballots—Arrangement of names—Instructions.
- 434-219-185 Logic and accuracy test decks.
- 434-219-210 Issuing absentee and polling place ballots.
- 434-219-220 Absentee ballots—Declarations—Instructions.
- 434-219-230 Segregation of absentee ballots.
- 434-219-250 Tabulation of ballots.
- 434-219-255 Repealed.
- 434-219-270 Repealed.
- 434-219-280 Votes not tabulated.
- 434-219-285 Repealed.
- 434-219-290 Canvassing and certification of presidential primary.
- 434-219-300 Repealed.
- 434-219-340 Claims for reimbursement.
- 434-219-350 Repealed.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

- 434-219-010 Authority and purpose. [Statutory Authority: RCW 29.19.070. 96-03-141, recodified as § 434-219-010, filed 1/24/96, effective 2/24/96; 91-18-012, § 434-75-010, filed 8/26/91, effective 9/26/91.] Repealed by 03-23-093, filed 11/17/03, effective 12/18/03. Statutory Authority: RCW 29.19.070.
- 434-219-030 Presidential primary—When held. [Statutory Authority: RCW 29.19.070. 96-03-141, recodified as § 434-219-030, filed 1/24/96, effective 2/24/96; 91-18-012, § 434-75-030, filed 8/26/91, effective 9/26/91.] Repealed by 03-23-093, filed 11/17/03, effective 12/18/03. Statutory Authority: RCW 29.19.070.
- 434-219-040 Presidential primary—Changing the date. [Statutory Authority: RCW 29.19.070. 96-03-141, recodified as § 434-219-040, filed 1/24/96, effective 2/24/96; 91-18-012, § 434-75-040, filed 8/26/91, effective 9/26/91.] Repealed by 03-23-093, filed 11/17/03, effective 12/18/03. Statutory Authority: RCW 29.19.070.
- 434-219-130 Conduct of the presidential primary. [Statutory Authority: RCW 29.19.070. 96-03-141, recodified as § 434-219-130, filed 1/24/96, effective 2/24/96; 91-18-012, § 434-75-130, filed 8/26/91, effective 9/26/91.] Repealed by 03-23-093, filed 11/17/03, effective 12/18/03. Statutory Authority: RCW 29.19.070.
- 434-219-255 Tabulating, reporting, and canvassing write-in votes. [Statutory Authority: RCW 29.19.070. 00-03-003, § 434-219-255, filed 1/6/00, effective 2/6/00.] Repealed by 03-23-093, filed 11/17/03, effective 12/18/03. Statutory Authority: RCW 29.19.070.
- 434-219-270 Vote-by-mail precincts. [Statutory Authority: RCW 29.19.070. 00-03-003, § 434-219-270, filed 1/6/00, effective 2/6/00; 96-03-141, recodified as § 434-219-270, filed 1/24/96, effective 2/24/96; 91-18-012, § 434-75-270, filed 8/26/91, effective 9/26/91.] Repealed by 03-23-093, filed 11/17/03, effective 12/18/03. Statutory Authority: RCW 29.19.070.
- 434-219-285 Record of ballots not tabulated. [Statutory Authority: RCW 29.19.070. 00-03-003, § 434-219-285, filed 1/6/00, effective 2/6/00.] Repealed by 03-23-093, filed 11/17/03, effective 12/18/03. Statutory Authority: RCW 29.19.070.
- 434-219-300 Sealing of voting devices. [Statutory Authority: RCW 29.19.070. 00-03-003, § 434-219-300, filed 1/6/00, effective 2/6/00.] Repealed by 03-23-093, filed 11/17/03, effective 12/18/03. Statutory Authority: RCW 29.19.070.
- 434-219-350 Time for submission and payment of claims for reimbursement. [Statutory Authority: RCW 29.19.070. 96-03-141, recodified as § 434-219-350, filed 1/24/96,

WAC 434-219-010 Repealed. See Disposition Table at beginning of this chapter.

WAC 434-219-020 Definitions. As used in this chapter:

(1) "Political party ballot" means a ballot composed of a list of names of candidates belonging to the same major political party and who have been certified by the secretary of state as provided in RCW 29.19.030.

(2) "Unaffiliated ballot" means a ballot composed of a list of all the candidates certified by the secretary of state as provided in RCW 29.19.030.

(3) "Separate ballot" means a ballot specific to a single political party or an unaffiliated ballot. When separate ballots are used, all ballots must be issued to each absentee voter unless the voter signs the appropriate oath requesting only one ballot.

(4) "Consolidated ballot" means a medium upon which multiple ballots may be listed. Such ballots must clearly identify each separate ballot by type and, if used at a polling place, must also be capable of being coded so that only votes cast for candidates matching the oath signed by the voter are counted. Consolidated mail ballots may be coded in the same manner as polling place ballots.

[Statutory Authority: RCW 29.19.070. 03-23-093, § 434-219-020, filed 11/17/03, effective 12/18/03; 00-03-003, § 434-219-020, filed 1/6/00, effective 2/6/00; 96-03-141, recodified as § 434-219-020, filed 1/24/96, effective 2/24/96; 91-18-012, § 434-75-020, filed 8/26/91, effective 9/26/91.]

WAC 434-219-030 Repealed. See Disposition Table at beginning of this chapter.

WAC 434-219-040 Repealed. See Disposition Table at beginning of this chapter.

WAC 434-219-080 Petition process for ballot access.

Members of a major political party may petition the secretary of state, pursuant to the provisions of RCW 29.19.030(2), to include on the presidential primary ballot the name of any candidate of that party not designated by the secretary of state under WAC 434-219-060. Petitions may be circulated for signatures not earlier than the first day following the designation of candidates by the secretary of state under WAC 434-219-060. Such petitions must be filed with the secretary of state not later than the thirty-ninth day preceding the primary, shall be accompanied by a signed, notarized statement by the candidate concerned giving his or her consent to the nomination, and must bear the signatures of at least one thousand persons registered to vote in the state of Washington at the time the petition signatures are verified.

[Statutory Authority: RCW 29.19.070. 03-23-093, § 434-219-080, filed 11/17/03, effective 12/18/03; 96-03-141, recodified as § 434-219-080, filed 1/24/96, effective 2/24/96; 91-18-012, § 434-75-080, filed 8/26/91, effective 9/26/91.]

WAC 434-219-100 Verification of signatures by secretary of state. Upon receipt of any nominating petition filed pursuant to WAC 434-219-080, the secretary of state shall

promptly canvass and verify the signatures in order to determine the validity of the petition. The secretary may reject, without verification of signatures, any petition that clearly bears insufficient signatures, any petition that is not accompanied by a consent to the nomination by the candidate, or any petition that is in a form inconsistent with the provisions of WAC 434-219-090. To the extent that it is not inconsistent with other provisions of these rules, the canvass and verification process may be observed in the same manner as that specified in RCW 29.79.200 for the observation of the canvass and verification of initiative signatures. The secretary of state shall reject the signature of any person not registered to vote in Washington, and any multiple signatures from the same voter. No signature may be rejected solely on the basis that it is not accompanied by the address or precinct name or number of the signer.

[Statutory Authority: RCW 29.19.070. 03-23-093, § 434-219-100, filed 11/17/03, effective 12/18/03; 96-03-141, recodified as § 434-219-100, filed 1/24/96, effective 2/24/96; 91-18-012, § 434-75-100, filed 8/26/91, effective 9/26/91.]

WAC 434-219-130 Repealed. See Disposition Table at beginning of this chapter.

WAC 434-219-150 Ballot request form used at the polling place. (1) The political party declaration provided under WAC 434-219-140, when provided to a voter desiring to vote at a polling place, may appear on either:

(a) A paper form of uniform size for each voter. The form shall identify the presidential primary, the major political party, and the date, and shall have space for the voter to sign his or her name and address. The voter's precinct shall be clearly indicated on the form. Multiple-part reproducible forms may be used for this purpose. The signed ballot request forms shall be collected by the precinct election officers and transmitted to the county auditor at the end of the voting day; or

(b) A format printed in the poll book which would permit the voter to sign his or her name and address and to indicate his or her political party preference, if any; or

(c) Separate poll books for each major political party distinct from the poll books for voters who do not subscribe to the declaration of any major political party.

(2) The county auditor shall provide appropriate instructions for the precinct election officers regarding the handling, maintaining, and transportation of the political party declarations.

[Statutory Authority: RCW 29.19.070. 03-23-093, § 434-219-150, filed 11/17/03, effective 12/18/03; 96-03-141, recodified as § 434-219-150, filed 1/24/96, effective 2/24/96; 91-18-012, § 434-75-150, filed 8/26/91, effective 9/26/91.]

WAC 434-219-160 Political party and unaffiliated ballots—Arrangement. Ballots for each major political party and unaffiliated ballots shall be provided as follows:

(1) Where candidate names are listed on separate ballots, each ballot shall be identified by color and either the name of the political party or as an unaffiliated ballot. Each separate ballot shall contain a machine readable code to distinguish each ballot type within each precinct.

(2) Where candidate names are listed on a consolidated ballot, they shall be presented in such a manner that each party's group of candidates is clearly distinguishable and identified by party name. The unaffiliated ballot may be listed in a separate listing or may be considered a combination of the party ballots. The order of the parties shall be the same as the order in which candidate names are listed on partisan general election ballots.

At a polling place, each ballot must be coded so that only votes cast for candidates of the party matching the oath signed by the voter are counted.

The code shall be a response position on the consolidated ballot identifying one of the major political parties or the unaffiliated status. Its purpose will be to exclude any vote cast on the ballot that does not correspond to the party or unaffiliated status indicated by the voter on the response position. The voter must mark or punch the appropriate response position corresponding to the oath or declaration on the absentee ballot return envelope. If the vote is cast at a polling place, the voter or precinct election official shall mark or punch the code. If the code is marked or punched by the voter, the precinct election official shall ensure that the code matches the oath or declaration as signed in the poll book. If a consolidated ballot is used in a mail ballot precinct or as an absentee ballot and a party/unaffiliated code is not used, each returning ballot must be segregated by oath and then subsequently inspected to ensure that only votes cast for candidates corresponding to the oath signed by the voter are counted.

[Statutory Authority: RCW 29.19.070. 03-23-093, § 434-219-160, filed 11/17/03, effective 12/18/03; 00-03-003, § 434-219-160, filed 1/6/00, effective 2/6/00; 96-03-141, recodified as § 434-219-160, filed 1/24/96, effective 2/24/96; 91-18-012, § 434-75-160, filed 8/26/91, effective 9/26/91.]

WAC 434-219-170 Order of political parties. Whenever political party declarations or ballots are printed on the same envelope, card, or sheet of paper, the party which polled the highest number of votes in the state for its candidate for president at the last preceding presidential election shall be listed first. The party which polled the next highest number of votes in the state for its candidate for president at the last preceding presidential election shall be listed second. Unaffiliated declarations shall be printed below political party declarations.

[Statutory Authority: RCW 29.19.070. 03-23-093, § 434-219-170, filed 11/17/03, effective 12/18/03; 00-03-003, § 434-219-170, filed 1/6/00, effective 2/6/00.]

WAC 434-219-180 Ballots—Arrangement of names—Instructions. (1) The unaffiliated ballot shall contain the names of all of the candidates certified by the secretary of state under WAC 434-219-120 listed alphabetically under the designation of the office (president of the United States) together with any other issues being submitted to the voters at special elections held in conjunction with the presidential primary.

(2) The political party ballots shall contain the names of all of the candidates certified by the secretary of state under WAC 434-219-120 for that party's nomination listed alphabetically under the designation of the office (president of the United States) together with any other issues being submitted

to the voters at special elections held in conjunction with the presidential primary.

(3) Provision for the voter to write-in the name of another candidate shall be provided on each separate ballot or for each party's office on a consolidated ballot. The names of candidates on the presidential primary ballot shall not be rotated.

(4) The ballot shall contain instructions to the voters in substantially the following form:

"If you vote for more than one candidate for this office, your vote in the presidential primary will not be counted."

The instructions shall be printed large enough to be easily read by the voter.

(5) Ballots for each political party and unaffiliated ballots shall be differentiated by color except when using a consolidated ballot.

[Statutory Authority: RCW 29.19.070. 03-23-093, § 434-219-180, filed 11/17/03, effective 12/18/03; 00-03-003, § 434-219-180, filed 1/6/00, effective 2/6/00; 96-03-141, recodified as § 434-219-180, filed 1/24/96, effective 2/24/96; 91-18-012, § 434-75-180, filed 8/26/91, effective 9/26/91.]

WAC 434-219-185 Logic and accuracy test decks. No later than fifteen days before the date of the presidential primary, the county auditor shall provide for the preparation of a test deck for logic and accuracy testing. No later than thirty days before the date of the presidential primary, the county auditor in consultation with the office of the secretary of state shall schedule a logic and accuracy test so that a representative of the office of the secretary of state can be present during the test. A representative of the secretary of state shall observe and certify that the test was conducted. Excluding the provisions in this chapter the procedures for the logic and accuracy test shall be conducted pursuant to the provisions of chapter 434-333 WAC and RCW 29.33.350.

[Statutory Authority: RCW 29.19.070. 03-23-093, § 434-219-185, filed 11/17/03, effective 12/18/03; 00-03-003, § 434-219-185, filed 1/6/00, effective 2/6/00.]

WAC 434-219-210 Issuing absentee and polling place ballots. (1) Polling place voters who do not make a political party declaration under WAC 434-219-140 shall be presented either an unaffiliated ballot, or a consolidated ballot coded as an unaffiliated ballot. Polling place voters who make a political party declaration under WAC 434-219-140 shall be presented either that party's ballot or a consolidated ballot coded to match their party oath.

(2) Absentee ballot voters, except as provided in subsection (3) of this section if applicable, shall be issued all unaffiliated and political party ballots, either as separate ballots or as a consolidated ballot.

(3) At the discretion of the county auditor, absentee ballots issued directly to the voter at the auditor's office may be issued in the same manner as polling place ballots provided that the voter marks, or verbally refuses to mark, the appropriate declaration on the return envelope prior to receiving the ballot.

[Statutory Authority: RCW 29.19.070. 03-23-093, § 434-219-210, filed 11/17/03, effective 12/18/03; 00-03-003, § 434-219-210, filed 1/6/00, effective 2/6/00; 96-03-141, recodified as § 434-219-210, filed 1/24/96, effective 2/24/96; 91-18-012, § 434-75-210, filed 8/26/91, effective 9/26/91.]

WAC 434-219-220 Absentee ballots—Declarations—Instructions. (1) The political party declaration and unaffiliated declaration provided under WAC 434-219-140 shall be printed on the return envelope below the absentee ballot oath provided under WAC 434-240-190. Each declaration shall be printed next to a box in which the voter is instructed to make a mark to indicate to which declaration they subscribe. The date and signature lines in the absentee ballot oath shall also serve as the date and signature lines for the political party and unaffiliated declarations.

(2) In addition to other instructions normally provided to absentee voters, the county auditor shall ensure that, whenever presidential primary ballots are issued, the voters are given specific instructions on how to mark their ballot so that it will be counted in accordance with the oath they signed on the return envelope. Instructions shall also be provided to the voter on the correct method for writing in a candidate's name on the ballot.

[Statutory Authority: RCW 29.19.070. 03-23-093, § 434-219-220, filed 11/17/03, effective 12/18/03; 00-03-003, § 434-219-220, filed 1/6/00, effective 2/6/00; 96-03-141, recodified as § 434-219-220, filed 1/24/96, effective 2/24/96; 91-18-012, § 434-75-220, filed 8/26/91, effective 9/26/91.]

WAC 434-219-230 Segregation of absentee ballots. Absentee ballots must be segregated according to major party declaration choice before they are removed from the return envelopes. The number of ballots in each segregated group shall be recorded on a ballot accountability form at each step of the absentee ballot canvassing process.

[Statutory Authority: RCW 29.19.070. 03-23-093, § 434-219-230, filed 11/17/03, effective 12/18/03; 00-03-003, § 434-219-230, filed 1/6/00, effective 2/6/00; 96-03-141, recodified as § 434-219-230, filed 1/24/96, effective 2/24/96; 91-18-012, § 434-75-230, filed 8/26/91, effective 9/26/91.]

WAC 434-219-250 Tabulation of ballots. (1) Any voter who selects a party oath and votes for a candidate certified by the secretary of state for that party shall have that vote tabulated as a political party vote, regardless upon which ballot that vote is cast.

(2) Any voter who selects the unaffiliated oath, shall have that vote tabulated as an unaffiliated vote, regardless upon which ballot that vote is cast.

(3) Any voter who selects a party oath and then votes for a candidate certified by the secretary of state for a different party shall not have that vote tabulated.

(4) If the voter does not select an oath, then no vote for president shall be tabulated.

[Statutory Authority: RCW 29.19.070. 03-23-093, § 434-219-250, filed 11/17/03, effective 12/18/03; 00-03-003, § 434-219-250, filed 1/6/00, effective 2/6/00; 96-03-141, recodified as § 434-219-250, filed 1/24/96, effective 2/24/96; 92-08-032, § 434-75-250, filed 3/24/92, effective 4/1/92; 91-18-012, § 434-75-250, filed 8/26/91, effective 9/26/91.]

WAC 434-219-255 Repealed. See Disposition Table at beginning of this chapter.

WAC 434-219-270 Repealed. See Disposition Table at beginning of this chapter.

WAC 434-219-280 Votes not tabulated. The county auditor shall not tabulate votes in the presidential primary in the following cases:

(1) Where the voter has attempted to vote for more than one candidate on the same political party or unaffiliated ballot;

(2) Where the voter has voted on more than one political party or unaffiliated ballot, in which case any vote cast on a ballot not matching the oath signed by the voter shall be rejected;

In those instances where the auditor is not sure whether a ballot or part of a ballot should be counted, he or she shall refer that ballot to the county canvassing board for their determination.

[Statutory Authority: RCW 29.19.070. 03-23-093, § 434-219-280, filed 11/17/03, effective 12/18/03; 00-03-003, § 434-219-280, filed 1/6/00, effective 2/6/00; 96-03-141, recodified as § 434-219-280, filed 1/24/96, effective 2/24/96; 91-18-012, § 434-75-280, filed 8/26/91, effective 9/26/91.]

WAC 434-219-285 Repealed. See Disposition Table at beginning of this chapter.

WAC 434-219-290 Canvassing and certification of presidential primary. County canvassing boards shall certify the results of the presidential primary including the total number of write-in votes cast, by congressional and legislative districts, not later than the tenth day following the primary. The county auditor shall send one original copy of the returns by mail to the secretary of state on the same day the returns are certified. Wherever applicable, the other procedures established by chapter 29.62 RCW for the canvassing of state primaries shall apply to the canvassing of a presidential primary. Not later than the thirtieth day following the presidential primary, the secretary of state shall notify the candidates and the chairperson of the national and state committees of each major political party of the votes cast for each candidate listed on the ballot and of the write-in votes cast for any qualified write-in candidates.

[Statutory Authority: RCW 29.19.070. 03-23-093, § 434-219-290, filed 11/17/03, effective 12/18/03; 00-03-003, § 434-219-290, filed 1/6/00, effective 2/6/00; 96-03-141, recodified as § 434-219-290, filed 1/24/96, effective 2/24/96; 91-18-012, § 434-75-290, filed 8/26/91, effective 9/26/91.]

WAC 434-219-300 Repealed. See Disposition Table at beginning of this chapter.

WAC 434-219-340 Claims for reimbursement. Following the presidential primary, each county auditor shall provide to the secretary of state a completed claim for reimbursement of expenses incurred by the county in conducting the primary. This cost shall be prorated with any other jurisdictions holding special elections in conjunction with the primary under RCW 29.13.045. The procedures for allocating such costs shall be the same as those prescribed by the office of the state auditor for election cost allocations to the state, cities, towns, and special purpose districts. Claims for reimbursement and supporting documents shall be submitted to the secretary of state not later than sixty days following the certification of the returns of the presidential primary by the secretary of state.

[Statutory Authority: RCW 29.19.070. 03-23-093, § 434-219-340, filed 11/17/03, effective 12/18/03; 96-03-141, recodified as § 434-219-340, filed 1/24/96, effective 2/24/96; 91-18-012, § 434-75-340, filed 8/26/91, effective 9/26/91.]

WAC 434-219-350 Repealed. See Disposition Table at beginning of this chapter.

Chapter 434-240 WAC

ABSENTEE VOTING

(Formerly chapter 434-40 WAC)

WAC

434-240-010	Definitions.
434-240-245	Procedure for signatures that don't match.

WAC 434-240-010 Definitions. As used in this chapter:

(1) An "elector" of the state of Washington is any person who qualifies under state or federal law as an overseas voter, service voter, or out-of-state voter and who:

(a) Is not currently a registered voter in Washington or any other state;

(b) Will be at least eighteen years of age at the time of the next election;

(c) Is a citizen of the United States;

(d) Is a legal resident of the state, county, and precinct for at least thirty days preceding the election at which he or she offers to vote;

(e) Is not currently being denied his or her civil rights by being convicted of a crime for which he or she could have been sentenced to the state penitentiary;

(2) "Out-of-state voters," "overseas voters," "protected records voters," and "service voters" are electors of the state of Washington and are **not** registered voters of Washington or any other state; electors of the state of Washington who are spouses or dependents of service voters shall be considered to be either out-of-state voters or overseas voters;

(3) "Service voters" are electors of the state of Washington who are outside the state during the period available for voter registration and who are members of the armed forces while in active service, are students or members of the faculty at a United States military academy, are members of the merchant marine of the United States, are members of a religious group or welfare agency officially attached to and serving with the armed forces of the United States, or are certified participants in the address confidentiality program authorized by chapter 40.24 RCW.

(4) "Canvassing" is that process of examining, in detail, a ballot, groups of ballots, election subtotals, or grand totals in order to determine the final official returns of a primary, special, or general election and in order to safeguard the integrity of the election process;

(5) "Territorial limits of the United States" means the fifty United States and the District of Columbia;

(6) "Ongoing absentee ballot" is a ballot provided to voters who have requested in writing to automatically receive an absentee ballot for each ensuing election for which he or she is entitled to vote, and provided to voters who are certified participants in the address confidentiality program, pursuant to the provisions of chapter 40.24 RCW;

(7) "Hospital absentee ballot" is that absentee ballot provided to voters confined to a health care facility on the day of a primary or election;

(8) "Regular absentee ballot" is that absentee ballot provided to voters or electors who request an absentee ballot and

who do not either request or qualify for an ongoing absentee ballot, hospital absentee ballot, or special absentee ballot;

(9) "Secure storage" are those locations provided for the storage of all material connected with the absentee ballot process, including ballots, and shall be under the direct control of the county auditor. Secure storage shall employ the use of numbered seals and logs or any other security measures which will detect any inappropriate access to the secured materials when such materials are not being prepared or processed by the county auditor or persons authorized by the county canvassing board;

(10) "Challenged ballot" is that ballot issued to any voter whose registration has been challenged pursuant to the provisions of chapter 29.10 RCW and this chapter;

(11) "Special ballot" is that ballot issued to a voter by precinct election officers pursuant to WAC 434-253-043.

(12) "County auditor" shall be as defined by RCW 29.01.043, and with respect to the processing of absentee ballots and applications, the term includes any employee of the county auditor who is directed in writing to perform those duties on behalf of the county auditor.

(13) "Mail ballot precinct" is any precinct containing less than two hundred active registered voters at the closing of voter registration under RCW 29.07.160 in which the county auditor has determined to conduct the voting by mail ballot.

[Statutory Authority: RCW 29.04.080. 03-15-054, § 434-240-010, filed 7/11/03, effective 8/11/03; 02-20-037, § 434-240-010, filed 9/24/02, effective 10/25/02. Statutory Authority: RCW 29.04.210, 29.36.150. 02-07-028, § 434-240-010, filed 3/12/02, effective 4/12/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-240-010, filed 10/13/97, effective 11/13/97. Statutory Authority: 1991 c 23. 91-20-074, § 434-40-010, filed 9/26/91, effective 10/27/91. Statutory Authority: RCW 29.36.150. 88-03-019 (Order 88-1), § 434-40-010, filed 1/12/88.]

WAC 434-240-245 Procedure for signatures that don't match. If the signature on the return envelope of an absentee ballot is not the same as the signature of the voter on the registration file pursuant to RCW 29.36.310 and WAC 434-240-240, the auditor shall either:

(1) Send the voter a voter registration form and a notice asking for the voter to update their signature for the voter registration file by filling out a new registration form and forwarding it to the auditor; or

(2) Contact the voter directly and inform them that the signature on their return envelope does not match and that the voter may update their signature by filling out a new voter registration form.

If the signature is not the same because the name is different, the auditor shall send the voter a voter registration form and notice directing the voter to complete the form, including the appropriate steps to change their name on the voter registration files or complete a name change pursuant to RCW 29.10.051.

[Statutory Authority: RCW 29.04.080. 04-01-072, § 434-240-245, filed 12/12/03, effective 1/12/04.]

Chapter 434-262 WAC
CANVASSING AND CERTIFICATION OF
PRIMARIES AND ELECTIONS
 (Formerly chapter 434-62 WAC)

WAC

434-262-010 Definitions.
 434-262-020 Preliminary abstract of votes.

WAC 434-262-010 Definitions. As used in these regulations:

(1) "Canvassing" is that process of examining in detail a ballot, groups of ballots, election subtotals, or grand totals, in order to determine the final official returns of a primary, special, or general election, and to safeguard the integrity of the election process.

(2) "County canvassing board" is that body charged by law with the duty of canvassing absentee ballots, of ruling on the validity of questioned or challenged ballots, of the verifying all unofficial returns as listed in the auditor's abstract of votes, and the producing of the official county canvass report; it shall be composed of the county auditor, prosecuting attorney, and chairman of the board of the county legislative authority, or their designated representatives.

(3) "Auditor's abstract of votes" is that report prepared by the county auditor which lists the number of registered voters, votes cast, all of the vote totals by precinct, or by combination of precincts if applicable, and which includes absentee ballot totals, legislative district subtotals, if any, and county-wide totals. Vote totals in the auditor's abstract of votes shall be unofficial until verified and certified by the county canvassing board.

(4) "County canvass report" is the auditor's abstract of votes after verification by the county canvassing board and shall contain a certificate which shall include the oath as specified in RCW 29.62.040, the original signatures of each member of the county canvassing board, the county seal, and all other material pertinent to the election.

(5) "Certified copy of the county canvass report" is that report transmitted by the county auditor to the secretary of state which contains registered voters and votes cast by precinct, or combination of precincts if applicable, votes cast for and against state measures, and votes cast for candidates for federal and statewide offices and for any office whose jurisdiction encompasses more than one county, absentee ballot totals for those measures and candidates, subtotals if applicable, and county-wide totals. It shall also include a certificate, bearing original signatures and an original county seal, identical to that included in the official county canvass report, and any other material which may be pertinent to the canvass of the election.

[Statutory Authority: RCW 29.04.080. 03-15-054, § 434-262-010, filed 7/11/03, effective 8/11/03. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-262-010, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 29.04.080. 80-15-008 (Order 80-3), § 434-62-010, filed 10/3/80.]

WAC 434-262-020 Preliminary abstract of votes. Following the election and prior to the official canvass, the county auditor shall prepare a preliminary abstract of votes, listing the number of registered voters and votes cast. The preliminary abstract of votes must also list separately for

votes cast by absentee ballot and those cast at the polls, votes cast for and against measures, votes cast for candidates, overvotes and undervotes, by precinct or groups of precincts in the event that precincts have been combined in accordance with RCW 29.04.055, for canvassing purposes. The county auditor shall inspect the preliminary abstract of votes for errors or anomalies that may affect the results of the election. Correction of any errors or anomalies discovered must be made prior to the official canvass.

[Statutory Authority: RCW 29.04.080. 03-15-054, § 434-262-020, filed 7/11/03, effective 8/11/03. Statutory Authority: RCW 29.04.210, 29.36.150. 02-07-028, § 434-262-020, filed 3/12/02, effective 4/12/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. 97-21-045, recodified as § 434-262-020, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 29.04.080. 80-15-008 (Order 80-3), § 434-62-020, filed 10/3/80.]

Chapter 434-670 WAC

THE WASHINGTON STATE ARCHIVES LOCAL RECORDS GRANT PROGRAM

WAC

434-670-010	Washington state archives local records grant program.
434-670-020	Eligible and ineligible activities.
434-670-030	Eligibility.
434-670-040	Evaluation of proposals.
434-670-050	Grant application requirements.
434-670-060	Grant calendar.
434-670-070	Accounting.
434-670-080	Auditing requirements.
434-670-090	Conflicts of interest.

WAC 434-670-010 Washington state archives local records grant program. The Washington state archives local records grant program, administered by the office of the secretary of state, provides financial assistance to local government officials to support records management and preservation efforts, particularly for records of permanent retention. This grants-in-aid program is a significant effort in the overall mission of the program to enhance the quality of archival preservation and public access to records of enduring value. This grant program is governed by this chapter and by RCW 36.22.175.

[Statutory Authority: RCW 36.22.175(1). 03-06-069, § 434-670-010, filed 3/3/03, effective 4/3/03.]

WAC 434-670-020 Eligible and ineligible activities.

(1) The following activities, including but not limited to, are eligible for support through grants administered pursuant to this chapter:

- (a) Planning;
- (b) Records management;
- (c) Preservation;
- (d) Conservation;
- (e) Professional consultants;
- (f) Essential equipment;
- (g) Reference tools, and;
- (h) Education;
- (i) Temporary personnel.

(2) The following activities, including but not limited to, are ineligible for support through grants administered pursuant to this chapter:

- (a) Projects already completed;
- (b) Expenses incurred prior to the grant period;

- (c) Existing/permanent staff positions;
- (d) Equipment nonessential to the project;
- (e) Capital improvements to buildings;
- (f) Payments to lobbyists;
- (h) Hospitality expenses;
- (i) Prizes/awards;
- (j) Benefit activities (social, fundraisers, etc.);
- (k) Educational outreach not available to the public;
- (l) Tuition reimbursement for academic credit;
- (m) Activities having a religious purpose;
- (n) Inventories/guides not available to the public and;
- (o) Purchase of manuscripts/records.

[Statutory Authority: RCW 36.22.175(1). 03-06-069, § 434-670-020, filed 3/3/03, effective 4/3/03.]

WAC 434-670-030 Eligibility. Local government entities, including special purpose districts, are eligible to apply for grants under this chapter. Entities other than local governments, such as individuals, state agencies, federal agencies, and private organizations are ineligible, but local public records housed by state agencies may be included in a grant application that is submitted and administered by the local official who has statutory authority over the records.

[Statutory Authority: RCW 36.22.175(1). 03-06-069, § 434-670-030, filed 3/3/03, effective 4/3/03.]

WAC 434-670-040 Evaluation of proposals. (1)

Washington state archives staff will review grant applications for completeness, conformity to application requirements, soundness of budget, and relevancy to the objectives of the Washington state archives local records grant program. (Staff may also consider, in addition to the factors specified above the potential for widespread citizen use, research value and value for ongoing governmental operation of the proposed project including improvements to existing operations.) The proposal may be returned to the applicant institution for further development or clarification, prior to application deadline.

(2) A summary will be prepared by the Washington state archives for each complete application and forwarded to the oversight committee. The committee will review the applications at its annual public meeting and make funding recommendations to the Secretary of State.

(3) The office of the secretary of state will notify the applicant in writing as to whether the proposal has been funded or rejected.

[Statutory Authority: RCW 36.22.175(1). 03-06-069, § 434-670-040, filed 3/3/03, effective 4/3/03.]

WAC 434-670-050 Grant application requirements.

In order to be complete an application must include:

- (1) Identification of local government entity and project personnel;
- (2) A description of the activity proposed for funding including:
 - (a) Statement of purpose and goals;
 - (b) Project summary;
 - (c) Detailed analysis of plan, discussion of techniques and a timetable;
 - (d) Project objectives; and

- (e) Specific end results or products.
- (3) A funding description, including:
 - (a) Budget layout;
 - (b) Budget explanation;
 - (c) Need for outside funding;
 - (d) Funding of future management and preservation projects; and
 - (e) Local entity's accounting methods and audit procedures.
- (4) Relevant information, including:
 - (a) Evaluation of results (how will the success or failure be measured);
 - (b) Statement of any previous actions; and
 - (c) Description of importance of the project in terms of an overall, long-range record management program
- (5) Authorization, including:
 - (a) Being signed and dated by proper official; and
 - (b) Identification of preparer of the application.
- (6) Support material, including:
 - (a) Letter of commitment from the applicant's funding authority;
 - (b) Resumes of project personnel, consultants, volunteers, etc., and descriptions of their grant-funded duties
 - (c) Required forms;
 - (d) Identification of necessary services, equipment, supplies, etc.; and
 - (e) Other relevant information.

[Statutory Authority: RCW 36.22.175(1). 03-06-069, § 434-670-050, filed 3/3/03, effective 4/3/03.]

WAC 434-670-060 Grant calendar. (1) The grant period begins on the date of the award issued by the Office of the Secretary of State. Grant projects must be completed in the awarded biennium.

(2) The grant payment and reporting schedule will be approved and published by the oversight committee for each grant cycle. All unused grant funds and interest in possession of the grantee must be returned to the Washington state archives local records grant program within sixty days of completion.

[Statutory Authority: RCW 36.22.175(1). 03-06-069, § 434-670-060, filed 3/3/03, effective 4/3/03.]

WAC 434-670-070 Accounting. Grantees must keep financial records in accordance with the accounting practices generally applicable to their local government accounting practices and apply approved record retention schedules. These records, as public records, shall be subject to inspection by the Washington state archives staff and the oversight committee during regular business hours throughout the grant period. If any litigation, claim, or audit is begun before the end of the retention period, records must be retained until such proceeding is resolved.

[Statutory Authority: RCW 36.22.175(1). 03-06-069, § 434-670-070, filed 3/3/03, effective 4/3/03.]

WAC 434-670-080 Auditing requirements. Grantees must comply with the audit requirements set forth in Washington statutes for local government units. The grantee is responsible for ensuring that the Washington state archives

receives copies of the audit report for any audit performed during the grant period or for the following three years. Specific accounting requirements for the Washington state archives local records grant program are:

(1) Grant money must be deposited in an auditable, interest-bearing account. Interest received must be applied to the project.

(2) Grant work must be monitored in progress. The Washington state archives staff may visit the work site for review at any time during the project.

(3) Changes in the approved grant, including changes of personnel, must be requested in writing to the Washington state archives, local records grant program.

(4) In the case of default by the grantee, the grant will be revoked and all unused funds must be returned to the Washington state archives local records grant program. The Washington state archives will notify the grantee of default in writing.

(5) The grantee shall submit a final grant report by June 30.

(6) Grantees must submit copies of all invoices with the final report, and

(7) Grantees must adhere to local and state bid requirements and submit documentation with the final grant report.

[Statutory Authority: RCW 36.22.175(1). 03-06-069, § 434-670-080, filed 3/3/03, effective 4/3/03.]

WAC 434-670-090 Conflicts of interest. (1) The Washington state archives oversight committee will not consider a proposal where a committee member or a member of the secretary of state's staff derives compensation from the proposed grant.

(2) A board member shall abstain from reviewing or voting on proposals if she/he is directly or indirectly connected with a proposed project through employment at the same institution, (directly or) indirectly supervises the project, or serves as an unpaid consultant to the project.

[Statutory Authority: RCW 36.22.175(1). 03-06-069, § 434-670-090, filed 3/3/03, effective 4/3/03.]

Title 446 WAC STATE PATROL

**Chapters
446-20
446-75**

**Employment—Conviction records.
DNA identification.**

Chapter 446-20 WAC

EMPLOYMENT—CONVICTION RECORDS

WAC

446-20-285

Employment—Conviction records—Child and adult abuse information.

WAC 446-20-285 Employment—Conviction records—Child and adult abuse information. After January 1, 1988, certain child and adult abuse conviction informa-

tion will be furnished by the state patrol upon written or electronic request of any applicant, business or organization, the state board of education, or the department of social and health services. This information will consist of the following:

(1) Convictions of crimes against children or other persons as defined in RCW 43.43.830(6), and as amended by chapter 9A.44 RCW;

(2) Department of health disciplinary authority final decisions of specific findings of physical or sexual abuse or exploitation of a child and any subsequent criminal charges associated with the conduct that is the subject of the disciplinary authority final decision; for the businesses and professions defined in chapter 9A.44 RCW; and

(3) Civil adjudications of child abuse, as amended by chapter 9A.44 RCW.

Criminal history information will be furnished from the Washington state patrol, consistent with the provisions of RCW 43.43.830 through 43.43.840, upon receipt of a written or electronic request.

School districts, the superintendent of public instruction, educational service districts and their contractors will also receive conviction information under RCW 10.97.030 and 10.97.050 pursuant to chapter 159, Laws of 1992.

The state patrol shall also furnish any similar records maintained by the Federal Bureau of Investigation or records in custody of the National Crime Information Center, if available, subject to their policies and procedures regarding such dissemination.

(a) The business or organization making such request shall not make an inquiry to the Washington state patrol or an equivalent inquiry to a federal law enforcement agency unless the business or organization has notified the applicant who has been offered a position as an employee or volunteer that an inquiry may be made.

(b) For positive identification, the request for criminal history information form may be accompanied by fingerprint cards of a type specified by the Washington state patrol identification and criminal history section, and shall contain a certification by the business or organization; the state board of education; or the department of social and health services, that the information is being requested and will be used only for the purposes as enumerated in RCW 43.43.830 through 43.43.845.

(c) In the absence of fingerprint cards, the applicant may provide a right thumb fingerprint impression in the area provided on the request for criminal history information form. In the event of a possible match to the applicant's name and date of birth, the right thumb fingerprint impression will be used for identification verification purposes only.

(d) After processing a properly completed request for criminal history information form, if the conviction record, disciplinary authority final decision, adjudication record, or equivalent response from a federal law enforcement agency shows no evidence of crimes against persons, an identification declaring the showing of no evidence shall be issued to the business or organization by the Washington state patrol identification and criminal history section within fourteen working days of receipt of the request. Possession of such identification shall satisfy future record check requirements for the applicant for a two-year period.

(e) The business or organization shall notify the applicant of the state patrol's response within ten calendar days after receipt by the business or organization. The employer shall provide a copy of the response to the applicant and shall notify the applicant of such availability.

(f) The business or organization shall be immune from civil liability for failure to request background information on a prospective employee or volunteer unless the failure to do so constitutes gross negligence.

[Statutory Authority: RCW 10.97.030 and 43.830-845 [43.43.830-43.43.-845]. 03-05-007, § 446-20-285, filed 2/7/03, effective 3/10/03. Statutory Authority: Chapters 10.97 and 43.43 RCW. 97-05-048, § 446-20-285, filed 2/18/97, effective 3/21/97. Statutory Authority: RCW 43.43.760, 43.43.815 and 43.43.838. 92-15-015, § 446-20-285, filed 7/6/92, effective 8/6/92. Statutory Authority: RCW 10.97.090. 91-24-099 (Order 91-004), § 446-20-285, filed 12/4/91, effective 1/4/92. Statutory Authority: 1990 c 3. 90-20-003 (Order 90-003), § 446-20-285, filed 9/20/90, effective 10/21/90. Statutory Authority: RCW 43.43.838. 89-23-017, § 446-20-285, filed 11/6/89, effective 12/7/89. Statutory Authority: RCW 43.43.838 and 1987 c 486 § 5. 88-07-066 (Order 88-03-A), § 446-20-285, filed 3/17/88.]

Chapter 446-75 WAC

DNA IDENTIFICATION

WAC

446-75-010	Definitions.
446-75-020	Purpose.
446-75-030	Purposes of DNA identification.
446-75-060	Collection of biological sample for DNA databank— Procedures—Time frame.
446-75-070	Expungement of DNA data.
446-75-080	DNA identification data—Prohibitions.

WAC 446-75-010 Definitions. (1) "DNA" wherever used in this chapter shall mean deoxyribonucleic acid.

(2) "Convicted felon" wherever used in this chapter shall mean:

(a) Every individual convicted after July 1, 1990, of a felony defined as a sex or violent offense under RCW 9.94A.030;

(b) Every individual convicted on or before July 1, 1990, of a felony defined as a sex or violent offense under RCW 9.94A.030, who is still incarcerated on or after July 25, 1999;

(c) Every juvenile adjudicated guilty after July 1, 1994, of a felony defined as a sex or violent offense under RCW 9.94A.030 or an equivalent juvenile offense;

(d) Every juvenile adjudicated guilty on or before July 1, 1994, of a felony defined as a sex or violent offense under RCW 9.94A.030 or an equivalent juvenile offense, who is still incarcerated on or after July 25, 1999;

(e) Every adult or juvenile convicted of a felony, stalking under RCW 9A.46.100, harassment under RCW 9A.46.020, or communicating with a minor for immoral purposes under RCW 9.68A.090, or adjudicated guilty of an equivalent juvenile offense, on or after July 1, 2002;

(f) Every adult or juvenile convicted of a felony, stalking under RCW 9A.46.100, harassment under RCW 9A.46.020, or communicating with a minor for immoral purposes under RCW 9.68A.090, or adjudicated guilty of an equivalent juvenile offense, before July 1, 2002, who is still incarcerated on or after July 1, 2002.

(3) "DNA identification" wherever used in this chapter shall mean the identification of a particular individual from

the chemical structure of the DNA contained in cells of the human body.

(4) "Biological sample" wherever used in this chapter means a buccal swab (a swabbing of the inside of the mouth between the cheek and gum). The Washington state patrol crime laboratory division will supply a buccal swab collection kit to any agency responsible for collecting convicted felon samples for DNA typing. If there is a reason that a buccal swab cannot be obtained, a bloodstain collected by a finger stick may be taken from the individual.

[Statutory Authority: RCW 43.43.759. 03-08-053, § 446-75-010, filed 3/28/03, effective 4/28/03; 91-11-046, § 446-75-010, filed 5/14/91, effective 6/14/91.]

WAC 446-75-020 Purpose. The purpose of this chapter is to provide procedures for the operation of DNA identification systems as required by RCW 43.43.752 through 43.43.758, and to prohibit the improper use of DNA identification data as required by RCW 43.43.759.

[Statutory Authority: RCW 43.43.759. 03-08-053, § 446-75-020, filed 3/28/03, effective 4/28/03; 91-11-046, § 446-75-020, filed 5/14/91, effective 6/14/91.]

WAC 446-75-030 Purposes of DNA identification. DNA identification systems as authorized by chapter 43.43 RCW shall be used only for three purposes:

- (1) Identification of possible suspects in criminal investigations;
- (2) Convicted felon identification databanking; and
- (3) Identification of human remains or missing persons.

Nothing in this section prohibits the submission of results derived from the biological samples to the Federal Bureau of Investigation combined DNA index system.

[Statutory Authority: RCW 43.43.759. 03-08-053, § 446-75-030, filed 3/28/03, effective 4/28/03; 91-11-046, § 446-75-030, filed 5/14/91, effective 6/14/91.]

WAC 446-75-060 Collection of biological sample for DNA databank—Procedures—Time frame. (1) The collection, preservation, and shipment of blood samples obtained from convicted felons pursuant to RCW 43.43.754 for the convicted felon databank program shall be in conformance with the "Protocol for the Collection of Biological Sample for the Convicted Felon DNA Program" as prepared by the Washington state patrol crime laboratory division. Copies of the current protocol may be obtained from the Washington State Patrol Crime Laboratory Division, Olympia, WA.

(a) If the convicted felon does not serve a term of confinement in a facility operated by the department of corrections or the department of social and health services, and does serve a term of confinement in a city or county jail facility, officials at the city or county jail facility shall be responsible for obtaining the biological sample either as part of the intake process if the person is convicted on or after July 1, 2002, or within a reasonable time after July 1, 2002, but prior to the person's release, if the person was incarcerated before July 1, 2002.

(b) If the convicted felon serves a term of confinement in a facility operated by the department of corrections or the department of social and health services, officials at the facil-

ity shall be responsible for obtaining the biological sample either as part of the intake process if the person is convicted on or after July 1, 2002, or within a reasonable time after July 1, 2002, but prior to the person's release, if the person was incarcerated before July 1, 2002.

(c) If the convicted felon is sentenced on or after July 1, 2002, and does not serve a term of confinement in a city, county or state facility, the local police department or sheriff's office shall be responsible for obtaining the biological sample after sentencing.

(2) Results from DNA identifications made from blood samples obtained from convicted felons under RCW 43.43.-754 shall be submitted to the chief of the Washington state patrol and entered into the Washington state patrol DNA databank. Such results shall reside in the databank until expungement pursuant to WAC 446-75-070.

[Statutory Authority: RCW 43.43.759. 03-08-053, § 446-75-060, filed 3/28/03, effective 4/28/03; 91-11-046, § 446-75-060, filed 5/14/91, effective 6/14/91.]

WAC 446-75-070 Expungement of DNA data. (1) A person desiring the destruction of his DNA identification data from a DNA databank shall make his request therefor on a form furnished by the chief of the Washington state patrol. The request shall be mailed or delivered to the Washington State Patrol Crime Laboratory Division, Olympia, WA.

(2) The request shall be completed, signed by the person whose record is sought to be expunged. The signature shall be notarized. It shall include the address of the applicant, the printed name and the address of the witness to the applicant's signature and such other information requested on the application as identifies the applicant and the offense for which the request of expungement is made.

(3) The request shall include proof that the person making the request for expungement is the same person whose DNA data is sought to be expunged. Such proof shall include a sworn statement of identity. When requested by the patrol, fingerprints and a blood sample shall also be required from the applicant.

(4) The request shall include proof that the person making the request has no record as a convicted felon under RCW 43.43.754 or has other lawful grounds for expungement. Such proof shall include a sworn statement from the applicant, and not-guilty or released without conviction documentation from such criminal charges. Where the finding or release is based on an order of a court, the applicant shall furnish a certified true copy of the court order.

(5) The Washington state patrol crime laboratory has discretion to deny the request for expungement.

[Statutory Authority: RCW 43.43.759. 03-08-053, § 446-75-070, filed 3/28/03, effective 4/28/03; 91-11-046, § 446-75-070, filed 5/14/91, effective 6/14/91.]

WAC 446-75-080 DNA identification data—Prohibitions. The use of any data obtained from DNA identification procedures is prohibited for any research or other purpose not related to a criminal investigation, to identification of human remains or missing persons, or to improving the operation of the system established by the Washington state patrol and authorized by RCW 43.43.752 through 43.43.759.

[Statutory Authority: RCW 43.43.759, 03-08-053, § 446-75-080, filed 3/28/03, effective 4/28/03; 91-11-046, § 446-75-080, filed 5/14/91, effective 6/14/91.]

Title 458 WAC

REVENUE, DEPARTMENT OF

Chapters

458-07	Valuation and revaluation of real property.
458-12	Property tax division—Rules for assessors.
458-16	Property tax—Exemptions.
458-16A	Property tax—Exemptions—Homes for the aging, senior citizens and disabled persons.
458-17	Assessment and taxation of ships and vessels.
458-18	Property tax—Abatements, credits, deferrals and refunds.
458-20	Excise tax rules.
458-30	Open Space Taxation Act rules.
458-40	Taxation of forest land and timber.
458-61	Real estate excise tax.

Chapter 458-07 WAC

VALUATION AND REVALUATION OF REAL PROPERTY

WAC

458-07-020	Revaluation of real property—Multiyear counties.
458-07-035	Listing of property—Subdivisions and segregation of interests.

WAC 458-07-020 Revaluation of real property—Multiyear counties. (1) **Introduction.** This rule provides information about the revaluation of real property in a county where all real property is not revalued each year. It explains when an assessor is authorized to revalue real property using appraisal judgment outside of the approved revaluation cycle. It also explains what happens when the area of the county being physically inspected and revalued in a particular year is not completed in that year. Finally, this rule explains the requirement that revaluation notices be mailed by the assessor to the taxpayer when there is any change in the assessed value of real property.

(2) **Revaluation cycles.** In a county where all real property is not revalued each year, all real property must be physically inspected and revalued at current true and fair market value on a proportional basis within the county each year of a two, three, or four-year cycle. Approximately equal portions of the taxable property of the county must be physically inspected and revalued each year of the cycle. Alternatively, the department may approve a plan whereby the county assessor physically inspects and revalues all real property in the county once every two years.

(3) **Revaluation outside of approved cycle.** In certain circumstances the assessor is authorized to revalue real prop-

erty, using appraisal judgment, outside of the approved revaluation cycle. These revaluations must not be arbitrary or capricious, nor violate the equal protection clauses of the federal and state Constitutions, nor the uniformity clause of the state Constitution. The assessor may disregard the revaluation cycle and change a property valuation, as appropriate, in the following situations:

(a) If requested by a property owner, when a notice of decision pertaining to the value of real property is received under RCW 36.70B.130 (Notice of decision—Distribution; local project review), chapter 35.22 RCW (First Class Cities), chapter 35.63 RCW (Planning Commissions), chapter 35A.63 RCW (Planning and Zoning in Code Cities), or chapter 36.70 RCW (Planning Enabling Act);

(b) When the owner or person responsible for payment of taxes on any real property petitions the assessor for a reduction in the assessed value in accordance with RCW 84.40.039, within three years of adoption of a restriction by a government entity;

(c) When there has been a "definitive change of land use designation" by an authorized land use authority, and the revaluation is in accordance with RCW 84.48.065;

(d) When a bona fide mistake has been made by the assessor in a prior valuation made within the current valuation cycle. The change in property valuation is not retroactive to the prior year;

(e) When property has been destroyed, in whole or in part, and is entitled to a reduction in value in accordance with chapter 84.70 RCW; or

(f) When property has been subdivided or merged.

(4) **Revaluation areas—Incomplete revaluation.** In any year, when the area of the county being physically inspected and revalued is not completed in that year, the portion remaining must be completed before beginning the physical inspection and revaluation of another area in the succeeding year. For any portion of a revaluation area that was not completed in the year intended, the value of real property in that portion is still determined as of January 1st of the assessment year originally intended, but the new appraised value is placed on the assessment rolls, and is subject to appeal by the taxpayer, in the assessment year the property is actually inspected and revalued. All areas of the county must be physically inspected and revalued within the cycle established in the revaluation plan filed with the department.

(5) **Change of value notice.** In a county that revalues all real property on a multiyear cycle, revaluation notices must be mailed by the assessor to the taxpayer when there is any change in the assessed value of real property, not later than thirty days after an appraisal. For additional information about revaluation notices, refer to WAC 458-12-360.

[Statutory Authority: RCW 84.08.010 and 84.08.070, 03-22-025, § 458-07-020, filed 10/27/03, effective 11/27/03. Statutory Authority: RCW 84.08.070, 00-01-043, § 458-07-020, filed 12/7/99, effective 1/7/00.]

WAC 458-07-035 Listing of property—Subdivisions and segregation of interests. (1) **Introduction.** This rule explains when the assessor must begin the listing and valuation of property in the county. It also provides information relating to the listing and valuation of subdivisions of real property. Finally, this rule explains when a person will be

allowed to pay property taxes on their partial interest in a parcel of real property.

(2) **Listing of property.** The assessor must begin the listing and valuation of all property in the county, except new construction and mobile homes not previously assessed in this state, not later than December 1st of each year, and complete the listing and valuation not later than May 31st of the succeeding year. The listing and valuation of new construction and mobile homes not previously assessed in this state must be completed by August 31st of each year.

(3) **Valuation of subdivisions.** The assessor must list and value all subdivisions of real property at one hundred percent of true and fair value as follows:

(a) If an advance tax deposit was paid in accordance with RCW 58.08.040, each lot of a subdivision must be valued by October 30th of the year following the recording of the plat, replat, altered plat, or binding site plan. The value established will be the value of the lot as of January 1st of the year the original parcel was last revalued. Each lot of a subdivision that is valued on or before May 31st, or the closing of the assessment roll, whichever is later, must be placed on the roll for that assessment year. Each lot of a subdivision that is valued after May 31st, or the closing of the assessment roll, whichever is later, must be placed on the roll for the succeeding assessment year; and

(b) If no advance tax deposit was paid, each lot of a subdivision must be valued by the end of the calendar year following the recording of the plat, map, subdivision, or replat. The value established must be the value of the lot as of January 1st of the year the original parcel was last revalued. Each lot of a subdivision that is valued on or before May 31st, or the closing of the assessment roll, whichever is later, must be placed on the roll for that assessment year. Each lot of a subdivision that is valued after May 31st, or the closing of the assessment roll, whichever is later, must be placed on the roll for the succeeding assessment year.

(4) **Petition for payment of taxes on partial interest.** Any person desiring to pay taxes on only their interest in a parcel of real property, whether their interest is a divided interest or an undivided interest, may do so by applying to the assessor of the county where the property is located. The assessor must determine the value of the applicant's interest and certify that value to the county treasurer who will accept payment of taxes for the applicant's interest in the property. No segregation of the property can be made unless all current year and delinquent taxes and assessments on the entire parcel have been paid in full, except for the following situations, in which all current year and delinquent taxes and assessments on the entire parcel need not first be paid in full:

(a) When property is being acquired for public use; and

(b) When a person or financial institution desires to pay the taxes and any penalties and interest on a mobile home upon which they have a lien by mortgage or otherwise.

[Statutory Authority: RCW 84.08.010 and 84.08.070. 03-22-025, § 458-07-035, filed 10/27/03, effective 11/27/03. Statutory Authority: RCW 84.08.070. 00-01-043, § 458-07-035, filed 12/7/99, effective 1/7/00.]

Chapter 458-12 WAC PROPERTY TAX DIVISION—RULES FOR ASSESSORS

WAC

458-12-060	Listing of personal property.
458-12-065	Repealed.
458-12-070	Repealed.
458-12-075	Repealed.
458-12-080	Repealed.
458-12-360	Notice of change in value of real property.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

458-12-065	Listing personal property—Form and notice. [Order PT 68-6, § 458-12-065, filed 4/29/68.] Repealed by 04-01-119, filed 12/17/03, effective 1/17/4. Statutory Authority: RCW 84.08.010 and 84.08.070.
458-12-070	Listing of personalty—When due—Late filing. [Order PT 68-6, § 458-12-070, filed 4/29/68.] Repealed by 04-01-119, filed 12/17/03, effective 1/17/4. Statutory Authority: RCW 84.08.010 and 84.08.070.
458-12-075	Personalty—Filing by corporations, partnerships, firms or agents. [Order PT 68-6, § 458-12-075, filed 4/29/68.] Repealed by 04-01-119, filed 12/17/03, effective 1/17/4. Statutory Authority: RCW 84.08.010 and 84.08.070.
458-12-080	Listing of personalty—Manufacturers. [Order PT 69-1, § 458-12-080, filed 4/14/69; Order 68-6, § 458-12-080, filed 4/29/68.] Repealed by 04-01-119, filed 12/17/03, effective 1/17/4. Statutory Authority: RCW 84.08.010 and 84.08.070.

WAC 458-12-060 Listing of personal property. (1)

Introduction. This rule provides information about the listing of personal property subject to ad valorem taxation. This rule also provides specific information about the listing of personal property by manufacturers. For information about the listing of ships and vessels subject to property taxation, refer to WAC 458-17-101.

(2) **Who is required to list personal property with the county assessor?** Every person is required to list all taxable (i.e., nonexempt) personal property in the person's ownership, possession, or control. RCW 84.40.185 and 84.40.190. Every person required to list personal property must deliver to the county assessor a form listing all of the person's taxable personal property that was located in the county as of 12:00 p.m. on January 1st of the assessment year. The listing may be delivered to the assessor either in person, by mail, or by electronic transmittal (e.g., internet-based application, e-mail, or facsimile) if available. The listing does not need to be signed or verified under penalty of perjury. (Chapter 302, Laws of 2003.)

For purposes of this rule, the term "person" includes natural persons and artificial persons such as partnerships, corporations, limited liability companies, associations, trusts, and estates.

(a) **How should property be identified on the listing form?** Each item of taxable personal property may, but need not, be separately identified on the listing form. At a minimum, however, each category of taxable personal property must be separately identified on the listing form. For example, office equipment must be separately identified as personal computers and peripherals, facsimile machines, copiers, telephone equipment, office furniture, supplies, and the like. RCW 84.08.020 and 84.40.040.

(b) **What other information must be included in the personal property listing?** In addition to a listing of all cat-

egories of taxable personal property, a listing form must also include:

(i) The year of acquisition for each category of personal property; and

(ii) The total original cost of each category of personal property. The value of any trade-in is not to be deducted from the acquisition cost. For purposes of listing taxable personal property, the total original cost includes all costs associated with making the property operational but excludes sales tax. For example, installation, freight, and engineering charges are costs that may be incurred while placing property into operation. RCW 84.08.020 and 84.40.040.

(c) **When are personal property listings due?** RCW 84.40.040 provides that personal property listings are due on or before April 30th. A penalty may be added to the amount of tax assessed if listing is not made by the due date. RCW 84.40.130. Refer to WAC 458-12-110 for detailed information about the penalties imposed under RCW 84.40.130.

(d) **How do the exemptions for household goods, furnishings, and personal effects and for the head of a family affect listing?** RCW 84.36.110 provides exemptions for the head of a family and for household goods, furnishings, and personal effects. Information about these exemptions and their effect on listing is provided in WAC 458-16-115.

(e) **What if the assessor believes that an incomplete or inaccurate listing has been made?** When the assessor believes that an incomplete or inaccurate listing has been made, the assessor has the following options:

(i) If the assessor believes that a person listing personal property for himself or herself, or on behalf of a principal (e.g., any other person, company, or corporation), has not made a full, fair, and complete listing of such property, the assessor may examine the person under oath in regard to the amount of the property the person is required to list. If the person refuses to answer under oath, the assessor may list the property of that person, or of that person's principal, according to the assessor's best judgment and information. RCW 84.40.110. Any oath authorized to be administered under Title 84 RCW may be administered by any assessor or deputy assessor, or by any other officer having authority to administer oaths. Any person willfully making a false list, schedule, or statement under oath is subject to the penalties of perjury. RCW 84.40.120.

(ii) For the purpose of verifying any list, statement, or schedule required to be furnished to the assessor by any taxpayer, any assessor or the assessor's trained and qualified deputy may visit, investigate, and examine any personal property at any reasonable time. For the purposes of this verification, the records, accounts, and inventories, which will aid in determining the amount and valuation of the property, will also be subject to visitation, investigation, and examination. The visitation, investigation, and examination may be performed at any office of the taxpayer in this state. The taxpayer is required to furnish or make available all the information pertaining to property in this state to the assessor even though the records may be maintained at any office outside this state. RCW 84.40.340.

(f) **What if the owner of personal property moves to another county or into this state after January 1st?** The owner of taxable personal property who moves from one county to another between January 1st and July 1st will be

assessed in the county whose assessor first calls upon the owner to make a listing. The owner of personal property who moves into this state from another state between January 1st and July 1st must make a listing of taxable personal property that the person owned on January 1st of the assessment year with the assessor in the county in which the person resides.

If the owner of personal property moves to another county or into this state after January 1st and can satisfy the assessor that the owner's property has been assessed and will be held liable for the tax on the current year in another state or county, the owner cannot be assessed again for the current year. RCW 84.44.080.

(3) **Assessor's duty to maintain list of persons liable to assessment.** Assessors must maintain an alphabetical list of the names and last known addresses of all property owners in the county who are subject to assessment of personal property. On or before January 1st of each year, the assessor is required to mail or electronically transmit (e.g., e-mail) a notice to such persons that a listing is required along with a listing form. The notice and listing form must be in accordance with forms prescribed by the department of revenue. If practicable, the notice and listing form mailed or electronically transmitted to each taxpayer must include a copy of the previous year's listing. RCW 84.40.040. A copy of the taxpayer's previous year's listing must also be provided to the taxpayer upon the taxpayer's request.

(a) **What if I do not receive a listing form from the assessor?** Property owners who are subject to assessment of personal property and any other person required to list personal property are responsible for making a listing regardless of whether or not the person receives a listing form from the assessor.

(b) **What are the assessor's duties upon receipt of a personal property listing?** Upon receipt of a personal property listing, the assessor will determine the true and fair value of the property listed and enter one hundred percent of the true and fair value of the property on the assessment roll opposite the name of the party assessed (i.e., the owner of the property). The assessor may, after giving written notice of the action to the person assessed, add to the assessment list any taxable property that should have been included in the list but was omitted by the taxpayer. RCW 84.40.040.

RCW 84.40.200 requires that a copy of the completed personal property listing containing the assessor's determination of the true and fair value of the property assessed must be provided to the person assessed, or to the person listing the property. The information may be provided in person, by mail, or by electronic transmittal if available.

(4) **Listing of personal property by manufacturers.** This subsection provides specific information about the listing of taxable personal property by manufacturers. A manufacturer must make and deliver to the assessor a personal property listing. The listing is made in the county where the personal property is situated. RCW 84.44.010. The listing must include the manufacturer's stock, engines, machinery, and other nonexempt personal property, together with the year of acquisition and total original cost for each category. Detailed information about the cost of personal property is contained in subsection (2)(b)(ii) of this rule. Manufacturer's stock that constitutes "business inventories," as that term is

defined in RCW 84.36.477, is exempt from ad valorem taxation and need not be included in the personal property listing.

Fixtures considered by the assessor as part of any parcel of real property should not be included in a manufacturer's personal property listing. For detailed information about fixtures or trade fixtures, refer to WAC 458-12-005 and 458-12-010.

(a) **Who is a "manufacturer"?** A "manufacturer" is any person who purchases, receives, or holds personal property of any description for the purpose of adding to the value thereof by any process of manufacturing, refining, rectifying, or by the combination of different materials with the view of making gain or profit by so doing. RCW 84.40.210.

(b) **What is "manufacturer's stock"?** "Manufacturer's stock" includes all articles purchased, received, or otherwise held for the purpose of being used in whole or in part in any process or processes of manufacturing, combining, rectifying, or refining.

(c) **What if property identified on the personal property listing has also been listed and assessed as part of any parcel of real property?** On receipt of the manufacturer's personal property listing, the assessor will delete from the assessment the value of any engines and machinery that the assessor knows to have been assessed as part of any parcel of real property (i.e., as a fixture). A copy of the corrected assessment will be provided to the manufacturer.

[Statutory Authority: RCW 84.08.010 and 84.08.070. 04-01-119, § 458-12-060, filed 12/17/03, effective 1/17/04; Order PT 68-6, § 458-12-060, filed 4/29/68.]

WAC 458-12-065 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-12-070 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-12-075 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-12-080 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-12-360 Notice of change in value of real property. (1) **Introduction.** This rule explains the requirement of county assessors to notify taxpayers of any change in the true and fair value of real property as provided by RCW 84.40.045. The notice of a change in the true and fair value of real property is commonly referred to as a value notice or revaluation notice.

(2) **When must a revaluation notice be provided?** All revaluation notices must be mailed within thirty days of the completed appraisal, except that no revaluation notices can be mailed during the period from January 15th to February 15th of each year. If the true and fair value of the real property appraised has not changed, no revaluation notice need be sent to the taxpayer following the completed appraisal. Also, no notice need be sent with respect to changes in valuation of forest land made under chapter 84.33 RCW.

The following examples identify a number of facts and then state a conclusion. These examples should be used only

as a general guide. The status of each situation must be determined after a review of all of the facts and circumstances.

(a) On January 5th the assessor completes an appraisal of a home and the land upon which it sits. The total value of the land and home increased as a result of the appraisal. The assessor must mail a revaluation notice to the taxpayer by February 16th; however, the assessor is not allowed to mail the revaluation notice between January 15th and February 15th.

(b) The assessor appraises a home and the land upon which it sits. The value of the home decreases, and the value of the land increases; however, the total value of the home and land remain unchanged. The assessor is not required to mail a revaluation notice to the taxpayer. Under RCW 84.40.045, revaluation notices are only required when there is a change in the true and fair value of the real property that is the subject of the appraisal. In this example, although there is a change in the true and fair value of the home and land, there is no overall change in the true and fair value of the real property that was the subject of the appraisal.

(3) **What if an assessor fails to provide a timely revaluation notice?** The failure to provide a timely revaluation notice as required by RCW 84.40.045 does not invalidate the assessment. RCW 84.40.045 does not affect RCW 84.40.020 which provides, in relevant part, that all real property in this state subject to taxation must be listed and assessed every year, at its value on January 1st of the assessment year.

A taxpayer who fails to timely appeal an assessor's determination of value to the county board of equalization (board) because of the assessor's failure to timely provide a revaluation notice may still petition the board for a review of the assessor's determination of value. A board may reconvene on its own authority in certain circumstances as provided in WAC 458-14-127, including upon request of a taxpayer who has not received a timely revaluation notice. Under WAC 458-14-127, the taxpayer must submit to the board a sworn affidavit stating that a revaluation notice for the current assessment year was not received by the taxpayer at least fifteen calendar days prior to the deadline for filing the petition for review of the assessor's determination of value, and the taxpayer can show proof that the value was actually changed. The request to reconvene and the sworn affidavit must be filed with the board by April 30th of the tax year immediately following the board's regularly convened session. (For additional information about appealing an assessor's determination of value to the county board, refer to chapter 458-14 WAC.)

(4) **Who is entitled to receive a revaluation notice?** The assessor is required by law to mail revaluation notices to the taxpayer. RCW 84.40.045. For purposes of this rule, "taxpayer" means the person charged, or whose property is charged, with property tax and whose name appears on the most recent tax roll or has been otherwise provided to the assessor.

If any taxpayer, as shown by the tax rolls, holds only a security interest under a mortgage, contract of sale, or deed of trust in the real property that is the subject of the revaluation notice, the taxpayer is required to supply, within thirty days of receiving a written request from the assessor, the name and address of the person making payments under the mortgage, contract of sale, or deed of trust. The assessor must mail a

copy of the revaluation notice to the person making payments under the mortgage, contract of sale, or deed of trust at the address provided by the taxpayer. The assessor is required to make the request provided for in this subsection during the month of January. A taxpayer who willfully fails to comply with such a request from the assessor within the thirty-day time limitation is subject to a maximum civil penalty of five thousand dollars. The civil penalty is recoverable in an action by the county prosecutor and, when recovered, must be deposited in the county current expense fund.

(5) What information must a revaluation notice contain? A revaluation notice must contain the following information:

- (a) The name and address of the taxpayer;
- (b) A description of the real property that is the subject of the revaluation notice;
- (c) The previous and new true and fair values, stating separately land and improvement values;
- (d) A statement that the assessed value is one hundred percent of the true and fair value;
- (e) If the property is classified on the basis of its current use, the previous and new current use value of the property, stating separately land and improvement values;
- (f) A statement informing taxpayers that if they would like to learn more about how their property was valued for tax purposes and how their property taxes will be determined, they may obtain an information pamphlet describing the property tax system from the assessor's office free of charge;
- (g) A statement that land used for farm and agricultural purposes, to preserve open space, or for the commercial growth and harvesting of forest crops may be eligible for assessment based on the land's current use rather than its highest and best use. This statement must also provide information on the method of making application and availability of further information on current use classification;
- (h) A statement informing taxpayers that if they own and live in a residence in the county, including a mobile home, are now or will be sixty-one years of age by December 31st of the current year, or are retired because of physical disability, and if their combined disposable income is under the limits provided in RCW 84.36.381, they may be eligible to receive a property tax exemption. Although not statutorily required, it is suggested that a revaluation notice contain a statement informing taxpayers that if they are a senior citizen or a disabled person, they may be able to defer payment of their property taxes. This statement should include information about how further information about property tax deferrals for senior citizens and disabled persons may be obtained; and
- (i) A brief statement of the procedure for appeal to the county board of equalization and the time, date, and place of the meetings of the board. The following language is suggested: "You may appeal either the true and fair value and/or current use assessed value to the county board of equalization. An appeal petition may be obtained from the board of equalization. Petitions for a hearing must be filed with the board of equalization on or before July 1st of the assessment year, or within (number of days) of the date of the revaluation notice, whichever is later. Petitions received after those dates will be denied on the grounds of not having been timely filed. The board of equalization will convene on July 15th in the

(name of office) at (name of city or town), Washington, and will continue in session for a period not to exceed four weeks. The board of equalization is to review and equalize the assessments of the current year for taxes payable the following year."

[Statutory Authority: RCW 84.08.010 and 84.08.070. 03-18-037, § 458-12-360, filed 8/26/03, effective 9/26/03; Order PT 68-6, § 458-12-360, filed 4/29/68.]

Chapter 458-16 WAC PROPERTY TAX—EXEMPTIONS

WAC

458-16-010	Repealed.
458-16-011	Repealed.
458-16-012	Repealed.
458-16-013	Repealed.
458-16-020	Repealed.
458-16-022	Repealed.
458-16-030	Repealed.
458-16-040	Repealed.
458-16-060	Repealed.
458-16-070	Repealed.
458-16-079	Repealed.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

458-16-010	Senior citizen and disabled persons exemption—Definitions. [Statutory Authority: RCW 84.36.389 and 84.36.865. 83-19-029 (Order PT 83-5), § 458-16-010, filed 9/14/83. Statutory Authority: RCW 84.36.389. 81-05-018 (Order PT 81-6), § 458-16-010, filed 2/11/81; Order PT 76-1, § 458-16-010, filed 4/7/76; Order PT 74-6, § 458-16-010, filed 9/11/74.] Repealed by 03-09-002, filed 4/2/03, effective 5/3/03. Statutory Authority: RCW 84.36.383, 84.36.389, and 84.36.865. Later promulgation, see chapter 458-16A WAC.
458-16-011	Senior citizen and disabled persons exemption—Gross income. [Statutory Authority: RCW 84.36.389. 81-05-018 (Order PT 81-6), § 458-16-011, filed 2/11/81.] Repealed by 03-09-002, filed 4/2/03, effective 5/3/03. Statutory Authority: RCW 84.36.383, 84.36.389, and 84.36.865. Later promulgation, see chapter 458-16A WAC.
458-16-012	Senior citizens and disabled persons exemption—Adjusted gross income. [Statutory Authority: RCW 84.36.389. 81-05-018 (Order PT 81-6), § 458-16-012, filed 2/11/81.] Repealed by 03-09-002, filed 4/2/03, effective 5/3/03. Statutory Authority: RCW 84.36.383, 84.36.389, and 84.36.865. Later promulgation, see chapter 458-16A WAC.
458-16-013	Senior citizens and disabled persons exemption—Disposable income. [Statutory Authority: RCW 84.36.389 and 84.36.865. 92-15-058, § 458-16-013, filed 7/13/92, effective 8/13/92; 83-19-029 (Order PT 83-5), § 458-16-013, filed 9/14/83. Statutory Authority: RCW 84.36.389. 81-05-018 (Order PT 81-6), § 458-16-013, filed 2/11/81.] Repealed by 03-09-002, filed 4/2/03, effective 5/3/03. Statutory Authority: RCW 84.36.383, 84.36.389, and 84.36.865. Later promulgation, see chapter 458-16A WAC.
458-16-020	Senior citizen and disabled persons exemption—Qualifications for exemption. [Statutory Authority: RCW 84.36.389 and 84.36.865. 92-15-058, § 458-16-020, filed 7/13/92, effective 8/13/92; 83-19-029 (Order PT 83-5), § 458-16-020, filed 9/14/83. Statutory Authority: RCW 84.36.389. 81-05-018 (Order PT 81-6), § 458-16-020, filed 2/11/81; Order PT 74-6, § 458-16-020, filed 9/11/74.] Repealed by 03-09-002, filed 4/2/03, effective 5/3/03. Statutory Authority: RCW 84.36.383, 84.36.389, and 84.36.865. Later promulgation, see chapter 458-16A WAC.
458-16-022	Senior citizen and disabled persons exemption—Qualifications for cooperative housing. [Order PT 76-1, § 458-16-022, filed 4/7/76.] Repealed by 03-09-002, filed 4/2/03, effective 5/3/03. Statutory Authority: RCW 84.36.383, 84.36.389, and 84.36.865. Later promulgation, see chapter 458-16A WAC.

- 458-16-030 Senior citizen and disabled persons exemption—Claims. [Statutory Authority: RCW 84.36.389 and 84.36.865, 88-13-041 (Order PT 88-8), § 458-16-030, filed 6/9/88; 83-19-029 (Order PT 83-5), § 458-16-030, filed 9/14/83; Order PT 74-6, § 458-16-030, filed 9/11/74.] Repealed by 03-09-002, filed 4/2/03, effective 5/3/03. Statutory Authority: RCW 84.36.383, 84.36.389, and 84.36.865. Later promulgation, see chapter 458-16A WAC.
- 458-16-040 Senior citizen and disabled persons exemption—Denial—Appeal—Penalty—Perjury. [Order PT 74-6, § 458-16-040, filed 9/11/74.] Repealed by 03-09-002, filed 4/2/03, effective 5/3/03. Statutory Authority: RCW 84.36.383, 84.36.389, and 84.36.865. Later promulgation, see chapter 458-16A WAC.
- 458-16-060 Senior citizen and disabled persons exemption—Transfer of exemption. [Statutory Authority: RCW 84.36.389, 81-05-018 (Order PT 81-6), § 458-16-060, filed 2/11/81; Order PT 74-6, § 458-16-060, filed 9/11/74.] Repealed by 03-09-002, filed 4/2/03, effective 5/3/03. Statutory Authority: RCW 84.36.383, 84.36.389, and 84.36.865. Later promulgation, see chapter 458-16A WAC.
- 458-16-070 Senior citizen and disabled persons exemption—Cancellation. [Statutory Authority: RCW 84.36.389, 81-05-018 (Order PT 81-6), § 458-16-070, filed 2/11/81; Order PT 74-6, § 458-16-070, filed 9/11/74.] Repealed by 03-09-002, filed 4/2/03, effective 5/3/03. Statutory Authority: RCW 84.36.383, 84.36.389, and 84.36.865. Later promulgation, see chapter 458-16A WAC.
- 458-16-079 Senior citizen and disabled persons exemption—Refunds—Late filings. [Statutory Authority: RCW 84.36.389, 81-05-018 (Order PT 81-6), § 458-16-079, filed 2/11/81.] Repealed by 03-09-002, filed 4/2/03, effective 5/3/03. Statutory Authority: RCW 84.36.383, 84.36.389, and 84.36.865. Later promulgation, see chapter 458-16A WAC.

WAC 458-16-010 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-16-011 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-16-012 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-16-013 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-16-020 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-16-022 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-16-030 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-16-040 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-16-060 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-16-070 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-16-079 Repealed. See Disposition Table at beginning of this chapter.

Chapter 458-16A WAC

PROPERTY TAX—EXEMPTIONS—HOMES FOR THE AGING, SENIOR CITIZENS AND DISABLED PERSONS

WAC

- 458-16A-100 Senior citizen and disabled person exemption—Definitions.
- 458-16A-110 Senior citizen and disabled person exemption—Gross income.
- 458-16A-115 Senior citizen and disabled person exemption—Adjusted gross income.
- 458-16A-120 Senior citizen and disabled person exemption—Determining combined disposable income.
- 458-16A-130 Senior citizen and disabled person exemption—Qualifications for exemption.
- 458-16A-135 Senior citizen and disabled person exemption—Application procedures.
- 458-16A-140 Senior citizen and disabled person exemption—Exemption described—Exemption granted—Exemption denied—Freezing property values.
- 458-16A-150 Senior citizen and disabled person exemption—Requirements for keeping the exemption.

WAC 458-16A-100 Senior citizen and disabled person exemption—Definitions. (1) **Introduction.** This rule contains definitions of the terms used for the senior citizen and disabled person exemption from property taxes. The definitions apply to the senior citizen and disabled person exemption contained in sections RCW 84.36.381 through 84.36.389 unless the context clearly requires otherwise.

(2) **Annuity.** "Annuity" means a series of payments under a contract. Annuity contracts pay a fixed sum of money at regular intervals for more than one full year. An annuity may be paid as the proceeds of a life insurance contract (other than as a lump sum payment), unemployment compensation, disability payments, or even welfare receipts. It does not include payments for the care of dependent children.

(3) **Assessment year.** "Assessment year" means the year when the assessor lists and values the principal residence for property taxes. The assessment year is the calendar year prior to the year the taxes become due and payable. It is always the year before the claimant receives a reduction in his or her property taxes because of the senior citizen and disabled person exemption.

(4) **Capital gain.** "Capital gain" means the amount the seller receives for property (other than inventory) over that seller's adjusted basis in the property. The seller's initial basis in the property is the property's cost plus taxes, freight charges, and installation fees. In determining the capital gain, the seller's costs of transferring the property to a new owner are also added onto the adjusted basis of the property. If the property is acquired in some other manner than by purchase, the seller's initial basis in the property is determined by the way the seller received the property (e.g., property exchange, payment for services, gift, or inheritance). The seller adjusts (increases and decreases) the initial basis of the property for events occurring between the time the property is acquired and when it is sold (e.g., increased by the cost of improvements made later to the property).

(5) **Claimant.** "Claimant" means a person claiming the senior citizen and disabled person exemption by filing an application with the county assessor in the county where the property is located.

(6) **Combined disposable income.** "Combined disposable income" means the annual disposable income of the

claimant, the claimant's spouse, and any cotenant reduced by amounts paid by the claimant or the claimant's spouse for their:

- (a) Legally prescribed drugs;
- (b) Home health care; and
- (c) Nursing home expenses.

Disposable income is not reduced by these amounts if payments are reimbursed by insurance or a government program (e.g., Medicare or Medicaid). When the application is made, the combined disposable income is calculated for the assessment year.

(7) **Cotenant.** "Cotenant" means a person who resides with the claimant and who has an ownership interest in the residence.

(8) **Department.** "Department" means the state department of revenue.

(9) **Depreciation.** "Depreciation" means the annual deduction allowed to recover the cost of business or investment property having a useful life of more than one year. In limited circumstances, this cost, or a part of this cost, may be taken as a section 179 expense on the federal income tax return in the year business property is purchased.

(10) **Disposable income.** "Disposable income" means the adjusted gross income as defined in the Federal Internal Revenue Code of 2001, and as amended after that date, plus all the other items described below to the extent they are not included in or have been deducted from adjusted gross income. (RCW 84.36.383)

(a) Capital gains, other than gain excluded from the sale of a principal residence that is reinvested prior to the sale or within the same calendar year in a different principal residence;

- (b) Losses. Amounts deducted for loss;
- (c) Depreciation. Amounts deducted for depreciation;
- (d) Pension and annuity receipts;

(e) Military pay and benefits other than attendant-care and medical-aid payments. Attendant-care and medical-aid payments are any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the military;

(f) Veterans benefits other than attendant-care and medical-aid payments. Attendant-care and medical-aid payments are any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the Department of Veterans Affairs (VA);

(g) Federal Social Security Act and railroad retirement benefits;

(h) Dividend receipts;

(i) Interest received on state and municipal bonds.

(11) **Excess levies.** "Excess levies" means voter-approved levies by taxing districts, other than port or public utility districts, of additional taxes in excess of the statutory aggregate dollar rate limit, the statutory dollar rate limit, or the constitutional one percent levy limit. It does not include regular levies allowed to exceed a statutory limit with voter approval or voted regular levies.

(12) **Excluded military pay or benefits.** "Excluded military pay or benefits" means military pay or benefits excluded from a person's federal gross income, other than those amounts excluded from that person's federal gross income for attendant-care and medical-aid payments. Mem-

bers of the armed forces receive many different types of pay and allowances. Some payments or allowances are included in their gross income for the federal income tax while others are excluded from their gross income. Excluded military pay or benefits include:

(a) Compensation for active service while in a combat zone or a qualified hazardous duty area;

(b) Death allowances for burial services, gratuity payment to a survivor, or travel of dependents to the burial site;

(c) Moving allowances;

(d) Travel allowances;

(e) Uniform allowances;

(f) Group term life insurance payments made by the military on behalf of the claimant, the claimant's spouse, or the cotenant; and

(g) Survivor and retirement protection plan premiums paid by the military on behalf of the claimant, the claimant's spouse, or the cotenant.

(13) **Family dwelling unit.** "Family dwelling unit" means the dwelling unit occupied by a single person, any number of related persons, or a group not exceeding a total of eight related and unrelated nontransient persons living as a single noncommercial housekeeping unit. The term does not include a boarding or rooming house.

(14) **Home health care.** "Home health care" means the treatment or care of either the claimant or the claimant's spouse received in the home. It must be similar to the type of care provided in the normal course of treatment or care in a nursing home, although the person providing the home health care services need not be specially licensed. The treatment and care must meet at least one of the following criteria. It must be for:

(a) Medical treatment or care received in the home;

(b) Physical therapy received in the home;

(c) Food, oxygen, lawful substances taken internally or applied externally, necessary medical supplies, or special needs furniture or equipment (such as wheel chairs, hospital beds, or therapy equipment), brought into the home as part of a necessary or appropriate in-home service that is being rendered (such as a meals on wheels type program); or

(d) Attendant care to assist the claimant, or the claimant's spouse, with household tasks, and such personal care tasks as meal preparation, eating, dressing, personal hygiene, specialized body care, transfer, positioning, ambulation, bathing, toileting, self-medication a person provides for himself or herself, or such other tasks as may be necessary to maintain a person in his or her own home, but shall not include improvements or repair of the home itself.

(15) **Lease for life.** "Lease for life" means a lease that terminates upon the demise of the lessee.

(16) **Legally prescribed drugs.** "Legally prescribed drugs" means drugs supplied by prescription of a medical practitioner authorized to issue prescriptions by the laws of this state or another jurisdiction.

(17) **Life estate.** "Life estate" means an estate whose duration is limited to the life of the party holding it or of some other person.

(a) Reservation of a life estate upon a principal residence placed in trust or transferred to another is a life estate.

(b) Beneficial interest in a trust is considered a life estate for the settlor of a revocable or irrevocable trust who grants to

himself or herself the beneficial interest directly in his or her principal residence, or the part of the trust containing his or her personal residence, for at least the period of his or her life.

(c) Beneficial interest in an irrevocable trust is considered a life estate, or a lease for life, for the beneficiary who is granted the beneficial interest representing his or her principal residence held in an irrevocable trust, if the beneficial interest is granted under the trust instrument for a period that is not less than the beneficiary's life.

(18) **Owned.** "Owned" includes "contract purchase" as well as "in fee," a "life estate," and any "lease for life." A residence owned by a marital community or owned by cotenants is deemed to be owned by each spouse or cotenant.

(19) **Ownership by a marital community.** "Ownership by a marital community" means property owned in common by both spouses. Property held in separate ownership by one spouse is not owned by the marital community. The person claiming the exemption must own the property for which the exemption is claimed. Example: A person qualifying for the exemption by virtue of age or disability cannot claim exemption on a residence owned by the person's spouse as a separate estate outside the marital community unless the claimant has a life estate therein.

(20) **Pension.** "Pension" means an agreement to provide for payments, not wages, to a person (or to that person's family) who has fulfilled certain conditions of service or reached a certain age. A pension may allow payment of all or a part of the entire pension benefit, in lieu of regular periodic payments.

(21) **Physical disability.** "Physical disability" means the condition of being disabled, resulting in the inability to pursue an occupation because of physical or mental impairment.

(22) **Principal residence.** "Principal residence" means the claimant owns and occupies the residence as his or her principal or main residence. It does not include a residence used merely as a vacation home. For purposes of this exemption:

(a) Principal or main residence means the claimant occupies the residence for more than six months each year.

(b) Confinement of the claimant to a hospital or nursing home does not disqualify the claim for exemption if:

(i) The residence is temporarily unoccupied;

(ii) The residence is occupied by the claimant's spouse or a person financially dependent on the claimant for support;

(iii) The residence is occupied by a caretaker who is not paid for watching the house;

(iv) The residence is rented for the purpose of paying nursing home or hospital costs.

(23) **Regular gainful employment.** "Regular gainful employment" means consistent or habitual labor or service which results in an increase in wealth or earnings.

(24) **Replacement residence.** "Replacement residence" means a residence that qualifies for the senior citizen and disabled person exemption and replaces the prior residence of the senior citizen or disabled person receiving the exemption.

(25) **Residence.** "Residence" means a single-family dwelling unit whether such unit be separate or part of a multiunit dwelling and includes up to one acre of the parcel of land on which the dwelling stands. The term also includes:

(a) A share ownership in a cooperative housing association, corporation, or partnership if the person claiming

exemption can establish that his or her share represents the specific unit or portion of such structure in which he or she resides.

(b) A single-family dwelling situated upon leased lands and upon lands the fee of which is vested in the United States, any instrumentality thereof including an Indian tribe, the state of Washington, or its political subdivisions.

(c) A mobile home which has substantially lost its identity as a mobile unit by being fixed in location upon land owned or rented by the owner of said mobile home and placed on a foundation, posts, or blocks with fixed pipe connections for sewer, water or other utilities even though it may be listed and assessed by the county assessor as personal property. It includes up to one acre of the parcel of land on which a mobile home is located if both the land and mobile home are owned by the same qualified claimant.

(26) **Veterans benefits.** "Veterans benefits" means benefits paid or provided under any law, regulation, or administrative practice administered by the VA. Federal law excludes from gross income any veterans' benefits payments, paid under any law, regulation, or administrative practice administered by the VA.

[Statutory Authority: RCW 84.36.383, 84.36.389, and 84.36.865. 03-09-002, § 458-16A-100, filed 4/2/03, effective 5/3/03.]

WAC 458-16A-110 Senior citizen and disabled person exemption—Gross income. (1) **Introduction.** This rule explains the definition of gross income used for federal income tax. In order to meet the income requirements for the senior citizen and disabled person exemption program, the claimant must provide supporting documents verifying combined disposable income. The gross income for federal income tax purposes of the claimant, the claimant's spouse, and any cotenants represents a part of the claimant's combined disposable income.

(a) **Income tax return.** In most cases, the claimant presents copies of federal income tax returns to demonstrate both gross income and adjusted gross income amount(s) for the claimant, the claimant's spouse, and any cotenants. The assessor then determines the disposable income for each person based upon that person's income tax return and the other information supplied by the claimant.

(b) **No income tax return.** When the claimant does not present federal income tax returns, the assessor must determine what constitutes gross income for the nonfiler and obtain copies of income documents to determine that person's gross income. This rule provides the assessor with some guidance in determining the gross income for a nonfiler.

(c) **Verifying the gross income amount.** In some cases, the assessor may choose to verify income amount(s). The rule provides the assessor some guidance in verifying all or part of the gross income for the claimant, the claimant's spouse, or any of the cotenants.

(2) **Gross income determined.** Internal Revenue Code section 61 defines "gross income," generally, as all income from whatever source derived. WAC 458-16A-135 lists the documentation used to determine the income of the claimant.

(3) **Exclusions from the federal definition of gross income.** A claimant may provide documentation or information about amounts received during the year that are excluded from gross income. These amounts should not be taken into

account when determining gross income. The federal definition of gross income, generally, does not include:

(a) Gifts, inheritance amounts, or life insurance proceeds;

(b) Up to two hundred fifty thousand dollars (five hundred thousand dollars for a married couple) gain from the sale of a principal residence that meets the requirements of Internal Revenue Code section 121, see also WAC 458-16A-100 (definition of disposable income);

(c) Amounts received for illness or injury when received from workmen's compensation, a legal settlement, a legal judgment, a Medicare+Choice MSA, a federal employer under the federal Employees Compensation Act, accident insurance, or health insurance. If the amount received is from an employer directly for illness or injury or from employer-provided accident or health insurance, the amount is excluded only if it is paid to reimburse medical expenses, for the loss of limb, or for permanent disfigurement to the employee, the employee's spouse, or the employee's dependents;

(d) Contributions or payments made by an employer to accident and health plans, the employer's qualified transportation plan, a cafeteria plan, a dependent care assistance program, educational assistance programs, or for certain fringe benefits for employees described by Internal Revenue Code section 132. If the claimant earns wages as an employee, he or she should receive a W-2 form from the employer reporting those wages. This W-2 form should have already excluded the described contributions or payments provided for the employee's benefit in the above list. If a question arises about whether or not an employer adjusted the employee's gross income for these exclusions, the claimant should contact their employer and have the employer provide the county with a correct or corrected copy of the W-2 form to verify the correct wages paid to the employee;

(e) Income from discharge of indebtedness under certain limited circumstances, such as insolvency. These circumstances are outlined in Internal Revenue Code section 108;

(f) Improvements by a lessee left upon the lessor's property at the termination of a lease;

(g) Recovery of an amount deducted in a prior tax year that did not reduce federal income taxes paid in that prior year. For example, a person that itemized deductions may get a refund of property taxes or a stolen uninsured item will be returned. This refund or recovery is included in income unless the deduction did not result in a reduction of tax. It may not result in a reduction of tax because the person had to pay alternative minimum tax or taking away that deduction drops that person below the standard deduction amount. When the deduction did not reduce taxes, the recovery amount that did not reduce taxes is excluded. The assessor may request the claimant excluding such a recovery to present prior returns and worksheets such as the worksheets provided in Publication 525, *Taxable and Nontaxable Income*, to demonstrate how the exclusion was calculated;

(h) Qualified scholarships and fellowship grants provided for certain educational expenses (e.g., tuition and books). Internal Revenue Code section 117 provides a complete description of qualified scholarship and fellowship grant amounts excluded from gross income;

(i) Meals or lodging furnished to an employee for the convenience of the employer;

(j) Excluded military pay and benefits. These exclusions are defined in WAC 458-16A-100. A discussion of how to determine and calculate these benefits is found in WAC 458-16A-120;

(k) Amounts received under insurance contracts for certain living expenses: As a general rule, when an individual's principal residence is damaged or destroyed by fire, storm, or other casualty, or who is denied access to his principal residence by governmental authorities because of the occurrence or the threat of such a casualty, gross income does not include amounts received by such individual under an insurance contract which are paid to compensate or reimburse such individual for living expenses incurred for himself and members of his household resulting from the loss of use or occupancy of such residence;

(l) Certain cost-sharing payments made for conservation purposes on land owned by the claimant: Payments received from federal or state funds primarily to conserve soil, protect or restore the environment, improve forests, or provide a habitat for wildlife are excluded from gross income. In addition, the claimant may exclude energy conservation subsidies provided by public utilities from gross income. If the claimant indicates that he or she has received payments from the government or had improvements made to his or her residence or land by the government for conservation purposes, the assessor may ask for verification of the amount excluded (if any) from gross income and the information received by the claimant supporting this exclusion. See Internal Revenue Code sections 126 and 136;

(m) Child support payments;

(n) Qualified foster care payments made from the government or a qualified nonprofit to a foster parent or guardian. See Internal Revenue Code section 131;

(o) Income from United States savings bonds used to pay higher education tuition and fees. See Internal Revenue Code section 135;

(p) Distributions from a qualified state tuition program or a Coverdell Education Savings Account used to pay for higher education expenses. Distributions from a Coverdell Education Savings Account used to pay for elementary or secondary education expenses. See Internal Revenue Code sections 529 and 530.

[Statutory Authority: RCW 84.36.383, 84.36.389, and 84.36.865. 03-09-002, § 458-16A-110, filed 4/2/03, effective 5/3/03.]

WAC 458-16A-115 Senior citizen and disabled person exemption—Adjusted gross income. (1) Introduction. This rule explains how an assessor determines the adjusted gross income for the claimant, the claimant's spouse, and any cotenants. In order to meet the income requirements for the senior citizen and disabled person exemption program, the claimant must provide supporting documents verifying combined disposable income. The adjusted gross income for federal income tax purposes of the claimant, the claimant's spouse, and any cotenants represents a part of the claimant's combined disposable income.

(a) **Income tax return.** In most cases, the claimant presents copies of federal income tax returns to demonstrate adjusted gross income amount(s) for the claimant, the claimant's spouse, and any cotenants. The assessor then determines the disposable income for each person based upon that per-

son's income tax return and other information supplied by the claimant.

(b) **No income tax return.** When the claimant does not present federal income tax return(s), the assessor must determine what constitutes the gross income and the adjusted gross income of the nonfiler and obtain copies of income documents to determine that person's income amounts. This rule provides the assessor with some guidance in determining the adjusted gross income for a nonfiler.

(c) **Verifying the adjusted gross income amount.** In some cases, the assessor may choose to verify income amount(s). The rule provides the assessor some guidance in verifying all or part of the adjusted gross income for the claimant, the claimant's spouse, or any of the cotenants.

(2) **Adjusted gross income.** Internal Revenue Code section 62 defines "adjusted gross income" as gross income minus the following deductions:

(a) **Trade and business deductions.** Business owners may deduct from gross income trade or business expenses. If the claimant submits a copy of a Form 1040 federal income tax return, these deductions will be taken on the Schedule C, the Schedule C-EZ, or, for a farm, the Schedule F. If the business owned is a partnership, limited partnership, S Corporation, or Limited Liability Company (LLC), the deduction is taken on the return submitted by the partnership, limited partnership, S Corporation, or LLC (Tax Return Forms 1065 and 1120S) and passed through to the individual on a Schedule K-1. A claimant or cotenant that does not file a federal income tax return, but claims to have trade or business deductions should provide documentation of income and expenses from the business to allow the assessor to determine the amount of trade or business expenses to be deducted.

(b) **Unreimbursed expenses paid or incurred by an elementary or secondary school teacher for educational materials and equipment, an employee who is a qualified performing artist, or a state or local government official paid on a fee basis.** From 2002 until 2010, an elementary or secondary school teacher may deduct from gross income up to two hundred fifty dollars of unreimbursed amounts that the teacher pays for educational materials and equipment used in the teacher's classroom. A teacher may take this deduction on a Form 1040 or a 1040A. A qualified performing artist, defined by Internal Revenue Code section 62(b), or a state or local government official paid on a fee basis may deduct from gross income any unreimbursed trade or business expenses incurred for that employer as an employee. If the claimant submits a copy of a Form 1040 federal income tax return, the deduction will be taken on the dotted line before the final line for determining adjusted gross income with a designation of "QPA" or "FBO." A claimant or cotenant that does not file a tax return, but claims to have unreimbursed expenses for this deduction, should provide documentation to demonstrate his or her status as an elementary or secondary school teacher, a qualified performing artist, or a government employee paid on a fee basis and documentation of the unreimbursed educational materials and equipment or trade or business amounts spent as an employee for his or her employer.

(c) **Losses from sale or exchange of property.** A property owner may deduct from gross income losses from the sale or exchange of property for federal income tax purposes. If the claimant submits a copy of a Form 1040 federal income

tax return, the deduction is generally determined on a Schedule D. For purposes of this program, losses cannot be deducted from income. Any losses taken must be added onto adjusted gross income. An assessor may refuse documentation of losses from a claimant or cotenant that does not file a tax return as these losses do not result in any change to the claimant's final combined disposable income.

(d) **Deductions attributable to rents and royalties.** A property owner may deduct from gross income expenses attributable to property held for the production of rents and royalties. If the claimant submits a copy of a Form 1040 federal income tax return, the deductions are determined on a Schedule E. A claimant or cotenant that does not file a tax return, but claims to have expenses from rental property or licensed property, should provide documentation of these expenses.

(e) **Certain deductions of life tenants and income beneficiaries of property.** A life tenant or income beneficiary of a trust or estate may deduct from gross income for federal income tax purposes depreciation or depletion expenses related to the business or rental property in which he or she has a life estate or when the property is owned by a trust or estate, if he or she has a beneficial interest in the property. If the claimant submits a copy of a Form 1040 federal income tax return, these deductions are shown on Schedule E. A claimant or cotenant with a beneficial interest in business property owned by a trust or estate would show the depreciation or depletion deduction on the Schedule K-1 from that trust or estate. An assessor may refuse documentation of depreciation or depletion on property from a claimant or cotenant that does not file a tax return as these expenses do not result in any change to the claimant's final combined disposable income.

(f) **Pension, profit-sharing, annuity, and annuity plans of self-employed individuals.** A self-employed person may deduct from gross income contributions to a SEP, SIMPLE, or other qualified plan. These deductions are claimed on the Form 1040 federal income tax return. A self-employed claimant or cotenant that does not file a tax return, but claims this deduction, should provide documentation of the contributions made to a qualified plan by his or her business.

(g) **Self-employed health insurance deduction.** As part of his or her trade and business expenses, a self-employed person may deduct from gross income part (and after 2002, all) of the business's payments for his or her health insurance. This deduction is claimed on the Form 1040 federal income tax return. A self-employed claimant or cotenant that does not file a tax return, but claims this deduction, should provide documentation of the payments made for his or her health insurance by his or her business. The assessor may request the claimant to submit a copy of the deduction worksheet provided in the instructions for Form 1040 to calculate this deduction whether or not the self-employed person filed a tax return.

(h) **One-half of self-employment tax.** As part of his or her trade or business expenses, a self-employed person may deduct from gross income one-half of the self-employment tax paid to the federal government determined on a Schedule SE. This deduction is claimed on the Form 1040 federal income tax return. A self-employed person that has not filed

a return, may not claim this deduction as the self-employment tax is reported and paid with that return.

(i) **Retirement savings.** A person may deduct from gross income qualifying contributions (up to three thousand five hundred dollars) made to an individual retirement account (IRA). This deduction may be claimed on either the Form 1040 or Form 1040A federal income tax return. A claimant or cotenant that does not file a tax return, but claims to have made qualifying contributions to an IRA, should provide documentation of these contributions. The assessor may request the claimant to submit a copy of the IRA deduction worksheet provided in the instructions for Form 1040 and Form 1040A to calculate this deduction whether or not the person filed a tax return.

(j) **Penalties on early withdrawal of savings.** A person may deduct from gross income for purposes of federal income tax penalties paid because of an early withdrawal of savings. This deduction is claimed on the Form 1040 federal income tax return. The IRS classifies these penalties as losses. For purposes of this program, losses may not be deducted from income. Any deduction taken on this line must be added to adjusted gross income. An assessor may refuse documentation about these penalties from a claimant or cotenant that does not file a tax return as these losses do not result in any change to the claimant's final combined disposable income.

(k) **Alimony.** A person may deduct from gross income alimony paid in cash to a previous spouse. This deduction is claimed on the Form 1040 federal income tax return. A person that does not file a tax return, but made alimony payments, should provide copies of documentation showing alimony payments were made in cash to a prior spouse. The documents should include a copy of the divorce or separation instrument providing for the alimony payments and the amount of the alimony payments made during the year.

(l) **Reforestation costs.** A landowner may deduct from gross income for purposes of federal income tax the amortized reforestation costs for qualified timber property over a period of eighty-four months. If the property is held as business property, the deduction will appear with the trade and business expenses. If the property is not held as business property and the claimant submits a copy of a Form 1040 federal income tax return, this deduction is claimed on the dotted line before the final line for determining adjusted gross income on the Form 1040 federal income tax return and identified as "RFST." An assessor may refuse documentation of the amortization of reforestation costs from a claimant or cotenant that does not file a tax return as these amortized costs are depreciation expenses. These expenses would be added onto adjusted gross income for purposes of this program and do not result in any change to the claimant's final combined disposable income.

(m) **Required repayment of supplemental unemployment compensation.** A person may deduct from gross income required repayments of supplemental unemployment compensation benefits. If the claimant submits a Form 1040 federal income tax return, the deduction may show on the return in one of two ways. If the repayment is made in the same year the benefits are received, the taxpayer reduces the total unemployment compensation reported on the return by the amount of repayment. If the repayment is made in a later

year, the taxpayer deducts the repayment on the dotted line before the final line for determining adjusted gross income on the return and identifies it as "Sub-Pay TRA." A person that does not file a tax return, but claims to have repaid supplemental unemployment compensation, should provide documentation of these repayments.

(n) **Jury duty pay given to employer.** An employee may deduct from gross income jury duty pay given to his or her employer. An employee deducts the jury pay given to the employer on the dotted line before the final line for determining adjusted gross income on the Form 1040 federal income tax return and identifies it as "Jury Pay." A person that does not file a tax return, but claims to have given jury pay received during the year to their employer, should provide documentation of the amount of jury pay given over to the employer.

(o) **Clean-fuel vehicles and certain refueling property.** A person may deduct from gross income a portion of the cost for a qualified clean-fuel vehicle and certain refueling property until the end of calendar year 2004. This deduction may show on the Form 1040 federal income tax return in one of two ways. If the property is held as business property, the deduction will appear with the trade and business expenses. If a clean-fuel vehicle is not held as business property, or is claimed by an employee who used it in whole or part for business, this deduction is claimed on the dotted line before the final line for determining adjusted gross income on the return and identified as "Clean Fuel." A purchaser that does not file a tax return, but purchased clean-fuel property, should provide documentation about the qualifying clean-fuel vehicle or the refueling property, the amount paid for the clean-fuel property, and a calculation of the deduction amount allowed.

(p) **Unreimbursed moving expenses.** If the claimant or cotenant had to move a significant distance for a job or business, he or she may deduct from gross income the unreimbursed moving costs. This deduction is claimed on the Form 1040 federal income tax return. If the claimant or cotenant does not file a tax return, the claimant should provide documentation of the distance moved, the reason for the move, and the moving expenses. The assessor may ask the claimant to submit a copy of Form 3903, Moving Expenses, and the distance test worksheet on that form to prove the amount of his or her adjusted gross income whether or not the claimant or cotenant filed a federal income tax return.

(q) **Archer MSAs (medical savings accounts).** A person may deduct from gross income a qualifying contribution to an Archer MSA. An MSA is an account set up exclusively for paying the qualified medical expenses of the account holder or the account holder's spouse or dependent(s) in conjunction with a high deductible health plan (HDHP). To be eligible for an MSA, the person must work as an employee for a small employer or be self-employed. The person must also have an HDHP, and have no other health insurance coverage except permitted coverage. The calculation of the deduction is performed on a Form 8853. This deduction is claimed on the Form 1040 federal income tax return. If the person does not file a tax return, but claims to have made a qualifying contribution to an Archer MSA, the claimant should provide copies of documentation as to that person's qualifications for the deduction and how the deduction was

calculated. If this deduction is claimed, the assessor may ask the claimant to submit a copy of Form 8853, Archer MSAs and Long Term Care Insurance Contracts, whether or not the claimant or cotenant filed a federal income tax return.

(r) **Interest on student loans.** A person may deduct from gross income some or all student loan interest paid on his or her student loan(s) during the first sixty months of the loan repayment period. The deduction may not be claimed by a taxpayer claimed as a dependent, a taxpayer filing as married filing separately, or when the taxpayer has an adjusted gross income amount over fifty-five thousand dollars (seventy-five thousand dollars if married filing jointly). This deduction is claimed on either the Form 1040 or Form 1040A federal income tax return. A person that does not file a tax return, but claims to have paid student loan interest, should provide copies of documentation of that person's qualification for the deduction and how the deduction was calculated. For 2002 and after, a person may deduct some or all of this student loan interest (not over two thousand five hundred dollars) repaid for any repayment period (the sixty-month limit is gone), provided the taxpayer does not have adjusted gross income above sixty-five thousand dollars (one hundred thirty thousand dollars if married filing jointly). The two thousand five hundred dollar limit on the interest gets reduced for taxpayers with adjusted gross income over fifty thousand dollars (one hundred thousand dollars if married filing jointly). See Internal Revenue Code section 221.

(s) **Higher education expenses.** From 2002 to 2005, an individual with adjusted gross income below a set amount (generally sixty-five thousand dollars) may take a deduction for qualified tuition and related expenses paid by that person for that person, that person's spouse, or a dependent of that person. Depending on the individual's gross income, the deduction cannot exceed three thousand dollars (four thousand dollars in 2004 and 2005). The deduction is claimed on either the Form 1040 or Form 1040A federal income tax return. A person that does not file a tax return, but claims to have paid higher education expenses, should provide copies of documentation of that person's qualification for the deduction and how the deduction was calculated. This deduction may only be taken if the income was not excluded from gross income. See WAC 458-16A-110 (savings bonds, qualified state tuition programs, and Coverdell Education Savings Accounts).

[Statutory Authority: RCW 84.36.383, 84.36.389, and 84.36.865. 03-09-002, § 458-16A-115, filed 4/2/03, effective 5/3/03.]

WAC 458-16A-120 Senior citizen and disabled person exemption—Determining combined disposable income. (1) **Introduction.** This rule describes how an assessor determines a claimant's combined disposable income.

(2) **Begin by calculating disposable income.** The assessor must determine the disposable income of the claimant, the claimant's spouse, and all cotenants. The assessor begins by obtaining a copy of the claimant's, the claimant's spouse's, and any cotenant's federal income tax return. If the claimant, the claimant's spouse, or a cotenant does not provide a federal income tax return, the assessor must calculate disposable income from copies of other income documents (e.g., W-2, 1099-R, 1099-INT, etc.). The assessor may want to review the definitions of gross income, WAC 458-16A-

110, and adjusted gross income, WAC 458-16A-115, to help calculate the combined disposable income for a claimant. These rules provide some guidance on how to determine adjusted gross income without copies of a federal income tax return. On the federal income tax return, the adjusted gross income is found on the front pages of Form 1040, Form 1040A, and Form 1040EZ. Even when a return is provided, an assessor may request copies of supporting documents to verify the amount of the claimant's combined disposable income.

(a) **Absent spouse.** When a spouse has been absent for over a year and the claimant has no knowledge of his/her spouse's whereabouts or whether the spouse has any income or not, and the claimant has not received anything of value from the spouse or anyone acting upon the spouse's behalf, the spouse's disposable income is deemed to be zero for purposes of this exemption. The claimant must submit with the application a dated statement signed by the applicant under the penalty of perjury. This statement must state that more than one year prior to filing this application:

- (i) The claimant's spouse has been absent;
- (ii) The claimant has not and does not know the whereabouts of the claimant's spouse;
- (iii) The claimant has not had any communication with the claimant's spouse;
- (iv) The claimant has not received anything of value from the claimant's spouse or anyone acting upon the claimant's spouse's behalf.

The statement must also agree to provide this income information if the claimant is able to obtain it anytime in the next four years.

(b) **Form 1040EZ.** Generally, the adjusted gross income on Form 1040EZ represents the disposable income for the person or couple filing the return. However, that person's or couple's adjusted gross income as shown on the Form 1040EZ must be increased by the following amounts that are excluded from their adjusted gross income.

(i) **Gain from a sold residence.** Under certain circumstances, gain from a sold residence is added onto the seller's adjusted gross income. Since there is no federal form used for reporting the exclusion of capital gains from the sale of a principal residence, the exemption application asks if a home has been sold, whether the sale proceeds were reinvested in new principal residence, and the amount of capital gain from the sale.

(A) If the proceeds were reinvested in a new principal residence, the excluded capital gain reinvested in the new residence is ignored. The adjusted gross income on Form 1040EZ is not adjusted for any part of the excluded capital gain reinvested in the new residence.

(B) If the proceeds were not reinvested in a new principal residence or only a part of the proceeds were reinvested in a new principal residence, the amount of excluded capital gain that is not reinvested in a new principal residence is added onto the seller's adjusted gross income to determine the seller's disposable income. The assessor may accept the excluded capital gain amount claimed upon the application or request a copy of documents demonstrating the seller's basis in the property and the capital gain earned upon the sale.

(ii) **Interest received on state and municipal bonds.** Interest received on state or local government bonds is gener-

ally not subject to federal income tax. This tax exempt interest is marked "TEI" and reported on the Form 1040EZ. The tax-exempt interest is added onto the bond owner's federal adjusted gross income to determine the bond owner's disposable income.

(A) The assessor may ask a claimant whether the claimant, the claimant's spouse, or any cotenant's own state or local government bonds. If the return does not show the tax exempt amount from the bond, the assessor may ask to see a copy of the Form 1099-INT (Interest Income).

(B) If the claimant does not have this form, the bond issuer should be able to tell the owner whether the interest is taxable. The issuer should also give the owner a periodic (or year-end) statement showing the tax treatment of the bond. If the income recipient invested in the bond through a trust, a fund, or other organization, that organization should give the recipient this information.

(iii) **Excluded military pay and benefits.** Military pay and benefits excluded from federal adjusted gross income, other than attendant-care and medical-aid payments, are added onto the adjusted gross income of the military personnel receiving the excluded military pay or benefits to determine that person's disposable income. Excluded military pay and benefits are discussed in more detail below in paragraph (c)(vii).

(iv) **Veterans benefits.** Veterans benefits, other than attendant-care and medical-aid payments, are added onto the veteran's adjusted gross income to determine the veteran's disposable income. Veterans benefits are discussed in more detail below in paragraph (c)(viii).

(c) **Form 1040A.** If a claimant provides a copy of a Form 1040A, the assessor calculates the disposable income for the person or couple filing the return by adding onto the adjusted gross income reported the items described below to the extent these items were excluded or deducted from gross income:

(i) **Gain from a sold residence.** The excluded capital gain from selling a principal residence to the extent that excluded gain was not reinvested in a new principal residence is added onto the seller's adjusted gross income to determine the seller's disposable income. The amount is reported on the exemption application. Refer to paragraph (a)(i) above for a more complete discussion of excluded capital gain upon a sold residence.

(ii) **Interest received on state and municipal bonds.** Interest received on state or local government bonds is generally not subject to federal income tax. The tax-exempt interest reported on Form 1040A is added back onto the bond owner's adjusted gross income to determine the bond owner's disposable income. Refer to paragraph (a)(ii) above for a more complete discussion of tax-exempt interest on state and municipal bonds.

(iii) **Pension and annuity receipts.** Any nontaxable pension and annuity amounts are added onto the recipient's adjusted gross income amount to determine the recipient's disposable income. The nontaxable pension and annuity amounts are the difference in the total pension and annuity amounts reported from the taxable amounts reported. If the total amount of the pension and annuity amounts are not reported on the return, the assessor may use a copy of the claimant's, the claimant's spouse's, or the cotenant's Form

1099-R (Distributions from Pensions, Annuities, Retirement or Profit Sharing Plans, IRAs, Insurance Contracts, etc.) to determine the total amount of pension and annuity amounts received. Pension and annuity amounts do not include distributions made from a traditional individual retirement account; and

(iv) **Federal Social Security Act and railroad retirement benefits.** Any nontaxable Social Security benefit or equivalent railroad retirement amount reported on Form 1040A is added onto the adjusted gross income of the person receiving these benefits to determine that person's disposable income. The nontaxable Social Security benefit or equivalent railroad retirement amount is the difference in the total Social Security benefits or equivalent railroad retirement amounts reported from the taxable amount reported. If the total amount of the Social Security benefit or equivalent railroad retirement amount is not reported on the return, the assessor may use a copy of the claimant's, the claimant's spouse's, or the cotenant's Form SSA-1099 to determine the Social Security benefits or Form RRB-1099 to determine the railroad retirement benefits received.

(v) **Excluded military pay and benefits.** Military pay and benefits excluded from federal adjusted gross income, other than attendant-care and medical-aid payments, are added onto adjusted gross income of the military personnel receiving the excluded military pay or benefits to determine that person's disposable income. Excluded military pay and benefits are discussed below in paragraph (c)(vii).

(vi) **Veterans benefits.** Veterans benefits, other than attendant-care and medical-aid payments, are added back onto the veteran's adjusted gross income to determine the veteran's disposable income. Veterans benefits are discussed below in paragraph (c)(viii).

(d) **Form 1040.** If a claimant provides a copy of a Form 1040, the assessor calculates the disposable income for the person or couple filing the return by adding onto the reported adjusted gross income all the items described below to the extent these items were excluded or deducted from gross income:

(i) **Gain from a sold residence.** The excluded capital gain from selling a principal residence to the extent that excluded gain was not reinvested in a new principal residence is added onto the seller's adjusted gross income to determine the seller's disposable income. The excluded capital gain amount is reported on the exemption application.

(ii) **Capital gains.** If the return shows capital gains or losses, the assessor examines a copy of the following schedule or forms, if any, that were filed with the return. The assessor should examine the capital gains reported on Schedule D (Capital Gains and Losses) and on Forms 4684 (Casualty and Thefts), 4797 (Sales of Business Property), and 8829 (Business Use of Home).

The assessor adds onto the adjusted gross income any amount of capital gains reduced by losses or deductions on the schedules or forms listed above to determine the total capital gains. The amount of capital gains that were excluded or deducted from adjusted gross income must be added onto that adjusted gross income to determine disposable income.

(iii) **Losses.** Amounts deducted for loss are added onto the adjusted gross income to determine the disposable income. Most losses are reported on the return in parentheses

to reflect that these loss amounts are to be deducted. The net losses are reported on Form 1040 as business losses, as capital losses, as other losses, as rental or partnership-type losses, and as farm losses. Add these amounts in parentheses onto the adjusted gross income. In addition, the assessor adds to adjusted gross income the amount reported as a penalty on early withdrawal of savings because the amount represents a loss under section 62 of the Internal Revenue Code.

(A) The taxpayer only reports the net amount of losses on the front page of the Form 1040 federal income tax return. A loss may be used on other schedules or forms to reduce income before being transferred to the front page of the return to calculate adjusted gross income. The assessor adds onto the adjusted gross income the amount of losses used to reduce income on these other schedules and forms. If the assessor has already added capital gains reduced by losses, the assessor does not add this amount onto adjusted gross income as it has already been accounted for. The amount of losses that were used to reduce adjusted gross income must be added onto that adjusted gross income to determine disposable income. For example, the claimant reports on the front page of the 1040 a capital loss of (five thousand dollars). The assessor examines the Schedule D. On the Schedule D, the claimant reports two thousand dollars in long-term capital gains from the sale of Company X stock and seven thousand dollars in long-term capital losses from the sale of an interest in the Y limited partnership. The assessor has already reduced the claimant's adjusted gross income by five thousand dollars from the capital loss reported on the front page of the return. The assessor would add onto adjusted gross income only the additional two thousand dollars in losses from this Schedule D that was used to offset the capital gain the claimant earned from the sale of Company X stock.

(B) The assessor should examine losses reported on Schedules C (Profit or Loss from Business), D (Capital Gains and Losses), E (Supplemental Income and Loss), F (Profit or Loss from Farming), and K-1 (Shareholder's Share of Income, Credits, Deductions, etc.), and on Forms 4684 (Casualty and Thefts), 4797 (Sales of Business Property), 8582 (Passive Activity Loss Limitations), and 8829 (Business Use of Home) to determine the total amount of losses claimed.

(iv) **Depreciation.** Amounts deducted for the depreciation, depletion, or amortization of an asset's costs are added onto the adjusted gross income to determine the disposable income. This includes section 179 expenses, as an expense in lieu of depreciation. Amounts deducted for depreciation, depletion, amortization, and 179 expenses may be found on Schedules C, C-EZ, E, F, K and K-1, and on Form 4835 (Farm Rental Income and Expenses). If the schedule or form results in a loss transferred to the front of the Form 1040 federal income tax return, the depreciation deduction to the extent it is represented in that loss amount should not be added onto the adjusted gross income (as this would result in it being added back twice);

(v) **Pension and annuity receipts.** Any nontaxable pension and annuity amounts are added onto the recipient's adjusted gross income amount to determine the recipient's disposable income. The nontaxable pension and annuity amounts are the difference in the total pension and annuity amounts reported from the taxable amount reported. If the

total amount of the pension and annuity amounts are not reported on the return, the assessor may use a copy of the claimant's, the claimant's spouse's, or the cotenant's Form 1099-R (Distributions from Pensions, Annuities, Retirement or Profit Sharing Plans, IRAs, Insurance Contracts, etc.) to determine the total amount of pension and annuity amounts received. Pension and annuity amounts do not include distributions made from a traditional individual retirement account.

(vi) **Federal Social Security Act and railroad retirement benefits.** Any nontaxable Social Security benefit or equivalent railroad retirement amount reported on the Form 1040 federal income tax return is added onto the adjusted gross income of the person receiving these benefits to determine that person's disposable income. The nontaxable Social Security benefit or equivalent railroad retirement amount is the difference in the total Social Security benefits or equivalent railroad retirement amounts reported from the taxable amount reported. If the total amount of the Social Security benefit or equivalent railroad retirement amount is not reported on the return, the assessor may use a copy of the claimant's, the claimant's spouse's, or the cotenant's Form SSA-1099 to determine the Social Security benefits or Form RRB-1099 to determine the railroad retirement benefits received.

(vii) **Excluded military pay and benefits.** Military pay and benefits excluded from federal adjusted gross income, other than pay or benefits for attendant care or medical aid, are added onto the adjusted gross income of the military personnel receiving the military pay or benefits to determine that person's disposable income. Excluded military pay and benefits are not reported on the Form 1040. Excluded military pay and benefits such as pay earned in a combat zone, basic allowance for subsistence (BAS), basic allowance for housing (BAH), and certain in-kind allowances, are reported in box 12 of the Form W-2. The claimant should disclose when excluded military pay and benefits were received and provide copies of the Form W-2 or other documents that verify the amounts received.

(viii) **Veterans benefits.** Veterans benefits, other than attendant-care and medical-aid payments, are added onto the veteran's adjusted gross income to determine the veteran's disposable income. Federal law excludes from gross income any veterans benefits payments, paid under any law, regulation, or administrative practice administered by the Department of Veterans Affairs (VA). Except for payments by the VA made for attendant care or medical aid, allowances or payments made from the VA must be added onto the veteran's adjusted gross income. VA benefits are not reported on the Form 1040. The claimant should disclose when excluded veterans benefits were received and provide copies of documents that verify the amount received. Attendant-care and medical-aid payments are any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the VA. Disability compensation or pensions paid by the VA are not attendant-care or medical-aid payments;

(ix) **Dividend receipts.** Exempt-interest dividends received from a regulated investment company (mutual fund) are reported on the tax-exempt interest line of the Form 1040

and added onto the recipient's adjusted gross income to determine that recipient's disposable income.

(A) The assessor may ask a claimant whether the claimant, the claimant's spouse, or any cotenants have received exempt-interest dividends.

(B) Generally, the mutual fund owner will receive a notice from the mutual fund telling him or her the amount of the exempt-interest dividends received. These exempt-interest dividends are not shown on Form 1099-DIV or Form 1099-INT. Although exempt-interest dividends are not taxable, the owner must report them on the Form 1040 tax return if he or she has to file; and

(x) **Interest received on state and municipal bonds.** Interest received on state or local government bonds is generally not subject to federal income tax. This tax-exempt interest is reported on the Form 1040 and added onto the bond owner's adjusted gross income to determine the bond owner's disposable income.

(3) **Calculate the combined disposable income.** When the assessor has calculated the disposable income for the claimant, the claimant's spouse, and any cotenants, the assessor combines the disposable income of these people together. The assessor reduces this combined income by the amount paid by the claimant or the claimant's spouse during that calendar year for their legally prescribed drugs, home health care, and nursing home care to calculate the claimant's combined disposable income.

[Statutory Authority: RCW 84.36.383, 84.36.389, and 84.36.865. 03-09-002, § 458-16A-120, filed 4/2/03, effective 5/3/03.]

WAC 458-16A-130 Senior citizen and disabled person exemption—Qualifications for exemption. (1) **Introduction.** This rule describes the qualifications a claimant must meet for the senior citizen or disabled person property tax exemption. In order to qualify for the exemption, the claimant:

- (a) Must meet age or disability requirements;
- (b) Must have a combined disposable income of thirty thousand dollars or less; and
- (c) Must own the property and occupy it as his or her principal residence.

(2) **Age, retirement, and disability requirements.** In order to qualify for the exemption:

(a) The senior citizen claiming the exemption must be age sixty-one or older on December 31st of the year in which the claim is filed. No proof is required concerning a senior citizen's employment status to claim the exemption.

(b) The disabled person claiming the exemption must be at the time of filing retired from regular gainful employment because of his or her physical disability (i.e., unable to work because of a physical or mental impairment). A disabled person is considered retired, although he or she was not working at a job, if he or she is unable to enter into regular gainful employment because of his or her physical disability and does not have a guardian or other person legally required to financially support and care for him or her; or

(c) The surviving spouse of a claimant, who applies to continue their spouse's exemption, must be age fifty-seven or older in the calendar year the claimant dies.

(3) **Income requirements.** In order to qualify for the exemption, the claimant's combined disposable income, as

defined in RCW 84.36.383 and WAC 458-16A-120, must be below the statutory limit amount provided in RCW 84.36.381.

(4) **Principal residence requirements.** In order to qualify for the exemption, the claimant must own the property and occupy it as his or her principal residence. The claimant must occupy the principal residence at the time of filing for each year the exemption is claimed. See WAC 458-16A-100 (definitions of principal residence and residence), and WAC 458-16A-135 (supporting documents required to demonstrate the property is owned and occupied as a claimant's principal residence).

[Statutory Authority: RCW 84.36.383, 84.36.389, and 84.36.865. 03-09-002, § 458-16A-130, filed 4/2/03, effective 5/3/03.]

WAC 458-16A-135 Senior citizen and disabled person exemption—Application procedures. (1) **Introduction.** This rule explains when and how a senior citizen or disabled person may apply for a property tax exemption on that person's principal residence. RCW 84.36.381 through 84.36.389.

(2) **When to apply for the exemption.** A claimant may first apply for the exemption in the calendar year that he or she meets the age or disability requirements for exemption of taxes due in the following year. If the claimant does not apply when he or she meets the age or disability requirements, then he or she may apply for the exemption in any subsequent year. The exemption may be claimed on his or her principal residence for previous years by applying with separate applications for each year. However, refunds based upon an exemption made in previous years may be refunded only for up to three years after the taxes were paid as provided in chapter 84.69 RCW.

(3) **Application required.** A claimant must submit to the county assessor's office an application for exemption with supporting documents. If the claimant applies for more than one year when the application is first made, an application must be made for each year the claimant seeks the exemption.

(4) **Where to obtain the application form.** A claimant may obtain the application form and the list of required supporting documents from the county assessor's office where his or her principal residence is located.

(5) **How to apply for the exemption.** Applications and supporting documents are filed in person or by mail at the county assessor's office where the principal residence is located.

(a) **The application form.** The county assessor designs the application form or adapts a master form obtained from the department. The county must obtain approval of the final form from the department before it may be distributed and used. The claimant must use an application form from the county where the principal residence is located and provide true and accurate information in the application.

(b) **Signatures.** The signature must certify that under penalty of perjury under the laws of Washington the application is true and correct. The application must be signed, dated, and state the place (city, county, or address) where it was signed. The application must be signed by:

- (i) The claimant;
- (ii) The claimant's designated agent;

(iii) The legal guardian for the claimant (if applicable);
or

(iv) If the property is subject to a deed of trust, mortgage, or purchase contract requiring an accumulation of reserves to pay property taxes, the lien holder; and

(v) If the claimant resides in a cooperative housing unit or portion of a cooperative structure representing the claimant's ownership share in that cooperative, the authorized agent of the cooperative must also sign the application.

(c) **Perjury statement.** The perjury statement certifying under the penalty of perjury that the application is true and correct must be placed upon the application immediately above a line for the signature. Any person signing a false claim with the intent to defraud or evade the payment of any tax commits perjury. If a person receives an exemption based on erroneous information, the assessor assesses any unpaid taxes with interest for up to three years. If a person receives an exemption based on erroneous information, and the person either provided that information with the intent to defraud or intentionally failed to correct that information, the assessor assesses any unpaid taxes with interest, for up to three years, with the one hundred percent penalty provided in RCW 84.40.130. RCW 84.36.385(5).

(d) **Cooperative agreement to reduce rent.** A cooperative must also agree, in a statement attached to the application, to reduce amounts owed by the claimant to the cooperative by the amount of the tax exemption. The agreement must also state that when the exemption exceeds the amount owed to the cooperative, the cooperative must pay to the claimant any amount of the tax exemption remaining after this offsetting reduction. RCW 84.36.387(5).

(e) **Supporting documents.** Unless the assessor determines that all or some of the supporting documents are not necessary, a claimant must present the documents listed below with his or her application. Except for affidavits, the assessor's office should not accept original documents from the claimant. If the assessor's office is presented with original documents (other than affidavits), they must make copies or note the information provided in the documents on a separate sheet and return these original documents to the claimant. The claimant submits the following documents with the application:

(i) If the county records do not reflect the claimant as the property owner, copies of any legal instruments demonstrating the claimant's interest held in the property;

(ii) Documents demonstrating that the property is the claimant's principal residence (i.e., copy of a driver's license and voter's registration card);

(iii) Copies of legal identification showing the claimant's age (i.e., copy of a driver's license or birth certificate);

(iv) If the claim is based upon a physical disability, either:

(A) An affidavit from a licensed physician (medical or osteopath doctor), a licensed or certified psychologist for disabling mental impairments, or a licensed podiatrist for disabling impairments of the foot, that states the claimant is unable to enter into regular gainful employment because of his or her physical disability and the expected term of the disability; or

(B) Copies of a written acknowledgment or decision by the Social Security Administration or Veterans Administration that the claimant is permanently physically disabled;

(v) Copies of documents showing income earned or reported by the claimant, the claimant's spouse and any cotenants, even when the income is estimated (income information should be provided to the degree possible and then confirmed with supporting documents in the follow-up period), such proof shall include to the extent it is relevant:

(A) If the claimant, the claimant's spouse, or any cotenants receive Social Security payments, a federal statement showing Social Security paid (generally, Form SSA-1099);

(B) If the claimant, the claimant's spouse, or any cotenants receive railroad retirement benefits, a federal statement showing railroad retirement benefits paid (generally, Forms RRC-1099 and RRC 1099-R);

(C) If the claimant, the claimant's spouse, or any cotenants file federal income tax returns, those returns with supporting forms, schedules, and, if specifically requested, worksheets for the deductions taken from gross income (generally, Form 1040 with its supporting forms and schedules);

(D) If the claimant or the claimant's spouse has been in a nursing home or receiving in-home care, copies of invoices (or an equivalent billing statement or payment statement) for nonreimbursed nursing home and in-home care;

(E) If the claimant indicates that the claimant's and the claimant's spouse's nonreimbursed prescription drugs for the period under review exceeds five hundred dollars, copies of checks or other payment statements (i.e., pharmacy printout of payments for purchases) showing amounts paid for nonreimbursed prescription drug expenses;

(F) If no federal returns were filed or received, the claimant must still provide copies of documents to demonstrate his or her income and the income of his or her spouse and any cotenants (i.e., federal income statements such as Form W-2 (wages), Form 1099-INT (interest), Form 1099-DIV (dividends), Form 1099-R (pension amounts), Form 1099-G (unemployment), or Form 1099-Misc. (contract income)). Even claimants who claim they have no federal income (or an inordinately small amount of federal income) must have income to maintain themselves and their residences. In these situations, the claimant must produce copies of documents demonstrating the source of the funds they are living on (i.e., checking account registers and bank statements) and the bills for maintaining the claimant and the residence (i.e., public assistance check stubs, utility invoices, cable TV invoices, check registers, bank statements, etc.); and

(vi) Any other copies of documents the assessor requires in his or her discretion for the claimant to produce in order to demonstrate the claimant qualifies for the exemption.

(f) Public disclosure of the application. The application form may not be disclosed. A copy of the application may be disclosed only if all income information on the form is obliterated so that it cannot be read. Except as required by law, no public disclosure may be made of the checklist of supporting documents or any supporting documents retained that concern the claimant's, the claimant's spouse's, or any cotenant's income.

[Statutory Authority: RCW 84.36.383, 84.36.389, and 84.36.865. 03-09-002, § 458-16A-135, filed 4/2/03, effective 5/3/03.]

WAC 458-16A-140 Senior citizen and disabled person exemption—Exemption described—Exemption granted—Exemption denied—Freezing property values.

(1) **Introduction.** This rule explains how county assessors process a claimant's application form for the senior citizen or disabled person property tax exemption. The rule describes the exemption and what happens when the exemption is granted or denied by the assessor.

(2) **The exemption described.** This property tax exemption reduces or eliminates property taxes on a senior citizen's or disabled person's principal residence. Except for benefit charges made by a fire protection district, this exemption does not reduce or exempt an owner's payments for special assessments against the property. Local governments impose special assessments on real property because the real property is specially benefitted by improvements made in that area (e.g., local improvement district assessments for roads or curbs, surface water management fees, diking/drainage fees, weed control fees, etc.). All the property owners in that area share in paying for these improvements. The only exception related to this program is for benefit charges made by a fire protection district. Fire protection district benefit charges are reduced twenty-five, fifty, or seventy-five percent depending upon the combined disposable income of the claimant. RCW 52.18.090.

(a) **Excess levies.** A qualifying claimant receives an exemption from excess levies on his or her principal residence.

(b) **Regular levies.** Depending upon the claimant's combined disposable income, the exemption may also apply to all or a portion of the regular levies on the claimant's principal residence. Both the level of the claimant's combined disposable income and the assessed value of the home determine the amount of the regular levy exempted from property taxes. The exemption applies to all the regular and excess levies when the assessed value of the claimant's principal residence falls below the amount of exempt assessed value identified in RCW 84.36.381 (5)(b) and the claimant's combined disposable income is also below the levels set in that section.

(c) **Property taxes due.** Generally the owner pays the property taxes on the principal residence and obtains directly the benefit of this exemption. If the claimant is not the property's owner, or is not otherwise obligated to pay the property taxes on the principal residence, but "owned" the principal residence for purposes of this exemption, the property owner that owes the tax must reduce any amounts owed to them by the claimant up to the amount of the tax exemption. If the amounts owed by the claimant to this property owner are less than the tax exemption, the owner must pay to the claimant in cash any amount of the tax exemption remaining after this offsetting reduction. RCW 84.36.387(6).

(3) **Processing exemption applications.** County assessors process applications for the senior citizen or disabled person exemption. The assessors grant or deny the exemption based upon these completed applications.

(a) **Application review.** The county assessor reviews a completed application and its supporting documents.

The assessor:

(i) Notes on a checklist for the claimant's file the supporting documents received;

(ii) Reviews the supporting documents;

(iii) Records relevant information from the supporting documents into the claimant's file. In particular, the assessor records into the file the claimant's age and a summary of the income information received; and

(iv) After reviewing the supporting documents, must either destroy or return the supporting documents used to verify the claimant's age and income.

(b) **Incomplete applications.** A county assessor may return an incomplete application or a duplicate application. An incomplete application may be missing:

(i) Signatures;

(ii) Information upon the form; or

(iii) Supporting documents.

Upon returning an incomplete application, the assessor should provide the claimant with a dated denial form listing the signatures, information, or documents needed to complete the application. The denial of an incomplete application may be appealed in the same manner as a denial of the exemption.

(c) The assessor may accept any late filings for the exemption even after the taxes have been levied, paid, or become delinquent. An application filed for the exemption in previous years constitutes a claim for a refund under WAC 458-18-210.

(4) **Exemption timing if approved.** Property taxes are reduced or eliminated on the claimant's principal residence for the year following the year the claimant became eligible for the program. When a late application is filed, the exemption may only result in:

(a) A property tax refund for taxes paid within three years of the payment date; and

(b) Relief from unpaid property taxes for previous years.

(5) **Exemption procedure when claim granted.** When the exemption is granted, the county assessor:

(a) Freezes the assessed value of the principal residence upon the assessment roll;

(b) Determines the level of exemption the claimant qualifies for;

(c) Notifies the claimant that the exemption has been granted;

(d) Notifies the claimant of his or her duty to file timely renewal applications;

(e) Notifies the claimant of his or her duty to file change of status forms when necessary;

(f) Notifies the claimant of the need to reapply for the exemption if the claimant moves to a replacement residence;

(g) Notifies the claimant that has supplied estimated income information whether or not follow-up income information is needed;

(h) Places the claimant on a notification list for renewal of the exemption;

(i) Places the claimant on a notification list if supporting documents are needed to confirm estimated income information prior to May 31st of the following year;

(j) Exempts the residence from all or part of its property taxes; and

(k) Provides the department with a recomputation of the assessed values for the immediately preceding year as a part of the annual recomputation process.

(6) **Exemption procedure when claim denied.** The assessor denies the exemption when the claimant does not qualify. The assessor provides a dated denial form listing his

or her reasons for this denial. A claimant may appeal the exemption's denial to the county board of equalization as provided for in WAC 458-14-056.

(7) **Freezing the property value.** The assessor freezes the assessed value of the principal residence either on the later of January 1, 1995, or January 1st of the year when a claimant first qualifies for the exemption. The assessor then tracks both the market value of the principal residence and its frozen value. The assessor provides both the principal residence's market value and its frozen value in the valuation notices sent to the owner.

(a) **Frozen values in counties using a cyclical revaluation plan.** In counties using a cyclical revaluation plan, the assessor:

(i) Revalues the principal residence, for property revalued in that assessment year, before the assessed value is frozen; or

(ii) Freezes the principal residence's value at the most recent assessed value for property that is not revalued in that assessment year.

The assessor continues to revalue the principal residence during the regular revaluation cycles to track the market value for the property.

(b) **Adding on improvement costs.** The assessor adds onto the frozen assessed value the cost of any improvements made to the principal residence.

(c) **One-year gaps in qualification.** If a claimant receiving the exemption fails to qualify for only one year because of high income, the previous frozen property value must be reinstated on January 1st of the following year when the claimant again qualifies for the program.

(d) **Moving to a new residence.** If an eligible claimant moves, the county assessor freezes the assessed value of the new principal residence on January 1st of the assessment year in which the claimant transfers the exemption to the replacement residence.

[Statutory Authority: RCW 84.36.383, 84.36.389, and 84.36.865. 03-09-002, § 458-16A-140, filed 4/2/03, effective 5/3/03.]

WAC 458-16A-150 Senior citizen and disabled person exemption—Requirements for keeping the exemption. (1) **Introduction.** This rule explains how and when a senior citizen or disabled person must file additional reports with the county assessor to keep the senior citizen or disabled person property tax exemption. The rule also explains what happens when the claimant or the property no longer qualifies for the full exemption.

(2) **Continuing the exemption.** The claimant must keep the assessor up to date on the claimant's continued qualification for the senior citizen or disabled person property tax exemption. The claimant keeps the assessor up to date in three ways. First, the claimant submits a change in status form when any change affects his or her exemption. In some circumstances, the change in status form may be submitted by an executor, a surviving spouse, or a purchaser to notify the county of a change in status affecting the exemption. Second, the claimant submits a renewal application for the exemption either upon the assessor's request following an amendment of the income requirement, or every four years. Third, the claimant applies to transfer the exemption when moving to a new principal residence.

(3) **Change in status.** When a claimant's circumstances change in a way that affects his or her qualification for the senior citizen or disabled person property tax exemption, the claimant must submit a completed change in status form to notify the county of this change.

(a) **When to submit form.** The claimant must submit a change in status form to the county assessor for any change affecting that person's qualification for the exemption within thirty days of such change in status. If the claimant is unable or fails to submit a change in status form, any subsequent property owner, including a claimant's estate or surviving spouse, should submit a change in status form to avoid interest and in some cases the penalty for willfully claiming the exemption based upon erroneous information.

(b) **Changes in status described.** Changes in status include:

(i) Changes that affect the property (i.e., new construction, boundary line changes, rentals, ownership changes, etc.);

(ii) Changes to the property owner's annual income that increase or decrease property taxes due under the program; or

(iii) Changes that affect the property owner's eligibility for the exemption (i.e., death, moving to a replacement residence, moving to another residence the claimant does not own, moving into a hospice, a nursing home, or any other long-term care facility, marriage, improvement of a physical disability for a disabled person's claim, or a disabled person entering into gainful employment).

(c) **Change in status form.** The county assessor designs the change in status form or adapts a master form obtained from the department. The county must obtain approval of the final form from the department before it may be distributed. The claimant, the claimant's agent, or a subsequent owner of the residence must use a change in status form from the county where the principal residence is located. The person filing the form must provide true and accurate information on the change in status form.

(d) **Obtaining the form.** The claimant or subsequent property owner may obtain the form from the county assessor where his or her principal residence is located.

(e) **Failure to submit the form after a change in status occurs.** If the claimant fails to submit the change in status form, the application information relied upon becomes erroneous for the period following the change in status. Upon discovery of the erroneous information, the assessor determines the status of the exemption, and notifies the county treasurer to collect any unpaid property taxes and interest from the claimant, the claimant's estate, or if the property has been transferred, from the subsequent property owner. The treasurer may collect any unpaid property taxes, interest, and penalties for a period not to exceed three years as provided for under RCW 84.40.380. In addition, if a person willfully fails to submit the form or provides erroneous information, that person is liable for an additional penalty equal to one hundred percent of the unpaid taxes. RCW 84.36.385. If the change in status results in a refund of property taxes, the treasurer may refund property taxes and interest for up to the most recent three years after the taxes were paid as provided in chapter 84.69 RCW.

(f) **Loss of the exemption.** If the change in status disqualifies the applicant for the exemption, property taxes must

be recalculated based upon the current full assessed value of the property and paid from the date the change in status occurred. RCW 84.40.360. For example, the exemption is lost when the claimant dies (unless the spouse is also qualified). The property taxes are recalculated to the full assessed amount of the principal residence on a pro rata basis beginning the day following the date of the claimant's death for the remainder of the year.

(g) **Loss of exemption on part of the property.** If the change in status removes a portion of the property from the exemption, property taxes in their full amount on that portion of the property that is no longer exempt must be recalculated based upon the current full assessed value of that portion of the property and paid from the date the change in status occurred. For example, a property owner subdivides his or her one-acre lot into two parcels. The parcel that does not have the principal residence built upon it no longer qualifies for the exemption. The property taxes are recalculated to the full assessed amount of that parcel on a pro rata basis for the remainder of the year beginning the day following the date the subdivision was given final approval.

(h) **Exemption reduced.** If the change in status reduces the exemption amount, the increased property taxes are due in the year following the change in income. For example, a claimant's income rises so that only excess levies on her principal residence are exempt. The claimant's income is based upon the assessment year. The following year when the taxes are collected, the property taxes due are calculated with only an exemption for excess levies.

(4) **Renewal application.** The county assessor must notify claimants when to file a renewal application with updated supporting documentation.

(a) **Notice to renew.** Written notice must be sent by the assessor in the year the renewal application is requested. Notice must be sent no later than December 10th, three weeks before the December 31st filing requirement.

(b) **When to renew.** The assessor must request a renewal application at least once every four years. The assessor may request a renewal application for any year the income requirements are amended in the statute after the exemption is granted. Once notified, the claimant must file the renewal application by December 31st of that year.

(c) **Processing renewal applications.** Renewal applications are processed in the same manner as the initial application.

(d) **The renewal application form.** The county assessor may design the renewal application form or adapt either its own application form or the application master form obtained from the department. The county must obtain approval of the final renewal application form from the department before it may be distributed. The property owner must use a renewal form from the county where the principal residence is located. The claimant must provide true and accurate information on the renewal application form.

(e) **Obtaining the form.** The assessor provides this form to senior citizens or disabled persons claiming the exemption when requesting renewal.

(f) **Failure to submit the renewal application.** If the property owner fails to submit the renewal application form, the exemption is discontinued until the claimant reapplies for the program. The assessor may postpone collection activities

and continue to work with an eligible claimant to complete an application for a missed period.

(5) **Transfer of the exemption.** When a claimant moves to a replacement residence, the claimant must file a change in status form with the county where his or her former principal residence was located. No claimant may receive an exemption on more than the equivalent of one residence in any year.

(a) **Exemption on the former residence.** The exemption on the former residence applies to the closing date on the sale of the former residence, provided the claimant lived in the residence for most of the portion of that year prior to the date of closing. Property taxes in their full amount must be recalculated based upon the current full assessed value of the property and paid from the day following the date the sale closed. The taxes are paid for the remaining portion of the year. RCW 84.40.360.

(b) **Exemption upon the replacement residence.** Upon moving, the claimant must reapply for the exemption in the county where the replacement residence is located if the claimant wants to continue in the exemption program. The same application, supporting documents, and application process is used for the exemption on the replacement residence as when a claimant first applies. See WAC 458-16A-135. The exemption on the replacement residence applies on a pro rata basis in the year he or she moves, but only from the latter of the date the claimant moves into the new principal residence or the day following the date the sale closes on his or her previous residence.

[Statutory Authority: RCW 84.36.383, 84.36.389, and 84.36.865. 03-16-029, § 458-16A-150, filed 7/29/03, effective 8/29/03; 03-09-002, § 458-16A-150, filed 4/2/03, effective 5/3/03.]

Chapter 458-17 WAC

ASSESSMENT AND TAXATION OF SHIPS AND VESSELS

WAC

458-17-101	Assessment and taxation of ships and vessels.
458-17-105	Repealed.
458-17-110	Repealed.
458-17-115	Repealed.
458-17-120	Repealed.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

458-17-105	Ships and vessels—Definitions. [Statutory Authority: RCW 82.01.060(2), 86-21-003 (Order PT 86-5), § 458-17-105, filed 10/2/86.] Repealed by 03-16-028, filed 7/29/03, effective 8/29/03. Statutory Authority: RCW 84.08.005, 84.08.070, and 82.01.060(2).
458-17-110	Ships and vessels—Subject to property taxation. [Statutory Authority: RCW 82.01.060(2), 86-21-003 (Order PT 86-5), § 458-17-110, filed 10/2/86.] Repealed by 03-16-028, filed 7/29/03, effective 8/29/03. Statutory Authority: RCW 84.08.005, 84.08.070, and 82.01.060(2).
458-17-115	Ships and vessels—Listing. [Statutory Authority: RCW 82.01.060(2), 86-21-003 (Order PT 86-5), § 458-17-115, filed 10/2/86.] Repealed by 03-16-028, filed 7/29/03, effective 8/29/03. Statutory Authority: RCW 84.08.005, 84.08.070, and 82.01.060(2).
458-17-120	Ships and vessels—Apportionment of value. [Statutory Authority: RCW 82.01.060(2), 86-21-003 (Order PT 86-5), § 458-17-120, filed 10/2/86.] Repealed by 03-16-028, filed 7/29/03, effective 8/29/03. Statutory Authority: RCW 84.08.005, 84.08.070, and 82.01.060(2).

WAC 458-17-101 Assessment and taxation of ships and vessels. (1) **Introduction.** This rule explains the application of the personal property tax to ships and vessels. Ships and vessels that are not subject to the excise tax imposed by chapter 82.49 RCW are either subject to the state property tax levy or are completely exempt from both the property tax and the excise tax. This rule covers only those ships and vessels subject to the property tax. See chapter 308-93 WAC for information regarding ships and vessels subject to the excise tax, which is administered by the department of licensing.

(2) **Which ships and vessels are subject to property taxation?** Under RCW 84.36.080, a ship or vessel is subject to the state portion of the property tax if the ship or vessel is:

- (a) Used exclusively for commercial fishing purposes; or
- (b) Primarily engaged in commerce and has or is required to have a valid marine document as a vessel of the United States.

Accordingly, such a ship or vessel is subject to assessment by the department of revenue for that portion of the property tax levied by the state for state purposes.

(3) **Which ships and vessels are exempt from property taxation?** The following are exempt from all property taxation, including the state levy:

- (a) A ship or vessel listed in the state or federal register of historical places (see RCW 84.36.080);
- (b) A ship or vessel with an assessed value of less than five hundred dollars (see RCW 84.36.015); and
- (c) A ship or vessel that is not within the scope of subsection (2) of this rule (see RCW 84.36.090).

(4) **What are a ship or vessel owner's obligations?** Under RCW 84.40.065, every individual, corporation, partnership, trust, and estate must list with the department of revenue any ship or vessel subject to that person's ownership, possession or control and subject to property taxation under RCW 84.36.080. This listing is subject to the same requirements, penalties, and liens provided in chapters 84.40 and 84.60 RCW for all other personal property.

The listed owner of a ship or vessel as of January 1st of the assessment year is responsible for payment of the property tax for that vessel in the following year. A ship or vessel is subject to property taxation even if it is temporarily not within the limits of the state on January 1st of the year in which the vessel is to be assessed. If ownership of a taxable ship or vessel is transferred after January 1st, the listed owner as of January 1st remains liable for payment of the full amount of tax payable in the following year. The full year's property tax may be abated only if the ship or vessel is damaged or destroyed and qualifies for a reduction in value under RCW 84.70.010.

For example, Seller A sells a taxable charter boat to Buyer B on August 14, 2002. Because Seller A was the listed owner as of January 1, 2002, Seller A is responsible for the entire year's property tax for the 2002 assessment year. That tax is due by April 30, 2003. Buyer B will be the listed owner for 2003 and responsible for the property tax for assessment year 2003, which is due by April 30, 2004.

(5) **What happens if my ship or vessel is out of the state or being repaired during part of the year?** A qualifying ship or vessel, referred to as an "apportionable vessel," may have its assessed value reduced to reflect certain circum-

stances. A reduction in assessed value also reduces the amount of tax due.

(a) **What is an "apportionable vessel"?** Under RCW 84.40.036, an "apportionable vessel" is a ship or vessel that is:

- (i) Engaged in interstate commerce, meaning the transporting of persons or property from one state or territory of the United States to another;
- (ii) Engaged in foreign commerce, meaning the transporting of persons or property between a state or territory of the United States and a foreign country; or
- (iii) Engaged exclusively in fishing, tendering, harvesting and/or processing seafood products on the high seas or waters under the jurisdiction of other states.

(b) **How is value apportioned?** An apportionable vessel has its value apportioned as provided in this subsection.

(i) The value is apportioned based on the number of days or fractions of days that the vessel was within the limits of the state during the calendar year preceding the calendar year in which the vessel is assessed. No value is apportioned to this state unless the vessel is within the limits of the state for more than one hundred twenty days. Days during which a ship or vessel leaves the limits of the state only while navigating the high seas in order to travel between points in this state are considered as days within this state. A ship or vessel that does not qualify as an apportionable vessel under subsection (5)(a) of this rule may not have its value apportioned, regardless of the number of days the ship or vessel is within or outside the limits of the state.

(A) A "fraction of a day" means more than sixteen hours in a calendar day.

(B) The "limits of the state" means the boundaries of the state of Washington abutting Canada, Oregon, and Idaho and three miles to the west of Washington's coast line.

(ii) Time during which an apportionable vessel is in the state exclusively for one or more of the following purposes is not considered as time within the limits of the state, if the length of time is reasonable to:

- (A) Undergo maintenance, repair or alteration;
- (B) Take on or discharge cargo, passengers or supplies;

or

(C) Serve as a tug for a vessel under (A) or (B) of this subsection (5)(b)(ii).

A "reasonable length of time" includes a reasonable length of travel time to enter and leave the limits of the state exclusively for one of the purposes listed in (A) through (C) above. A ship or vessel engaging in any activity or use not described in (A) through (C) above, or merely being moored, is not considered to be within the state exclusively for the purposes described in this subsection.

(c) **Examples.** The following examples illustrate the application of the apportionment rules. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(i) Barge A loads cargo in Washington Port Z in eastern Washington. Loaded, Barge A embarks down the Columbia River to Vancouver, Washington and discharges its cargo. This activity does not qualify Barge A as an apportionable vessel because Barge A did not engage in interstate or foreign commerce. The barge would qualify as an apportionable ves-

sel for the following assessment year if it had discharged its cargo at Portland, Oregon.

(ii) Charter Boat operates out of XYZ Charters, based in Anacortes, Washington. The charter begins in Anacortes and sails into Canadian waters for one month before returning to Anacortes to complete the charter. This activity does not qualify Charter Boat as an apportionable vessel because Charter Boat did not engage in foreign or interstate commerce; no persons or property were transported from one country or state to another.

(iii) Charter Boat operates out of XYZ Charters, based in Anacortes, Washington. Charter Boat is delivered to persons who board the vessel in Vancouver, British Columbia. Charter Boat cruises in Canadian waters for one month before returning to Anacortes where the passengers disembark, completing the charter. This transaction involves foreign commerce because persons were transported between another country and the United States. As a result, the vessel qualifies as an apportionable vessel and its value will be apportioned based upon the number of days the vessel is within the limits of the state during that calendar year.

(iv) Charter Boat carries passengers from Seattle to Juneau, Alaska. Charter Boat then charters out of Alaska during the summer months. Charter Boat returns to Seattle in September for mooring and off-season repairs. The vessel qualifies as an apportionable vessel and its value will be apportioned to reflect the days the vessel is within the limits of the state during that calendar year. However, the days in Washington while the vessel is being repaired are not counted as days within the state, if reasonable in amount of time. On the other hand, the vessel's travel time within Washington waters while traveling to and from the state is counted as time within the state because the trip to this state was not exclusively for the purpose of repairs.

(v) Fishing Boat goes to Alaska each year to fish and returns to Seattle each fall for repair and maintenance. The vessel qualifies as an apportionable vessel and its value will be apportioned to reflect the days the vessel is within the limits of the state during that calendar year. The days in Washington for repair and maintenance are not counted, if the amount of time is reasonable. Travel time to and from Washington is also not counted as time within the state because the trip was exclusively for the purpose of obtaining repair and maintenance services. As a result, none of the vessel's value will be apportioned to Washington in this instance.

(vi) Charter Boat Owner A purchases a vessel on November 1, 2001. The boat had previously been used as a pleasure craft. The boat is first used in interstate commerce as a charter boat in January 2002 and spends half of the year outside of state waters in calendar year 2002. The boat is first listed in Owner A's name for tax purposes as of January 1, 2002. The vessel's entire value is assessed in 2002 because the vessel did not qualify as an apportionable vessel during calendar year 2001 (the calendar year preceding the assessment year). Owner A will first pay property taxes in the 2003 tax year based upon the vessel's value in the 2002 assessment year. The full amount of tax is due by April 30, 2003. The value for the 2003 assessment year will be apportioned based upon the boat's use in calendar year 2002 (50% of time within state waters). The amount of tax due for tax year 2004 will be

based upon the 2003 assessed value and is due by April 30, 2004.

[Statutory Authority: RCW 84.08.005, 84.08.070, and 82.01.060(2). 03-16-028, § 458-17-101, filed 7/29/03, effective 8/29/03.]

WAC 458-17-105 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-17-110 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-17-115 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-17-120 Repealed. See Disposition Table at beginning of this chapter.

Chapter 458-18 WAC PROPERTY TAX—ABATEMENTS, CREDITS, DEFERRALS AND REFUNDS

WAC

458-18-220

Refunds—Rate of interest.

WAC 458-18-220 Refunds—Rate of interest. The following rates of interest shall apply on refunds of taxes made pursuant to RCW 84.69.010 through 84.69.090 in accordance with RCW 84.69.100. The following rates shall also apply to judgments entered in favor of the plaintiff pursuant to RCW 84.68.030. The interest rate is derived from the equivalent coupon issue yield of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted after June 30th of the calendar year preceding the date the taxes were paid. The rate thus determined shall be applied to the amount of the judgment or the amount of the refund, until paid:

Year tax paid	Auction Year	Rate
1985	1984	11.27%
1986	1985	7.36%
1987	1986	6.11%
1988	1987	5.95%
1989	1988	7.04%
1990	1989	8.05%
1991	1990	8.01%
1992	1991	5.98%
1993	1992	3.42%
1994	1993	3.19%
1995	1994	4.92%
1996	1995	5.71%
1997	1996	5.22%
1998	1997	5.14%
1999	1998	5.06%
2000	1999	4.96%
2001	2000	5.98%
2002	2001	3.50%
2003	2002	1.73%
2004	2003	0.95%

[Statutory Authority: RCW 84.69.100. 03-24-014, § 458-18-220, filed 11/20/03, effective 12/21/03; 02-23-081, § 458-18-220, filed 11/19/02,

effective 12/20/02; 02-03-039, § 458-18-220, filed 1/8/02, effective 2/8/02; 00-24-106, § 458-18-220, filed 12/6/00, effective 12/31/00; 99-24-033, § 458-18-220, filed 11/23/99, effective 12/24/99. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.69.100. 99-01-066, § 458-18-220, filed 12/14/98, effective 1/1/99; 98-01-177, § 458-18-220, filed 12/23/97, effective 1/1/98; 97-02-068, § 458-18-220, filed 12/31/96, effective 1/1/97; 96-01-093, § 458-18-220, filed 12/19/95, effective 1/1/96; 95-06-044, § 458-18-220, filed 2/24/95, effective 3/27/95; 94-05-063, § 458-18-220, filed 2/11/94, effective 3/14/94. Statutory Authority: RCW 84.08.010 and 84.69.100. 93-06-096, § 458-18-220, filed 3/3/93, effective 4/3/93; 92-17-027, § 458-18-220, filed 8/11/92, effective 9/11/92; 91-15-024, § 458-18-220, filed 7/11/91, effective 8/11/91. Statutory Authority: RCW 84.69.100 and 84.08.010(2). 89-10-067 (Order PT 89-6), § 458-18-220, filed 5/3/89; 88-07-003 (Order PT 88-3), § 458-18-220, filed 3/3/88. Statutory Authority: RCW 84.69.100 as amended by 1987 c 319 and 84.08.010(2). 87-19-141 (Order PT 87-7), § 458-18-220, filed 9/23/87.]

Chapter 458-20 WAC EXCISE TAX RULES

WAC

458-20-122	Repealed.
458-20-135	Extracting natural products.
458-20-185	Tax on tobacco products.
458-20-208	Exemptions for adjustments of new motor vehicle inventory between new car dealers and accommodation sales.
458-20-210	Sales of tangible personal property for farming—Sales of agricultural products by farmers.
458-20-231	Repealed.
458-20-24001	Sales and use tax deferral—Manufacturing and research/development activities in distressed areas—Applications filed after July 31, 1999.
458-20-24001A	Sales and use tax deferral—Manufacturing and research/development activities in distressed areas—Applications filed prior to August 1, 1999.
458-20-24003	Tax incentives for high technology businesses.
458-20-244	Food and food ingredients.
458-20-251	Sewerage collection and other related activities.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

458-20-122	Sales of feed, seed, fertilizer, spray materials, and other tangible personal property for farm use. [Statutory Authority: RCW 82.32.300. 94-07-049, § 458-20-122, filed 3/10/94, effective 4/10/94; 86-21-085 (Order ET 86-18), § 458-20-122, filed 10/17/86; 86-09-058 (Order ET 86-7), § 458-20-122, filed 4/17/86; Order ET 70-3, § 458-20-122 (Rule 122), filed 5/29/70, effective 7/1/70.] Repealed by 03-18-024, filed 8/25/03, effective 9/25/03. Statutory Authority: RCW 82.01.060(2), 82.32.300, and 34.05.230. Later promulgation, see WAC 458-20-210.
458-20-231	Tax on internal distribution. [Statutory Authority: RCW 82.32.300. 99-02-055, § 458-20-231, filed 1/5/99, effective 2/5/99; 90-23-020, § 458-20-231, filed 11/14/90, effective 12/15/90; 83-08-026 (Order ET 83-1), § 458-20-231, filed 3/30/83; Order ET 70-3, § 458-20-231 (Rule 231), filed 5/29/70, effective 7/1/70.] Repealed by 03-09-062, filed 4/14/03, effective 5/15/03. Statutory Authority: RCW 82.32.300 and 82.01.060(2).

WAC 458-20-122 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-20-135 Extracting natural products. (1) Introduction. This rule explains the application of the business and occupation (B&O), retail sales, and use taxes to persons extracting natural products. Persons extracting natural products often use the same extracted products in a manufacturing process. The rule provides guidance for determining when an extracting activity ends and the manufacturing activity begins. In addition to all other taxes, commercial fisher-

men may be subject to the enhanced food fish excise tax levied by chapter 82.27 RCW (Tax on enhanced food fish).

Persons engaging in activities associated with timber harvest operations should refer to WAC 458-20-13501 (Timber harvest operations). Persons engaged in a manufacturing activity should also refer to WAC 458-20-136 (Manufacturing, processing for hire, fabricating) and 458-20-13601 (Manufacturers and processors for hire—Sales and use tax exemptions for machinery and equipment).

(2) **Who is an "extractor"?** RCW 82.04.100 defines the term "extractor" to mean every person who, from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, for sale or for commercial or industrial use mines, quarries, takes or produces coal, oil, natural gas, ore, stone, sand, gravel, clay, mineral, or other natural resource product. The term includes a person who fells, cuts, or takes timber, Christmas trees other than plantation Christmas trees, or other natural products. It also includes any person who takes fish, shellfish, or other sea or inland water foods or products.

(a) **Persons excluded from the definition of "extractor."** The term "extractor" does not include:

(i) Persons performing under contract the necessary labor or mechanical services for others (these persons are extractors for hire, see subsection (4) below); or

(ii) Persons who are farmers as defined in RCW 82.04.213. Refer to WAC 458-20-209 and 458-20-210 for tax-reporting information for farmers and persons selling property to or performing horticultural services for farmers.

(b) **When an extractor is also a manufacturer.** An extractor may subsequently take an extracted product and use it as a raw material in a manufacturing process. The following examples explain when an extracting process ends and a manufacturing process begins for various situations. These examples should be used only as a general guide. A determination of when extracting ends and manufacturing begins for other situations can be made only after a review of all of the facts and circumstances.

(i) **Mining and quarrying.** Mining and quarrying operations are extracting activities, and generally include the screening, sorting, and piling of rock, sand, stone, gravel, or ore. For example, an operation that extracts rock, then screens, sorts, and with no further processing places the rock into piles for sale, is an extracting operation.

(A) The crushing and/or blending of rock, sand, stone, gravel, or ore are manufacturing activities. These are manufacturing activities whether or not the materials were previously screened or sorted.

(B) Screening, sorting, piling, or washing of the material, when the activity takes place in conjunction with crushing or blending at the site where the materials are taken or produced, is considered a part of the manufacturing operation if it takes place after the first screen. If there is no separate first screen, only those activities subsequent to the materials being deposited into the screen are considered a part of the manufacturing operation.

(ii) **Commercial fishing.** Commercial fishing operations, including the taking of any fish in Washington waters (within the statutory limits of the state of Washington) and the taking of shellfish or other sea or inland water foods or

products, are extracting activities. These activities often include the removal of meat from the shell and the icing of fish or sea products.

(A) A person growing, raising, or producing a product of aquaculture as defined in RCW 15.85.020 on the person's own land or on land in which the person has a present right of possession is considered a farmer. RCW 82.04.213.

(B) Cleaning (removal of the head, fins, or viscera), filleting, and/or steaking fish are manufacturing activities. The cooking of fish or seafood is also a manufacturing activity. Refer to RCW 82.04.260 and WAC 458-20-136 for information regarding the special B&O tax rate/classification that applies to the manufacturing of seafood products that remain in a raw, raw frozen, or raw salted state.

(C) The removal of meat from the shell or the icing of fish or sea products, when the activity is performed in conjunction with and at the site where manufacturing takes place (e.g., cooking the fish or seafood), is considered a part of the manufacturing operation.

(3) Tax-reporting responsibilities for income received by extractors. Extractors are subject to the extracting B&O tax upon the value of the extracted products. (See WAC 458-20-112 regarding "value of products.") Extractors who sell the products at retail or wholesale in this state are subject to either the retailing or wholesaling B&O tax, as the case may be. In such cases, the extractor must report under both the "production" (extracting) and "selling" (wholesaling or retailing) classifications of the B&O tax, and claim a tax credit under the multiple activities tax credit (MATC). See also WAC 458-20-19301 (Multiple activities tax credits) for a more detailed explanation of the MATC reporting requirements.

For example, Corporation quarries rock without further processing. Corporation sells and delivers the rock to Landscaper, who is located in Washington. Landscaper provides

Corporation with a resale certificate. Corporation should report under both the extracting and wholesaling B&O tax classifications, and claim a MATC per WAC 458-20-19301. Had Corporation delivered the quarried rock to an out-of-state location, Corporation would have incurred only an extracting B&O tax liability.

(a) When extractors use their products in a manufacturing process. Persons who extract products, use these extracted products in a manufacturing process, and then sell the products all within Washington are subject to both "production" taxes (extracting and manufacturing) and the "selling" tax (wholesaling or retailing), and may claim the appropriate credits under the MATC. (See also WAC 458-20-136 on manufacturing.)

For example, Company quarries rock (an extracting activity), crushes and blends the rock (a manufacturing activity), and sells the resulting product at retail. The taxable value of the extracted rock is \$50,000 (the amount subject to the extracting B&O tax). The taxable value of the crushed and blended rock is \$140,000 (the amount subject to the manufacturing B&O tax). The crushed and blended rock is sold for \$140,000 (the amount subject to the retailing B&O tax). Assume the tax rates for the extracting and manufacturing B&O taxes are .00484, and the tax rate for the retailing B&O tax is .00471. Company should compute its tax liability as follows:

(i) Reporting B&O tax on the combined excise tax return:

(A) Extracting B&O tax liability of \$242 (\$50,000 x .00484);

(B) Manufacturing B&O tax liability of \$678 (\$140,000 x .00484); and

(C) Retailing B&O tax liability of \$659 (\$140,000 x .00471).

(ii) Completing the multiple activities tax credit (Part II of Schedule C):

Activity which results in a tax credit	Taxable Amount	Business and Occupation Tax Reported				
		Extracting	Manufacturing	Wholesaling	Retailing	Total Credit
Washington extracted products manufactured in Washington	50,000	242	242			242
Washington extracted products sold in Washington						
Washington manufactured products sold in Washington	140,000		678		659	659
					Multiple Activities Tax Credit Subtotal of taxes paid to Washington state	901
					Credit ID 800	901

Schedule C helps taxpayers calculate and claim the multiple activities tax credit provided by RCW 82.04.440. In the Schedule C example above, materials that a person extracts and then uses in a manufacturing process in Washington are entered at their value when extracting ceases and manufacturing begins (\$50,000 shown on the "Washington extracted

products manufactured in Washington" line of the Schedule C). The taxable amount reported on the "Washington manufactured products sold in Washington" line of the Schedule C is the value of products at the point that manufacturing ceases (\$140,000), not simply the value added by the manufacturing activity. For more information and examples that are helpful

in determining the value of products, refer to WAC 458-20-112 (Value of products).

(b) **When extractors sell their products at retail or wholesale.** An extractor making retail sales must collect and remit retail sales tax on all sales to consumers, unless the sale is exempt by law (e.g., see WAC 458-20-244 regarding sales of certain food products). Extractors making wholesale sales must obtain resale certificates from their customers to document the wholesale nature of any transaction. (Refer to WAC 458-20-102 on resale certificates.)

(4) **Tax-reporting responsibilities for income received by extractors for hire.** Persons performing extracting activities for extractors are subject to the extracting for hire B&O tax upon their gross income from those services.

For example, a person removing ore, waste, or overburden at a mining pit for the operator of the mining operation is an extractor for hire. Likewise, a person drilling to locate or provide access to a satisfactory grade of ore at the mining pit for the operator is also an extractor for hire. The gross income derived from these activities is subject to the extracting for hire B&O tax classification.

(5) **Mining or mineral rights.** Royalties or charges in the nature of royalties for granting another the privilege or right to remove minerals, rock, sand, or other natural resource product are subject to the service and other activities B&O tax. The special B&O tax rate provided by RCW 82.04.2907 does not apply because this statute specifically excludes compensation received for any natural resource. Refer also to RCW 82.45.035 and WAC 458-61-520 (Mineral rights and mining claims) for more information regarding the sale of mineral rights and the real estate excise tax.

Income derived from the sale or rental of real property, whether designated as royalties or another term, is exempt of the B&O tax.

(6) **Tax liability with respect to purchases of equipment or supplies and property extracted and/or manufactured for commercial or industrial use.** The retail sales tax applies to all purchases of equipment, component parts of equipment, and supplies by persons engaging in extracting or extracting for hire activities unless a specific exemption applies. If the seller fails to collect the appropriate retail sales tax, the buyer is required to remit the retail sales tax (commonly referred to as "deferred retail sales tax") or use tax directly to the department.

(a) **Exemption available for certain manufacturing equipment.** RCW 82.08.02565 and 82.12.02565 provide retail sales and use tax exemptions for certain machinery and equipment used by manufacturers and processors for hire. While this exemption does not extend to extractors or extractors for hire, persons engaged in both extracting and manufacturing activities should refer to WAC 458-20-13601 for an explanation of how these exemptions may apply to them.

(b) **Property manufactured for commercial or industrial use.** Persons manufacturing tangible personal property for commercial or industrial use are subject to both the manufacturing B&O and use taxes upon the value of the property manufactured, unless a specific exemption applies. (See also WAC 458-20-134 on commercial or industrial use.)

If the person also extracts materials used in the manufacturing process, the extracting B&O tax is due on the value of the extracted materials and a MATC may be taken. For exam-

ple, Quarry extracts rock, crushes the rock into desired size, and then uses the crushed rock in its parking lot. The use of the crushed rock by Quarry in its parking lot is a commercial or industrial use. Quarry is subject to the extracting and manufacturing B&O taxes and may claim a MATC. Quarry is also responsible for remitting use tax on the value of the crushed rock applied to the parking lot.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). 04-01-126, § 458-20-135, filed 12/18/03, effective 1/18/04. Statutory Authority: RCW 82.32.300. 00-11-096, § 458-20-135, filed 5/17/00, effective 6/17/00; 86-09-058 (Order ET 86-7), § 458-20-135, filed 4/17/86; 83-07-034 (Order ET 83-17), § 458-20-135, filed 3/15/83. Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-07-045 (Order ET 78-4), § 458-20-135, filed 6/27/78; Order ET 70-3, § 458-20-135 (Rule 135), filed 5/29/70, effective 7/1/70.]

WAC 458-20-185 Tax on tobacco products. (1) Introduction. This rule explains the tax liabilities of persons engaged in business as a retailer, distributor or subjobber of tobacco products. The tax on tobacco products is in addition to all other taxes owed. For example, retailers, distributors, and subjobbers are liable for business and occupation tax on their retailing or wholesaling activities, use tax on tobacco products distributed as samples, and litter tax on the value of the tobacco products. See WAC 458-20-186 for tax liabilities associated with taxes which apply exclusively to cigarettes.

(2) **Definitions.** The following definitions apply to this rule.

(a) "Tobacco products" means all tobacco products except cigarettes as defined in RCW 82.24.010. The term includes:

- (i) Cigars, cheroots, stogies, and periques;
- (ii) Granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco;
- (iii) Snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut, and other chewing tobaccos; and
- (iv) Shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking.

(b) "Manufacturer" means a person who manufactures and sells tobacco products.

(c) "Distributor" means:

- (i) Any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from without the state any tobacco products for sale;
- (ii) Any person who makes, manufactures, or fabricates tobacco products in this state for sale in this state;
- (iii) Any person engaged in the business of selling tobacco products without this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers; or

(iv) Any person engaged in the business of selling tobacco products in this state who handles for sale any tobacco products that are within this state but upon which tax has not been imposed.

(d) "Subjobber" means any person, other than a tobacco manufacturer or distributor, who buys tobacco products from a distributor and sells them to persons other than the ultimate consumers.

(e) "Retailer" means any person engaged in the business of selling tobacco products to ultimate consumers.

(f) "Sale" means any transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person. It includes all gifts by persons engaged in the business of selling tobacco products, for advertising, as a means of evading the provisions of chapter 82.26 RCW, or for any other purposes whatsoever.

(g) "Wholesale sales price" means the established price for which a manufacturer sells tobacco product to the distributor, exclusive of any discount or other reduction.

(i) A wholesale sales price that is an established price must reflect the fair market value of the tobacco products. In the case where a seller and buyer establish a sales price that does not reflect fair market value, such as may occur in certain sales between affiliated companies, the wholesale sales price is the fair market value of the tobacco product and not the sales price established by the seller and buyer.

(ii) The phrase "discount or other reduction" includes any reduction from the established wholesale sales price made to a specific customer or class of customers.

Example. Pursuant to a half-price promotion, a manufacturer sells tobacco products to a distributor. The invoice lists \$100 as the price of the product less a \$50 discount resulting in a net invoice of \$50. The tax is due on \$100 which is the wholesale sales price exclusive of any discount or other reduction.

(h) "Business" means any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing tobacco products in this state.

(i) "Place of business" means any place where tobacco products are sold or where tobacco products are manufactured, stored, or kept for the purpose of sale or consumption, including any vessel, vehicle, airplane, train, or vending machine.

(j) "Retail outlet" means each place of business from which tobacco products are sold to consumers.

(k) "Department" means the department of revenue.

(l) "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, the state and its departments and institutions, political subdivision of the state of Washington, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise. The term excludes any person immune from state taxation, including the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country.

(m) "Indian country" means the same as defined in WAC 458-20-192.

(3) **Rate and measure of tax.** The Washington state tobacco products tax is an excise tax levied on the wholesale sales price on all tobacco products sold, used, consumed, handled, or distributed within the state.

The rate of tax is a combination of statutory percentage rates found in RCW 82.26.020, 82.26.025, and 82.26.028. The total current rate of tax is shown on the current combined excise tax return.

(4) **Imposition of tax.** The tax is imposed once on all tobacco products sold, used, consumed, handled, or distributed within this state.

(a) **When tax is imposed.** The tax is imposed at the time the distributor:

(i) Brings, or causes to be brought, into this state from without the state tobacco products for sale; or

(ii) Makes, manufactures, or fabricates tobacco products in this state for sale in this state; or

(iii) Ships or transports tobacco products to retailers in this state, to be sold by those retailers; or

(iv) Handles for sale any tobacco products that are within this state but upon which tax has not been imposed. For example, a retailer with a place of business in this state purchases for sale tobacco products from an enrolled tribal member of a federally recognized tribe located within Indian country. Because the tax was not imposed on the enrolled tribal member, the retailer must pay the tax.

(b) **Additional occasion when tax may be imposed.** Any retailer who fails to keep invoices as required under chapter 82.32 RCW and which invoices do not conform to the requirements set forth in subsection (5)(b) of this rule is liable for the tax on any uninvoiced tobacco product which that retailer handles for sale.

(c) **When an out-of-state person is a distributor who must pay the tax.** A person located out-of-state who is selling tobacco products to Washington wholesalers from a stock of goods located outside this state is not a distributor and therefore is not liable for the tax.

(i) On the other hand, a person located out-of-state who is selling and shipping tobacco products to Washington retailers from an out-of-state stock of goods is a distributor and is subject to the tax. If the out-of-state person is not required to register and pay taxes in Washington, the retailers to whom it sells must pay the tax. However, such out-of-state persons may elect to register with the state and pay the tax.

(ii) A Washington retailer who purchases tobacco from an out-of-state stock of goods from a person located out-of-state who is not required to register and pay taxes in Washington may provide to that person a certificate affirming that the Washington retailer will remit to the state the tax due. Both the out-of-state person and the Washington retailer should retain a copy of such certificate. The certificate should substantially conform to the example shown below:

Retailer's Certificate of Remittance of Tax

The undersigned retailer hereby certifies that the undersigned will remit to the state the tax due on the tobacco products specified below purchased from seller. This certificate shall be considered a part of each order which the undersigned may give to the seller, unless otherwise specified, and shall be valid until revoked by the undersigned in writing or until it expires, whichever occurs first. This certificate expires four years from the effective date.

Name of Seller:
Name of Retailer: Effective Date:
UBI/Registration #
Address of Retailer:
Tobacco products purchased:
Agent for Retailer (print)
Signature:

(iii) A person who is located out-of-state and who is required to register and pay taxes in Washington may sell and ship tobacco products to a Washington customer who is both a wholesaler and retailer. Under this circumstance, the person, the customer, and the department may enter into a written agreement that identifies the person who will remit to the state the tax due as to those particular sales. The written agreement will contain such other terms and conditions that are acceptable to the department.

(iv) When a person located outside Washington distributes samples in this state, that person must pay the tax on those samples.

(5) **Books and records.** Since the tobacco products tax is paid on returns as computed by the taxpayer rather than by affixing of stamps or decals, the law contains stringent provisions requiring that accurate and complete records be maintained. The records must include all pertinent papers and documents relating to the purchase, sale, or disposition of tobacco products and must be kept for a period of at least five years after the date of the document or the date of the entry appearing in the records.

(a) **Distributors.** Distributors must keep at each registered place of business complete and accurate records for that place of business. The records to be kept by distributors include itemized invoices of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state or shipped or transported to retailers in this state, and of all sales of tobacco products except retail sales. The itemized invoice for each purchase or sale must be legible and must show the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts. Itemized invoices must be preserved for five years from the date of sale.

(b) **Retailers and subjobbers.** Retailers and subjobbers must secure itemized invoices of all tobacco products purchased. The itemized invoice for each purchase must be legible and must show the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts. Itemized invoices must be preserved for five years from the date of sale.

(c) **Warehouses.** Records of all deliveries or shipments (including ownership, quantities) of tobacco products from any public warehouse of first destination in this state must be kept by the warehouse.

(6) **Nonpayment of tax by retailers.** If the department finds that any nonpayment of tax by the retailer was willful, penalties and interest shall be assessed in accordance with chapter 82.32 RCW. In the case of a second or plural nonpayment of tax by the retailer, penalties and interest will be assessed in accordance with chapter 82.32 RCW without regard to willfulness.

(a) Example. In the course of an audit of Retailer, the department determines that on several occasions Retailer failed to pay the tax. The department does not find the nonpayment to be willful. Retailer owes the tax due on all occasions of nonpayment and the penalties and interest is assessed on all but the first occasion of nonpayment. A few years later Retailer is audited again. The department finds one occasion of nonpayment of tax. In addition to the tax due, penalties and interest will be assessed in accordance with chapter 82.32 RCW.

(b) Example. In the course of an audit of Retailer #2, the department determines that on several occasions Retailer #2 failed to pay the tax. The department determines that the nonpayment of tax was willful. In addition to the tax due on all occasions of nonpayment, Retailer #2 owes penalties and interest on all occasions.

(7) **Reports and returns.** The tax is reported on the combined excise tax return to be filed according to the reporting frequency assigned by the department. Detailed instructions for preparation of these returns may be secured from the department.

Out-of-state wholesalers or distributors selling directly to retailers in Washington should apply for a certificate of registration, and the department will furnish returns for reporting the tax.

Retailers, distributors, and subjobbers may be required to file a report with the department in compliance with the provisions of the National Uniform Tobacco Settlement when purchasing tobacco products from certain manufacturers. Please see WAC 458-20-264 and chapter 70.157 RCW.

(8) **Interstate sales and sales to U.S.**

(a) The tax does not apply to tobacco products sold to federal government agencies, nor to deliveries to retailers outside the state for resale by such retailers, and a credit may be taken for the amount of tobacco products tax previously paid on such products. RCW 82.26.110. The credit is not available for sales made for delivery outside this state other than sales for resale to retailers. For example, no credit may be taken for a sale of tobacco products delivered to a consumer outside the state.

(b) To document that the tobacco products were sold to a retailer outside the state for resale by such retailer, the person may obtain from the retailer a certificate which substantially conforms to the following:

Retailer's Certification of Purchase of Tobacco Products for Resale Outside Washington

The undersigned buyer/retailer hereby certifies that the tobacco products specified below are purchased for resale outside this state by the undersigned. This certificate shall be considered a part of each order which the undersigned may give to the seller, unless otherwise specified, and shall be valid until revoked in writing by the undersigned or until it expires, whichever occurs first. This certificate expires four years from the effective date.

Name of Seller Effective Date.
UBI/Registration #
Name of Buyer/Retailer Business
Address.
Items purchased for resale
Agent for buyer/retailer (print).
Signature.

(9) **Returned or destroyed goods.** A credit may also be taken for tobacco products destroyed or returned to the manufacturer on which tax was previously paid. If the credit is claimed against tax owed by the taxpayer or as a refund of tax paid, taxpayers must retain in their records appropriate documentation, affidavits or certificates conforming to those illustrated below:

(a) Certificate of taxpayer.

Claim for Credit on Tobacco Products
Tax Merchandise Destroyed

The undersigned certifies under penalty of perjury under the laws of the state of Washington that the following is true and correct to the best of his/her knowledge:

That he/she is (Title) of the (Business Name), a dealer in tobacco products; that the dealer has destroyed merchandise unfit for sale, said tobacco products having a wholesale sales price of \$; that tobacco tax had been paid on such tobacco products; that the tobacco products were destroyed in the following manner and in the presence of an authorized agent of the department of revenue:

.....
(State date and manner of destruction)
.....

Attested to: By
Date Signature of Taxpayer or
Authorized Representative.
.....
Position with Dealer
.....
Dealer
.....
Address of Dealer

APPROVED:

.....
Authorized Agent of
Department of Revenue of the
State of Washington.

(b) Certificate of manufacturer.

Claim for Credit on Tobacco Products
Tax Merchandise Returned:

The undersigned certifies under penalty of perjury under the laws of the state of Washington that the following is true and correct to the best of his/her knowledge:

That he/she is (Title) of the (Business Name), a manufacturer of tobacco products; that the manufacturer has received from (Dealer), (Address), a dealer in tobacco products within the State of Washington, certain tobacco products which were unfit for sale, the tobacco products having a wholesale sales price of \$; that the tobacco products were destroyed in the following manner:

.....
(Indicate date and manner of destruction)
.....

Credit issued on Memo No.
credit approved by: Signature of Taxpayer or
Authorized Representative
.....
Name of Manufacturer
.....
Address
on behalf of the Department
of Revenue - State of
Washington

(10) Enforcement. Pursuant to RCW 82.26.121 and 66.44.010, enforcement officers of the liquor control board may enforce all provisions of the law with respect to the tax on tobacco products. Retailers, distributors, and subjobbers must allow department personnel and enforcement officers of the liquor control board free access to their premises to inspect the tobacco products contained in the premises and to examine the books and records of the business. Failure to allow free access or to hinder or interfere with department personnel and/or enforcement officers of the liquor control board may result in the revocation of the business license.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). 03-12-058, § 458-20-185, filed 6/2/03, effective 7/3/03. Statutory Authority: RCW 82.32.300. 94-10-061, § 458-20-185, filed 5/3/94, effective 6/3/94; 90-04-038, § 458-20-185, filed 1/31/90, effective 3/3/90; 83-07-032 (Order ET 83-15), § 458-20-185, filed 3/15/83; Order ET 71-1, § 458-20-185, filed 7/22/71; Order ET 70-3, § 458-20-185 (Rule 185), filed 5/29/70, effective 7/1/70.]

WAC 458-20-208 Exemptions for adjustments of new motor vehicle inventory between new car dealers and accommodation sales.

(1) Introduction. This rule discusses the business and occupation (B&O) tax exemptions for certain wholesale sales of new motor vehicles between new car dealers and accommodation sales. The rule also clarifies the applicability of the accommodation sale exemption to exchanges of fungible products, such as gasoline and oil.

(2) Inventory adjustments by new car dealers. Effective July 1, 2001, RCW 82.04.422 provides a B&O tax exemption for wholesale sales of new motor vehicles by new car dealers to other new car dealers for purposes of adjusting inventory levels.

The following conditions must be satisfied for the exemption to apply.

(a) New motor vehicle. The property sold must be a new motor vehicle. For the purposes of this rule, "new motor vehicle" means every motor vehicle that is self-propelled and is required to be registered and titled under Title 46 RCW, has not been previously titled to a retail purchaser, and is not a "used motor vehicle" as defined under RCW 46.04.660. RCW 46.70.011. Examples of motor vehicles include passenger cars, trucks, motorcycles, and motor homes.

(b) Wholesale sale between new car dealers selling the same make of new motor vehicles. The sale must be a wholesale sale and must occur between new car dealers selling the same make of vehicle.

(i) Example 1. A new car dealer sells a new light pickup truck, Make A, to another new car dealer. The purchasing dealer also sells new Make A passenger vehicles. This sale qualifies for the exemption.

(ii) Example 2. A new car dealer sells a new passenger vehicle, Make X, to another new car dealer. The purchasing dealer is not regularly engaged in the business of selling new Make X vehicles. This sale does not qualify for the exemption.

(c) Amount paid by the purchasing dealer may not exceed amount paid by selling dealer. The amount paid by the purchasing dealer cannot exceed the amount the selling dealer paid in the acquisition of the new motor vehicle, although the selling dealer may add reasonable expenses for preparing the vehicle for sale or transfer. Actual freight or

delivery costs incurred by the seller and billed as such to the buyer may also be added.

(i) **What are reasonable expenses for preparation?** Reasonable expenses for preparing the vehicle for sale or transfer include, but are not limited to, the actual cost of additional accessories installed by the selling dealer, such as wheel/tire upgrades, and pin striping.

Questions concerning whether the exemption is available when other costs are included should be submitted to the department for determination at:

Department of Revenue
Taxpayer Services
P.O. Box 47478
Olympia, WA 98504-7478

(ii) **What is the effect of holdbacks or discounts on amount paid?** The amount paid by the selling dealer may not be reduced by the amount of any manufacturer's holdbacks or discounts received after an article has been sold to adjust inventory levels even though the seller may retain such holdbacks or discounts.

For the following examples, presume a new car dealer receives two new motor vehicles from the manufacturer on June 1st. The manufacturer's sales invoice indicates an invoice price of \$16,600 and a holdback of \$500 for each vehicle. The dealer is entitled to receive the holdback on July 1st, thirty days after being billed for the vehicle by the manufacturer.

(A) **Example 1.** The new car dealer sells one of the vehicles to another new car dealer on June 10th. The amount paid by the selling dealer in the acquisition of the vehicle is \$16,600.

(B) **Example 2.** The new car dealer sells the other vehicle to another new car dealer on July 18th. The amount paid by the selling dealer in the acquisition of the vehicle is \$16,100.

(3) **Accommodation sales.** RCW 82.04.425 provides a B&O tax exemption for wholesale sales of tangible personal property by persons who regularly engage in making sales of the type of property so sold to other persons who similarly engage in the business of selling such property.

The following conditions must be satisfied for the exemption to apply.

(a) **Amount paid by buyer may not exceed amount paid by seller.** The amount the buyer pays to the seller may not exceed the amount the seller paid to the seller's vendor in the acquisition of the property. Thus, a seller who manufactured the property sold cannot claim the exemption because the property has not been acquired from a vendor.

The instructions in subsection (2)(c) of this rule regarding additional expenses for preparation and the effect of holdbacks and discounts equally apply to the accommodation sale B&O tax exemption provided by RCW 82.04.425.

(b) **Sale is an accommodation to fill an existing order.** The sale must occur as an accommodation to allow the buyer to fill a bona fide existing order of a customer or occur within fourteen days to reimburse in-kind a previous accommodation sale by the buyer to the seller. A bona fide existing order is present if there is a commitment by the buyer's customer to purchase the property. The buyer must retain records demonstrating the customer's commitment to purchase, such as a written agreement or deposit.

For example, Recreational Vehicle Dealer A purchases a fifth-wheel trailer from Recreational Vehicle Dealer B as an accommodation. Ten days later, Dealer A sells a travel trailer to Dealer B as reimbursement in-kind of the previous accommodation sale. For Dealer A to claim the B&O tax exemption for the sale of the travel trailer to Dealer B, Dealer A must keep sufficient records to document a bona fide existing customer order for the fifth-wheel trailer purchased from Dealer B.

(c) **Documentation.** A person claiming the exemption for an accommodation sale must maintain sufficient documentation to verify the exemption. In addition to the documentation noted above establishing, where pertinent, the existence of a bona fide existing customer order, this documentation must include:

- (i) The buyer's name and address;
- (ii) The seller's name and address;
- (iii) The buyer's UBI/tax registration number;
- (iv) Description of the property purchased, including make, model, and serial numbers as appropriate;
- (v) The date of purchase and the purchase price;
- (vi) A statement by the buyer as to whether the purchase is to fill a bona fide existing order or to reimburse a previous in-kind accommodation sale, including information identifying the previous accommodation sale; and
- (vii) The buyer's signature and title.

(4) **Exchanges of fungible products.** Persons engaged in the selling and distributing of fungible products often enter into exchange agreements. An exchange is a sale regardless of whether it results in a profit because a transfer of the ownership of, title to, or possession of property for valuable consideration occurs. RCW 82.04.040. Exchanges are subject to the B&O tax unless otherwise exempt by law.

(a) **What is a fungible product?** Fungible products are products that lose their physical identity to the point that they cannot be distinguished from like-kind items when commingled. Examples of fungible products include gasoline, bulk oil products, grains, logs, wood chips, fruits, and vegetables.

(b) **What is an exchange?** Under typical exchange agreements, a person is required to furnish products to another person selling and distributing the same products, sometimes receiving payment in-kind or with a substitute product at a later date. Exchange agreements may require the person to arrange for direct delivery from his or her vendor to the third party distributor. In some cases, actual title and/or possession of the product may pass directly from the vendor to the third-party distributor.

Persons exchanging fungible products often do so on a regular and continuing basis to cover shortages occurring because of a lack of storage or production facilities, and/or to effect savings in transportation costs. Exchanges may be carried as loans on the books of account (in which case the exchanges are often referred to as "intercompany loans"). Products acquired via an exchange may or may not be carried as regular inventory on the books of account.

(c) **May an exchange of fungible products qualify as an accommodation sale?** The fact that the product sold is a fungible product does not preclude a claim that the sale is exempt as an accommodation sale. However, such a claim will be recognized only if the statutory requirements of RCW 82.04.425 are met.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 34.05.230. 03-07-066, § 458-20-208, filed 3/17/03, effective 4/17/03; Order ET 70-3, § 458-20-208 (Rule 208), filed 5/29/70, effective 7/1/70.]

WAC 458-20-210 Sales of tangible personal property for farming—Sales of agricultural products by farmers.

(1) **Introduction.** This rule explains the application of business and occupation (B&O), retail sales, and use taxes to the sale and/or use of feed, seed, fertilizer, spray materials, and other tangible personal property for farming. This rule also explains the application of B&O, retail sales, and litter taxes to the sale of agricultural products by farmers. Farmers should refer to WAC 458-20-101 to determine whether they must obtain a tax registration endorsement or a temporary registration certificate from the department of revenue (department).

Farmers and persons making sales to farmers may also want to refer to the following rules for additional information:

- (a) WAC 458-20-209 (Farming for hire and horticultural services provided to farmers);
- (b) WAC 458-20-222 (Veterinarians);
- (c) WAC 458-20-239 (Sales to nonresidents of farm machinery or implements, and related services); and
- (d) WAC 458-20-262 (Retail sales and use tax exemptions for agricultural employee housing).

(2) **Who is a farmer?** A "farmer" is any person engaged in the business of growing, raising, or producing, upon the person's own lands or upon the lands in which the person has a present right of possession, any agricultural product to be sold. A "farmer" does not include a person growing, raising, or producing agricultural products for the person's own consumption; a person selling any animal or substance obtained therefrom in connection with the person's business of operating a stockyard, slaughterhouse, or packing house; or a person in respect to the business of taking, cultivating, or raising timber. RCW 82.04.213 and chapter 118, Laws of 2001.

(3) **What is an agricultural product?** An "agricultural product" is any product of plant cultivation or animal husbandry including, but not limited to: A product of horticulture, grain cultivation, vermiculture, viticulture, or aquaculture as defined in RCW 15.85.020; plantation Christmas trees; short-rotation hardwoods as defined in RCW 84.33.035 (as of July 22, 2001); turf; or any animal, including, but not limited to, an animal that is a private sector cultured aquatic product as defined in RCW 15.85.020, a bird, an insect, or the substances obtained from such animals. An "agricultural product" does not include animals defined under RCW 16.70.020 as "pet animals." RCW 82.04.213 and chapter 118, Laws of 2001.

(4) **Sales to farmers.** Persons making sales of tangible personal property to farmers are generally subject to wholesaling or retailing B&O tax, as the case may be, on the gross proceeds of sales. Sales of some services performed for farmers, such as installing or repairing tangible personal property, are retail sales and subject to retailing B&O tax on the gross proceeds of such sales. Persons making retail sales must collect retail sales tax from the buyer, unless the sale is specifically exempt by law. Readers should refer to subsection (6) of this rule for information about specific sales tax exemptions available for sales to farmers.

(a) **Documenting wholesale sales.** A seller must obtain a resale certificate from the buyer to document the wholesale nature of any transaction. (Refer to WAC 458-20-102 for detailed information about resale certificates.)

(b) **Buyer's responsibility when the seller does not collect retail sales tax on a retail sale.** If the seller does not collect retail sales tax on a retail sale, the buyer must pay the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department, unless the sale is specifically exempt by law. The "Combined Excise Tax Return" does not have a separate line for reporting deferred sales tax. Consequently, deferred sales tax liability should be reported on the use tax line of the buyer's Combined Excise Tax Return. If a deferred sales tax or use tax liability is incurred by a farmer who is not required to obtain a tax registration endorsement from the department (see WAC 458-20-101), the farmer must report the tax on a "Consumer Use Tax Return" and remit the appropriate tax to the department. Refer to WAC 458-20-178 for detailed information regarding use tax.

The Consumer Use Tax Return can be obtained by calling the department's telephone information center at 1-800-647-7706. The return may also be obtained from the department's website at: <http://dor.wa.gov>.

(c) **Feed, seed, seedlings, fertilizer, spray materials, and agents for enhanced pollination.** Sales to farmers of feed, seed, seedlings, fertilizer, spray materials, and agents for enhanced pollination, including insects such as bees, to be used for the purpose of producing an agricultural product, whether for wholesale or retail sale, are wholesale sales.

However, when these items are sold to consumers for purposes other than producing agricultural products for sale, the sales are retail sales. For example, sales of feed to riding clubs, racetrack operators, boarders, or similar persons who do not resell the feed at a specific charge are retail sales. Sales of feed for feeding pets or work animals, or for raising animals for the purpose of producing agricultural products for personal consumption are also retail sales. Sales of seed, fertilizer, and spray materials for use on lawns and gardens, or for any other personal use, are likewise retail sales.

(i) **What is feed?** "Feed" is any substance used as food to sustain or improve animals, birds, fish, or insects, including whole and processed grains or mixtures thereof, hay and forages or meals made therefrom, mill feeds and feeding concentrates, stock salt, hay salt, bone meal, fish meal, cod liver oil, double purpose limestone grit, oyster shell, and other similar substances. Food additives that are given for their beneficial growth or weight effects are "feed."

Hormones or similar products that do not make a direct nutritional or energy contribution to the body are not "feed," nor are products used as medicines.

(ii) **What is seed?** "Seed" is the propagative portions of plants commonly used for seeding or planting whether true seed, bulbs, plants, seed-like fruits, seedlings, or tubers.

(iii) **What is fertilizer?** "Fertilizer" is any substance containing one or more recognized plant nutrients and is used for its plant nutrient content and/or is designated for use in promoting plant growth. "Fertilizer" includes limes, gypsum, and manipulated animal and vegetable manures. There is no requirement that fertilizers be applied directly to the soil.

(iv) **What are spray materials?** "Spray materials" are any substance or mixture of substances in liquid, powder, granular, dry flowable, or gaseous form, which is intended to prevent, destroy, control, repel, or mitigate any insect, rodent, nematode, mollusk, fungus, weed, and any other form of plant or animal life normally considered to be a pest. The term includes treated materials, such as grains, that are intended to destroy, control, or repel such pests. "Spray materials" also include substances that act as plant regulators, defoliants, desiccants, or spray adjuvants.

(v) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(A) Sue grows vegetables for retail sale at a local market. Sue purchases fertilizers and spray materials that she applies to the vegetable plants. She also purchases feed for poultry that she raises to produce eggs for her personal consumption. Because the vegetables are an agricultural product produced for sale, retail sales tax does not apply to Sue's purchases of fertilizers and spray materials, provided she gives the seller a resale certificate. Retail sales tax does apply to her purchases of poultry feed, as the poultry are raised to produce eggs for Sue's personal consumption.

(B) WG Vineyards (WG) grows grapes that it uses to manufacture wine for sale. WG purchases pesticides and fertilizers that are applied to its vineyards. WG may purchase these pesticides and fertilizers at wholesale, provided WG gives the seller a resale certificate.

(C) Seed Co. contracts with farmers to raise seed. Seed Co. provides the seed and agrees to purchase the crop if it meets specified standards. The contracts provide that ownership of the crop is retained by Seed Co., and the risk of crop loss is borne by the farmers. The farmers are obligated to pay for the seed whether or not the crop meets the specified standard. The transfer of the possession of the seed to the farmers is a wholesale sale, provided Seed Co. obtains a resale certificate from the farmers.

(d) **Chemical sprays or washes.** Sales of chemical sprays or washes, whether to farmers or other persons, for the purpose of post-harvest treatment of fruit for the prevention of scald, fungus, mold, or decay are wholesale sales.

(e) **Farming equipment.** Sales to farmers of farming equipment such as machinery, machinery parts and repair, tools, and cleaning materials are retail sales and subject to retailing B&O and retail sales taxes, unless specifically exempt by law. Refer to subsections (4)(i) and (6) of this rule for information about sales tax exemptions available to farmers.

(f) **Packing materials and containers.** Sales of packing materials and containers, or tangible personal property that will become part of a container, to a farmer who will sell the property to be contained therein are wholesale sales, provided the packing materials and containers are not put to intervening use by the farmer. Thus, sales to farmers of binder twine for binding bales of hay that will be sold or wrappers for fruit and vegetables to be sold are subject to wholesaling B&O tax. However, sales of packing materials and containers to a farmer who will use the items as a consumer are retail sales and subject to retailing B&O and retail sales taxes. Thus,

sales of binder twine to a farmer for binding bales of hay that will be used to feed the farmer's livestock are retail sales.

(g) **Purchases for dual purposes.** A buyer normally engaged in both consuming and reselling certain types of tangible personal property and not able to determine at the time of purchase whether the particular property purchased will be consumed or resold must purchase according to the general nature of his or her business. RCW 82.08.130. If the buyer principally consumes the articles in question, the buyer should not give a resale certificate for any part of the purchase. If the buyer principally resells the articles, the buyer may issue a resale certificate for the entire purchase. For the purposes of this subsection, the term "principally" means greater than fifty percent.

If a buyer makes a purchase for dual purposes and does not give a resale certificate for any of the purchase and thereafter resells some of the articles purchased, the buyer may claim a "taxable amount for tax paid at source" deduction. Refer to WAC 458-20-102 for additional information regarding purchases for dual purposes and the "taxable amount for tax paid at source" deduction.

(i) **Potential deferred sales tax liability.** If the buyer gives a resale certificate for all purchases and thereafter consumes some of the articles purchased, the buyer is liable for deferred sales tax and must remit the tax directly to the department. Refer to subsection (4)(b) of this rule and WAC 458-20-102 for more information regarding deferred sales tax.

(ii) **Example.** A farmer purchases binder twine for binding bales of hay. Some of the hay will be sold and some will be used to feed the farmer's livestock. More than fifty percent of the binder twine is used for binding bales of hay that will be sold. Because the farmer principally uses the binder twine for binding bales of hay that will be sold, the farmer may issue a resale certificate to the seller for the entire purchase. The farmer is liable for deferred sales tax on the binder twine used for binding bales of hay that are used to feed the farmer's livestock and must remit the tax directly to the department.

(h) **"Fruit bin rentals" by fruit packers.** Fruit packers often itemize their charges to farmers for various services related to the packing and storage of fruit. An example is a charge for the bins which the packer uses in the receiving, sorting, inspecting, and storing of fruit (commonly referred to as "bin rentals"). The packer delivers the bins to the grower, who fills them with fruit for eventual storage in the packer's warehouse. Charges by fruit packers to farmers for such bin rentals do not constitute the rental of tangible personal property to the farmer where the bins are under the control of the packer for use in the receiving, sorting, inspecting, and storing of fruit. These charges are income to the packer related to the receipt or storage of fruit. The packer, as the consumer of the bins, is subject to retail sales or use tax on the purchase or use of the bins. (Information regarding the taxability of fruit packing is contained in WAC 458-20-214.)

(i) **Machinery and equipment used directly in a manufacturing operation.** Machinery and equipment used directly in a manufacturing operation by a manufacturer or processor for hire is exempt from sales or use tax provided that all requirements for the exemption are met. RCW 82.08.02565 and 82.12.02565. This exemption is commonly referred to as the M&E exemption. Farmers who use agricul-

tural products that they have grown, raised, or produced as ingredients in a manufacturing process may be entitled to the M&E exemption on the acquisition of machinery and equipment used directly in their manufacturing operation. Refer to WAC 458-20-13601 for detailed information regarding the M&E exemption.

See subsection (5)(b) of this rule for an example illustrating a farmer using agricultural products that the farmer has grown as an ingredient in a manufacturing process.

(5) **Sales by farmers.** Farmers are not subject to B&O tax on wholesale sales of agricultural products. RCW 82.04.330. Farmers who manufacture products using agricultural products that they have grown, raised, or produced should refer to subsection (5)(b) of this rule for tax-reporting information.

Farmers are subject to retailing B&O tax on retail sales of agricultural products and retailing or wholesaling B&O tax on sales of nonagricultural products, as the case may be, unless specifically exempt by law. Also, B&O tax applies to sales of agricultural products that the seller has not grown, raised, or produced upon the seller's own land or upon land in which the seller has a present right of possession, whether these products are sold at wholesale or retail. Likewise, B&O tax applies to sales of animals or substances derived from animals in connection with the business of operating a stockyard, slaughterhouse, or packing house. Farmers may be eligible to claim a small business B&O tax credit if the amount of B&O tax liability in a reporting period is under a certain amount. For detailed information about this credit, refer to WAC 458-20-104.

(a) **Litter tax.** The gross proceeds of sales of certain products, including food for human or pet consumption, are subject to litter tax. RCW 82.19.020. Litter tax does not apply to sales of agricultural products that are exempt from B&O tax under RCW 82.04.330. RCW 82.19.050 and chapter 118, Laws of 2001. Thus, farmers are not subject to litter tax on wholesale sales of agricultural products but are liable for litter tax on the gross proceeds of retail sales of agricultural products that constitute food for human or pet consumption. Also, farmers that manufacture products for use and consumption within this state (e.g., a farmer who produces wine from grapes that the farmer has grown) may be liable for litter tax measured by the value of the products manufactured. For detailed information about the litter tax, refer to chapter 82.19 RCW and WAC 458-20-243.

For example, RD Orchards (RD) grows apples at its orchards. Most apples are sold at wholesale, but RD operates a seasonal roadside fruit stand from which it makes retail sales of apples. The wholesale sales of apples are exempt from both B&O and litter taxes. The retail sales of apples are subject to retailing B&O and litter taxes but are exempt from sales tax because the apples are sold as a food product for human consumption. (See subsection (6)(d) of this rule for information about the retail sales tax exemption applicable to sales of food products for human consumption.)

(b) **Farmers using agricultural products in a manufacturing process.** The B&O tax exemption provided by RCW 82.04.330 does not apply to any person selling manufactured substances or articles. Thus, farmers who manufacture products using agricultural products that they have grown, raised, or produced are subject to manufacturing

B&O tax on the value of products manufactured. Farmers who sell their manufactured products at retail or wholesale in the state of Washington are also generally subject to the retailing or wholesaling B&O tax, as the case may be. In such cases, a multiple activities tax credit (MATC) may be available. For detailed information regarding the manufacturing B&O tax and the MATC, refer to WAC 458-20-136 and 458-20-19301, respectively.

For example, WG Vineyards (WG) produces wine from grapes that it grows in its vineyards located within this state. WG makes wholesale sales of its wine to customers both within and outside of this state. WG is subject to manufacturing B&O tax on the value of the wine it produces. WG is also subject to wholesaling B&O tax on wholesale sales of wine delivered to buyers within this state, and WG is entitled to a multiple activities tax credit. In addition, WG is subject to litter tax on the value of wine sold within this state. (See subsection (5)(a) of this rule for information on the litter tax.)

(i) **Special B&O tax rate for manufacturing fresh fruits and vegetables.** A special lower B&O tax rate is provided by RCW 82.04.260 to persons manufacturing fresh fruits or vegetables by canning, preserving, freezing, processing, or dehydrating. Thus, farmers and other persons manufacturing fresh fruits and vegetables using these processes should report their manufacturing activity under the manufacturing fresh fruits and vegetables B&O tax classification.

Wholesale sales of fresh fruits or vegetables canned, preserved, frozen, processed, or dehydrated by the seller and sold to purchasers who transport the goods out of this state in the ordinary course of business are also subject to the lower B&O tax rate provided by RCW 82.04.260.

(ii) **Special B&O tax rate for manufacturing dairy products.** Effective September 20, 2001, a special lower B&O tax rate is provided by RCW 82.04.260 to persons manufacturing dairy products that, as of that date, are identified in 21 CFR, chapter 1, parts 131, 133, and 135. These products include milk, buttermilk, cream, yogurt, cheese, and ice cream, and also include by-products from the manufacturing of dairy products such as whey and casein. Thus, farmers and other persons manufacturing qualifying dairy products should report their manufacturing activity under the manufacturing dairy products B&O tax classification. This special rate does not apply, however, when dairy products are used merely as an ingredient or component of a manufactured product that is not a dairy product (e.g., milk-based soups or pizza).

The special B&O tax rate provided by RCW 82.04.260 also applies to persons selling manufactured dairy products to purchasers who transport the goods outside of this state in the ordinary course of business. Unlike the special B&O tax rate for certain wholesale sales of fresh fruits or vegetables (see subsection (5)(b)(i) of this rule), the special B&O tax rate for sales of qualifying dairy products does not require that the sales be made by the person who manufactured the dairy products nor that they be sales at wholesale.

(c) **Raising cattle for wholesale sale.** Persons who raise cattle for wholesale sale are exempt from B&O tax under RCW 82.04.330 provided that the cattle are held for at least sixty days prior to the sale. Persons who purchase and hold cattle for fewer than sixty days before reselling the cattle are

not considered to be engaging in the normal activities of growing, raising, or producing livestock for sale.

For example, a feedlot operation purchases cattle and feeds them until they attain a good market condition. The cattle are then sold at wholesale. The feedlot operator is exempt from B&O tax on wholesale sales of cattle if the cattle are held for at least sixty days while they are prepared for market. However, the feedlot operator is subject to wholesaling B&O tax on wholesale sales of cattle held for fewer than sixty days prior to the sale.

(d) **B&O tax exemptions available to farmers.** In addition to the exemption for wholesale sales of agricultural products, there are several other B&O tax exemptions available to farmers which are discussed in this subsection.

(i) **Growing, raising, or producing agricultural products owned by other persons.** RCW 82.04.330 exempts amounts received by a farmer for growing, raising, or producing agricultural products owned by others, such as custom feed operations.

For example, a farmer is engaged in the business of raising cattle owned by others (commonly referred to as "custom feeding"). After the cattle attain a good market condition, the owner then sells them. Amounts received by the farmer for custom feeding are exempt from B&O tax under RCW 82.04.330, provided that the cattle are held by the farmer for at least sixty days. Farmers are not considered to be engaging in the activity of raising cattle for sale unless the cattle are held for at least sixty days while the cattle are prepared for market. (See subsection (5)(c) of this rule.)

(ii) **Sales of hatching eggs or poultry.** RCW 82.04.410 exempts amounts received for the sale of hatching eggs or poultry by farmers producing hatching eggs or poultry, when these agricultural products are for use in the production for sale of poultry or poultry products.

(iii) **Processed hops shipped outside Washington for first use.** RCW 82.04.337 exempts amounts received by hop growers or dealers for hops shipped outside the state of Washington for first use, if those hops have been processed into extract, pellets, or powder in this state. However, the processor or warehouse of such products is not exempt on amounts charged for processing or warehousing such products.

(e) **B&O tax credit to encourage alternatives to field burning.** Persons who qualify for a sales or use tax exemption under RCW 82.08.840 or 82.12.840 (machinery, equipment, or structures that reduce emissions from field burning) also qualify for a B&O tax credit. RCW 82.04.4459. The amount of the credit is equal to fifty percent of the amount of costs expended for constructing structures or acquiring machinery and equipment for which an exemption was taken under RCW 82.08.840 or 82.12.840. (See subsection (6)(1) of this rule for information about the sales and use tax exemptions provided by RCW 82.08.840 and 82.12.840.) No application is necessary for the credit. Persons taking the credit must keep records necessary for the department to verify eligibility for the credit. This credit is subject to the following limitations:

(i) No credit may be taken in excess of the amount of B&O tax that would otherwise be due;

(ii) Credit may not be carried over to subsequent calendar years;

(iii) The credit must be claimed by the due date of the last tax return for the calendar year in which the payment is made;

(iv) Any unused credit expires;

(v) Refunds will not be given in place of credits;

(vi) The credit may not be claimed for expenditures that occurred before March 22, 2000; and

(vii) The credit expires on January 1, 2006.

(6) **Retail sales and use tax exemptions.** This subsection provides information about a number of retail sales tax and corresponding use tax exemptions available to farmers and persons buying tangible personal property at retail from farmers. Some exemptions require the buyer to provide the seller with an exemption certificate. Readers should refer to subsection (7) of this rule for additional information regarding exemption certificates.

This subsection contains a number of examples which illustrate these exemptions. The examples identify a number of facts and then state a conclusion. The examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(a) **Pollen.** Pollen is exempt from retail sales and use taxes. RCW 82.08.0277 and 82.12.0273.

(b) **Semen.** Semen used in the artificial insemination of livestock is exempt from retail sales and use taxes. RCW 82.08.0272 and 82.12.0267.

(c) **Feed for livestock at public livestock markets.** Feed to be consumed by livestock at a public livestock market is exempt from retail sales and use taxes. RCW 82.08.0296 and 82.12.0296.

(d) **Food products.** Food products for human consumption are exempt from retail sales and use taxes. RCW 82.08.0293 and 82.12.0293. This exemption also applies to the sale and/or use of livestock for personal consumption as food. For detailed information about food products that qualify for this exemption, refer to WAC 458-20-244.

(e) **Auction sales of farm property.** Retail sales and use taxes do not apply to tangible personal property, including household goods, which have been used in conducting a farm activity, if the property was purchased from a farmer at an auction sale held or conducted by an auctioneer upon a farm. RCW 82.08.0257 and 82.12.0258.

(f) **Poultry.** Poultry used in the production for sale of poultry or poultry products is exempt from retail sales and use taxes. RCW 82.08.0267 and 82.12.0262.

For example, a poultry hatchery produces poultry from eggs. The resulting poultry are sold to egg producers. These sales are exempt from retail sales taxes under RCW 82.08.0267. (They are also exempt from B&O tax. See subsection (5)(d)(ii) of this rule.)

(g) **Leases of irrigation equipment.** Retail sales and use taxes do not apply to the lease or use of irrigation equipment, but only if:

(i) The lessor purchased the irrigation equipment for the purpose of irrigating land controlled by the lessor;

(ii) The lessor has paid retail sales or use tax upon the irrigation equipment;

(iii) The irrigation equipment is attached to the land in whole or in part; and

(iv) The irrigation equipment is leased to the lessee as an incidental part of the lease of the underlying land and is used solely on such land. RCW 82.08.0288 and 82.12.0283.

(h) **Beef and dairy cattle.** Beef and dairy cattle to be used by a farmer in producing an agricultural product are exempt from retail sales and use taxes. RCW 82.08.0259 and 82.12.0261.

For example, John operates a farm where he raises beef and dairy cattle for sale. He also raises other livestock for sale including hogs, sheep, and goats. All of John's sales of dairy and beef cattle for use on a farm are exempt from retail sales tax. However, John must collect retail sales tax on all retail sales of sheep, goats, and hogs unless the sales qualify for either the food products exemption described in subsection (6)(d) of this rule, or the exemption for sales of livestock for breeding purposes which is described immediately below.

(i) **Livestock for breeding purposes.** The sale or use of livestock, as defined in RCW 16.36.005, for breeding purposes where the animals are registered in a nationally recognized breed association is exempt from retail sales and use taxes. RCW 82.08.0259 and 82.12.0261. This exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department.

For example, ABC Farms raises and sells quarter horses registered in the American Quarter Horse Association (AQHA). Quarter horses are generally recognized as a definite breed of horse, and the AQHA is a nationally recognized breed association. Therefore, ABC Farms is not required to collect sales tax on retail sales of quarter horses for breeding purposes, provided it receives a completed exemption certificate from the buyer.

(j) **Bedding materials for chickens.** Retail sales and use taxes do not apply to bedding materials used by farmers to accumulate and facilitate the removal of chicken manure provided that the farmer is raising chickens that are sold as agricultural products. RCW 82.08.920 and 82.12.920. The exemption became effective September 20, 2001, and is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department.

(i) **What are bedding materials?** "Bedding materials" are wood shavings, straw, sawdust, shredded paper, and other similar materials.

(ii) **Example.** Farmer raises chickens for use in producing eggs for sale. When the chickens are no longer useful for producing eggs, Farmer sells the chickens to food processors for soup and stew meat. Farmer purchases bedding materials used to accumulate and facilitate the removal of chicken manure. The purchases of bedding materials by Farmer are exempt from retail sales tax. The law merely requires that the chickens be sold as agricultural products. It is immaterial that Farmer primarily raises the chickens to produce eggs.

(k) **Propane or natural gas used to heat structures housing chickens.** Retail sales and use taxes do not apply to propane or natural gas used by farmers to heat structures used to house chickens. The propane or natural gas must be used exclusively to heat the structures, and the structures must be used exclusively to house chickens that are sold as agricultural products. RCW 82.08.910 and 82.12.910. The exemption became effective September 20, 2001, and is available

only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department.

(i) **What are "structures"?** "Structures" are barns, sheds, and other similar buildings in which chickens are housed.

(ii) **Example.** Farmer purchases natural gas that is used to heat structures housing chickens. The natural gas is used exclusively to heat the structures, and the structures are used exclusively to house chickens. The chickens are used to produce eggs. When the chickens are no longer useful for producing eggs, Farmer sells the chickens to food processors for soup and stew meat. The purchase of natural gas by Farmer is exempt from retail sales tax. The law merely requires that the chickens be sold as agricultural products. It is immaterial that Farmer primarily houses these chickens to produce eggs.

(iii) **Example.** Farmer purchases natural gas that is used to heat structures used in the incubation of chicken eggs and structures used for washing, packing, and storing eggs. The natural gas used to heat these structures is not exempt from retail sales tax because the structures are not used exclusively to house chickens that are sold as agricultural products.

(l) **Machinery, equipment, and structures used to reduce emissions from field burning.** RCW 82.08.840 and 82.12.840 provide a sales and use tax exemption for certain property used to reduce field burning of cereal grains and field and turf grass grown for seed, or to reduce air emissions resulting from such field burning. The retail sales tax exemption applies to sales of machinery and equipment, and to services rendered in respect to constructing structures, installing, constructing, repairing, cleaning, decorating, altering, or improving of structures or eligible machinery and equipment, and to sales of tangible personal property that becomes an ingredient or component of eligible structures or eligible machinery and equipment, if all of the requirements for the exemption listed below in this subsection are met. The sales tax exemption is effective March 22, 2000. The use tax exemption applies to the use of machinery and equipment, and of tangible personal property that becomes an ingredient or component of eligible machinery and equipment, if all of the requirements for the exemption listed below in this subsection are met. This use tax exemption is also effective March 22, 2000. The use tax exemption also applies to the use of services rendered in respect to installing, repairing, cleaning, altering, or improving of eligible machinery and equipment, if all of the requirements for the exemption are met. This component of the use tax exemption is effective June 1, 2002.

These exemptions expire January 1, 2006. Persons taking an exemption must keep records necessary for the department to verify eligibility for the exemption. Persons who have taken an exemption and then discover that they do not meet the requirements for the exemption are subject to a deferred sales tax or use tax liability. (For additional information about deferred sales tax and use tax, refer to subsection (4)(b) of this rule.)

(i) **Majority use requirement.** To qualify for an exemption, the machinery, equipment, or structure must be used more than half (50%) of the time:

(A) For gathering, densifying, processing, handling, storing, transporting, or incorporating straw or straw-based

products that results in a reduction in field burning of cereal grains and field and turf grass grown for seed; or

(B) To decrease air emissions resulting from field burning of cereal grains and field and turf grass grown for seed.

(ii) **Exemption certificates.** For the sales tax exemption, the buyer must provide the seller with an exemption certificate in a form and manner prescribed by the department.

(iii) **Examples.** The following examples illustrate this exemption:

(A) Farmer cultivates turf grass. Farmer purchases spray equipment. As an alternative to field burning, the fields in which the spray equipment is used must be sprayed five times instead of twice. The use of the spray equipment meets the requirement that the equipment be used more than half of the time to decrease air emissions resulting from field burning; therefore, the purchase of the spray equipment is exempt.

(B) Farmer, who performs custom baling, purchases a new baler for use in baling hay and straw. The purchase of the baler is exempt if it will be used more than half of the time to bale straw, which results in a reduction in field burning.

(C) Farmer purchases a new combine for use in harvesting wheat. In addition to cutting the stalks, separating the kernels from the chaff, and unloading the kernels, the combine also chops the residual chaff before discharging it onto the field. While the need for field burning may decrease because the smaller residue more readily decomposes, the purchase of the combine does not qualify for the exemption. The combine is not used more than half of the time to decrease air emissions from field burning.

(m) **Dairy nutrient management equipment and facilities.** RCW 82.08.890 and 82.12.890 provide a sales and use tax exemption for persons operating dairy nutrient management equipment and facilities. The retail sales tax exemption applies to sales to eligible persons of services rendered in respect to operating, repairing, cleaning, altering, or improving of dairy nutrient management equipment and facilities, or to sales of tangible personal property that becomes an ingredient or component of the equipment and facilities. The sales tax exemption became effective July 13, 2001. The use tax exemption applies to the use by an eligible person of tangible personal property that becomes an ingredient or component of dairy nutrient management equipment and facilities. This use tax exemption also became effective July 13, 2001. The use tax exemption also applies to the use of labor and services rendered in respect to repairing, cleaning, altering, or improving eligible tangible personal property. This component of the use tax exemption is effective June 1, 2002. The sales and use tax exemption applies to sales made or to the use of tangible personal property or labor and services made after the dairy nutrient management plan is certified under chapter 90.64 RCW.

(i) These exemptions are available only if all of the following requirements are met:

(A) The equipment and facilities must be used exclusively for activities necessary to maintain a dairy nutrient management plan as required under chapter 90.64 RCW; and

(B) The buyer provides the seller with an exemption certificate in a form and manner prescribed by the department which must be retained in the seller's files. The department will provide an exemption certificate to an eligible person upon application. A sample letter for use in applying for an

exemption certificate can be obtained from the department as provided in subsection (7) of this rule.

(ii) For purposes of this exemption, the following definitions apply:

(A) "Eligible person" means a person licensed to produce milk under chapter 15.36 RCW who has a certified dairy nutrient management plan by December 31, 2003, as required by chapter 90.64 RCW.

(B) "Dairy nutrient management equipment and facilities" means machinery, equipment, and structures used exclusively in the handling and treatment of dairy manure, such as aerators, agitators, alley scrapers, augers, dams, gutter cleaners, loaders, lagoons, pipes, pumps, separators, and tanks. The term also includes tangible personal property that becomes an ingredient or component of the equipment and facilities, including repair and replacement parts.

(n) **Animal pharmaceuticals.** Certain animal pharmaceuticals are exempt from retail sales and use taxes when sold to, or used by, farmers or veterinarians. RCW 82.08.880 and 82.12.880. To qualify for the exemption, the animal pharmaceutical must be administered to an animal that is raised by a farmer for the purpose of producing an agricultural product for sale. Also, the animal pharmaceutical must be approved by the United States Department of Agriculture (USDA) or the United States Food and Drug Administration (FDA).

This exemption became effective August 1, 2001, and is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department.

(i) **What is a "veterinarian"?** A "veterinarian" means a person who is licensed to practice veterinary medicine, surgery, or dentistry under chapter 18.92 RCW.

(ii) **How can I determine whether the FDA or USDA has approved an animal pharmaceutical?** The FDA and USDA have an established approval process set forth in federal regulations. The FDA maintains a list of all approved animal pharmaceuticals called the "*Green Book*." The USDA maintains a list of approved biotechnology products called the "*Veterinary Biologics Product Catalogue*." Pharmaceuticals that are not on either of these lists have not been approved and are not eligible for the exemption.

(iii) **Example.** Dairy Farmer purchases sterilizing agents. The sterilizing agents are applied to the equipment and facilities where Dairy Farmer's cows are milked. Dairy Farmer also purchases teat dips, antiseptic udder washes, and salves that are not listed in either the FDA's *Green Book* of approved animal pharmaceuticals or the USDA's *Veterinary Biologics Product Catalogue* of approved biotechnology products. The purchases of sterilizing agents are not exempt as animal pharmaceuticals because the sterilizing agents are not administered to animals. The teat dips, antiseptic udder washes, and salves are likewise not exempt because they have not been approved by the FDA or USDA. This is the case even if these products are approved by the United States Environmental Protection Agency or any other governmental agency.

(iv) **What type of animal must the pharmaceutical be administered to?** As noted above, the exemption is limited to the sale and/or use of animal pharmaceuticals administered to an animal that is raised by a farmer for the purpose of producing an agricultural product for sale. The conditions under

which a farmer may purchase tax-exempt animal pharmaceuticals are similar to those under which a farmer may purchase feed at wholesale. Both types of purchases require that the particular product be sold to a farmer (or a veterinarian in the case of animal pharmaceuticals), and that the product be given or administered to an animal raised by a farmer for the purpose of producing an agricultural product for sale.

(v) **Examples of animals raised for the purpose of producing agricultural products for sale.** The animal pharmaceutical exemption is available in the following nonexclusive list of examples because the animals are being raised for the purpose of producing an agricultural product for sale, presuming all other requirements for the exemption are met:

(A) Horses, cattle, or other livestock raised by a farmer for sale;

(B) Cattle raised by a farmer for the purpose of slaughtering, if the resulting products are sold;

(C) Milk cows raised and/or used by a dairy farmer for the purpose of producing milk for sale;

(D) Horses raised by a farmer for the purpose of producing foals for sale;

(E) Sheep raised by a farmer for the purpose of producing wool for sale; and

(F) "Private sector cultured aquatic products" as defined by RCW 15.85.020 (e.g., salmon, catfish, and mussels) raised by an aquatic farmer for the purpose of sale.

(vi) **Examples of animals that are not raised for the purpose of producing agricultural products for sale.** The animal pharmaceutical exemption is not available in the following nonexclusive list of examples because the animals are not being raised for the purpose of producing an agricultural product for sale:

(A) Cattle raised for the purpose of slaughtering if the resulting products are not produced for sale;

(B) Sheep and other livestock raised as pets;

(C) Dogs or cats, whether raised as pets or for sale. Dogs and cats are pet animals; therefore, they are not considered to be agricultural products. (See subsection (3) of this rule); and

(D) Horses raised for the purpose of racing, showing, riding, and jumping. However, if at some time in the future the horses are no longer raised for racing, showing, riding, or jumping and are instead being raised by a farmer for the purpose of producing foals for sale, the exemption will apply if all other requirements for the exemption are met.

(vii) **Do products that are used to administer animal pharmaceuticals qualify for the exemption?** Sales of products that are used to administer animal pharmaceuticals (e.g., syringes) do not qualify for the exemption, even if they are later used to administer a tax-exempt animal pharmaceutical. However, sales of tax-exempt animal pharmaceuticals contained in a product used to administer the animal pharmaceutical (e.g., a dose of a tax-exempt pharmaceutical contained in a syringe or cotton applicator) do qualify for the exemption.

(7) **Sales tax exemption certificates.** As indicated in subsection (6) of this rule, certain sales of tangible personal property and retail services either to or by farmers are exempt from retail sales tax. Except as provided below, for those exemptions that require the buyer to provide the seller with an exemption certificate at the time of sale, farmers may use the department's "Farmers' Retail Sales Tax Exemption Cer-

tificate" or another certificate with substantially the same information as it relates to the claimed exemption. Sellers must retain a copy of the exemption certificate in their files. Without proper documentation, sellers are liable for payment of the retail sales tax on sales claimed as exempt.

The Farmers' Retail Sales Tax Exemption Certificate cannot be used for the dairy nutrient management exemption discussed in subsection (6)(m) of this rule. However, as noted above, the department will provide eligible persons, upon application, with an exemption certificate for this exemption. The Farmers' Retail Sales Tax Exemption Certificate and a sample letter for use in applying for the Dairy Nutrient Management Exemption Certificate can be obtained by calling the department's taxpayer information center at 1-800-647-7706. These documents can also be downloaded from the department's website at <http://dor.wa.gov/>.

[Statutory Authority: RCW 82.01.060(2), 82.32.300, and 34.05.230. 03-18-024, § 458-20-210, filed 8/25/03, effective 9/25/03. Statutory Authority: RCW 82.32.300. 94-07-048, § 458-20-210, filed 3/10/94, effective 4/10/94; 86-21-085 (Order ET 86-18), § 458-20-210, filed 10/17/86; 86-07-005 (Order ET 86-3), § 458-20-210, filed 3/6/86; 83-08-026 (Order ET 83-1), § 458-20-210, filed 3/30/83. Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-07-045 (Order ET 78-4), § 458-20-210, filed 6/27/78; Order ET 70-3, § 458-20-210 (Rule 210), filed 5/29/70, effective 7/1/70.]

WAC 458-20-231 Repealed. See Disposition Table at beginning of this chapter.

WAC 458-20-24001 Sales and use tax deferral—Manufacturing and research/development activities in distressed areas—Applications filed after July 31, 1999.

(1) **Introduction.** Chapter 82.60 RCW establishes a sales and use tax deferral program. The purpose of the program is to promote economic stimulation, create employment opportunities, and reduce poverty in certain areas of the state. The legislature established this program to be effective solely in those areas and under circumstances where the deferral is for investments that result in the creation of a specified minimum number of jobs or investment for a qualifying project.

(a) This deferral program applies to taxes imposed on the construction of qualified buildings or acquisition of qualified machinery and equipment and requires the recipient of the deferral to maintain the manufacturing or research and development activity for an eight-year period. This rule does not address RCW 82.08.02565 and 82.12.02565, which provide a statewide sales and use tax exemption for machinery and equipment used directly in a manufacturing operation. Refer to WAC 458-20-13601 for more information regarding the statewide exemption.

(b) This program was first enacted in 1985. The legislature made major revisions to program criteria in 1993, 1994, 1995, 1996, and 1999, specifically to the definitions of "eligible area," "eligible investment project," and "qualified building." Each revision created additional criteria for prospective applicants. This rule sets forth the requirements for applications made after July 31, 1999. For applications made prior to August 1, 1999, see WAC 458-20-24001A.

(c) The employment security department and the department of community, trade, and economic development administer programs for distressed areas and job training and should be contacted directly for information concerning these programs.

(2) **Definitions.** The following definitions apply to applications made after July 31, 1999.

(a) "Acquisition of equipment or machinery" means the equipment and machinery is under the dominion and control of the recipient.

(b) "Applicant" means a person applying for a tax deferral under chapter 82.60 RCW.

(c) "Certificate holder" means an applicant to whom a tax deferral certificate has been issued.

(d) "Computer-related services" means activities such as programming for the manufactured product. It includes creating operating systems, software, and other similar goods that will be copied and sold as canned software. "Computer-related services" does not include information services, such as data or information processing. The activities performed by the manufacturer to test, correct, revise, or upgrade software or hardware before they are approved for sale to the consumer are considered computer-related services.

(e) "Date of application" means the date of the U.S. Post Office postmark, fax, or electronic transmittal, or when the application is hand delivered to the department. The statute in effect on the "date of application" will determine the program criteria the applicant must satisfy.

(f) "Department" means the department of revenue.

(g) "Eligible area" means:

(i) Rural county. A rural county is a county with fewer than one hundred persons per square mile as determined annually by the office of financial management and published by the department of revenue effective for the period July 1st through June 30th; or

(ii) Community empowerment zone (CEZ). A "community empowerment zone" means an area meeting the requirements of RCW 43.31C.020 and officially designated as a CEZ by the director of the department of community, trade, and economic development or a county containing a CEZ.

(h) "Eligible investment project" means an investment project in an eligible area. "Eligible investment project" does not include an investment project undertaken by a light and power business as defined in RCW 82.16.010, other than that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part. It also does not include an investment project that has already received a deferral under chapter 82.60 RCW.

(i) "Industrial fixture" means an item attached to a building or to land. Examples of "industrial fixtures" are fuel oil lines, boilers, cranes, and improvements to land such as concrete slabs.

(j) "Initiation of construction," in regards to the construction, expansion, or renovation of buildings, means the commencement of on-site construction work. Neither planning nor land clearing prior to excavation of the building site constitutes the commencement of on-site construction work.

(k) "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project. When an application for sales and use tax deferral is timely submitted, costs incurred before the application date are allowable, if they otherwise qualify.

(l) "Manufacturing" has the meaning given in RCW 82.04.120. Manufacturing also includes computer program-

ming, the production of computer software, and other computer-related services, and the activities performed by research and development laboratories and commercial testing laboratories.

(m) "Operationally complete" means the project is capable of being used for its intended purpose as described in the application.

(n) "Person" has the meaning given in RCW 82.04.030. "Person" does not include the state of Washington or its institutions. "Person" can be either a lessee or a lessor, who can apply separately for individual investment projects at the same site, if they comply with the other requirements of chapter 82.60 RCW. The lessor/owner of the structure is not eligible for deferral unless the underlying ownership of the buildings, machinery, or equipment vests in the lessor/owner, or unless the lessor has by written contract agreed to pass the economic benefit of the deferral to the lessee in the form of reduced rent payments.

(o) "Qualified buildings" means construction of new structures and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity, used for manufacturing and research and development activities.

"Qualified buildings" are limited to structures used for manufacturing and research and development activities. "Qualified buildings" include plant offices and warehouses if such facilities are essential to or an integral part of a factory, mill, plant, or laboratory. "Office" means space used by professional, clerical, or administrative staff. For plant office space to be a qualified building its use must be essential or integral to the manufacturing or research and development operation. Office space that is used by supervisors and their staff, by technicians, by payroll staff, by the safety officer, and by the training staff are examples of qualifying office space. "Warehouse" means buildings or facilities used for the storage of raw materials or finished goods.

(p) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year. The "entire tax year" means the full-time position is filled for a period of twelve consecutive months. Full-time means at least thirty-five hours a week, four hundred fifty-five hours a quarter, or one thousand eight hundred twenty hours a year.

(q) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing or research and development operation. "Qualified machinery and equipment" includes computers, desks, filing cabinets, photocopiers, printers, software, data processing equipment, laboratory equipment; manufacturing components such as belts, pulleys, shafts and moving parts; molds, tools and dies; operating structures; and all equipment used to control or operate machinery. It also includes machinery and equipment acquired under the terms of a lease by the recipient. "New" as used in this subsection means either new to the taxing jurisdiction of the state or new to the certificate holder.

(r) "Recipient" means a person receiving a tax deferral under this program.

(s) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have

begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

(t) "Resident" means the person who fills the qualified employment position makes his or her home in the CEZ. A mailing address alone is insufficient to establish that a person is a resident.

(3) **Issuance of deferral certificate.** The department will issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW for an eligible investment project. The department will state on the certificate the amount of tax deferral for which the recipient is eligible. Recipients must keep track of how much tax is deferred.

(4) **Eligible investment amount.** There may or may not be a hiring requirement, depending on the location of the project.

(a) **No hiring requirements.** There are no hiring requirements for qualifying projects located in counties with fewer than one hundred persons per square mile. Monitoring and reporting procedures are explained in subsection (12) of this rule. Buildings that will be used partly for manufacturing or research and development and partly for other purposes are eligible for a deferral on a proportionate basis. Subsection (5) of this rule explains the procedure for apportionment.

(b) **Hiring requirements.** There are hiring requirements for qualifying projects located in CEZs or in counties containing CEZs. The applicant applies for a deferral of investment that correlates to the estimated number of persons to be hired based on the following formula:

Number of qualified employment positions to be hired x \$750,000 = amount of investment eligible for deferral

Applicants must make good faith estimates of anticipated hiring. The recipient must fill the positions by persons who at the time of hire are residents of the CEZ. The department has instituted a geographic information system (GIS) to assist taxpayers in determining taxing jurisdiction boundaries, local tax rates, and a mapping and address lookup system to determine whether a specific address is within a CEZ. The system is available on the department's Internet website at <http://www.dor.wa.gov>. A recipient must fill the qualified employment positions by the end of the calendar year following the year in which the project is certified as operationally complete and retain the position during the entire tax year. If the recipient does not fill the qualified employment positions by the end of the second calendar year following the year in which the project is certified as operationally complete, all deferred taxes are immediately due.

(5) **Apportionment of costs between qualifying and nonqualifying investments.** The deferral is allowable only in respect to investment in the construction of a new building or the expansion or renovation of existing buildings used in manufacturing, research and development, or commercial testing laboratories.

(a) Where a building(s) is used partly for manufacturing or research and development and partly for purposes that do not qualify for deferral under this rule, the deferral will be determined by one of the following apportionment methods. The first method of apportionment is based on square footage

and does not require tracking the costs of materials for the qualifying/nonqualifying areas of a building. The second method of apportionment tracks the costs of materials used in the qualifying/nonqualifying areas and is primarily used by those industries with specialized building requirements.

(i) The applicable tax deferral will be determined by apportionment according to the ratio of the square footage of that portion of the building(s) directly used for manufacturing or research and development purposes bears to the square footage of the total building(s).

Apportionment formula:

$$\frac{\text{Eligible square feet of building(s)}}{\text{Total square feet of building(s)}} = \text{Percent Eligible}$$

Percent Eligible x Total Project Costs = Eligible Costs.

"Total Project Costs" means cost of multipurpose buildings and other improvement costs associated with the deferral project. Machinery and equipment are not included in this calculation. Common areas, such as hallways and bathrooms, are not included in the square feet figure for either the numerator or the denominator. The cost of the common areas is multiplied by the percent eligible to determine the portion of the common area that is eligible for deferral.

Eligible Tax Deferred = Eligible Cost x Tax Rate.

(ii) If a building is used partly for manufacturing, research and development, or commercial testing and partly for other purposes, the applicable tax deferral shall be determined as follows:

(A) Tax on the cost of construction of areas devoted solely to manufacturing, research and development, or commercial testing may be deferred.

(B) Tax on the cost of construction of areas not used at all for manufacturing, research and development, or commercial testing may not be deferred.

(C) Tax on the cost of construction of areas used in common for manufacturing, research and development, or commercial testing and for other purposes, such as hallways, bathrooms, and conference rooms, may be deferred by apportioning the costs of construction on a square footage basis. The apportioned costs of construction eligible for deferral are established by using the ratio, expressed as a percentage, of the square feet of the construction, expansion, or renovation devoted to manufacturing, research and development, or commercial testing, excluding areas used in common to the total square feet of the construction, expansion, or renovation, excluding areas used in common. That percentage is applied to the cost of construction of the common areas to determine the costs of construction eligible for tax deferral. Expressed as a formula, apportionment of the cost of the common areas is determined by:

$$\frac{\text{Square feet devoted to manufacturing, research and development, or commercial testing, excluding square feet of common areas}}{\text{Total square feet, excluding square feet of common areas}} = \text{Percentage of total cost of construction of common areas eligible for deferral}$$

(b) Qualified machinery and equipment is not subject to apportionment.

(6) **Leased equipment.** The amount of tax deferral allowable for leased equipment is the amount of the consideration paid by the recipient to the lessor over the initial term of the lease, excluding any period of extension or option to renew, up to the last date for repayment of the deferred taxes. After that date the recipient must pay the appropriate sales taxes to the lessor for the remaining term of the lease.

(7) **Application procedure and review process.** An application for sales and use tax deferral under this program must be made prior to the initiation of construction, prior to the acquisition of machinery and equipment, and prior to the filling of qualified employment positions. Persons who apply after construction is initiated or finished or after acquisition of machinery and equipment are not eligible for the program. Applications for persons subject to hiring requirements must include information regarding the estimated total project cost and the qualified employment positions.

(a) Application forms will be supplied to the applicant by the department upon request. The completed application may be sent by fax to 360-586-2163 or mailed to the following address:

State of Washington
Department of Revenue
Special Programs
P.O. Box 47477
Olympia, WA 98507-7477

Applications and reports received by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. (RCW 82.60.100.)

(b) In considering whether to approve or deny an application for a deferral, the department will not approve an application for a project involving construction unless:

(i) The construction will begin within one year from the date of the application; or

(ii) If the construction will not begin within one year of construction, the applicant shows proof that there is a specific and active program to begin construction of the project within two years from the date of application. Proof may include, but is not limited to:

(A) Affirmative action by the board of directors, governing body, or other responsible authority of the applicant toward an active program of construction;

(B) Itemized reasons for the proposed construction;

(C) Clearly established plans for financing the construction; or

(D) Building permits.

Similarly, after an application has been granted, a deferral certificate is no longer valid and should not be used if construction has not begun within one year from the date of application or there is not a specific and active program to begin construction within two years from the date of application. However, the department will grant requests to extend the period for which the certificate is valid if the holder of the certificate can demonstrate that the delay in starting construction is due to circumstances beyond the certificate holder's control such as the acquisition of building permit(s).

(c) The department will verify the information contained in the application and approve or disapprove the application

within sixty days. If approved, the department will issue a tax deferral certificate. If disapproved, the department will notify the applicant as to the reason(s) for disapproval.

(d) The applicant may seek administrative review of the department's disapproval of an application within thirty days from the date of notice of the disallowance pursuant to the provisions of WAC 458-20-100, Appeals, small claims and settlements. The filing of a petition for review with the department starts a review of departmental action.

(8) **Program termination.** No applications for deferral of taxes will be accepted after June 30, 2004.

(9) **Eligible area criteria.** The office of financial management will determine annually the counties with fewer than one hundred persons per square mile. The department will update and distribute the list each year. The list will be effective on July 1 of each year.

If an investment project is located in an area that qualifies under more than one type of eligible area, the department will automatically assign the project to the eligible area that imposes the least burden on the taxpayer and with the greatest benefit to the taxpayer. If the applicant elects to be bound by the requirements of the other potential eligible area, the applicant must make a written statement to that effect. For example, on October 1, 1999, the city of Yakima qualifies as a CEZ, and the entire county of Yakima has fewer than one hundred persons per square mile. The CEZ requirements are more restrictive than counties containing fewer than one hundred persons per square mile. The department will assign the project to the "fewer than one hundred persons per square mile designation" unless the applicant elects to be bound by the CEZ requirements.

(10) **Use of the certificate.** A tax deferral certificate issued under this program is for the use of the recipient for deferral of sales and use taxes due on each eligible investment project. Deferral is limited only to investment in qualified building or qualified machinery and equipment as defined in this rule. Thus, sales and use taxes cannot be deferred on items that do not become part of the qualified buildings, machinery, or equipment. In addition, the deferral is not to be used to defer the taxes of the persons with whom the recipient does business, persons the recipient hires, or employees of the recipient.

The tax deferral certificate is to be used in a manner similar to that of a resale certificate as set forth in WAC 458-20-102, Resale certificates. The certificate holder must provide a copy of the tax deferral certificate to the seller at the time goods or services are purchased. The seller will be relieved of the responsibility for collection of the sales or use tax upon presentation of the certificate. The seller must retain a copy of the certificate as part of its permanent records for a period of at least five years. A blanket certificate may be provided by the certificate holder and accepted by the seller covering all such purchases relative to the eligible project. The seller is liable for business and occupation tax on all tax deferral sales.

(11) **Project operationally complete.** An applicant must provide the department with the estimated cost of the investment project at the time the application is made. Following approval of the application and issuance of a tax deferral certificate, a certificate holder must notify the department, in writing, when the value of the investment project

reaches the estimated cost as stated on the tax deferral certificate.

(a) If a certificate holder has reached its level of estimated costs and the project is not operationally complete, the certificate holder may request an amended certificate stating a revised amount upon which the deferral taxes are requested. Requests must be mailed or faxed to the department.

(b) The certificate holder must notify the department in writing when the construction project is operationally complete. The department will certify the date on which the project is operationally complete. The recipient of the deferral must maintain the manufacturing or research and development activity for eight years from this date.

(12) **Reporting and monitoring procedure.** Requirement to submit annual reports. Each recipient of a tax deferral under chapter 82.60 RCW must submit a report on December 31st of the year in which the investment project is certified by the department as having been operationally completed and on December 31st of each of the seven succeeding calendar years. The report must be made to the department in a form and manner prescribed by the department. If the recipient fails to submit a report or submits an inadequate or falsified report, the department may declare the amount of deferred taxes outstanding to be immediately due and payable. An inadequate or falsified report is one that contains material omissions or contains knowingly false statements and information.

(13) **Repayment of deferred taxes.** Repayment of tax deferred under chapter 82.60 RCW is excused, except as otherwise provided in RCW 82.60.070 and this subsection.

(a) Repayment of tax deferred under chapter 82.60 RCW is not required, and interest and penalties under RCW 82.60.070 will not be imposed, on machinery and equipment that qualifies for exemption under RCW 82.08.02565 or 82.12.02565.

(b) The following subsections describe the various circumstances under which repayment of the deferral may occur. Outstanding taxes are determined by reference to the following table. The table presumes the taxpayer maintained eligibility for the entire year.

Repayment Year	Percentage of Deferred Tax Waived
1 (Year operationally complete)	0%
2	0%
3	0%
4	10%
5	15%
6	20%
7	25%
8	30%

Any action taken by the department to disqualify a recipient for tax deferral or assess interest will be subject to administrative review pursuant to the provisions of WAC 458-20-100, Appeals, small claims and settlements. The filing of a petition for review with the department starts a review of departmental action.

(c) **Failure of investment project to satisfy general conditions.** If, on the basis of the recipient's annual report or other information, including that submitted by the employment security department, the department of revenue finds

that an investment project is not eligible for tax deferral for reasons other than failure to create the required number of qualified employment positions, the department will declare the amount of deferred taxes outstanding to be immediately due. An example of a disqualification under this section is a facility not being used for a manufacturing or research and development operation.

(d) **Failure of investment project to satisfy required employment positions conditions.** If, on the basis of the recipient's annual report or other information, the department finds that an investment project has been operationally complete for three years and has failed to create the required number of qualified employment positions, the amount of taxes deferred will be immediately due. There is no proration of the amount owed under this subsection. No penalties or interest will be assessed on the deferred sales/use tax; however, all other penalties and interest applicable to excise tax assessments may be assessed and imposed.

(14) **Debt not extinguished because of insolvency or sale.** Insolvency or other failure of the recipient does not extinguish the debt for deferred taxes nor will the sale, exchange, or other disposition of the recipient's business extinguish the debt for the deferred taxes. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of chapter 82.60 RCW, for the remaining periods of the deferral. Any person who becomes a successor (see WAC 458-20-216) to such investment project is liable for the full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient of the deferral.

(15) **Disclosure of information.** Applications and reports received by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. (RCW 82.60.100.)

[Statutory Authority: RCW 82.01.060(2) and 82.32.300. 04-01-127, § 458-20-24001, filed 12/18/03, effective 1/18/04. Statutory Authority: RCW 82.32.300. 01-12-041, § 458-20-24001, filed 5/30/01, effective 6/30/01; 88-17-047 (Order 88-5), § 458-20-24001, filed 8/16/88; 87-19-139 (Order 87-6), § 458-20-24001, filed 9/22/87; 86-14-019 (Order ET 86-13), § 458-20-24001, filed 6/24/86; 85-21-013 (Order ET 85-5), § 458-20-24001, filed 10/7/85.]

WAC 458-20-24001A Sales and use tax deferral—Manufacturing and research/development activities in distressed areas—Applications filed prior to August 1, 1999. Introduction. Chapter 82.60 RCW establishes a sales and use tax deferral program. The purpose of the program is to promote economic stimulation, create employment opportunities, and reduce poverty in certain areas of the state. The legislature established this program to be effective solely in those areas and for those circumstances where the deferral is for investments that result in the creation of a specified minimum number of jobs or investment for a qualifying project.

The program applies to sales and use taxes on materials and labor and services rendered in the construction of qualified buildings or acquisition of qualified machinery and equipment and requires the recipient of the deferral to maintain the manufacturing or research and development activity for an eight-year period. This rule does not address RCW 82.08.02565 and 82.12.02565, which provide a statewide sales and use tax exemption for machinery and equipment used directly in a manufacturing operation. Refer to WAC

458-20-13601 for more information regarding the statewide exemption.

This program was enacted in 1985. The legislature made major revisions to program criteria in 1993, 1994, 1995, 1996, and 1999, specifically to the definitions of "eligible area," "eligible investment project," and "qualified building." Each revision created additional criteria for prospective applicants. This rule is written in three parts and covers applications made prior to July 31, 1999. Each part sets forth the requirements on the basis of the period of time in which application is made. Refer to the year during which application was made for information on an individual application. For applications made after July 31, 1999, see WAC 458-20-24001.

The employment security department and the department of community, trade, and economic development administer additional programs for distressed areas and job training and should be contacted directly for information concerning these programs.

PART I

Applications after July 1, 1995, to July 31, 1999

(1) **Definitions.** For the purposes of this part, the following definitions apply for applications made on and after July 1, 1995, and before August 1, 1999:

(a) "Acquisition of equipment or machinery" means the equipment and machinery is under the dominion and control of the recipient.

(b) "Applicant" means a person applying for a tax deferral under chapter 82.60 RCW.

(c) "Certificate holder" means an applicant to whom a tax deferral certificate has been issued.

(d) "Computer-related services" means services that are connected or interact directly in the manufacture of computer hardware or software or the programming of the manufactured hardware. This includes the manufacture of hardware such as chips, keyboards, monitors, any other hardware, and the components of these items. It includes creating operating systems and software that will be copied and sold as canned software. "Computer-related services" does not include information services. The activities performed by the manufacturer to test, correct, revise, or upgrade software or hardware before they are approved for sale to the consumer are considered computer-related services.

(e) "Department" means the department of revenue.

(f) "Eligible area" means one of the areas designated according to the following classifications:

(i) Unemployment county. A county in which the average level of unemployment for the three calendar years preceding the year in which an application is filed exceeds the average state unemployment for those years by twenty percent. In making this calculation, the department will compare the county's average unemployment rate in the prior three years to one hundred twenty percent of the state's average unemployment rate based on official unemployment figures published by the department of employment security;

(ii) Median income county. On and after June 6, 1996, a county that has a median household income that is less than seventy-five percent of the state median income for the previous three years;

(iii) MSA. A metropolitan statistical area, as defined by the Office of Federal Statistical Policy and Standards, United States Department of Commerce, in which the average level of unemployment for the calendar year immediately preceding the year in which an application is filed under chapter 82.60 RCW exceeds the average state unemployment for such calendar year by twenty percent;

(iv) CEZ and county containing a CEZ. A designated community empowerment zone (CEZ) approved under RCW 43.63A.700 or a county containing such a community empowerment zone;

(v) Timber impact area towns. A town with a population of less than twelve hundred persons that is located in a county that is a timber impact area, as defined in RCW 43.31.601, but that is not an unemployment county as defined in Part I;

(vi) Governor's designation county. A county designated by the governor as an eligible area under RCW 82.60.047; or

(vii) Contiguous county. A county that is contiguous to an unemployment county or a governor's designation county.

(g)(i) "Eligible investment project" means:

(A) An investment project in an unemployment county, a median income county, an MSA, a timber impact area town, or a governor's designation county; or

(B) That portion of an investment project in a CEZ, a county containing a CEZ, or a contiguous county, that is directly utilized to create at least one new full-time qualified employment position for each seven hundred fifty thousand dollars of investment.

(ii) "Eligible investment project" does not include an investment project undertaken by a light and power business as defined in RCW 82.16.010, other than that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part. It also does not include an investment project that has already received a deferral under chapter 82.60 RCW.

(h) "Industrial fixture" means an item attached to a building or to land. Fixtures become part of the real estate to which they are attached and upon attachment are classified as real property, not personal property. Examples of "industrial fixtures" are fuel oil lines, boilers, cranes, and certain concrete slabs.

(i) "Initiation of construction," in regards to the construction, expansion, or renovation of buildings, means the commencement of on-site construction work. Land clearing prior to excavation of the building site does not commence construction nor does planning commence construction.

(j) "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project. When an application for sales and use tax deferral is timely submitted, costs incurred before the application date are allowable, if they otherwise qualify.

(k) "Manufacturing" has the meaning given in RCW 82.04.120. Manufacturing, for purposes of the distressed area deferral program, also includes computer programming, the production of computer software, and other computer-related services, and the activities performed by research and development laboratories and commercial testing laboratories.

(l) "Operationally complete" means the project is capable of being used for its intended purpose as described in the application.

(m) "Person" has the meaning given in RCW 82.04.030. "Person" does not include the state of Washington or its institutions. "Person" can be either a lessee or a lessor, who can apply separately for individual investment projects at the same site, if they comply with the other requirements of chapter 82.60 RCW. The lessor/owner of the structure is not eligible for deferral unless the underlying ownership of the buildings, machinery, or equipment vests exclusively in the lessor/owner, or unless the lessor has by written contract agreed to pass the economic benefit of the deferral to the lessee in the form of reduced rent payments.

(n) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity, used for manufacturing and research and development activities.

"Qualified buildings" are limited to structures used for manufacturing and research and development activities. "Qualified buildings" include plant offices and warehouses if such facilities are essential or an integral part of a factory, mill, plant, or laboratory. "Office" means space used by professional, clerical, or administrative staff. For plant office space to be a qualified building its use must be essential or integral to the manufacturing or research and development operation. Office space that is used by supervisors and their staff, by technicians, by payroll staff, by the safety officer, and by the training staff are examples of qualifying office space. "Warehouse" means facilities used for the storage of raw materials or finished goods.

(o) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year. The "entire tax year" means the full-time position is filled for a period of twelve consecutive months. "Full time" means at least 35 hours a week, 455 hours a quarter, or 1,820 hours a year.

(p) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing or research and development operation. "Qualified machinery and equipment" includes computers, desks, filing cabinets, photocopiers, printers, software, data processing equipment, laboratory equipment; manufacturing components such as belts, pulleys, shafts and moving parts; molds, tools and dies; operating structures; and all equipment used to control or operate machinery. It also includes machinery and equipment acquired under the terms of a lease by the recipient. "New" as used in this subsection means either new to the taxing jurisdiction of the state or new to the certificate holder.

(q) "Recipient" means a person receiving a tax deferral under this program.

(r) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

(2) **Issuance of deferral certificate.** The department will issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW for an eligible investment project. The department will state on the certificate the amount of tax deferral for which the recipient is eligible. Recipients must keep track of how much tax is deferred.

(3) **Eligible investment amount.** There may or may not be a hiring requirement, depending on the location of the project.

(a) **No hiring requirements.** There are no hiring requirements for qualifying projects located in distressed counties, MSAs, median income counties, governor-designated counties, or timber impact towns. Monitoring and reporting procedures are explained in subsection (10) of this rule. Buildings that will be used partly for manufacturing or research and development and partly for other purposes are eligible for a deferral on a proportionate basis. Subsection (4) of this rule explains the procedure for apportionment.

(b) **Hiring requirements.** There are hiring requirements for qualifying projects located in CEZs, in counties containing CEZs, or in contiguous counties. Total qualifying project costs, including any part of the project that would qualify under RCW 82.08.02565 and 82.12.02565, must be examined to determine the number of positions associated with the project. An applicant who knows at the time of application that he or she will not fill the required qualified employment positions is not eligible for the deferral. Applicants must make good faith estimates of anticipated hiring. The applicant applies for a deferral of investment that correlates to the estimated number of persons to be hired. The investment must include the sales price of machinery and equipment eligible for the sales and use tax exemption under RCW 82.08.02565 and 82.12.02565. An applicant can amend the number of persons hired until completion of the project. The qualified employment positions filled by December 31 of the year of completion are the benchmark to be used during the next seven years in determining hiring compliance.

(i) Total qualifying project costs are divided by seven hundred fifty thousand, the result being the qualified employment positions.

(ii) In addition, the number of qualified employment positions created by an investment project will be reduced by the number of full-time employment positions maintained by the recipient in any other community in this state that are displaced as a result of the investment project. This reduction requires a reexamination of whether the seventy-five percent hiring requirement (as explained below) is met.

(iii) This number, which is the result of (i) and (ii) of this subsection, is the number of positions used as the benchmark over the life of the deferral. For recipients locating in a CEZ or a county containing a CEZ, seventy-five percent of the new positions must be filled by residents of a CEZ located in the county where the project is located. The department has instituted a geographic information system (GIS) to assist taxpayers in determining taxing jurisdiction boundaries, local tax rates, and a mapping and address lookup system to determine whether a specific address is within a CEZ. The system is available on the department's internet website at <http://www.dor.wa.gov>. For recipients located in a contiguous county, residents of an adjacent unemployment or gover-

nor-designated county must fill seventy-five percent of the new positions.

(iv) The qualified employment positions are reviewed each year, beginning December 31st of the year the project is operationally complete and each year for seven years. If the recipient has failed to create the requisite number of positions, the department will issue an assessment as explained under subsection (11) of this rule.

(v) In addition to the hiring requirements for new positions under (b) of this subsection, the recipient of a deferral for an expansion or diversification of an existing facility must ensure that he or she maintains the same percentage of employment positions filled by residents of the contiguous county or the CEZ that existed prior to the application being made. This percentage must be maintained for seven years.

(vi) Qualified employment positions do not include those positions filled by persons hired in excess of the ratio of one employee per required dollar of investment for which a deferral is granted. In the event an employee is either voluntarily or involuntarily separated from employment, the employment position will be considered filled if the employer is either training or actively recruiting a replacement employee, so long as the position is not actually vacant for any period in excess of thirty consecutive days.

(4) **Apportionment of costs between qualifying and nonqualifying investments.** The deferral is allowable only in respect to investment in the construction of a new building or the expansion or renovation of existing buildings used in manufacturing, research and development, or commercial testing.

(a) Where a building(s) is used partly for manufacturing, research and development, or commercial testing and partly for purposes that do not qualify for deferral under this rule, the deferral will be determined by apportionment of the total project costs. The applicable tax deferral will be determined by apportionment according to the ratio of the square footage of that portion of the building(s) directly used for manufacturing, research and development, or commercial testing purposes bears to the square footage of the total building(s).

Apportionment formula:

$$\frac{\text{Eligible square feet of building(s)}}{\text{Total square feet of building(s)}} = \text{Percent Eligible}$$

$$\text{Percent Eligible} \times \text{Total Project Costs} = \text{Eligible Costs.}$$

"Total Project Costs" means cost of multipurpose buildings and other improvement costs associated with the deferral project. Machinery and equipment are not included in this calculation. Common areas, such as hallways and bathrooms, are not included in the square feet figure for either the numerator or the denominator. The cost of the common areas is multiplied by the percent eligible to determine the portion of the common area that is eligible for deferral.

$$\text{Eligible Tax Deferred} = \text{Eligible Cost} \times \text{Tax Rate.}$$

(b) Qualified machinery and equipment is not subject to apportionment.

(5) **Leased equipment.** The amount of tax deferral allowable for leased equipment is the amount of the consideration paid by the recipient to the lessor over the initial term of

the lease, excluding any period of extension or option to renew, up to the last date for repayment of the deferred taxes. After that date the recipient must pay the appropriate sales taxes to the lessor for the remaining term of the lease.

(6) **Application procedure and review process.** An application for sales and use tax deferral under this program must be made prior to the initiation of construction and the acquisition of machinery and equipment. Persons who apply after construction is initiated or after acquisition of machinery and equipment are not eligible for the program. Applications for persons subject to hiring requirements must include information regarding the estimated total project cost and the qualified employment positions.

(a) Application forms will be supplied to the applicant by the department upon request. The completed application may be sent by fax to 360-586-2163 or mailed to the following address:

State of Washington
Department of Revenue
Special Programs
P.O. Box 47477
Olympia, WA 98507-7477

(b) The department will verify the information contained in the application and approve or disapprove the application within sixty days. If approved, the department will issue a tax deferral certificate. If disapproved, the department will notify the applicant as to the reason(s) for disapproval. The U.S. Post Office postmark or fax date will be used as the date of application.

(c) The applicant may seek administrative review of the department's disapproval of an application within thirty days from the date of notice of disallowance pursuant to the provisions of WAC 458-20-100, Appeals, small claims and settlements. The filing of a petition for review with the department starts a review of departmental action.

(7) **Eligible area criteria.** The statewide and county unemployment statistics last published by the department will be used to determine eligible areas based on unemployment. Median income county designation is based on data produced by the office of financial management and made available to the department on November 1 of each year. The timber impact town designation is based on information provided by the department of employment security.

If an investment project is located in an area that qualifies under more than one type of eligible area, the department will automatically assign the project to the eligible area that imposes the least burden on the taxpayer and with the greatest benefit to the taxpayer. If the applicant elects to be bound by the requirements of the other potential eligible area, the applicant must make a written statement to that effect. For example, on May 1, 1998, the city of Yakima qualifies as a CEZ, and the entire county of Yakima qualifies as an unemployment county. The CEZ requirements are more restrictive than the unemployment county requirements. The department will assign the project to the distressed area eligible area unless the applicant elected to be bound by the CEZ requirements.

(8) **Use of the certificate.** A tax deferral certificate issued under this program is for the use of the recipient for deferral of sales and use taxes due on each eligible investment project. Deferral is limited only to investment in quali-

fied building or qualified machinery and equipment as defined in this Part I. Thus, sales and use taxes cannot be deferred on items that do not become part of the qualified buildings, machinery, or equipment. In addition, the deferral is not to be used to defer the taxes of the persons with whom the recipient does business, persons the recipient hires, or employees of the recipient.

The tax deferral certificate is used in a manner similar to that of a resale certificate as set forth in WAC 458-20-102, Resale certificates. The certificate holder must provide a copy of the tax deferral certificate to the seller at the time goods or services are purchased. The seller is relieved of the responsibility for collection of the sales or use tax upon presentation of the certificate. The seller must retain a copy of the certificate as part of its permanent records for a period of at least five years. A blanket certificate may be provided by the certificate holder and accepted by the seller covering all such purchases relative to the eligible project. The seller is liable for business and occupation tax on all tax deferral sales.

(9) **Project operationally complete.** An applicant must provide the department with the estimated cost of the investment project at the time the application is made. Following approval of the application and issuance of a deferral certificate, a certificate holder must notify the department, in writing, when the value of the investment project reaches the estimated cost as stated on the tax deferral certificate.

(a) If a certificate holder has reached its level of estimated costs and the project is not operationally complete, the certificate holder may request an amended certificate stating a revised amount upon which the deferral is requested. Requests must be mailed or faxed to the department.

(b) The certificate holder must notify the department in writing when the construction project is operationally complete. The department will certify the date on which the project was operationally complete. The recipient of the deferral must maintain the manufacturing or research and development activity for eight years from this date.

(10) **Reporting and monitoring procedure.** Requirement to submit annual reports. Each recipient of a deferral granted after July 1, 1995, must submit a report to the department on December 31st of the year in which the investment project is certified by the department as having been operationally completed, and on December 31st of each of the seven succeeding calendar years. The report must be made to the department in a form and manner prescribed by the department. The report must contain information regarding the actual employment related to the project and any other information required by the department. If the recipient fails to submit a report or submits an inadequate or falsified report, the department may declare the amount of deferred taxes outstanding to be immediately due and payable. An inadequate or falsified report is one that contains material omissions or contains knowingly false statements and information.

(11) **Repayment of deferred taxes.** Repayment of tax deferred under chapter 82.60 RCW is excused, except as otherwise provided in RCW 82.60.070 and this subsection, on an investment project for which a deferral has been granted under chapter 82.60 RCW after June 30, 1994.

(a) Taxes deferred under this chapter need not be repaid on machinery and equipment for lumber and wood product

industries, and sales of or charges made for labor and services, of the type which qualified for exemption under RCW 82.08.02565 or 82.12.02565.

(b) The following describes the various circumstances under which repayment of the deferral may be required. Outstanding taxes are determined by reference to the following table. The table presumes the taxpayer maintained eligibility for the entire year.

Repayment Year	Percentage of Deferred Tax Waived
1 (Year operationally complete)	0%
2	0%
3	0%
4	10%
5	15%
6	20%
7	25%
8	30%

Any action taken by the department to disqualify a recipient for tax deferral or require payment of all or part of deferred taxes is subject to administrative review pursuant to the provisions of WAC 458-20-100, Appeals, small claims and settlements. The filing of a petition for review with the department starts a review of departmental action. See subsection (11)(d) of this rule for repayment and waiver for deferrals with hiring requirements.

(c) **Failure of investment project to satisfy general conditions.** If, on the basis of the recipient's annual report or other information, including that submitted by the department of employment security, the department finds that an investment project is not eligible for tax deferral for reasons other than failure to create the required number of qualified employment positions, the department will declare the amount of deferred taxes outstanding to be immediately due. For example, a reason for disqualification would be that the facilities are not used for a manufacturing or research and development operation.

(d) **Failure of investment project to satisfy required employment positions conditions.** If, on the basis of the recipient's annual report or other information, the department finds that an investment project has been operationally complete for three years and has failed to create the required number of qualified employment positions, the amount of taxes deferred will be immediately due. The department will assess interest at the rate and as provided for delinquent excise taxes under RCW 82.32.050 (retroactively to the date the application was filed). There is no proration of the amount owed under this subsection. No penalties will be assessed.

(e) **Failure of investment project to satisfy employee residency requirements.** If, on the basis of the recipient's annual report or other information, the department finds that an investment project under RCW 82.60.040 (1)(b) or (c) has failed to comply with any requirement of RCW 82.60.045 for any calendar year for which reports are required under this subsection, twelve and one-half percent of the amount of deferred taxes will be immediately due. For each year a deferral's requirements are met twelve and one-half percent of the amount of deferred taxes will be waived. The department will assess interest at the rate provided for delinquent excise taxes under RCW 82.32.050, retroactively to the date

the application was filed. Each year the employment requirement is met, twelve and one-half percent of the deferred tax will be waived, if all other program requirements are met. No penalties will be assessed.

(f) The department of employment security makes and certifies to the department all determinations of employment and wages required under this subsection.

(12) **Debt not extinguished because of insolvency or sale.** Insolvency or other failure of the recipient does not extinguish the debt for deferred taxes nor will the sale, exchange, or other disposition of the recipient's business extinguish the debt for the deferred taxes. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral. Any person who becomes a successor (see WAC 458-20-216) to such investment project is liable for the full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient.

(13) **Disclosure of information.** Applications and reports received by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. (RCW 82.60.100.)

PART II

Applications from July 1, 1994, to June 30, 1995

(14) **Definitions.** For the purposes of this part, the following definitions apply for applications made on and after July 1, 1994 and before July 1, 1995.

(a) "Acquisition of equipment or machinery" means the date the equipment and machinery is under the dominion and control of the recipient.

(b) "Applicant" means a person applying for a tax deferral under chapter 82.60 RCW.

(c) "Certificate holder" means an applicant to whom a tax deferral certificate has been issued.

(d) "Computer-related services" means services that are connected or interact directly in the manufacture of computer hardware or software or the programming of the manufactured hardware. This includes the manufacture of hardware such as chips, keyboards, monitors, any other hardware, and the components of these items. It includes creating operating systems and software that will be copied and sold as canned software. "Computer-related services" does not include information services. The activities performed by the manufacturer to test, correct, revise, and upgrade software or hardware before they are approved for sale to the consumer are considered computer-related services in this instance.

(e) "Department" means the department of revenue.

(f) "Eligible area" means:

(i) Unemployment county. A county in which the average level of unemployment for the three calendar years preceding the year in which an application is filed exceeds the average state unemployment for those years by twenty percent. The department may compare the county's average unemployment rate in the prior three years to one hundred twenty percent of the state's average unemployment rate based on official unemployment figures published by the department of employment security;

(ii) MSA. A metropolitan statistical area, as defined by the Office of Federal Statistical Policy and Standards, United States Department of Commerce, in which the average level of unemployment for the calendar year immediately preceding the year in which an application is filed under chapter 82.60 RCW exceeds the average state unemployment for such calendar year by twenty percent;

(iii) CEZ. A designated community empowerment zone approved under RCW 43.63A.700;

(iv) Timber impact area towns. A town with a population of less than twelve hundred persons that is located in a county that is a timber impact area, as defined in RCW 43.31.601, but that is not an unemployment county as defined in this subsection;

(v) Contiguous county. A county that is contiguous to an unemployment county or a governor's designation county; or

(vi) Governor's designation county. A county designated by the governor as an eligible area under RCW 82.60.047.

(g)(i) "Eligible investment project" means that portion of an investment project which:

(A) Is directly utilized to create at least one new full-time qualified employment position for each seven hundred fifty thousand dollars of investment on which a deferral is requested; and

(B) Either initiates a new operation, or expands or diversifies a current operation by expanding, equipping, or renovating an existing facility with costs in excess of twenty-five percent of the true and fair value of the facility prior to improvement. "Improvement" means the physical alteration by significant expansion, modernization, or renovation of an existing facility, excluding land, where the cost of such expansion, etc., exceeds twenty-five percent of the true and fair value of the existing facility prior to the initiation of the expansion or renovation. The term "improvement" is further defined to include those portions of an existing facility which do not increase the usable floor space, but is limited to the renovation, modernization, or any other form of alteration or addition and the equipment and machinery installed therein during the course of construction. The twenty-five percent test may be satisfied by considering the value of both the building and machinery and equipment; however, at least forty percent of the total renovation costs must be attributable to the physical renovation of the building structure alone. "True and fair value" means the value listed on the assessment rolls as determined by the county assessor for the buildings or equipment for ad valorem property tax purposes at the time of application.

(ii) "Eligible investment project" does not include either an investment project undertaken by a light and power business as defined in RCW 82.16.010, other than cogeneration projects that are both an integral part of a manufacturing facility and owned at least fifty percent by the manufacturer, or investment projects that have already received deferrals under chapter 82.60 RCW.

(h) "Industrial fixture" means an item attached to a building or to land. Fixtures become part of the real estate to which they are attached and upon attachment are classified as real property, not personal property. Examples of "industrial fixtures" are fuel oil lines, boilers, craneways, and certain concrete slabs.

(i) "Initiation of construction," in regards to the construction of new buildings, means the commencement of on-site construction work.

(j) "Initiation of construction," in regards to the construction of expanding or renovating existing structures for the purpose of increasing floor space or production capacity used for manufacturing and research and development, means the commencement of the new construction by renovation, modernization, or expansion, by physical alteration.

(k) "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project. A person who does not build or remodel his or her own building, but leases from a third party, is eligible for sales and use tax deferral on the machinery and equipment provided that an investment in qualified machinery and equipment is made by such person and a new structure used to house the manufacturing activities is constructed.

(l) "Manufacturing" has the meaning given in RCW 82.04.120. Manufacturing, for purposes of the distressed area deferral program, also includes computer programming, the production of computer software, and other computer-related services, and the activities performed by research and development laboratories and commercial testing laboratories.

(m) "Operationally complete" means the project is capable of being used for its intended purpose as described in the application.

(n) "Person" has the meaning given in RCW 82.04.030. "Person" does not include the state of Washington or its institutions. "Person" can be either a lessee or a lessor, who can apply separately for individual investment projects at the same site, if they comply with the other requirements of chapter 82.60 RCW. The lessor/owner of the structure is not eligible for deferral unless the underlying ownership of the buildings, machinery, or equipment vests exclusively in the lessor/owner, or unless the lessor has by written contract agreed to pass the economic benefit of the deferral to the lessee in the form of reduced rent payments.

(o) "Qualified buildings" are limited to structures used for manufacturing and research and development activities. "Qualified buildings" include plant offices and warehouses if such facilities are essential or an integral part of a factory, mill, plant, or laboratory. "Office" means space used by professional, clerical, or administrative staff. For plant office space to be a qualified building its use must be essential or integral to the manufacturing or research and development operation. Office space that is used by supervisors and their staff, by technicians, by payroll staff, by the safety officer, and by the training staff are examples of qualifying office space. "Warehouse" means facilities used for the storage of raw materials or finished goods.

(p) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year. The "entire tax year" means the full-time position is filled for a period of twelve consecutive months. "Full time" means at least 35 hours per week, 455 hours a quarter, or 1,820 hours a year.

(q) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufactur-

ing operation or research and development operation. "Qualified machinery and equipment" includes: Computers, software, data processing equipment, laboratory equipment; manufacturing components such as belts, pulleys, shafts and moving parts; molds, tools and dies; operating structures; and all equipment used to control or operate machinery. It also includes machinery and equipment acquired under the terms of a lease by the recipient. "New" as used in this subsection means either new to the taxing jurisdiction of the state or new to the certificate holder.

(r) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

(s) "Recipient" means a person receiving a tax deferral under this program.

(15) **Issuance of deferral certificate.** The department will issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW for an eligible investment project. The department will state on the certificate the amount of tax deferral for which the recipient is eligible. Recipients must keep track of how much tax is deferred.

(16) Eligible investment amount.

(a) Projects located in unemployment counties, MSAs, governor-designated counties, or timber impact towns are eligible for a deferral on the portion of the investment project that represents one new qualified employment position for each seven hundred fifty thousand dollars of investment. The eligible amount is computed by dividing the total qualifying project costs by seven hundred fifty thousand, the result being the qualified employment positions. In addition, the number of qualified employment positions created by an investment project will be reduced by the number of full-time employment positions maintained by the recipient in any other community in this state that are displaced as a result of the investment project. This is the number of positions used as the hiring benchmark. The qualified employment positions must be filled by the end of year three. Monitoring and reporting procedures are set forth in subsection (23) of this rule. In addition, buildings that will be used partly for manufacturing or research and development and partly for other purposes are eligible for a deferral on a proportionate basis. Subsection (17) of this rule explains the procedure for apportionment.

(b) Projects located in CEZs, counties containing CEZs, or counties contiguous to an eligible county, are eligible for a deferral if the project meets specific hiring requirements. The recipient is eligible for a deferral on the portion of the investment project that represents one new qualified employment position for each seven hundred fifty thousand dollars of investment. The eligible amount is computed by dividing the total qualifying project costs by seven hundred fifty thousand, the result being the qualified employment positions. This is the number of positions used as the hiring benchmark over the life of the deferral. The qualified employment positions are reviewed each year, beginning December 31st of the year the project is operationally complete and each year for

seven years. Monitoring and reporting procedures are set forth in subsection (23) of this rule. In addition, buildings that will be used partly for manufacturing or research and development and partly for other purposes are eligible for a deferral on a proportionate basis. Subsection (17) of this rule explains the procedure for apportionment.

(c) In addition to the hiring requirements for new positions under (b) of this subsection, the recipient of a deferral for an expansion or diversification of an existing facility must ensure that he or she maintains the same percentage of employment positions filled by residents of the contiguous county or the CEZ that existed prior to the application being made. This percentage must be maintained for seven years. The department has instituted a geographic information system (GIS) to assist taxpayers in determining taxing jurisdiction boundaries, local tax rates, and a mapping and address lookup system to determine whether a specific address is within a CEZ. The system is available on the department's internet website at <http://www.dor.wa.gov>.

(d) Qualified employment positions does not include those persons hired in excess of the ratio of one employee per required dollar of investment for which a deferral is granted. In the event an employee is either voluntarily or involuntarily separated from employment, the employment position will be considered filled if the employer is either training or actively recruiting a replacement employee so long as the position is not actually vacant for any period in excess of thirty consecutive days.

(17) Apportionment of costs between qualifying and nonqualifying investments. The deferral is allowable only in respect to investment in the construction of a new building or the expansion or renovation of existing buildings used in manufacturing, research and development.

(a) Where a building(s) is used partly for manufacturing or research and development and partly for purposes which do not qualify for deferral under this rule, the deferral will be determined by apportionment of the total project costs. The applicable tax deferral will be determined by apportionment according to the ratio of the square footage of that portion of the building(s) directly used for manufacturing or research and development purposes bears to the square footage of the total building(s).

Apportionment formula:

$$\frac{\text{Eligible square feet of building(s)}}{\text{Total square feet of building(s)}} = \text{Percent Eligible}$$

$$\text{Percent Eligible} \times \text{Total Project Costs} = \text{Eligible Costs.}$$

"Total Project Costs" means cost of multipurpose buildings and other improvement costs associated with the deferral project. Machinery and equipment are not included in this calculation. Common areas, such as hallways and bathrooms, are not included in the square feet figure for either the numerator or the denominator. The cost of the common areas is multiplied by the percent eligible to determine the portion of the common area that is eligible for deferral.

$$\text{Eligible Tax Deferred} = \text{Eligible Cost} \times \text{Tax Rate.}$$

(b) Qualified machinery and equipment is not subject to apportionment.

(18) **Leased equipment.** The amount of tax deferral allowable for leased equipment is the amount of the consideration paid by the recipient to the lessor over the initial term of the lease, excluding any period of extension or option to renew, up to the last date for repayment of the deferred taxes. After that date the recipient must pay the appropriate sales taxes to the lessor for the remaining term of the lease.

(19) **Application procedure and review process.** An application for sales and use tax deferral under this program must be made prior to the initiation of construction and the acquisition of machinery and equipment. Persons who apply after construction is initiated or after acquisition of machinery and equipment are not eligible for the program.

(a) Application forms will be supplied to the applicant by the department upon request. The completed application may be sent by fax to 360-586-2163 or mailed to the following address:

State of Washington
Department of Revenue
Special Programs
P.O. Box 47477
Olympia, WA 98507-7477

(b) The department will verify the information contained in the application and approve or disapprove the application within sixty days. If approved, the department will issue a tax deferral certificate. If disapproved, the department will notify the applicant as to the reason(s) for disapproval. The U.S. Post Office postmark or fax date will be used as the date of application.

(c) The applicant may seek administrative review of the department's disapproval of an application within thirty days from the date of notice of disallowance pursuant to the provisions of WAC 458-20-100, Appeals, small claims and settlements. The filing of a petition for review with the department starts a review of departmental action.

(20) **Eligible area criteria.** The department will use the statewide and county unemployment statistics as last published by the department. Timber impact town designation is based on information provided by the department of employment security. The department will update the list of eligible areas by county, annually.

(21) **Use of the certificate.** A tax deferral certificate issued under this program will be for the use of the recipient for deferral of sales and use taxes due on each eligible investment project. Deferral is limited only to investment in qualified buildings or qualified machinery and equipment as defined in this Part II. Thus, sales and use taxes cannot be deferred on items that do not become part of the qualified buildings, machinery, or equipment. In addition, the deferral is not to be used to defer the taxes of the persons with whom the recipient does business, persons the recipient hires, or employees of the recipient. The tax deferral certificate is to be used in a manner similar to that of a resale certificate as set forth in WAC 458-20-102, Resale certificates. The certificate holder must provide a copy of the tax deferral certificate to the seller at the time goods or services are purchased. The seller will be relieved of the responsibility for collection of the sales or use tax upon presentation of the certificate. The seller must retain a copy of the certificate as part of its permanent records for a period of at least five years. A blanket cer-

tificate may be provided by the certificate holder and accepted by the seller covering all such purchases relative to the eligible project. The seller is liable for business and occupation tax on all tax deferral sales.

(22) **Project operationally complete.** An applicant must provide the department with the estimated cost of the investment project at the time the application is made. Following approval of the application and issuance of a tax deferral certificate, a certificate holder must notify the department, in writing, when the value of the investment project reaches the estimated cost as stated on the tax deferral certificate.

(a) If a certificate holder has reached its level of estimated costs and the project is not operationally complete, the certificate holder may request an amended certificate stating a revised amount upon which the deferral of sales and use taxes is requested. Requests must be mailed or faxed to the department.

(b) The certificate holder must notify the department in writing when the construction project is operationally complete. The department will certify the date on which the project was operationally complete. The recipient of the deferral must maintain the manufacturing or research and development activity for eight years from this date.

(c) The recipient will be notified in writing of the total amount of deferred taxes, the date(s) upon which the deferred taxes must be paid, and any reports required to be submitted in the subsequent years. If the department disallows any portion of the amount of sales and use taxes requested for deferral, the recipient may seek administrative review of the department's action within thirty days from the date of the notice of disallowance pursuant to the provisions of WAC 458-20-100, Appeals, small claims and settlements. The filing of a petition for review with the department starts a review of departmental action.

(23) **Reporting and monitoring procedure.** Requirement to submit annual reports. Each recipient of a sales and use tax deferral must submit a report to the department on December 31st of the year in which the investment project is certified by the department as having been operationally completed, and on December 31st of each of the seven succeeding calendar years. The report must be made to the department in a form and manner prescribed by the department. The report must contain information regarding the actual employment related to the project and any other information required by the department. If the recipient fails to submit a report or submits an inadequate or falsified report, the department may declare the amount of deferred taxes outstanding to be immediately due and payable. An inadequate or falsified report is one that contains material omissions or contains knowingly false statements and information.

(24) **Repayment of deferred taxes.** Repayment of tax deferred under chapter 82.60 RCW is excused, except as otherwise provided in RCW 82.60.070 and this subsection on an investment project for which a deferral has been granted under chapter 82.60 RCW after June 30, 1994.

(a) The following describes the various circumstances under which repayment of the deferral may be required. Outstanding taxes are determined by reference to the following table. The table presumes the taxpayer maintained eligibility

for the entire year. See subsection (c) for repayment and waiver for deferrals with hiring requirements.

Repayment Year	Percentage of Deferred Tax Waived
1 (Year operationally complete)	0%
2	0%
3	0%
4	10%
5	15%
6	20%
7	25%
8	30%

Any action taken by the department to disqualify a recipient for tax deferral or require payment of all or part of deferred taxes is subject to administrative review pursuant to the provisions of WAC 458-20-100, Appeals, small claims and settlements. The filing of a petition for review with the department starts a review of departmental action.

(b) **Failure of investment project to satisfy general conditions.** If, on the basis of the recipient's annual report or other information, including that submitted by the department of employment security, the department finds that an investment project is not eligible for tax deferral, other than failure to create the required number of positions, the department will declare the amount of deferred taxes outstanding to be immediately due. For example, a reason for disqualification would be that the facility is not used for manufacturing or research and development operations.

(c) **Failure of investment project to satisfy employment positions conditions.** If, on the basis of the recipient's annual report or other information, the department finds that an investment project has been operationally complete for three years and has failed to create the required number of qualified employment positions, the amount of taxes deferred will be immediately due. The department will assess interest at the rate and as provided for delinquent excise taxes under RCW 82.32.050 (retroactively to the date of deferral). No penalties will be assessed.

(d) **Failure of investment project to satisfy employee residency requirements.** If, on the basis of the recipient's annual report or other information, the department finds that an investment project under RCW 82.60.040 (1)(b) or (c) has failed to comply with the special hiring requirements of RCW 82.60.045 for any calendar year for which reports are required under this subsection, twelve and one-half percent of the amount of deferred taxes will be immediately due. For each year a deferral's requirements are met twelve and one-half percent of the amount of deferred taxes will be waived. The department will assess interest at the rate provided for delinquent excise taxes under RCW 82.32.050, retroactively to the date of deferral. No penalties will be assessed.

(e) The department of employment security makes and certifies to the department all determinations of employment and wages required under this subsection, per request.

(25) **Debt not extinguished because of insolvency or sale.** Insolvency or other failure of the recipient does not extinguish the debt for deferred taxes nor will the sale, exchange, or other disposition of the recipient's business extinguish the debt for the deferred taxes. Transfer of ownership does not terminate the deferral. The deferral is trans-

ferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral. Any person who becomes a successor (see WAC 458-20-216) to such investment project is liable for the full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient.

(26) **Disclosure of information.** Applications and reports received by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. (RCW 82.60.100.)

PART III

Applications from July 1, 1992, to June 30, 1994

(27) **Definitions.** For the purposes of this part, the following definitions apply for applications made after July 1, 1992, but before July 1, 1994:

(a) "Acquisition of equipment or machinery" means the equipment and machinery is under the dominion and control of the recipient.

(b) "Applicant" means a person applying for a tax deferral under chapter 82.60 RCW.

(c) "Certificate holder" means an applicant to whom a tax deferral certificate has been issued.

(d) "Computer-related services" means services that are connected or interact directly in the manufacture of computer hardware or software or the programming of the manufactured hardware. This includes the manufacture of hardware such as chips, keyboards, monitors, any other hardware, and the components of these items. It includes creating operating systems and software that will be copied and sold as canned software. "Computer-related services" does not include information services. The activities performed by the manufacturer to test, correct, revise, and upgrade software or hardware before they are approved for sale to the consumer are considered computer-related services in this instance.

(e) "Department" means the department of revenue.

(f) "Eligible area" means:

(i) Unemployment county. A county in which the average level of unemployment for the three calendar years preceding the year in which an application is filed exceeds the average state unemployment for those years by twenty percent. The department may compare the county's average unemployment rate in the prior three years to one hundred twenty percent of the state's average unemployment rate based on official unemployment figures published by the department of employment security;

(ii) MSA. A metropolitan statistical area, as defined by the Office of Federal Statistical Policy and Standards, United States Department of Commerce, in which the average level of unemployment for the calendar year immediately preceding the year in which an application is filed under chapter 82.60 RCW exceeds the average state unemployment for such calendar year by twenty percent; or

(iii) CEZ. Beginning July 1, 1993, a designated community empowerment zone approved under RCW 43.63A.700.

(g)(i) "Eligible investment project" means that portion of an investment project which:

(A) Is directly utilized to create at least one new full-time qualified employment position for each three hundred thou-

sand dollars of investment on which a deferral is requested; and

(B) Either initiates a new operation, or expands or diversifies a current operation by expanding, or renovating an existing building with costs in excess of twenty-five percent of the true and fair value of the plant complex prior to improvement. "Improvement" means the physical alteration by significant expansion, modernization, or renovation of an existing plant complex, excluding land, where the cost of such expansion, etc., exceeds twenty-five percent of the true and fair value of the existing plant complex prior to the initiation of the expansion or renovation. The term "improvement" is further defined to include those portions of an existing building which do not increase the usable floor space, but is limited to the renovation, modernization, or any other form of alteration or addition and the equipment and machinery installed therein during the course of construction. The twenty-five percent test may be satisfied by considering the value of both the building and machinery and equipment; however, at least forty percent of the total renovation costs must be attributable to the physical renovation of the building structure alone. "True and fair value" means the value listed on the assessment rolls as determined by the county assessor for the land, buildings, or equipment for ad valorem property tax purposes at the time of application; or

(C) Acquires machinery and equipment to be used for either manufacturing or research and development. The lessor/owner of the structure is not eligible for a deferral unless the underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person.

(ii) "Eligible investment project" does not include any portion of an investment project undertaken by a light and power business as defined in RCW 82.16.010 or investment projects that have already received deferrals under chapter 82.60 RCW.

(h) "Industrial fixture" means an item attached to a building or to land. Fixtures become part of the real estate to which they are attached and upon attachment are classified as real property, not personal property. Examples of "industrial fixtures" are fuel oil lines, boilers, craneways, and certain concrete slabs.

(i) "Initiation of construction," in regards to the construction of new buildings, means the commencement of on-site construction work.

(j) "Initiation of construction," in regards to the construction of expanding or renovating existing structures for the purpose of increasing floor space or production capacity used for manufacturing and research and development, means the commencement of new construction by renovation, modernization, or expansion, by physical alteration.

(k) "Investment project" means an investment in qualified buildings and qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project.

(l) "Manufacturing" has the meaning given in RCW 82.04.120. Manufacturing, for purposes of the distressed area deferral program, also includes computer programming, the production of computer software, and other computer-related services, and the activities performed by research and development laboratories and commercial testing laboratories.

(m) "Operationally complete" means the project is capable of being used for its intended purpose as described in the application.

(n) "Person" has the meaning given in RCW 82.04.030. "Person" does not include the state of Washington or its institutions. "Person" can be either a lessee or a lessor, who can apply separately for individual investment projects at the same site, if they comply with the other requirements of this chapter. The lessor/owner of the structure is not eligible for deferral unless the underlying ownership of the buildings, machinery, or equipment vests in the lessor/owner.

(o) "Qualified buildings" are limited to structures used for manufacturing and research and development activities. "Qualified buildings" include plant offices and warehouses if such facilities are essential or an integral part of a factory, mill, plant, or laboratory. "Office" means space used by professional, clerical, or administrative staff. For plant office space to be a qualified building, its use must be essential or integral to the manufacturing or research and development operation. Office space that is used by supervisors and their staff, by technicians, by payroll staff, by the safety officer, and by the training staff are examples of qualifying office space. "Warehouse" means facilities used for the storage of raw materials or finished goods.

(p) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year. The "entire tax year" means the full-time position is filled for a period of twelve consecutive months. "Full time" means at least 35 hours a week, 455 hours a quarter, or 1,820 hours a year.

(q) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing operation or research and development operation. "Qualified machinery and equipment" includes: Computers, software, data processing equipment, laboratory equipment; manufacturing components such as belts, pulleys, shafts and moving parts; molds, tools and dies; operating structures; and all equipment used to control or operate machinery. It also includes machinery and equipment acquired under the terms of a long- or short-term lease by the recipient. "New" as used in this subsection means either new to the taxing jurisdiction of the state or new to the certificate holder.

(r) "Recipient" means a person receiving a tax deferral under this program.

(s) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

(28) **Issuance of deferral certificate.** The department will issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW for an eligible investment project. The department will state on the certificate the amount of tax deferral for which the recipient is eligible. Recipients must keep track of how much deferral is taken.

(29) **Eligible investment amount.** Recipients are eligible for a deferral on investment used to create employment positions.

(a) Total qualifying project costs must be examined to determine the number of positions associated with the project. Total qualifying project costs are divided by three hundred thousand, the result being the qualified employment positions. This is the number of positions used as the hiring benchmark at the end of year three. The qualified employment positions are reviewed in the third year, following December 31st of the year the project is operationally complete. If the recipient has failed to create the requisite number of positions, the department will issue an assessment under subsection (37) of this rule. Buildings that will be used partly for manufacturing or research and development and partly for other purposes are eligible for a deferral on a proportionate basis. Subsection (30) of this rule explains the procedure for apportionment.

(b) Qualified employment positions does not include those persons hired in excess of the ratio of one employee per required dollar of investment for which a deferral is granted. In the event an employee is either voluntarily or involuntarily separated from employment, the employment position will be considered filled if the employer is either training or actively recruiting a replacement employee so long as the position is not actually vacant for any period in excess of thirty consecutive days.

(30) **Apportionment of costs between qualifying and nonqualifying investments.** The deferral is allowable only in respect to investment in the construction of a new building or the expansion or renovation of existing buildings directly used in manufacturing, research and development, or commercial testing laboratories.

(a) Where a building(s) is used partly for manufacturing or research and development, or commercial testing and partly for purposes, which do not qualify for deferral under this rule, the deferral will be determined by apportionment of the total project costs. The applicable tax deferral will be determined by apportionment according to the ratio of the square footage of that portion of the building(s) directly used for manufacturing or research and development purposes bears to the square footage of the total building(s).

Apportionment formula:

$$\frac{\text{Eligible square feet of building(s)}}{\text{Total square feet of building(s)}} = \text{Percent Eligible}$$

$$\text{Percent Eligible} \times \text{Total Project Costs} = \text{Eligible Costs.}$$

"Total Project Costs" means cost of multipurpose buildings and other improvement costs associated with the deferral project. Machinery and equipment are not included in this calculation. Common areas, such as hallways and bathrooms, are not included in the square feet figure for either the numerator or the denominator. The cost of the common areas is multiplied by the percent eligible to determine the portion of the common area that is eligible for deferral.

$$\text{Eligible Tax Deferred} = \text{Eligible Cost} \times \text{Tax Rate.}$$

(b) Qualified machinery and equipment is not subject to apportionment.

(31) **Leased equipment.** The amount of tax deferral allowable for leased equipment is the amount of the consideration paid by the recipient to the lessor over the initial term of the lease, excluding any period of extension or option to renew, up to the last date for repayment of the deferred taxes. After that date the recipient must pay the appropriate sales taxes to the lessor for the remaining term of the lease.

(32) **Application procedure and review process.** An application for sales and use tax deferral under this program must be made prior to the initiation of construction and the acquisition of equipment or machinery. Persons who apply after construction is initiated or finished or after acquisition of machinery and equipment are not eligible for the program.

(a) Application forms will be supplied to the applicant by the department upon request. The completed application may be sent by fax to 360-586-2163 or mailed to the following address:

State of Washington
Department of Revenue
Special Programs
P.O. Box 47477
Olympia, WA 98507-7477

(b) The department will verify the information contained in the application and either approve or disapprove the application within sixty days. If approved, the department will issue a tax deferral certificate. If disapproved, the department will notify the applicant as to the reason(s) for disapproval. The U.S. Post Office postmark or fax date will be used as the date of application.

(c) The applicant may seek administrative review of the department's refusal to issue a certificate pursuant to the provisions of WAC 458-20-100, Appeals, small claims and settlements, within thirty days from the date of notice of the department's refusal, or within any extension of such time granted by the department. The filing of a petition for review with the department starts a review of departmental action.

(33) **Unemployment criteria.** For purposes of making application for tax deferral and of approving such applications, the statewide and county unemployment statistics last published by the department will be used to determine eligible areas. The department will update the list of eligible areas by county, on an annual basis.

(34) **Use of the certificate.** A tax deferral certificate issued under this program is for the use of the recipient for deferral of sales and use taxes due on each eligible investment project. Deferral is limited only to investment in qualified buildings or qualified machinery and equipment as defined in this Part III. Thus, sales and use taxes cannot be deferred on items that do not become part of the qualified buildings, machinery, or equipment.

The tax deferral certificate is to be used in a manner similar to that of a resale certificate as set forth in WAC 458-20-102, Resale certificates. The certificate holder must provide a copy of the tax deferral certificate to the seller at the time goods or services are purchased. The seller will be relieved of the responsibility for collection of the sales or use tax upon presentation of the certificate. The seller must retain a copy of the certificate as part of its permanent records for a period of at least five years. A blanket certificate may be provided by the certificate holder and accepted by the seller covering

all such purchases relative to the eligible project. The seller is liable for business and occupation tax on all tax deferral sales. The deferral certificate is to defer the taxes of the recipient. For example, the deferral is not to be used to defer the taxes of the persons with whom the recipient does business, persons the recipient hires, or employees of the recipient.

(35) **Project operationally complete.** An applicant must provide the department with the estimated cost of the investment project at the time the application is made. Following approval of the application and issuance of a tax deferral certificate, a certificate holder must notify the department, in writing, when the value of the investment project reaches the estimated cost as stated on the tax deferral certificate.

(a) If a certificate holder has reached its level of estimated costs and the project is not operationally complete, the certificate holder may request an amended certificate stating a revised amount upon which the deferral of sales and use taxes is requested. Requests must be mailed or faxed to the department.

(b) The certificate holder must notify the department in writing when the construction project is operationally complete. The department will certify the date on which the project was operationally complete. The recipient of the deferral must maintain the manufacturing or research and development activity for eight years from this date.

(c) The recipient will be notified in writing of the total amount of deferred taxes, the date(s) upon which the deferred taxes must be paid, and any reports required to be submitted in the subsequent years. If the department disallows all or any portion of the amount of sales and use taxes requested for deferral, the recipient may seek administrative review of the department's action pursuant to the provisions of WAC 458-20-100, within thirty days from the date of the notice of disallowance.

(36) **Reporting and monitoring procedure.** Requirement to submit annual reports. Each recipient of a sales and use tax deferral must submit a report to the department on December 31st of each year during the repayment period until the tax deferral is repaid. The report must be made to the department in a form and manner prescribed by the department. The report must contain information regarding the actual employment related to the project and any other information required by the department. If the recipient fails to submit a report or submits an inadequate or falsified report, the department may declare the amount of deferred taxes outstanding to be immediately assessed and payable. An inadequate or falsified report is one that contains material omissions or contains knowingly false statements and information.

(37) **Repayment of deferred taxes.** The recipient must begin paying the deferred taxes in the third year after the date certified by the department as the date on which the construction project has been operationally completed.

(a) The first payment will be due on December 31st of the third calendar year after such certified date, with subsequent annual payments due on December 31st of the following four years, with amounts of payment scheduled as follows:

Repayment Year	Percentage of Deferred Tax Repaid
1 (Year certified operationally complete)	0%
2	0%
3	0%
4	10%
5	15%
6	20%
7	25%
8	30%

(b) The department may authorize an accelerated repayment schedule upon request of the recipient. Interest will not be charged on any taxes deferred under this part during the period of deferral, although other penalties and interest applicable to delinquent excise taxes may be assessed and imposed for any delinquent payments during the repayment period pursuant to chapter 82.32 RCW.

(c) Taxes deferred on the sale or use of labor directly applied in the construction of an investment project for which deferral has been granted need not be repaid, provided eligibility for the granted tax deferral has been perfected by meeting all of the eligibility requirements, based upon the recipient's annual December 31 reports and any other information available to the department. The recipient must establish, by clear and convincing evidence, the value of all construction and installation labor for which repayment of sales tax is sought to be excused. Such evidence must include, but is not limited to: A written, signed, and dated itemized billing from construction/installation contractors or independent third party labor providers which states the value of labor charged separately from the value of materials. This information must be maintained in the recipient's permanent records for the department's review and verification. In the absence of such itemized billings in its permanent records, no recipient may be excused from repayment of sales tax on the value of labor in an amount exceeding thirty percent of its gross construction or installation contract charges. The value of labor for which an excuse from repayment of sales or use tax may be received will not exceed the value which is subject to such taxes under the general provisions of chapters 82.08 and 82.12 RCW.

(d) **Failure of investment project to satisfy general conditions.** If, on the basis of the recipient's annual report or other information, including that submitted by the department of employment security, the department finds that an investment project is not eligible for tax deferral for reasons other than failure to create the required number of qualified employment positions, the department will declare the amount of deferred taxes outstanding to be immediately due. For example, a reason for disqualification would be the facility is not used for a manufacturing or research and development operation.

(e) **Failure of investment project to satisfy required employment positions.** If, on the basis of the recipient's annual report or other information, the department finds that an investment project has been operationally complete for three years and has failed to create the required number of qualified employment positions, the department will assess interest but not penalties, on the deferred taxes for the project. The department will assess interest at the rate provided for

delinquent excise taxes under RCW 82.32.050, retroactively to the date of the date of deferral. No penalties will be assessed.

(f) The department of employment security makes and certifies to the department all determinations of employment and wages required under this subsection, per request.

(g) Any action taken by the department to assess interest or disqualify a recipient for tax deferral will be subject to administrative review pursuant to the provisions of WAC 458-20-100, Appeals, small claims and settlements. The filing of a petition for review with the department starts a review of departmental action.

(38) **Debt not extinguished because of insolvency or sale.** Insolvency or other failure of the recipient does not extinguish the debt for deferred taxes nor will the sale, exchange, or other disposition of the recipient's business extinguish the debt for the deferred taxes. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral. Any person who becomes a successor (see WAC 458-20-216) to such investment project will be liable for the full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient.

(39) **Disclosure of information.** Applications and reports received by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. (RCW 82.60.100.)

[Statutory Authority: RCW 82.01.060(2) and 82.32.300. 04-01-127, § 458-20-24001A, filed 12/18/03, effective 1/18/04. Statutory Authority: RCW 82.32.300. 01-12-041, § 458-20-24001A, filed 5/30/01, effective 6/30/01.]

WAC 458-20-24003 Tax incentives for high technology businesses. (1) **Introduction.** This rule explains the tax incentives, contained in chapter 82.63 RCW and RCW 82.04.4452, which apply to businesses engaged in research and development or pilot scale manufacturing in Washington in five high technology areas: Advanced computing, advanced materials, biotechnology, electronic device technology, and environmental technology. Eligibility for high technology or research and development tax incentives offered by the federal government or any other jurisdiction does not establish eligibility for Washington's programs.

(2) **Definitions.** For purposes of this rule, the following definitions apply unless otherwise required by the context.

(a) "Advanced computing" means technologies used in the designing and developing of computing hardware and software, including innovations in designing the full spectrum of hardware from hand-held calculators to super computers, and peripheral equipment.

(b) "Advanced materials" means materials with engineered properties created through the development of specialized processing and synthesis technology, including ceramics, high value-added metals, electronic materials, composites, polymers, and biomaterials.

(c) "Applicant" means a person applying for a tax deferral under chapter 82.63 RCW.

(d) "Biotechnology" means the application of technologies, such as recombinant DNA techniques, biochemistry, molecular and cellular biology, genetics, including genomics, gene expression and genetic engineering, cell fusion tech-

niques, and new bioprocesses, using living organisms, or parts of organisms, to produce or modify products, to improve plants or animals, to develop microorganisms for specific uses, to identify targets for small molecule pharmaceutical development, or to transform biological systems into useful processes and products or to develop microorganisms for specific uses.

(e) "Electronic device technology" means technologies involving microelectronics; semiconductors; electronic equipment and instrumentation; radio frequency, microwave, and millimeter electronics; optical and optic-electrical devices; and data and digital communications and imaging devices.

(f) "Eligible investment project" means an investment project which either initiates a new operation, or expands or diversifies a current operation by expanding, renovating, or equipping an existing facility. The lessor or owner of the qualified building is not eligible for a deferral unless the underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person, or unless the lessor by written contract agrees to pass the economic benefit of the deferral to the lessee in the form of reduced rent payments.

(g) "Environmental technology" means assessment and prevention of threats or damage to human health or the environment, environmental cleanup, and the development of alternative energy sources.

(i) The assessment and prevention of threats or damage to human health or the environment concerns assessing and preventing potential or actual releases of pollutants into the environment that are damaging to human health or the environment. It also concerns assessing and preventing other physical alterations of the environment that are damaging to human health or the environment.

(A) Pollutants include waste materials or by-products from manufacturing or other activities.

(B) Environmental technology includes technology to reduce emissions of harmful pollutants but does not include technology to increase fuel economy. Where technology both reduces emissions and increases fuel economy, it is environmental technology if the primary purpose is to reduce emissions. That reducing emissions is the primary purpose of technology can be demonstrated by showing the technology is developed to meet governmental emission standards.

(C) Environmental technology does not include technology for preventive health measures for, or medical treatment of, human beings.

(ii) Environmental cleanup is corrective or remedial action to protect human health or the environment from releases of pollutants into the environment.

(iii) Alternative energy sources are those other than traditional energy sources such as fossil fuels, nuclear power, and hydroelectricity. However, when traditional energy sources are used in conjunction with the development of alternative energy sources, all the development will be considered the development of alternative energy sources.

(h) "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction or improvement of the project.

(i) "Person" has the meaning given in RCW 82.04.030.

(j) "Pilot scale manufacturing" means design, construction, and testing of preproduction prototypes and models in the fields of biotechnology, advanced computing, electronic device technology, advanced materials, and environmental technology other than for commercial sale. "Commercial sale" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

(k) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity used for pilot scale manufacturing or qualified research and development, including plant offices and other facilities that are an essential or an integral part of a structure used for pilot scale manufacturing or qualified research and development.

(i) If a building is used partly for pilot scale manufacturing or qualified research and development and partly for other purposes, the applicable tax deferral shall be determined as follows:

(A) Tax on the cost of construction of areas devoted solely to pilot scale manufacturing or research and development may be deferred.

(B) Tax on the cost of construction of areas not used at all for pilot scale manufacturing or research and development may not be deferred.

(C) Tax on the cost of construction of areas used in common for pilot scale manufacturing or research and development and for other purposes, such as hallways, bathrooms, and conference rooms, may be deferred by apportioning the costs of construction on a square footage basis. The apportioned costs of construction eligible for deferral are established by using the ratio, expressed as a percentage, of the square feet of the construction, expansion, or renovation devoted to pilot scale manufacturing or qualified research and development, excluding areas used in common to the total square feet of the construction, expansion, or renovation, excluding areas used in common. That percentage is applied to the cost of construction of the common areas to determine the costs of construction eligible for tax deferral. Expressed as a formula, apportionment of the cost of the common areas is determined by:

$$\frac{\text{Square feet devoted to research and development or pilot scale manufacturing, excluding square feet of common areas}}{\text{Total square feet, excluding square feet of common areas}} = \text{Percentage of total cost of construction of common areas eligible for deferral}$$

(D) The apportionment method described in (A), (B), and (C) above shall be used unless the applicant or recipient can demonstrate that another method better represents a reasonable apportionment of costs, considering all the facts and circumstances.

(ii) Building construction does not include the construction of landscaping or most other work outside the building itself. However, it does include the construction of parking lots connected to or adjacent to the building if the parking lots

are for the use of workers performing pilot scale manufacturing or research and development in the building.

(l) "Qualified machinery and equipment" means fixtures, equipment, and support facilities that are an integral and necessary part of a pilot scale manufacturing or qualified research and development operation. "Qualified machinery and equipment" includes: Computers; software; data processing equipment; laboratory equipment, instrumentation, and other devices used in a process of experimentation to develop a new or improved pilot model, plant process, product, formula, invention, or similar property; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; vats, tanks, and fermenters; operating structures; and all other equipment used to control, monitor, or operate the machinery. For purposes of this rule, qualified machinery and equipment must be either new to the taxing jurisdiction of the state or new to the certificateholder, except that used machinery and equipment may be treated as qualified machinery and equipment if the certificateholder either brings the machinery and equipment into Washington or makes a retail purchase of the machinery and equipment in Washington or elsewhere.

(i) Machinery and equipment is an integral and necessary part of pilot scale manufacturing or qualified research and development if the pilot scale manufacturing or qualified research and development could not be accomplished without it. A laboratory table would be integral and necessary to qualified research and development. Decorative artwork would not be integral and necessary to qualified research and development.

(ii) Qualified machinery and equipment must be used exclusively for pilot scale manufacturing or qualified research and development to qualify for the deferral. However, *de minimis* nonqualifying use will not cause the loss of the deferral. An example of *de minimis* use is the occasional use of a computer for personal e-mail.

(iii) Unlike buildings, if machinery and equipment is used for both qualifying and nonqualifying purposes, the costs may not be apportioned. Sales or use tax may not be deferred on the purchase or use of machinery and equipment used for both qualifying and nonqualifying purposes.

(m) "Qualified research and development" means research and development performed within this state in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, and environmental technology.

(n) "Qualified research and development expenditures" means operating expenses, including wages, compensation of a proprietor or a partner in a partnership, benefits, supplies, and computer expenses, directly incurred in qualified research and development by a person claiming the business and occupation tax credit provided by RCW 82.04.4452. The term does not include amounts paid to a person other than a public educational or research institution to conduct qualified research and development. Nor does the term include capital costs and overhead, such as expenses for land, structures, or depreciable property.

(i) In order for an operating expense to be a qualified research and development expenditure, it must be directly incurred in qualified research and development. If an employee performs qualified research and development

activities and also performs other activities, only the wages and benefits proportionate to the time spent on qualified research and development activities are qualified research and development expenditures under this rule. The wages of employees who supervise or are supervised by persons performing qualified research and development are qualified research and development expenditures to the extent the work of those supervising or being supervised involves qualified research and development.

(ii) The compensation of a proprietor or a partner is determined in one of two ways:

(A) If there is net income for federal income tax purposes, the amount reported subject to self-employment tax is the compensation.

(B) If there is no net income for federal income tax purposes, reasonable cash withdrawals or cash advances are the compensation.

(iii) Depreciable property within the meaning of this rule is any property with a useful life that extends beyond the accounting year in which it is acquired, regardless of whether the property is depreciated or currently expensed. Expenditures related to depreciable property are not qualified research and development expenditures within the meaning of this rule even though they are currently expensed.

(iv) Computer expenses do not include the purchase, lease, rental, or repair of equipment. They do include Internet subscriber fees, run time on a mainframe computer, and outside processing.

(v) Training expenses for employees are qualified research and development expenditures if the training is directly related to the research and development being performed. Training expenses include registration fees, materials, and travel expenses. Although the research and development must occur in Washington, training may take place outside of Washington.

(vi) Qualified research and development expenditures include the cost of clinical trials for drugs and certification by Underwriters Laboratories.

(vii) Qualified research and development expenditures do not include legal expenses, patent fees, or any other expense not incurred directly for qualified research and development.

(viii) Stock options granted as compensation to employees performing qualified research and development are qualified research and development expenditures to the extent they are reported on the W-2 forms of the employees and are taken as a deduction for federal income tax purposes by the employer.

(ix) Preemployment expenses related to employees who perform qualified research and development are qualified research and development expenditures. These expenses include recruiting and relocation expenses and employee placement fees.

(o) "Research and development" means activities performed to discover technological information, and technical and nonroutine activities concerned with translating technological information into new or improved products, processes, techniques, formulas, inventions, or software.

The term includes exploration of a new use for an existing drug, device, or biological product if the new use requires

separate licensing by the Federal Food and Drug Administration under chapter 21 CFR, as amended.

The term does not include adaptation or duplication of existing products where the products are not substantially improved by application of the technology, nor does the term include surveys and studies, social science and humanities research, market research or testing, quality control, sale promotion and service, computer software developed for internal use, and research in areas such as improved style, taste, and seasonal design.

(i) A person need not both discover technological information and translate technological information into new or improved products, processes, techniques, formulas, inventions, or software in order to engage in research and development. A person may perform either activity alone and be engaged in research and development.

(ii) To discover technological information means to gain knowledge of technological information through purposeful investigation. The knowledge sought must be of something not previously known or, if known, only known by persons who have not made the knowledge available to the public.

(iii) Technological information is information related to the application of science, especially with respect to industrial and commercial objectives. Industrial and commercial objectives include both sale and internal use (other than internal use software). The translation of technological information into new or improved products, processes, techniques, formulas, inventions, or software does not require the use of newly discovered technological information to qualify as research and development.

(iv) The translation of technological information requires both technical and nonroutine activities. An activity is technical if it involves the application of scientific, engineering, or computer science methods or principles. The term "nonroutine" refers to the specific activities undertaken to achieve a desired result. A customized or unique result is not by itself conclusive proof that it was the product of nonroutine activities. Indicia of nonroutine activities include, but are not limited to:

(A) The activity involves overcoming one or more technological barriers under circumstances where the outcome is not certain;

(B) The activity has not been done before; or

(C) The activity involves a process of experimentation.

(v) A product is substantially improved when it functions fundamentally differently because of the application of technological information. This fundamental difference must be objectively measured. Examples of objective measures include increased value, faster operation, greater reliability, and more efficient performance.

(vi) Computer software is developed for internal use if it is to be used only by the person by whom it is developed. If it is to be available for sale, lease, or license, it is not developed for internal use, even though it may have some internal applications. If it is to be available for use by persons, other than the person by whom it is developed, who access or download it remotely, such as through the internet, it is not usually deemed to be developed for internal use. However, remotely accessed software is deemed to be developed for internal use if its purpose is to assist users in obtaining goods, services, or information provided by or through the person by

whom the software is developed. For example, software is developed for internal use if it enables or makes easier the ordering of goods from or through the person by whom the software is developed. On the other hand, a search engine used to search the World Wide Web is an example of software that is not developed for internal use because the search engine itself is the service sought.

(vii) Research and development is complete when the product, process, technique, formula, invention, or software can be reliably reproduced for sale or commercial use. However, the improvement of an existing product, process, technique, formula, invention, or software may qualify as research and development.

(p) "Research and development spending" means qualified research and development expenditures plus eighty percent of amounts paid to a person other than a public educational or research institution to conduct qualified research and development.

(q) "Taxable amount" means the taxable amount subject to business and occupation tax required to be reported on the person's combined excise tax returns for the year for which the credit is claimed, less any taxable amount for which a multiple activities tax credit is allowed under RCW 82.04.-440. See WAC 458-20-19301 for information on the multiple activities tax credit.

(3) **Sales and use tax deferral.** Chapter 82.63 RCW provides for the deferral of sales and use taxes on eligible investment projects. These are projects that involve research and development or pilot scale manufacturing in five high technology areas: Advanced computing, advanced materials, biotechnology, electronic device technology, and environmental technology.

(a) Application process.

(i) Applicants must apply for deferral to the department of revenue before the initiation of construction of, or acquisition of equipment or machinery for the investment project. The date of application is the earlier of the postmark date or the date of receipt by the department.

(A) Construction is initiated when workers start on-site building tasks. The initiation of construction does not include land clearing or site preparation prior to excavation of the building site. Also, the initiation of construction does not include design or planning activities.

(B) Equipment or machinery is acquired at the time the applicant or its agent obtains dominion and control of the equipment or machinery.

(ii) Application forms may be obtained at department of revenue district offices, by downloading from the department's website (dor.wa.gov), by telephoning the telephone information center (800-647-7706), or by contacting the department's special programs division at:

Department of Revenue
Special Programs Division
Post Office Box 47477
Olympia, WA 98504-7477
FAX 360-586-2163

(iii) Applicants must mail or fax applications to the special programs division at the address or fax number given above.

(iv) The application form shall include information regarding the location of the investment project, the appli-

cant's average employment in Washington for the prior year, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, and time schedules for completion and operation. The application form may also include other information relevant to the project and the applicant's eligibility for deferral.

(v) Applicants must agree to supply the department with nonproprietary information necessary to measure the results of the tax deferral program.

(vi) Applications and other information received by the department in connection with the deferral program are not confidential and are subject to public disclosure.

(vii) The department must rule on an application within sixty days. If an application is denied, the department must explain in writing the basis for the denial. An applicant may appeal a denial within thirty days under WAC 458-20-100.

(b) Deferral certificate.

(i) If an application is approved, the department must issue the applicant a sales and use tax deferral certificate.

(ii) The certificate provides for deferral of state and local sales and use taxes on the eligible investment project. The certificate will state the amount of tax deferral for which the recipient is eligible. It will also state the date by which the project will be operationally complete. The deferral is limited to investment in qualified buildings or qualified machinery and equipment. The deferral does not apply to the taxes of persons with whom the recipient does business, persons the recipient hires, or employees of the recipient.

(iii) A successful applicant, hereafter referred to as a recipient, must present a copy of the certificate to sellers of goods or retail services provided in connection with the eligible investment project in order to avoid paying sales or use tax. Sellers who accept these certificates in good faith are relieved of the responsibility to collect sales or use tax on transactions covered by the certificates. Sellers must retain copies of certificates as documentation for why sales or use tax was not collected on a transaction.

(iv) In cases of leases of qualifying machinery and equipment, the deferral certificate allows for deferral of tax on payments made during the initial term of the lease, and does not allow for deferral for extensions or renewals of the lease. Deferral of tax is not allowed for lease payments for any period after the seventh calendar year following the calendar year for which the project is certified as operationally complete.

(v) The certificate may not be used to defer tax on repairs to, or replacement parts for, qualified machinery and equipment.

(vi) The department may not issue a certificate for an investment project that has already received a deferral under chapters 82.60, 82.61, or 82.63 RCW, except that an investment project for qualified research and development that has already received a deferral may also receive an additional deferral certificate for adapting the investment project for use in pilot scale manufacturing. However, a certificate may be amended or a certificate issued for a new investment project at an existing facility.

(c) Amendment of application or certificate.

(i) Applicants and recipients may make written requests to the special programs division to amend an application or certificate.

(ii) Grounds for requesting amendment include, but are not limited to:

(A) The project will exceed the costs originally stated;

(B) The project will take more time to complete than originally stated;

(C) The original application is no longer accurate because of changes in the project;

(D) Transfer of ownership of the project.

(ii) The department must rule on the request within sixty days. If the request is denied, the department must explain in writing the basis for the denial. An applicant or recipient may appeal a denial within thirty days under WAC 458-20-100.

(d) Certification.

(i) When the building, machinery, or equipment is ready for use, the recipient must notify the special programs division in writing that the eligible investment project is operationally complete. The department shall, after appropriate investigation: Certify that the project is operationally complete; not certify the project; or certify only a portion of the project. The certification will include the year in which the project is operationally complete.

(ii) If all or any portion of the project is not certified, the recipient must repay all or a proportional part of the deferred taxes. The department will notify the recipient of the amount due, including interest, and the due date.

(iii) The department must explain in writing the basis for not certifying all or any portion of a project. The decision of the department to not certify all or a portion of a project may be appealed under WAC 458-20-100 within thirty days.

(e) Repayment of deferred taxes.

(i) Deferred taxes need not be repaid if the investment project is used only for qualified research and development or pilot scale manufacturing during the calendar year for which the department certifies the investment project as operationally complete and during the succeeding seven calendar years.

(ii) Deferred taxes must be repaid if an investment project is used for purposes other than qualified research and development or pilot scale manufacturing during the calendar year for which the department certifies the investment project as operationally complete or at any time during any of the succeeding seven calendar years. Taxes are immediately due according to the following schedule:

Year in which nonqualifying use occurs	% of deferred taxes due
1	100%
2	87.5%
3	75%
4	62.5%
5	50%
6	37.5%
7	25%
8	12.5%

Interest on the taxes, but not penalties, must be paid retroactively to the date of deferral.

(iii) However, if the investment project is used for purposes other than qualified research and development or pilot scale manufacturing during the first eight years, deferred taxes need not be repaid on particular items if the purchase or use of the item would have qualified for the machinery and equipment sales and use tax exemptions provided by RCW 82.08.02565 and 82.12.02565 (discussed in WAC 458-20-13601) at the time of purchase or first use.

(iv) Deferred taxes need not be repaid if qualified machinery and equipment on which the taxes were deferred is destroyed, becomes inoperable and cannot be reasonably repaired, wears out, or becomes obsolete and is no longer practical for use in the project. The use of machinery and equipment which becomes obsolete for purposes of the project and is used outside the project is subject to use tax at the time of such use.

(f) **Transfer of deferral.** Transfer of ownership does not terminate the deferral. The deferral may be transferred to the new owner if the new owner meets all eligibility requirements for the remaining periods of the deferral. The new owner must apply for an amendment to the deferral certificate. If the deferral is transferred, the new owner is liable for repayment of deferred taxes under the same terms as the original owner. If the new owner is a successor to the previous owner under the terms of WAC 458-20-216 and the deferral is not transferred, the new owner's liability for deferred taxes is limited to those that are due for payment at the time ownership is transferred.

(g) **No extinguishment of debt.** The debt for deferred taxes will not be extinguished by the insolvency or other failure of the recipient.

(h) **Expiration of sales and use tax deferral program.** The authority of the department to issue deferral certificates expires July 1, 2004.

(4) Examples relating to the sales and use tax deferral program.

(a) Lessor and lessee examples.

(i) Prior to the initiation of construction, Owner/Lessor A enters into an agreement with Lessee B, a company engaged in qualified research and development. Under the agreement, A will build a building to house B's research and development activities, will apply for a tax deferral on construction of the building, will lease the building to B, and will pass on the value of the deferral through reduced rent payments. A applies for the deferral before construction begins. A is entitled to a deferral on building construction costs.

(ii) After construction has begun, Lessee C asks that certain tenant improvements be added to the building. Lessor D and Lessee C each agree to pay a portion of the cost of the improvements. C and D each apply for a deferral on the costs of the tenant improvements before work on the tenant improvements has begun. Both applications may be approved. While construction of the building was initiated before the applications were submitted, tenant improvements on a building under construction are deemed to be the expansion or renovation of an existing structure.

(iii) After construction has begun but before machinery or equipment has been acquired, Lessee E applies for a deferral on machinery and equipment. The application will be approved. Even though it is too late to apply for a deferral of

tax on building costs, it is not too late to apply for a deferral for the machinery and equipment.

(b) Apportionment of building costs. A building to be constructed will be partially devoted to research and development and partially devoted to marketing, a nonqualifying purpose. The total area of the building is one hundred thousand square feet. Sixty thousand square feet are used only for research and development, twenty thousand square feet are used only for marketing, and the remaining twenty thousand square feet are used in common by research and development employees and marketing employees. Tax on the cost of constructing the sixty thousand square feet used only for research and development may be deferred. Tax on the cost of constructing the twenty thousand square feet used only for marketing may not be deferred. Tax on seventy-five percent of the cost of constructing the common areas may be deferred. (Sixty thousand square feet devoted solely to research and development divided by eighty thousand square feet devoted solely to research and development and marketing results in a ratio expressed as seventy-five percent.)

(5) **Business and occupation tax credit.** RCW 82.04.-4452 provides for a business and occupation tax credit for persons engaging in research and development in Washington in five areas of high technology: Advanced computing, advanced materials, biotechnology, electronic device technology, and environmental technology.

(a) **Eligibility for the credit.** Persons are eligible for the credit if their research and development spending in the calendar year for which credit is claimed exceeds 0.92 percent of the person's taxable amount for the same calendar year.

(b) **Calculating the credit.**

(i) Prior to July 1, 1998. The amount of the credit is equal to the greater of:

the person's qualified research and development expenditures

or

eighty percent of amounts received by a person other than a public educational or research institution as compensation for conducting qualified research and development

multiplied by 0.00515 in the case of a nonprofit corporation or association, and

multiplied by 0.025 in the case of all other persons.

(ii) On and after July 1, 1998. The amount of the credit is equal to the greater of:

the person's qualified research and development expenditures

or

eighty percent of amounts received by a person other than a public educational or research institution as compensation for conducting qualified research and development

multiplied by 0.00484 in the case of a nonprofit corporation or association, and

multiplied by 0.015 in the case of all other persons.

(iii) Persons calculating the credit on the basis of amounts received for conducting qualified research and development must actually perform the research and development themselves. Amounts received for conducting qualified research and development that are paid to other persons who actually perform some or all of the qualified research

and development contracted for may not be included in the calculation.

(iv) The credit for any calendar year may not exceed the lesser of two million dollars or the amount of business and occupation tax otherwise due for the calendar year.

(v) Credits may not be carried forward or carried back to other calendar years.

(c) Claiming the credit.

(i) The first time persons claim the credit they must complete an Initial Survey, Research and Development Credit form (26 0005) and mail it to the address indicated on the form. The purpose of the initial survey is to gather information necessary to measure the results of the credit program. By law, persons claiming the credit must agree to provide this information.

(ii) Credits are claimed on the person's combined excise tax return. Every time a credit is claimed, the person making the claim must complete and attach a Declaration, Research and Development Credit form (26 0003) to the return.

(iii) The Initial Survey and Declaration forms used in the credit program may be obtained at department of revenue district offices, by downloading from the department's website (dor.wa.gov), or by telephoning the telephone information center (800-647-7706).

(d) **Assignment of the credit.**

(i) A person entitled to the credit because of qualified research and development conducted under contract for another person may assign all or a portion of the credit to the person who contracted for the performance of the qualified research and development.

(ii) The assignment is accomplished by use of the Declaration, Research and Development Credit form, referred to in (c)(ii) of this subsection.

(iii) Both the person assigning the credit and the person receiving the credit must be eligible under (a) of this subsection for the assignment to be valid.

(iv) The total of the credit claimed and the credit assigned by a person assigning credit may not exceed the lesser of two million dollars or the amount of business and occupation tax otherwise due from the assignor in any calendar year.

(v) The total of the credit claimed, including credit received by assignment, may not exceed the lesser of two million dollars or the amount of business and occupation tax otherwise due from the assignee in any calendar year.

(e) **Expiration.** The business and occupation tax credit program for high technology businesses expires December 31, 2004.

(f) **Examples relating to the credit program.**

(a) A business, not a nonprofit corporation or association, which engages in qualified research and development has a taxable amount of ten million dollars in 2002. It pays eighty thousand dollars in 2002 in wages and benefits to employees directly engaged in qualified research and development. Also during 2002, it pays twenty thousand dollars to a person that is not a public educational or research institute to conduct qualified research and development. It is eligible to claim the credit for 2002. Its research and development spending, ninety-six thousand dollars (eighty thousand dollars in wages plus eighty percent of twenty thousand dollars for contracted research and development) is more than

ninety-two thousand dollars (0.92 percent of its taxable amount, ten million dollars).

The amount of credit is one thousand two hundred dollars. This is determined by multiplying its qualified research and development expenditures, eighty thousand dollars, by 0.015. The contracted amount is not included in the credit computation.

(b) A company that engages in environmental cleanup contracted to clean up a site. It had never faced exactly the same situation before, but guaranteed at the outset that it could do the job. It used a variety of existing technologies to accomplish the task in a combination it had never used before. The company was not engaged in research and development in performing this contract. It applied existing technologies in a routine manner, considering the nature of its business, and the outcome was certain.

(c) Company A is engaged in research and development in biotechnology and needs to perform standard blood tests as part of its development of a drug. It contracts with a lab, B, to perform the tests. The costs of the tests are qualified research and development expenditures for A, the company engaged in the research and development. Although the tests themselves are routine, they are only a part of what A is doing in the course of developing the drug. B, the lab contracted to perform the testing, is not engaged in research and development with respect to the drug being developed. B is neither discovering technological information nor is it translating technological information into new or improved products, processes, techniques, formulas, inventions, or software. B is not entitled to a credit on account of the compensation it receives for conducting the tests.

(d) Company C is engaged in research and development. It enters into a contract with Company D requiring Company D to provide employees to work under the direction of Company C. Company D's only obligation is to provide employees. It is not obligated to perform any other task. Company D's provision of employees is not research and development and it is not entitled to the credit on account of the contract. Company D is neither discovering technological information nor is it translating technological information into new or improved products, processes, techniques, formulas, inventions, or software.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.63.010. 03-12-053, § 458-20-24003, filed 5/30/03, effective 6/30/03.]

WAC 458-20-244 Food and food ingredients. (1) Introduction. RCW 82.08.0293 and 82.12.0293 provide retail sales tax and use tax exemptions for certain foods sold for human consumption. In 2003, the legislature adopted the food definitions set forth in the national Streamlined Sales and Use Tax Agreement. The 2003 amendments to these statutes significantly change how sales of food and food ingredients are taxed on and after January 1, 2004. This rule provides guidelines for determining if the sale of a food or food ingredient is subject to retail sales tax.

There is no general business and occupation (B&O) tax exemption for sales of food and food ingredients. Therefore, even if a sale of food is exempt from retail sales tax, the income from that sale is included in gross proceeds when calculating the business's retailing B&O tax.

(2) **Related rules.** The department has adopted other rules that provide important tax reporting information to persons who sell food and prepared meals:

- (a) WAC 458-20-119 (Sales of meals);
- (b) WAC 458-20-124 (Restaurants, cocktail bars, taverns and similar businesses);
- (c) WAC 458-20-12401 (Special stadium sales and use tax);
- (d) WAC 458-20-166 (Hotels, motels, boarding houses, rooming houses, resorts, summer camps, trailer camps, etc.);
- (e) WAC 458-20-167 (Education institutions, school districts, student organizations, and private schools);
- (f) WAC 458-20-168 (Hospitals, medical care facilities, and adult family homes); and
- (g) WAC 458-20-169 (Nonprofit organizations).

(3) **"Food and food ingredients" defined.** "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.

"Food and food ingredients" does not include:

- (a) "Alcoholic beverages," which means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume; and
- (b) "Tobacco," which means cigarettes, cigars, chewing or pipe tobacco, or any other items that contain tobacco.

(4) **Taxability of prepared food.** The exemption for "food and food ingredients" provided in RCW 82.08.0293 does not apply to prepared food. The sale of prepared food is subject to retail sales tax, unless otherwise exempt by law. See subsection (5) of this section for information about the taxability of soft drinks and subsection (6) of this section for information about the taxability of dietary supplements.

(a) **Prepared food.** "Prepared food" means:

- (i) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food;
- (ii) Food sold in a heated state or heated by the seller; or
- (iii) Two or more food ingredients mixed or combined by the seller for sale as a single item, except:

(A) Food that is only cut, repackaged, or pasteurized by the seller;

(B) Raw eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, part 401.11 of *The Food Code*, published by the Food and Drug Administration, as amended or renumbered as of January 1, 2003, so as to prevent foodborne illness; or

(C) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.

(b) **Food sold with eating utensils.** Food sold with eating utensils provided by the seller is prepared food and thus subject to tax, even if the seller does not otherwise prepare the food.

(i) **Eating establishments that sell food with eating utensils.** Generally food sold by an eating establishment is subject to sales tax. An eating establishment may be mobile or in a fixed location and may or may not provide seating accommodations for its customers. Eating establishments

include restaurants, caterers, pizzerias, bars, taverns, night clubs, yogurt or ice cream stores/stands, coffee or donut shops, diners, refreshment stands, drive-ins, fast food restaurants, bagel shops, lunch counters, cafeterias, private and social clubs, sandwich shops, snack bars, hot dog carts, espresso stands, concession stands at a fair or a mall, sidewalk vendors or like places of business where food is served to individuals and is customarily sold for consumption shortly after it is sold.

(A) All food served at eating establishments is subject to tax unless the seller maintains adequate records for sale of food items that are generally not sold with eating utensils and do not otherwise qualify as prepared food, such as gallons of milk, loaves of bread, whole pies, a dozen donuts, wedding or birthday cakes, and packages of rolls or muffins. The information shown on invoices, cash register receipts, or sales tickets must provide an adequate description of the food items sold to show that the sale was not of food items that are generally served with eating utensils or do not otherwise qualify as prepared food.

(B) Food sold by grocery stores, convenience stores, and department stores is generally not considered to be sold with eating utensils provided by the seller, even though eating utensils may be available to customers (e.g., napkins on the counter). For example, the sale of yogurt is not subject to retail sales tax even if napkins are available for the customer's use at the checkout stand. The food may be taxable if it is generally served with eating utensils (see part (ii) below). A grocery store is a business primarily engaged in the retail sale of a wide variety of food products. They generally contain the following departments: Dairy, baked goods, canned and dry goods, frozen foods, meats, fresh fruits and vegetables and household supplies.

Grocery stores, department stores, and convenience stores that have a separately identifiable eating establishment, such as a salad bar, sushi bar, or deli, are required to collect the tax on food items sold at that establishment unless the store maintains adequate records for sale of food items that are generally not sold with eating utensils or do not otherwise qualify as prepared food.

(ii) **Food that is generally sold with eating utensils.** Food that is generally sold with eating utensils, including plates, knives, forks, spoons, glasses, cups, napkins, or straws, is subject to tax, even if the seller does not *in all cases* actually provide the utensils. For example, sales from salad bars or "make your own sandwich" bars at a grocery store are taxable since salads and sandwiches are generally eaten with eating utensils (a fork for the salad and a napkin for the sandwich). "Make your own ice cream sundae" bars are taxable for the same reason. These items are taxable regardless of where they are sold. Cold cut platters, cheese platters, vegetable and fruit platters are taxable since the platter is an eating utensil.

(A) Box lunches are taxable since they are generally sold with eating utensils provided by the seller.

(B) If the eating utensil is provided by the manufacturer rather than by the seller, the sale of the food is not subject to retail sales tax. For example, a box of crackers and cheese that includes a spreader, is not subject to tax since the seller does not provide the spreader.

(c) **"Prepared food" examples.** The examples in this subsection identify a number of facts and then state a conclusion. These examples should only be used as a general guide. Similar determinations for other situations can be made only after a review of all facts and circumstances.

(i) If a carton of milk is purchased from a grocery store, the sale is exempt from retail sales tax because the milk, in this case, is an exempt food item. If an individual purchases a glass of milk from a restaurant, however, it is subject to retail sales tax because the seller provided an eating utensil, a glass.

(ii) A grocery store deli sells pasta salad that it prepares itself and potato salad that it purchases in bulk. The deli packages the pasta salad for sale, and repackages the potato salad the deli purchased in bulk into smaller containers. Sales of the potato salad are exempt from retail sales tax because "prepared food" does not include food that is merely repackaged. Sales of the pasta salad are subject to retail sales tax because the deli mixed or combined two or more food ingredients, doing something more than cutting or repackaging the food ingredients.

(iii) A grocery store meat department prepares ready-to-bake stuffed pork chops. The stuffed pork chops are not "prepared foods" and are not subject to tax even though the seller combined two or more ingredients because "prepared foods" does not include raw meat, or foods containing raw animal foods that require cooking by the consumer, to prevent food-borne illness.

(iv) **Pizza.** The taxability of pizza depends on who prepares it and in what form it is sold. The following examples explain the taxability of pizza in its various forms:

(A) Pizza prepared by the seller and sold in a heated state. Pizza sold by the slice and whole hot pizzas ready to eat, including delivered pizzas, are taxable because they are sold in a heated state. Additionally, the sale of the pizza is a taxable sale of a "prepared food" because the seller mixed or combined two or more food ingredients.

(B) Ready-to-bake pizzas prepared by the seller. Fresh or frozen ready-to-bake pizza prepared by the seller is taxable as a "prepared food" because the seller mixed or combined two or more food ingredients.

(C) Ready-to-bake pizzas prepared by a third party. Fresh or frozen ready-to-bake pizza procured by the seller from a third party or wholesaler is exempt from sales tax because it does not fall under the definition of "prepared food" as the seller did not mix or combine two or more food ingredients.

(d) **Exemption from taxation for certain meals (prepared food).** Notwithstanding subsection (4)(a) and (b), above, meals sold under a state-administered nutrition program for the aged as provided for in the Older Americans Act (Public Law 95-478 Title III) and RCW 74.38.040, and meals sold to or for senior citizens, disabled persons, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW are exempt from retail sales and use tax. There is a sales tax exemption for meal sales for certain fund-raising by nonprofit organizations. See WAC 458-20-169.

(5) **Taxability of soft drinks.** The exemption for "food and food ingredients" provided in RCW 82.08.0293 does not apply to "soft drinks."

(a) **"Soft drinks" defined.** "Soft drinks" are nonalcoholic beverages that contain natural or artificial sweeteners. Soft drinks do not include:

(i) Beverages that contain milk or milk products, soy, rice, or similar milk substitutes; or

(ii) Beverages that contain greater than fifty percent vegetable or fruit juice by volume.

(b) **"Soft drink" examples.** The examples in this subsection identify a number of facts and then state a conclusion. These examples should only be used as a general guide. Similar determinations for other situations can be made only after a review of all facts and circumstances.

(i) The sale of bottled water, carbonated water, and flavored water, without natural or artificial sweeteners, is exempt from tax because they are defined as food in RCW 82.08.0293 and do not fall within the definition of "soft drinks." If these products are sold in a cup or glass, however, the sale is a sale of a "prepared food" and is subject to sales tax. See subsection (4)(a)(i) above. Bottled water, carbonated water, and flavored water that contain natural or artificial sweeteners are subject to sales tax because they are "soft drinks."

(ii) Sports drinks that contain natural or artificial sweeteners are subject to sales tax because they fall within the definition of "soft drinks."

(iii) Fruit or vegetable juice that contains natural or artificial sweeteners and contains fifty percent or less by volume of fruit or vegetable juice is subject to sales tax because it falls within the definition of "soft drinks."

(iv) Bottled coffee or tea drinks with natural or artificial sweeteners, but without milk or milk products, are "soft drinks" and are subject to retail sales tax. Bottled coffee or tea drinks, with or without sweeteners that contain milk or milk products are not subject to sales tax because they do not fall within the definition of "soft drinks."

(6) **Taxability of dietary supplements.** The exemption for "food and food ingredients" provided in RCW 82.08.0293 does not apply to "dietary supplements."

(a) **"Dietary supplements" defined.** "Dietary supplement" means any product, other than tobacco, intended to supplement the diet and that:

(i) Contains one or more of the following dietary ingredients:

(A) A vitamin;

(B) A mineral;

(C) An herb or other botanical;

(D) An amino acid;

(E) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(F) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in this subsection;

(ii) Is intended for ingestion in tablet, capsule, powder, soft gel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(iii) Is required to be labeled as a dietary supplement, identifiable by the "Supplement Facts" box found on the label and as required under 21 Code of Federal Regulations (CFR) § 101.36, as amended or renumbered as of January 1, 2003.

(b) **"Dietary supplements" examples.** The examples in this subsection identify a number of facts and then state a conclusion. These examples should only be used as a general guide. Similar determinations for other situations can be made only after a review of all facts and circumstances.

(i) Nutrition products in bar or liquid form formulated to provide balanced nutrition as a sole source of nourishment are considered a food and not a dietary supplement and are therefore exempt from taxation.

(ii) A product sold for human consumption may have one or more of the following federal Food and Drug Administration labels, a "Nutrition Facts," a "Dietary Supplements Facts," or a "Drug Facts" label. If a product label contains a "Supplement Facts" and "Nutrition Facts" box, the product is a food and not subject to tax if it does not otherwise qualify as prepared food.

(7) **Is ice sold for human consumption taxed?** Ice sold for human consumption is considered a food or food ingredient and is therefore exempt from retail sales tax. "Ice sold for human consumption" means ice sold in cube, shaved, or crushed form and in quantities of ten pounds or less in weight per bag or container. Blocks of ice of any weight are not considered a food or food ingredient and are therefore taxable. See WAC 458-20-120 (Sales of ice) for additional guidance on the sale of ice.

(8) **Combination businesses.** The sale of "food and food ingredients" or "prepared food" sold in the same manner should receive the same tax treatment regardless of the establishment in which the item is sold. Persons operating a combination of two kinds of food sales businesses at one location must keep their accounting records and sales receipts segregated between taxable and tax exempt sales. Examples of combination businesses are a grocery store with a lunch counter or salad-deli bar, a bakery that sells tax-exempt baked goods and also sells baked goods with eating utensils or as part of a meal, and a gas station/convenience store.

(a) **Tax collecting responsibility.** Combination businesses must collect and report retail sales tax upon their charges for prepared foods. It is sufficient segregation for accounting purposes if cash registers or electronic checking machines are programmed to identify and separately tax food that is not tax exempt. If the combined food business' sales are commingled in their accounting records, all sales of food and food ingredients are subject to retail sales tax.

(b) **Combination business examples.** The examples in this subsection identify a number of facts and then state a conclusion. These examples should only be used as a general guide. Similar determinations for other situations can be made only after a review of all facts and circumstances.

(i) A consumer purchases his wedding cake, a donut, and a cup of coffee from Bakery. The sale of the wedding cake is not taxable if Bakery maintains adequate records for sale of food items that are generally not sold with eating utensils and do not otherwise qualify as prepared food. The sale of the donut is taxable because it is a food that is generally sold with eating utensils, a napkin. The sale of the coffee is taxable because it is served with an eating utensil, the cup, and because it is sold in a heated state by the seller.

(ii) Grocery Store has a deli section that prepares and sells deli foods and provides a salad bar where the customer can make a salad. A customer purchases a salad that he made

from the salad bar and a bottle of apple juice that is one hundred percent fruit juice. The sale of a salad from the salad bar is taxable because it is generally sold with eating utensils (e.g., a plate, fork, knife, spoon, or napkin). The sale of the apple juice is exempt because it is food and not a "soft drink" because it is more than fifty percent fruit juice.

(iii) Gas Station has a convenience store that sells "food and food ingredients," "prepared food," and nonfood products. The sale of "food and food ingredients" is not taxable if Gas Station maintains adequate records for sale of food items that are generally not sold with eating utensils and do not otherwise qualify as prepared food.

(9) **How are packages of food items that contain taxable and nontaxable items taxed?** When a package consists of both food and nonfood products, such as a holiday or picnic basket containing beer and pretzels, cups or glasses containing food items, or soft drinks along with cheese and crackers, the food portion may be tax exempt if its price is stated separately. If the price is a lump sum, the sales tax applies to the entire price.

Nonfood items given to buyers to promote food or food ingredient sales such as coffee sold in a decorative apothecary container or cheese sold in a serving dish are not taxable and are not deemed combination packages where it is clear that the nonfood item is simply a gift furnished as a sales inducement for the food. In the same way, promotional giveaways of food items as an inducement for sales of nonfood items are not exempt (e.g., the sale of crystal ware containing candy or nuts is fully subject to sales tax).

(10) **Purchases made under the Food Stamp Act of 1977.** RCW 82.08.0297 provides a retail sales tax exemption for the sale of eligible foods that are purchased with coupons issued only under the federal Food Stamp Act of 1977. The term "food coupon" does not include manufacturers' coupons, grocers' coupons, or other coupons issued by private parties. "Eligible foods" has the same meaning as established under federal law for the purposes of the Food Stamp Act of 1977. The term includes any food or food ingredient intended for human consumption except alcoholic beverages, tobacco, and hot foods or hot food ingredients prepared for immediate consumption. 7 U.S.C. § 2012(g), as amended or renumbered as of January 1, 2003. The term "coupon," as used in this subsection, means any coupon, stamp, type of certificate, authorization card, cash or check issued in lieu of a coupon, or access device, including an electronic benefit transfer card or personal identification number issued pursuant to the provisions of the Food Stamp Act of 1977. 7 CFR § 271.2, as amended or renumbered as of January 1, 2003.

(a) **Purchasing nonfood products with food coupons.** Some nonfood products may be exempt if purchased with food coupons. For example, seeds and growing plants are considered "nonfood products," even though they may be sold at grocery stores and can be ingested by humans. However, seeds and plants to grow foods for the personal consumption of eligible households are "eligible foods" under the Food Stamp Act of 1977. 7 CFR § 271.2, as amended or renumbered as of January 1, 2003. Therefore, in this limited circumstance, the sale of seeds and plants is tax exempt.

When both coupons and cash (or check) are used to make purchases, the coupons must be applied first to "eligible foods" which are not otherwise tax exempt "food or food

ingredients." For example, soft drinks and garden seeds are "eligible foods" under the food stamp program but are not tax exempt under RCW 82.08.0293. The intent is always to apply the coupons and cash in such a way as to provide the greatest possible amount of retail sales tax exemption under the law.

(b) **Food coupon examples.** The examples in this subsection identify a number of facts and then state a conclusion. These examples should only be used as a general guide. Similar determinations for other situations can be made only after a review of all facts and circumstances. The following examples demonstrate how the tax exemption applies in cases where a purchase of ten dollars each is made for meat (a food ingredient), soda pop (an eligible food), and soap (a nonfood item) using both coupons and cash.

(i) The customer pays with fifteen dollars in coupons and fifteen dollars in cash. The coupons are applied first to the soda pop (ten dollars worth) and then to the meat (five dollars worth). The cash applies to the rest of the meat and the soap. Retail sales tax is due on the ten-dollar purchase of soap because soap is not an "eligible food" under the food stamp program.

(ii) A customer pays the thirty-dollar selling price with ten dollars worth of coupons and twenty dollars cash. The coupons are applied to the soda pop, making the soda pop exempt. The cash is applied towards the purchase of the meat and soap. The result is that retail sales tax is due only on the ten-dollar purchase of soap.

(iii) The customer pays with five dollars worth of coupons and twenty-five dollars in cash. Again, the coupons are first applied towards the soda pop, leaving five dollars of the value to be purchased with cash. Retail sales tax is due on fifteen dollars, the ten-dollar purchase of soap and five dollars worth of soda pop.

(11) **How are food vending van sales taxed?** Food and food ingredient sales from vehicular vending vans are taxable or exempt of retail sales tax in the same manner as food sales at grocery stores. Thus, sales of candy bars, gum, or any pre-wrapped food and food ingredients which are prepackaged by a manufacturer or preparer other than the person operating the van are exempt from retail sales tax. Sales of any prepared food items or soft drinks, including, but not limited to, hot-dogs, sandwiches, soups, and hot or cold beverages are subject to retail sales tax. See definition of "prepared food" in subsection (4)(a), above.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). 03-24-031, § 458-20-244, filed 11/25/03, effective 1/1/04. Statutory Authority: RCW 82.32.300. 88-15-066 (Order 88-4), § 458-20-244, filed 7/19/88; 87-19-139 (Order 87-6), § 458-20-244, filed 9/22/87; 86-21-085 (Order ET 86-18), § 458-20-244, filed 10/17/86; 86-02-039 (Order ET 85-8), § 458-20-244, filed 12/31/85; 83-17-099 (Order ET 83-6), § 458-20-244, filed 8/23/83; 82-16-061 (Order ET 82-7), § 458-20-244, filed 7/30/82. Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-05-041 (Order ET 78-1), § 458-20-244 (Rule 244), filed 4/21/78, effective 7/1/78.]

WAC 458-20-251 Sewerage collection and other related activities. (1) **Introduction.** RCW 82.16.020 levies a public utility tax upon persons engaging in the business of sewerage collection. This rule provides guidance on the assessment of the public utility tax upon sewerage collection businesses, including the distinction between sewerage collection and other related business activities. It also describes how to determine the taxable gross receipts of a sewerage

collection business that also engages in other related business activities. Additionally, the rule addresses a sewerage collection business's business and occupation (B&O), retail sales, and use tax reporting responsibilities. Municipalities and other governmental entities engaging in sewerage collection business activities should also refer to WAC 458-20-189 for guidance on the taxation of public service businesses and enterprise activities.

(2) **What is a sewerage collection business?** A sewerage collection business is the activity of accepting sewage to be deposited into and carried off by a system of lateral sewers, drains, and pipes to a common point, or points, for transfer to treatment or disposal, but does not include the actual transfer, treatment, or disposal of sewage. A sewerage collection business includes only that portion of a sewer system where "collection" occurs. Sewerage collection ends when the sewage exits the lateral sewers in a sewer system. Collection does not include the further transfer of sewage through a system of intercepting sewers or the final treatment or disposal of sewage.

(a) **What is the difference between sewage and sewerage?** Sewage is the waste matter carried off by sewer drains and pipes. Sewerage refers to the physical facilities (e.g., pipes, lift stations, and treatment and disposal facilities) through which sewage flows.

(b) **What is the difference between lateral and intercepting sewers?**

(i) A lateral sewer is a branch sewer running laterally down a street, alley, or easement that collects sewage directly from abutting properties and delivers it into an intercepting sewer.

(A) The sewage from abutting properties is collected through sewer pipes running from the abutting properties to the lateral sewer in the street, alley, or easement. If a sewerage collection business is responsible for maintaining any portion of such a sewer pipe, that portion is considered to be part of the lateral sewer.

(B) A lateral sewer may include force mains or lift stations if such equipment is installed as part of a lateral sewer line.

(ii) An intercepting sewer is a main sewer that receives flow from laterals and delivers the sewage to another main sewer or to a point for treatment or disposal.

The following diagram illustrates how sewer pipes in a sewerage system are categorized as lateral or intercepting sewers. The diagram does not attempt to represent any publicly maintained portions of sewer pipes that run from abutting properties to the lateral sewer in the street, alley, or easement.

Place illustration here.

(c) How are drainage utility charges accounted for?

Certain real estate development projects (due to paving and other factors) may adversely affect rainwater runoff within areas served by a stormwater sewer system. Often, the stormwater system is administered by the same entity that operates a sewerage collection business. In this circumstance, some sewerage utilities impose a drainage utility charge on the development to reflect the impact on the utility's stormwater sewer system caused by the increased runoff. Other sewerage utilities charge all sewerage customers an additional drainage utility charge to reflect stormwater runoff. Although the same entity may be providing both stormwater and sanitary sewer collection services to the customer and many of the same facilities may be used, a drainage utility charge is not related to the collection of sewage for treatment and disposal. Therefore, a sewerage collection business does not include this activity. Utility drainage charges are, however, subject to B&O taxation under the service and other activities classification, as discussed in subsection (4) below.

(3) How is the public utility tax determined? Persons engaged in the sewerage collection business are subject to the public utility tax under the sewer collection classification measured by the gross receipts of the collection business. (See RCW 82.16.020.) Gross receipts of the sewerage collection business include only that portion of income from customer billings that is allocable to the collection of sewage by a sewerage collection business. Gross receipts do not include any charges of any kind attributable to sewerage services other than collection.

There are two methods to determine the gross receipts of the collection business.

(a) Itemization of customer billings. If customer billings are itemized to show the actual charge for sewage collection, income realized from those billings is the gross receipts tax measure. If the itemized charges for sewage collection are less than the actual cost of providing the collection service, however, the sewerage collection business must use the cost-of-doing-business formula in subsection (3)(b) below.

(b) Cost-of-doing-business formula. If collection services are provided jointly with other related sewer services provided by the sewerage collection business or any other person, and the actual charge for sewerage collection is not itemized separately on customer billings or is less than the actual cost of providing the collection service, a simple cost-of-doing-business formula is used to derive the gross receipts public utility tax measure.

(i) Formula. The costs of providing sewerage collection services are divided by all business costs incurred in rendering all sewer services, including sewerage collection. The resulting percentage is multiplied by gross income from customer billings (all sewerage related charges). The result is the gross receipts public utility tax measure from engaging in the sewerage collection business. The standard cost accounting records of the sewerage collection business must be used for this purpose.

The formula is:

$$\frac{\text{Sewerage collection costs (Annualized)}}{\text{Total sewer service costs (Annualized)}} = \frac{\text{Public Utility Tax Measure}}{\text{\% x gross billing income}} =$$

In determining sewage collection costs for a sewerage collection business that also engages in related business activities involving the interception, transfer, storage, treatment, and/or disposal of sewage, only lateral sewers are considered collection sewers. Intercepting sewers are not collection sewers and may not be allocated to collection activities. All costs of operation of the sewer services business must be included in the denominator, including, but not limited to, direct operating costs and direct and indirect overhead costs. When circumstances warrant, the department may allow certain equipment—such as force mains or pump stations—to be converted into an equivalent length of pipe for purposes of allocating costs accurately.

(ii) **Annual year-end adjustment.** For the purpose of annualizing its costs, the sewerage collection business may use the previous calendar year costs or its budget allocations for the current tax year. In either case, however, it must make an end-of-year adjustment to its reporting based upon actual costs incurred during the current year.

(c) **Late charges/penalties excluded.** Revenue from late charges or other penalties for untimely payment by sewerage collection customers must be excluded when calculating gross receipts under subsection (3)(a) and (b) above. Receipts from these sources are subject to B&O taxation under the service and other activities classification as provided in subsection (4) below. (See WAC 458-20-179, Public utility tax, for further explanation of the taxation of late charge penalties.)

(d) **Preutility service activities excluded.** Services provided to a customer prior to receipt of sewerage collection services are subject to B&O taxation under the service and other activities classification as provided in subsection (4) below. For example, many sewerage collection businesses assess connection charges to a new customer before providing sewerage collection services to that customer. Such a connection charge may be variable (calculated as a charge per linear foot of road frontage for example) or a flat fee. A sewerage collection business may assess other charges for specific services provided to new customers, such as installing or inspecting the installation of service connections. In each case, the revenue from such fees is taxable under the service and other activities classification as long as the service for which the fee is assessed is performed before the sewerage collection business provides collection services to that customer. (See WAC 458-20-179, Public utility tax, for further explanation of the taxation of preutility service activities.)

(e) **Treatment or disposal costs deduction.** RCW 82.16.050(11) provides that in computing the public utility tax, a sewerage collection business may deduct from its reported gross income amounts paid by the business to a person taxable under chapter 82.04 RCW for the treatment or disposal of sewage. The deduction provided by RCW 82.16.050(11) may be taken on the combined excise tax return only when the receipts related to treatment or disposal are included in the gross amounts reported under the sewer collection classification.

(4) **How are related business activities taxed?** Persons engaged in the sewerage collection business may also be engaged in related business activities involving the interception, transfer, storage, treatment, and/or disposal of sewage. These activities are generally subject to the service and other activities B&O tax. The measure of tax is the gross income or gross proceeds derived from those other services. The measure of tax does not include any amount subject to the sewerage collection public utility tax classification. The amount of gross income or gross proceeds subject to the service and other activities B&O tax must be determined consistent with the method used to determine the gross receipts subject to the sewerage collection public utility tax (see subsection (3) above).

(5) **What if a governmental sewerage collection business pays a separate governmental entity for sewage interception, treatment or disposal?** RCW 82.04.432 provides a deduction from the B&O tax measure for amounts paid by municipal sewerage utilities and other public corporations to any other municipal corporation or governmental agency for sewage interception, treatment, or disposal. Thus, in such cases the service and other activities B&O tax on sewer services does not have a pyramiding effect. In addition, RCW 82.04.4291 provides a B&O tax deduction for amounts derived by a political subdivision of the state of Washington from another political subdivision of the state of Washington as compensation for services subject to the service and other activities B&O tax. Income received from the state of Washington or its agencies and departments, however, is not deductible under RCW 82.04.4291. Thus, the local government entity that receives compensation from another local government entity for providing sewage interception, treatment, or disposal for that other government entity may also deduct the income from its own measure of service and other activities B&O tax, provided this amount has been included in the gross amount reported on the combined excise tax return. In such a case, neither entity pays tax on the amounts represented by the payments made for sewage interception, treatment, or disposal.

For example, Washington Municipality A operates a sewerage collection business. Rather than invest in its own treatment facilities, it contracts with Washington Municipality B to provide sewage transfer, treatment, and disposal services to Municipality A. When determining its tax liability, Municipality A must break down its sewage service charges (as provided in subsection (3) above) into a sewerage collection portion and that portion representing other sewage services (interception, transfer, treatment, and disposal). Municipality A pays public utility tax on its gross receipts from the sewerage collection business. Municipality A also pays service and other activities B&O tax on income derived from that portion of sewage transfer that it undertakes to move the waste to Municipality B for further transfer, treatment, and disposal by Municipality B. However, Municipality A may deduct from its gross income subject to service and other activities B&O tax the amount of any payments made to Municipality B for sewage transfer, treatment, or disposal services provided by Municipality B. In addition, pursuant to RCW 82.04.4291, Municipality B may deduct from its gross income subject to service and other activities B&O tax the amount of the payments received from Municipality A.

(6) **Local improvement district assessments.** Local improvement district (LID) and utility local improvement district (ULID) assessments, including interest and penalties on assessments, are not considered part of taxable income for either public utility tax or B&O tax purposes because they are exercises of the jurisdiction's taxing authority. These assessments may be composed of a share of the costs of capital facilities, installation labor, connection fees, and other expenses. A deduction may be taken for these amounts if they are included in the LID or ULID assessments.

(7) **Property purchased and used by a sewerage collection business.** Persons engaged in the sewerage collection business and/or engaged in providing other related sewer services are themselves the consumers of all tangible personal property purchased for their own use in conducting those activities. Retail sales tax (commonly referred to as "deferred sales tax") or use tax must be remitted directly to the department upon all tangible personal property used by a sewerage collection business or sewer service provider as a consumer, if the retail sales tax has not been collected by the seller. (See RCW 82.12.020.)

(8) **Sale of sludge.** With proper treatment, it is possible for the sludge remaining after the initial treatment of raw sewage to be used as fertilizer. If a sewerage collection business sells sludge, manufacturing B&O tax is due on the value of the products and retailing or wholesaling B&O tax is due on the gross proceeds of the sale. A multiple activities tax credit (MATC) applies as provided in RCW 82.04.440 and WAC 458-20-19301. If the sludge is sold to a consumer, retail sales tax is due on the proceeds of that sale, unless otherwise exempt by law.

If the necessary requirements are met, the business may claim a manufacturing machinery and equipment (M&E) exemption for machinery and equipment used directly in manufacturing the sludge (rendering it suitable for use as a fertilizer). This exemption is not available for machinery or equipment used merely to treat sewage for disposal.

For more information on the M&E exemption, see RCW 82.08.02565, 82.12.02565, and WAC 458-20-13601.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). 03-19-059, § 458-20-251, filed 9/11/03, effective 10/12/03. Statutory Authority: RCW 82.32.300. 86-18-069 (Order 86-16), § 458-20-251, filed 9/3/86.]

Chapter 458-30 WAC

OPEN SPACE TAXATION ACT RULES

WAC

458-30-262	Agricultural land valuation—Interest rate—Property tax component.
458-30-590	Rate of inflation—Publication—Interest rate—Calculation.

WAC 458-30-262 Agricultural land valuation—Interest rate—Property tax component. For assessment year 2004, the interest rate and the property tax component that are to be used to value classified farm and agricultural lands are as follows:

- (1) The interest rate is 8.34 percent; and
- (2) The property tax component for each county is:

COUNTY	PERCENT	COUNTY	PERCENT
Adams	1.40	Lewis	1.15
Asotin	1.48	Lincoln	1.37
Benton	1.36	Mason	1.26
Chelan	1.34	Okanogan	1.20
Clallam	1.18	Pacific	1.33
Clark	1.35	Pend Oreille	1.33
Columbia	1.36	Pierce	1.51
Cowlitz	1.23	San Juan	0.73
Douglas	1.37	Skagit	1.22
Ferry	1.03	Skamania	1.02
Franklin	1.55	Snohomish	1.33
Garfield	1.58	Spokane	1.42
Grant	1.40	Stevens	1.09
Grays Harbor	1.35	Thurston	1.42
Island	0.99	Wahkiakum	1.07
Jefferson	1.16	Walla Walla	1.43
King	1.10	Whatcom	1.28
Kitsap	1.34	Whitman	1.57
Kittitas	1.05	Yakima	1.29
Klickitat	1.17		

[Statutory Authority: RCW 84.34.065 and 84.34.141. 03-24-013, § 458-30-262, filed 11/20/03, effective 12/21/03; 02-23-080, § 458-30-262, filed 11/19/02, effective 12/20/02; 02-03-040, § 458-30-262, filed 1/8/02, effective 2/8/02. Statutory Authority: RCW 84.34.065, 84.34.360. 00-24-105, § 458-30-262, filed 12/6/00, effective 1/1/01; 99-24-034, § 458-30-262, filed 11/23/99, effective 1/1/00. Statutory Authority: RCW 84.34.065, 84.34.360 and 84.08.010. 99-01-067, § 458-30-262, filed 12/14/98, effective 1/1/99. Statutory Authority: RCW 84.34.065, 84.34.141 and 84.08.010. 98-01-178, § 458-30-262, filed 12/23/97, effective 1/1/98. Statutory Authority: RCW 84.34.065, 84.34.141, 84.08.010 and 84.34.070. 97-02-066, § 458-30-262, filed 12/31/96, effective 1/1/97. Statutory Authority: RCW 84.34.065, 84.34.141, 84.08.010 and 84.34.070. 96-01-095, § 458-30-262, filed 12/19/95, effective 1/1/96. Statutory Authority: RCW 84.34.065, 84.34.141, 84.08.010 and 84.08.070. 95-09-041, § 458-30-262, filed 4/14/95, effective 5/15/95. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.34.065. 94-05-062, § 458-30-262, filed 2/11/94, effective 3/14/94. Statutory Authority: RCW 84.08.010 and 84.08.070. 93-07-067, § 458-30-262, filed 3/17/93, effective 4/17/93; 92-03-068, § 458-30-262, filed 1/14/92, effective 2/14/92; 91-04-001, § 458-30-262, filed 1/24/91, effective 2/24/91; 90-24-087, § 458-30-262, filed 12/5/90, effective 1/5/91. Statutory Authority: RCW 84.08.010(2) and 84.34.141. 90-02-080 (Order PT 90-1), § 458-30-262, filed 1/2/90, effective 2/2/90.]

WAC 458-30-590 Rate of inflation—Publication—Interest rate—Calculation. (1) **Introduction.** This section sets forth the rates of inflation discussed in WAC 458-30-550. It also explains the department of revenue's obligation to annually publish a rate of inflation and the manner in which this rate is determined.

(2) **General duty of department—Basis for inflation rate.** Each year the department determines and publishes a rule establishing an annual rate of inflation. This rate of inflation is used in computing the interest that is assessed when farm and agricultural or timber land, which are exempt from special benefit assessments, is withdrawn or removed from current use classification.

(a) The rate of inflation is based upon the implicit price deflator for personal consumption expenditures calculated by the United States Department of Commerce. This rate is used to calculate the rate of interest collected on exempt special benefit assessments.

(b) The rate is published by December 31st of each year and applies to all withdrawals or removals from farm and

agricultural or timber land classification that occur the following year.

(3) **Assessment of rate of interest.** An owner of classified farm and agricultural or timber land is liable for interest on the exempt special benefit assessment. Interest accrues from the date the local improvement district is created until the land is withdrawn or removed from classification. Interest accrues and is assessed in accordance with WAC 458-30-550.

(a) Interest is assessed only for the time (years and months) the land remains classified under RCW 84.34.020 (2) or (3).

(b) If the classified land is exempt from the special benefit assessment for more than one year, the annual inflation rates are used to calculate an average rate of interest. This average is determined by adding the inflation rate for each year the classified land was exempt from the special benefit assessment after the local improvement district was created. The sum of the inflation rates is then divided by the number of years involved to determine the applicable rate of interest.

(c) **Example.** A local improvement district for a domestic water supply system was created in January 1990 and the owner used the statutory exemption provided in RCW 84.34.320. On July 1, 1997, the land was removed from the farm and agricultural classification. An average interest rate was calculated using the inflation rates for 1990 through 1997. The owner was then notified of the amount of previously exempt special benefit assessment, plus the average interest rate.

(4) **Rates of inflation.** The rates of inflation used to calculate the interest as required by WAC 458-30-550 are as follows:

YEAR	PERCENT	YEAR	PERCENT
1976	5.6	1977	6.5
1978	7.6	1979	11.3
1980	13.5	1981	10.3
1982	6.2	1983	3.2
1984	4.3	1985	3.5
1986	1.9	1987	3.7
1988	4.1	1989	4.8
1990	5.4	1991	4.2
1992	3.3	1993	2.7
1994	2.2	1995	2.3
1996	2.2	1997	2.1
1998	0.85	1999	1.42
2000	2.61	2001	1.89
2002	1.16	2003	1.84

[Statutory Authority: RCW 84.34.360 and 84.34.310. 03-24-076, § 458-30-590, filed 12/2/03, effective 1/2/04; 02-24-058, § 458-30-590, filed 12/3/02, effective 1/3/03; 02-03-041, § 458-30-590, filed 1/8/02, effective 2/8/02; 00-24-107, § 458-30-590, filed 12/6/00, effective 1/1/01; 99-24-035, § 458-30-590, filed 11/23/99, effective 12/24/99; 99-01-068, § 458-30-590, filed 12/14/98, effective 1/1/99; 98-01-179, § 458-30-590, filed 12/23/97, effective 1/1/98; 97-02-067, § 458-30-590, filed 12/31/96, effective 1/1/97; 96-01-094, § 458-30-590, filed 12/19/95, effective 1/1/96; 95-06-043, § 458-30-590, filed 2/24/95, effective 3/27/95. Statutory Authority: RCW 84.34.360. 94-11-098, § 458-30-590, filed 5/17/94, effective 6/17/94; 92-22-061, § 458-30-590, filed 10/29/92, effective 11/29/92. Statutory Authority: RCW 84.08.010 and 84.08.070. 90-24-087, § 458-30-590, filed 12/5/90, effective 1/5/91. Statutory Authority: Chapter 84.34 RCW and RCW 84.34.360. 89-05-010 (Order PT 89-3), § 458-30-590, filed 2/8/89. Statutory Authority: RCW 84.34.360. 88-07-004 (Order PT 88-4), § 458-30-590, filed 3/3/88; 87-07-009 (Order PT 87-3), § 458-30-590, filed 3/10/87.]

Chapter 458-40 WAC

TAXATION OF FOREST LAND AND TIMBER

WAC

- 458-40-540 Forest land values—2004.
- 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments.
- 458-40-680 Timber excise tax—Volume harvested—Approved scaling and grading methods—Sample scaling—Conversions.

WAC 458-40-540 Forest land values—2004. The forest land values, per acre, for each grade of forest land for the 2004 assessment year are determined to be as follows:

LAND GRADE	OPERABILITY CLASS	2004
		VALUES ROUNDED
1	1	\$210
	2	207
	3	196
	4	142
2	1	178
	2	172
	3	165
	4	119
3	1	139
	2	135
	3	134
	4	102
4	1	106
	2	103
	3	102
	4	78
5	1	77
	2	70
	3	69
	4	47
6	1	39
	2	36
	3	36
	4	34
7	1	18
	2	18
	3	17
	4	17
8		1

[Statutory Authority: RCW 82.32.300 and 84.33.140. 04-02-018, § 458-40-540, filed 12/30/03, effective 1/1/04. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, 84.33.091, and 84.33.140. 03-02-004, § 458-40-540, filed 12/19/02, effective 1/1/03. Statutory Authority: RCW 82.32.300, 84.33.096, 84.33.091 and 84.33.120. 02-02-033, § 458-40-540, filed 12/24/01, effective 1/1/02. Statutory Authority: RCW 82.32.300, 84.33.096 and 84.33.120. 01-02-018, § 458-40-540, filed 12/21/00, effective 1/1/01; 00-02-018, § 458-40-540, filed 12/27/99, effective 1/1/00; 99-02-030, § 458-40-540, filed 12/30/98, effective 1/1/99; 98-02-014, § 458-40-540, filed 12/30/97, effective 1/1/98; 97-07-041, § 458-40-540, filed 3/14/97, effective 4/14/97; 96-02-055, § 458-40-540, filed 12/29/95, effective 1/1/96. Statutory Authority: RCW 82.32.300 and 84.33.120. 95-02-039, § 458-40-540, filed 12/30/94, effective 1/1/95. Statutory Authority: RCW 82.32.300. 94-02-046, § 458-40-540, filed 12/30/93, effective 1/1/94. Statutory Authority: RCW 84.33.120. 93-02-024, § 458-40-540, filed 12/31/92, effective 1/1/93; 91-24-026, § 458-40-540, filed 11/26/91, effective 1/1/92. Statutory Authority: RCW 84.33.120 and 84.08.010. 90-24-012, § 458-40-540, filed 11/27/90, effective 12/28/90; 89-23-095, § 458-40-540, filed 11/21/89, effective 12/22/89. Statutory Authority: RCW 84.33.120 and 84.33.130. 88-23-055 (Order FT-88-3), § 458-40-540, filed 11/15/88; 87-22-

068 (Order FT-87-3), § 458-40-540, filed 11/4/87. Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-540, filed 12/31/86.]

WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments. (1) Introduction. This rule provides stumpage value tables and stumpage value adjustments used to calculate the amount of a harvester's timber excise tax.

(2) Stumpage value tables. The following stumpage value tables are used to calculate the taxable value of stumpage harvested from January 1 through July 31, 2004:

**TABLE 1—Stumpage Value Table
Stumpage Value Area 1**
January 1 through July 31, 2004

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir	DF	1	\$465	\$458	\$451	\$444	\$437
		2	357	350	343	336	329
		3	352	345	338	331	324
		4	346	339	332	325	318
Western Redcedar ⁽²⁾	RC	1	871	864	857	850	843
Western Hemlock and Other Conifer ⁽³⁾	WH	1	268	261	254	247	240
		2	216	209	202	195	188
		3	216	209	202	195	188
		4	216	209	202	195	188
Red Alder	RA	1	339	332	325	318	311
		2	277	270	263	256	249
Black Cottonwood	BC	1	1	1	1	1	
Other Hardwood	OH	1	166	159	152	145	138
Douglas-Fir Poles	DFL	1	654	647	640	633	626
Western Redcedar Poles	RCL	1	1191	1184	1177	1170	1163
Chipwood ⁽⁴⁾	CHW	1	1	1	1	1	
RC Shake Blocks	RCS	1	303	296	289	282	275
RC Shingle Blocks	RCF	1	121	114	107	100	93
RC & Other Posts ⁽⁵⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁶⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁶⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

(2) Includes Alaska-Cedar.

(3) Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."

(4) Stumpage value per ton.

(5) Stumpage value per 8 lineal feet or portion thereof.

(6) Stumpage value per lineal foot.

**TABLE 2—Stumpage Value Table
Stumpage Value Area 2**
January 1 through July 31, 2004

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir	DF	1	\$379	\$372	\$365	\$358	\$351
		2	379	372	365	358	351
		3	379	372	365	358	351
		4	318	311	304	297	290
Western Redcedar ⁽²⁾	RC	1	871	864	857	850	843
Western Hemlock and Other Conifer ⁽³⁾	WH	1	275	268	261	254	247
		2	223	216	209	202	195
		3	200	193	186	179	172
		4	190	183	176	169	162
Red Alder	RA	1	339	332	325	318	311
		2	277	270	263	256	249
Black Cottonwood	BC	1	1	1	1	1	
Other Hardwood	OH	1	166	159	152	145	138
Douglas-Fir Poles	DFL	1	654	647	640	633	626
Western Redcedar Poles	RCL	1	1191	1184	1177	1170	1163
Chipwood ⁽⁴⁾	CHW	1	1	1	1	1	
RC Shake Blocks	RCS	1	303	296	289	282	275
RC Shingle Blocks	RCF	1	121	114	107	100	93
RC & Other Posts ⁽⁵⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁶⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁶⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

(2) Includes Alaska-Cedar.

(3) Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."

(4) Stumpage value per ton.

(5) Stumpage value per 8 lineal feet or portion thereof.

(6) Stumpage value per lineal foot.

**TABLE 3—Stumpage Value Table
Stumpage Value Area 3**
January 1 through July 31, 2004

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$343	\$336	\$329	\$322	\$315
		2	308	301	294	287	280
		3	308	301	294	287	280
		4	308	301	294	287	280
Western Redcedar ⁽³⁾	RC	1	871	864	857	850	843
Western Hemlock and Other Conifer ⁽⁴⁾	WH	1	282	275	268	261	254
		2	230	223	216	209	202
		3	181	174	167	160	153
		4	125	118	111	104	97

**TABLE 3—Stumpage Value Table
Stumpage Value Area 3**
January 1 through July 31, 2004

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Red Alder	RA	1	339	332	325	318	311
		2	277	270	263	256	249
Black Cottonwood	BC	1	1	1	1	1	1
Other Hardwood	OH	1	166	159	152	145	138
Douglas-Fir Poles	DFL	1	654	647	640	633	626
Western Redcedar Poles	RCL	1	1191	1184	1177	1170	1163
Chipwood ⁽⁵⁾	CHW	1	1	1	1	1	1
RC Shake Blocks	RCS	1	303	296	289	282	275
RC Shingle Blocks	RCF	1	121	114	107	100	93
RC & Other Posts ⁽⁶⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁷⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁷⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

- (1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- (2) Includes Western Larch.
- (3) Includes Alaska-Cedar.
- (4) Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."
- (5) Stumpage value per ton.
- (6) Stumpage value per 8 lineal feet or portion thereof.
- (7) Stumpage value per lineal foot.

**TABLE 4—Stumpage Value Table
Stumpage Value Area 4**
January 1 through July 31, 2004

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$375	\$368	\$361	\$354	\$347
		2	375	368	361	354	347
		3	375	368	361	354	347
		4	326	319	312	305	298
Lodgepole Pine	LP	1	150	143	136	129	122
Ponderosa Pine	PP	1	274	267	260	253	246
		2	202	195	188	181	174
Western Redcedar ⁽³⁾	RC	1	871	864	857	850	843
Western Hemlock and Other Conifer ⁽⁴⁾	WH	1	261	254	247	240	233
		2	209	202	195	188	181
		3	203	196	189	182	175
		4	167	160	153	146	139
Red Alder	RA	1	339	332	325	318	311
		2	277	270	263	256	249
Black Cottonwood	BC	1	1	1	1	1	1
Other Hardwood	OH	1	166	159	152	145	138
Douglas-Fir Poles	DFL	1	654	647	640	633	626
Western Redcedar Poles	RCL	1	1191	1184	1177	1170	1163
Chipwood ⁽⁵⁾	CHW	1	1	1	1	1	1
RC Shake Blocks	RCS	1	303	296	289	282	275
RC Shingle Blocks	RCF	1	121	114	107	100	93

**TABLE 4—Stumpage Value Table
Stumpage Value Area 4**
January 1 through July 31, 2004

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Western Redcedar Poles	RCL	1	1191	1184	1177	1170	1163
Chipwood ⁽⁵⁾	CHW	1	1	1	1	1	1
RC Shake Blocks	RCS	1	303	296	289	282	275
RC Shingle Blocks	RCF	1	121	114	107	100	93
RC & Other Posts ⁽⁶⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁷⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁷⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

- (1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- (2) Includes Western Larch.
- (3) Includes Alaska-Cedar.
- (4) Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."
- (5) Stumpage value per ton.
- (6) Stumpage value per 8 lineal feet or portion thereof.
- (7) Stumpage value per lineal foot.

**TABLE 5—Stumpage Value Table
Stumpage Value Area 5**
January 1 through July 31, 2004

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$479	\$472	\$465	\$458	\$451
		2	386	379	372	365	358
		3	345	338	331	324	317
		4	343	336	329	322	315
Lodgepole Pine	LP	1	150	143	136	129	122
Ponderosa Pine	PP	1	274	267	260	253	246
		2	202	195	188	181	174
Western Redcedar ⁽³⁾	RC	1	871	864	857	850	843
Western Hemlock and Other Conifer ⁽⁴⁾	WH	1	248	241	234	227	220
		2	196	189	182	175	168
		3	187	180	173	166	159
		4	187	180	173	166	159
Red Alder	RA	1	339	332	325	318	311
		2	277	270	263	256	249
Black Cottonwood	BC	1	1	1	1	1	1
Other Hardwood	OH	1	166	159	152	145	138
Douglas-Fir Poles	DFL	1	654	647	640	633	626
Western Redcedar Poles	RCL	1	1191	1184	1177	1170	1163
Chipwood ⁽⁵⁾	CHW	1	1	1	1	1	1
RC Shake Blocks	RCS	1	303	296	289	282	275
RC Shingle Blocks	RCF	1	121	114	107	100	93

**TABLE 5—Stumpage Value Table
Stumpage Value Area 5**
January 1 through July 31, 2004

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
RC & Other Posts ⁽⁶⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁷⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁷⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

- (1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- (2) Includes Western Larch.
- (3) Includes Alaska-Cedar.
- (4) Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."
- (5) Stumpage value per ton.
- (6) Stumpage value per 8 lineal feet or portion thereof.
- (7) Stumpage value per lineal foot.

**TABLE 6—Stumpage Value Table
Stumpage Value Area 6**
January 1 through July 31, 2004

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$258	\$251	\$244	\$237	\$230
Lodgepole Pine	LP	1	150	143	136	129	122
Ponderosa Pine	PP	1	274	267	260	253	246
		2	202	195	188	181	174
Western Redcedar ⁽³⁾	RC	1	577	570	563	556	549
True Firs and Spruce ⁽⁴⁾	WH	1	135	128	121	114	107
Western White Pine	WP	1	308	301	294	287	280
Hardwoods	OH	1	50	43	36	29	22
Western Redcedar Poles	RCL	1	577	570	563	556	549
Small Logs ⁽⁵⁾	SML	1	25	24	23	22	21
Chipwood ⁽⁵⁾	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks	RCF	1	92	85	78	71	64
LP & Other Posts ⁽⁶⁾	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees ⁽⁷⁾	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25

- (1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- (2) Includes Western Larch.
- (3) Includes Alaska-Cedar.
- (4) Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."
- (5) Stumpage value per ton.
- (6) Stumpage value per 8 lineal feet or portion thereof.

- (7) Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.
- (8) Stumpage value per lineal foot.

**TABLE 7—Stumpage Value Table
Stumpage Value Area 7**
January 1 through July 31, 2004

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$263	\$256	\$249	\$242	\$235
Lodgepole Pine	LP	1	177	170	163	156	149
Ponderosa Pine	PP	1	285	278	271	264	257
		2	227	220	213	206	199
Western Redcedar ⁽³⁾	RC	1	592	585	578	571	564
True Firs and Spruce ⁽⁴⁾	WH	1	177	170	163	156	149
Western White Pine	WP	1	315	308	301	294	287
Hardwoods	OH	1	50	43	36	29	22
Western Redcedar Poles	RCL	1	592	585	578	571	564
Small Logs ⁽⁵⁾	SML	1	19	18	17	16	15
Chipwood ⁽⁵⁾	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks	RCF	1	92	85	78	71	64
LP & Other Posts ⁽⁶⁾	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees ⁽⁷⁾	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25

- (1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- (2) Includes Western Larch.
- (3) Includes Alaska-Cedar.
- (4) Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."
- (5) Stumpage value per ton.
- (6) Stumpage value per 8 lineal feet or portion thereof.
- (7) Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.
- (8) Stumpage value per lineal foot.

**TABLE 8—Stumpage Value Table
Stumpage Value Area 10**
January 1 through July 31, 2004

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$361	\$354	\$347	\$340	\$333
		2	361	354	347	340	333
		3	361	354	347	340	333
		4	312	305	298	291	284
Lodgepole Pine	LP	1	150	143	136	129	122
Ponderosa Pine	PP	1	274	267	260	253	246
		2	202	195	188	181	174
Western Redcedar ⁽³⁾	RC	1	857	850	843	836	829

TABLE 8—Stumpage Value Table
Stumpage Value Area 10
 January 1 through July 31, 2004

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Western Hemlock and Other Conifer ⁽⁴⁾	WH	1	247	240	233	226	219
		2	195	188	181	174	167
		3	189	182	175	168	161
		4	153	146	139	132	125
Red Alder	RA	1	325	318	311	304	297
		2	263	256	249	242	235
Black Cottonwood	BC	1	1	1	1	1	1
Other Hardwood	OH	1	152	145	138	131	124
Douglas-Fir Poles	DFL	1	640	633	626	619	612
Western Redcedar Poles	RCL	1	1177	1170	1163	1156	1149
Chipwood ⁽⁵⁾	CHW	1	1	1	1	1	1
RC Shake Blocks	RCS	1	303	296	289	282	275
RC Shingle Blocks	RCF	1	121	114	107	100	93
RC & Other Posts ⁽⁶⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁷⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁷⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

- (1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- (2) Includes Western Larch.
- (3) Includes Alaska-Cedar.
- (4) Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."
- (5) Stumpage value per ton.
- (6) Stumpage value per 8 lineal feet or portion thereof.
- (7) Stumpage value per lineal foot.

(3) **Harvest value adjustments.** The stumpage values in subsection (2) of this rule for the designated stumpage value areas are adjusted for various logging and harvest conditions, subject to the following:

(a) No harvest adjustment is allowed for special forest products, chipwood, or small logs.

(b) Conifer and hardwood stumpage value rates cannot be adjusted below one dollar per MBF.

(c) Except for the timber yarded by helicopter, a single logging condition adjustment applies to the entire harvest unit. The taxpayer must use the logging condition adjustment class that applies to a majority (more than 50%) of the acreage in that harvest unit. If the harvest unit is reported over more than one quarter, all quarterly returns for that harvest unit must report the same logging condition adjustment. The helicopter adjustment applies only to the timber volume from the harvest unit that is yarded from stump to landing by helicopter.

(d) The volume per acre adjustment is a single adjustment class for all quarterly returns reporting a harvest unit. A harvest unit is established by the harvester prior to harvesting. The volume per acre is determined by taking the volume logged from the unit excluding the volume reported as chip-

wood or small logs and dividing by the total acres logged. Total acres logged does not include leave tree areas (RMZ, UMZ, forested wetlands, etc.) over 2 acres in size.

(e) A domestic market adjustment applies to timber which meet the following criteria:

(i) **Public timber**—Harvest of timber not sold by a competitive bidding process that is prohibited under the authority of state or federal law from foreign export may be eligible for the domestic market adjustment. The adjustment may be applied only to those species of timber that must be processed domestically. According to type of sale, the adjustment may be applied to the following species:

Federal Timber Sales: All species except Alaska-cedar. (Stat. Ref. - 36 C.F.R. 223.10)

State, and Other Nonfederal, Public Timber Sales: Western Redcedar only. (Stat. Ref. - 50 U.S.C. appendix 2406.1)

(ii) **Private timber**—Harvest of private timber that is legally restricted from foreign export, under the authority of The Forest Resources Conservation and Shortage Relief Act (Public Law 101-382), (16 U.S.C. Sec. 620 et seq.); the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)); a Cooperative Sustained Yield Unit Agreement made pursuant to the act of March 29, 1944 (16 U.S.C. Sec. 583-583i); or Washington Administrative Code (WAC 240-15-015(2)) is also eligible for the Domestic Market Adjustment.

The following harvest adjustment tables apply from January 1 through July 31, 2004:

TABLE 9—Harvest Adjustment Table
Stumpage Value Areas 1, 2, 3, 4, 5, and 10
 January 1 through July 31, 2004

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of 30 thousand board feet or more per acre.	\$0.00
Class 2	Harvest of 10 thousand board feet to but not including 30 thousand board feet per acre.	- \$15.00
Class 3	Harvest of less than 10 thousand board feet per acre.	- \$35.00
II. Logging conditions		
Class 1	Ground based logging a majority of the unit using tracked or wheeled vehicles or draft animals.	\$0.00
Class 2	Cable logging a majority of the unit using an overhead system of winch driven cables.	- \$30.00
Class 3	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	- \$145.00
III. Remote island adjustment:		
	For timber harvested from a remote island	- \$50.00
IV. Thinning		
Class 1	A limited removal of timber described in WAC 458-40-610 (28)	-\$100.00

TABLE 10—Harvest Adjustment Table
Stumpage Value Areas 6 and 7
 January 1 through July 31, 2004

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of more than 8 thousand board feet per acre.	\$0.00
Class 2	Harvest of 3 thousand board feet to 8 thousand board feet per acre.	- \$7.00
Class 3	Harvest of less than 3 thousand board feet per acre.	- \$10.00
II. Logging conditions		
Class 1	The majority of the harvest unit has less than 40% slope. No significant rock outcrops or swamp barriers.	\$0.00
Class 2	The majority of the harvest unit has slopes between 40% and 60%. Some rock outcrops or swamp barriers.	-\$20.00
Class 3	The majority of the harvest unit has rough, broken ground with slopes over 60%. Numerous rock outcrops and bluffs.	-\$30.00
Class 4	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$145.00
Note:	A Class 2 adjustment may be used for slopes less than 40% when cable logging is required by a duly promulgated forest practice regulation. Written documentation of this requirement must be provided by the taxpayer to the department of revenue.	
III. Remote island adjustment:		
	For timber harvested from a remote island	- \$50.00

TABLE 11—Domestic Market Adjustment

Class	Area Adjustment Applies	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
Class 1:	SVA's 1 through 6, and 10	\$0.00
Class 2:	SVA 7	\$0.00

Note: The adjustment will not be allowed on special forest products.

(4) **Damaged timber.** Timber harvesters planning to remove timber from areas having damaged timber may apply to the department of revenue for an adjustment in stumpage values. The application must contain a map with the legal descriptions of the area, an accurate estimate of the volume of damaged timber to be removed, a description of the damage sustained by the timber with an evaluation of the extent to which the stumpage values have been materially reduced from the values shown in the applicable tables, and a list of estimated additional costs to be incurred resulting from the removal of the damaged timber. The application must be received and approved by the department of revenue before the harvest commences. Upon receipt of an application, the department of revenue will determine the amount of adjustment to be applied against the stumpage values. Timber that has been damaged due to sudden and unforeseen causes may qualify.

(a) Sudden and unforeseen causes of damage that qualify for consideration of an adjustment include:

(i) Causes listed in RCW 84.33.091; fire, blow down, ice storm, flood.

(ii) Others not listed; volcanic activity, earthquake.

(b) Causes that do not qualify for adjustment include:

(i) Animal damage, root rot, mistletoe, prior logging, insect damage, normal decay from fungi, and pathogen caused diseases; and

(ii) Any damage that can be accounted for in the accepted normal scaling rules through volume or grade reductions.

(c) The department of revenue will not grant adjustments for applications involving timber that has already been harvested but will consider any remaining undisturbed damaged timber scheduled for removal if it is properly identified.

(d) The department of revenue will notify the harvester in writing of approval or denial. Instructions will be included for taking any adjustment amounts approved.

[Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, and 84.33.091. 04-01-125, § 458-40-660, filed 12/18/03, effective 1/1/04; 03-14-072, § 458-40-660, filed 6/26/03, effective 7/1/03. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, 84.33.091, and 84.33.140. 03-02-004, § 458-40-660, filed 12/19/02, effective 1/1/03. Statutory Authority: RCW 82.32.300, 84.33.096, and 84.33.091. 02-14-019, § 458-40-660, filed 6/21/02, effective 7/1/02. Statutory Authority: RCW 82.32.300, 84.33.096, 84.33.091 and 84.33.120. 02-02-033, § 458-40-660, filed 12/24/01, effective 1/1/02. Statutory Authority: RCW 82.32.300, 84.33.096, and 84.33.091. 01-13-105, § 458-40-660, filed 6/20/01, effective 7/1/01; 01-02-020, § 458-40-660, filed 12/21/00, effective 1/1/01. Statutory Authority: RCW 82.32.300, 84.33.096, 84.33.091, 82.32.060, and 84.33.077. 00-19-067, § 458-40-660, filed 9/19/00, effective 1/1/01. Statutory Authority: RCW 82.32.300, 84.33.096 and 84.33.091. 00-14-011, § 458-40-660, filed 6/27/00, effective 7/1/00; 00-02-019, § 458-40-660, filed 12/27/99, effective 1/1/00; 99-14-055, § 458-40-660, filed 6/30/99, effective 7/1/99; 99-02-032, § 458-40-660, filed 12/30/98, effective 1/1/99; 98-14-083, § 458-40-660, filed 6/30/98, effective 7/1/98; 98-02-015, § 458-40-660, filed 12/30/97, effective 1/1/98; 97-14-068, § 458-40-660, filed 6/30/97, effective 7/1/97. Statutory Authority: RCW 82.32.330, 84.33.096 and 84.33.091. 97-02-069, § 458-40-660, filed 12/31/96, effective 1/1/97; 96-14-063, § 458-40-660, filed 6/28/96, effective 7/1/96; 96-02-057, § 458-40-660, filed 12/29/95, effective 1/1/96. Statutory Authority: RCW 82.32.330, 84.33.096 and 84.33.200. 95-18-027, § 458-40-660, filed 8/25/95, effective 9/25/95. Statutory Authority: RCW 82.32.300 and 84.33.096. 95-02-038, § 458-40-660, filed 12/30/94, effective 1/1/95. Statutory Authority: RCW 84.33.091, 84.32.300 [82.32.300] and 84.33.096. 94-14-048, § 458-40-660, filed 6/30/94, effective 7/1/94; 94-02-047, § 458-40-660, filed 12/30/93, effective 1/1/94; 93-14-051, § 458-40-660, filed 6/30/93, effective 7/1/93; 93-02-025, § 458-40-660, filed 12/31/92, effective 1/1/93; 92-14-083, § 458-40-660, filed 6/29/92, effective 7/1/92; 92-02-067, § 458-40-660, filed 12/31/91, effective 1/1/92. Statutory Authority: RCW 84.33.096 and 82.32.300. 91-14-077, § 458-40-660, filed 6/28/91, effective 7/1/91; 91-09-030, § 458-40-660, filed 4/12/91, effective 5/13/91; 91-02-088, § 458-40-660, filed 12/31/90, effective 1/31/91; 90-14-033, § 458-40-660, filed 6/29/90, effective 7/30/90; 90-02-049, § 458-40-660, filed 12/29/89, effective 1/29/90. Statutory Authority: Chapter 84.33 RCW and RCW 84.33.091. 89-14-051 (Order FT-89-2), § 458-40-660, filed 6/30/89; 89-02-027 (Order FT-88-5), § 458-40-660, filed 12/30/88; 88-14-032 (Order FT-88-2), § 458-40-660, filed 6/30/88; 88-02-026 (Order FT-87-5), § 458-40-660, filed 12/31/87. Statutory Authority: Chapter 84.33 RCW. 87-14-042 (Order 87-2), § 458-40-660, filed 6/30/87; 87-02-023 (Order 86-4), § 458-40-660, filed 12/31/86.]

WAC 458-40-680 Timber excise tax—Volume harvested—Approved scaling and grading methods—Sample scaling—Conversions. (1) **Introduction.** The acceptable log scaling and grading standard for stumpage value areas 1, 2, 3, 4, 5, and 10 is the Scribner Decimal C log rule as described in the most current edition of the "Official Log Scaling and Grading Rules" developed and authored by the Northwest Log Rules Advisory Group. The acceptable log scaling standard for stumpage value areas 6 and 7 is the Scribner Decimal C log rule described in the most current edition of the "National Forest Log Scaling Handbook" (FSH 2409.11) as published by the United States Forest Service. Lodgepole pine harvested in stumpage value areas 6, 7, or 10

must be scaled using a one inch taper allowance per log segment.

(2) **Special services scaling.** Special services scaling as described in the "Official Log Scaling and Grading Rules" developed and authored by the Northwest Log Rules Advisory Group may not be used for tax reporting purposes without prior written approval of the department of revenue.

(3) **Sample scaling.** Sample scaling may not be used for tax reporting purposes without prior written approval of the department of revenue. To be approved, sample scaling must be in accordance with the following guidelines:

(a) Sample selection, scaling, and grading must be conducted on a continuous basis as the unit is harvested.

(b) The sample must be taken in such a manner to assure random, unbiased sample selection in accordance with accepted statistical tests of sampling.

(c) The sample used to determine total volume, species, and quality of timber harvested for a given reporting period must have been taken during that period.

(d) Sample frequency must be large enough to meet board foot variation accuracy limits of plus or minus two and five-tenths percent standard error at the ninety-five percent confidence level.

(e) Harvesters, or a purchaser with an approved sample scaling method, must maintain sufficient supporting documentation to allow the department of revenue to verify source data, and test statistical reliability of sample scale systems.

(f) Exceptions: Sampling designs and accuracy standards other than those described herein may only be used with the prior written approval of the department of revenue.

(4) **Conversions to Scribner Decimal C Scale.** The following definitions, tables, and conversion factors must be used in determining taxable volume for timber harvested that was not originally scaled by the Scribner Decimal C Log Rule. Conversion methods other than those listed are not to be used for tax reporting purposes without prior written approval of the department of revenue. Harvesters who wish to use a method of conversion other than those listed below must obtain written approval from the department of revenue before harvesting. Purchasers may obtain written approval of a sample scaling method from the department of revenue. The department will maintain a list of purchasers with an approved sample scaling method. A harvester may obtain this list and a summary of the approved method for specific purchasers from the department of revenue. If a harvester has not obtained approval of a sample scaling method before harvesting, the harvester may use a purchaser's approved sample scaling method. If the harvester, or purchaser, fails to use an approved sample scaling method or other method of conversion approved by these rules to set the purchase price, the department will establish its own method, as the circumstances require, to determine a reasonable estimate of the volume of timber sold.

(a) **Weight measurement.** If the sole unit of measure used to set the purchase price for logs from harvest units that meet the definition of the lowest quality code for each species was weight, and the harvester does not use an approved method of sample scaling to determine volume for the stumpage value tables, the following tables must be used for converting to Scribner Decimal C. If weight is the sole measure used for a harvest unit with quality codes other than the low-

est, the department will establish its own method, as the circumstances require, to determine a reasonable estimate of the volume of timber sold. Harvesters must keep records to substantiate the species and quality codes reported. For tax reporting purposes, a ton equals 2,000 pounds.

(Stumpage Value Areas 1, 2, 3, 4, 5, & 10)				
BOARD FOOT WEIGHT SCALE FACTORS (TONS/MBF)				
Species	Quality code			
	1	2	3	4
Douglas-fir ¹	NA	NA	NA	7.50
Western Hemlock ²	NA	NA	NA	8.25
Western Redcedar ³	7.0			
Red Alder ⁴	NA	7.8		
Chipwood	9.0			

¹Includes Douglas-fir, Western Larch, and Sitka Spruce.

²Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and other conifers not separately designated. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."

³Includes Alaska-cedar.

⁴Maple, Black Cottonwood and other hardwoods.

(Stumpage Value Areas 6 & 7)		
BOARD FOOT WEIGHT SCALE FACTORS (TONS/MBF)		
Species	Quality code	
	1	2
Ponderosa Pine	NA	6.50
Douglas-fir ¹	5.50	
Lodgepole Pine	6.0	
Western Hemlock ²	5.50	
Englemann Spruce	4.50	
Western Redcedar ³	4.50	
Chipwood	9.0	
Small Logs	6.50	

¹Includes Western Larch.

²Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and other conifers not separately designated. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."

³Includes Alaska-cedar.

(b) **Cord measurement.** For the purposes of converting cords into Scribner volume:

(i) In stumpage value areas 1, 2, 3, 4, 5, and 10 logs with an average scaling diameter of 8 inches and larger must be converted to Scribner volume using 400 board feet per cord. Logs having an average scaling diameter of less than 8 inches must be converted to Scribner volume using 330 board feet per cord.

(ii) In stumpage value areas 6 and 7 logs with an average scaling diameter of 8 inches and larger must be converted to Scribner volume using 470 board feet per cord. Logs having an average scaling diameter of less than 8 inches must be converted to Scribner volume using 390 board feet per cord.

(iii) A cord of Western Redcedar shake or shingle blocks must be converted to Scribner volume using 600 board feet per cord.

(c) **Cants or lumber from portable mills.** To convert from lumber tally to Scribner volume:

(i) In stumpage value areas 1, 2, 3, 4, 5, and 10 multiply the lumber tally for the individual species by 75%, and round to the nearest one thousand board feet (MBF); or

(ii) In stumpage value areas 6 and 7 multiply the lumber tally for the individual species by 88%, and round to the nearest one thousand board feet (MBF).

(d) **Log scale conversion.** Timber harvested in stumpage value areas 1, 2, 3, 4, 5, and 10 and which has been scaled by methods and procedures published in the "National Forest Log Scaling Handbook" (FSH 2409.11) must have the vol-

umes reported reduced by eighteen percent. Timber harvested in stumpage value areas 6 and 7 and which has been scaled by methods and procedures published in the "Official Log Scaling and Grading Rules" developed and authored by the Northwest log rules advisory group, must have the volumes reported increased by eighteen percent.

(e) **Timber pole and piling volume tables.** Harvesters of poles must use the following tables to determine the Scribner board foot volume for each pole length and class:

Total Scribner Board Foot Volume Stumpage Value Areas 1, 2, 3, 4, 5, and 10																	
Length	Pole Class ¹															Piling Class ²	
	H6	H5	H4	H3	H2	H1	1	2	3	4	5	6	7	9	10	A	B
20							50	50	40	40	30	30	20	20	20	80	70
25							60	60	50	50	40	40	30	30	30	100	90
30							110	70	60	60	50	50	40	40		130	110
35					160	160	130	100	80	80	60	60	50			130	110
40			240	200	180	180	150	120	120	90	70	60				150	120
45	380	340	340	280	230	230	190	150	120	120	90	90				150	120
50	430	370	370	300	260	260	210	160	140	140	100					160	140
55	470	410	410	330	280	280	230	180	150	150						180	150
60	540	470	470	410	340	340	290	220	190	190						190	160
65	610	520	520	420	380	380	320	260	210	210						210	180
70	650	560	560	480	400	400	350	270	230	230						230	190
75	700	600	600	520	520	520	440	290	250							230	200
80	820	700	700	600	600	600	540	440	360	290						250	210
85	910	800	800	660	660	660	570	490	360							260	210
90	1080	930	930	820	820	690	590	490	400							260	220
95	1170	1000	1000	870	870	750	640	540								290	240
100	1190	1030	1030	900	900	760	660	550								310	250
105	1310	1160	1160	1000	1000	860	740	610								330	270
110	1370	1220	1220	1050	1050	910	780	650								380	300
115	1440	1280	1280	1100	1100	960	860	680								400	310
120	1660	1460	1460	1300	1300	1140	970	820								500	400
125	1840	1600	1600	1410	1410	1250	1080	930									
130	1920	1680	1680	1490	1490	1310	1120	970									

¹ Pole class definitions taken from American National Standard specifications and dimensions for wood poles as approved August 7, 1976, under American National Standard Institute, Inc. codified ANSI 05.1-1972.

² Piling class definitions as per American Society for Testing and Materials for "round timber piles." As the designation: D 25-58 (reapproved 1964).

Total Scribner Board Foot Volume Stumpage Value Areas 6 and 7																	
Length	Pole Class ¹															Piling Class ²	
	H6	H5	H4	H3	H2	H1	1	2	3	4	5	6	7	9	10	A	B
20							70	60	50	50	30	30	20	20	20	90	70
25							80	70	50	50	40	40	30	30	20	100	80
30							110	90	60	60	50	50	40	40		130	110
35					190	160	140	100	100	70	60	60	50			140	100
40				240	240	200	170	120	110	100	70	70				140	100
45	390	330	330	270	270	220	180	150	110	110	80	70				150	110
50	460	390	390	340	340	280	240	190	150	150	120					190	150
55	510	430	430	370	360	300	250	190	150	150						190	150
60	610	530	530	440	440	380	310	240	200	200						240	200
65	650	570	570	490	480	410	350	280	220	220						240	200
70	750	650	650	550	470	470	410	320	260	260						260	210
75	810	700	700	600	600	500	440	340	270							270	220
80	960	830	830	710	710	610	510	420	340							220	220
85	1020	870	870	760	760	640	550	450	360							300	240
90	1110	970	970	840	840	720	620	500	420							280	280
95	1160	1010	1010	870	870	740	640	510								360	280
100	1380	1210	1210	1060	1060	910	780	650								360	280
105	1430	1250	1250	1100	1100	940	820	690								400	300
110	1580	1390	1390	1220	1220	1070	920	770								460	340
115	1660	1470	1470	1280	1280	970	810	680								470	360
120	1880	1680	1680	1480	1480	1290	1130	950								560	450
125	1910	1690	1690	1490	1490	1140	970	810									
130	2170	1920	1920	1710	1710	1510	1320	1140									

¹ Pole class definitions taken from American National Standard specifications and dimensions for wood poles as approved August 7, 1976, under American National Standard Institute, Inc. codified ANSI 05.1-1972.

² Piling class definitions as per American Society for Testing and Materials for "round timber piles." As the designation: D 25-58 (reapproved 1964).

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 84.33.096. 03-22-099, § 458-40-680, filed 11/5/03, effective 12/6/03. Statutory Authority: RCW 82.32.300 and 84.33.096. 00-24-068, § 458-40-680, filed 12/1/00, effective 1/1/01. Statutory Authority: RCW 82.32.330, 84.33.096 and 84.33.120. 96-02-056, § 458-40-680, filed 12/29/95, effective 1/29/96. Statutory Authority: RCW 82.32.300 and 84.33.096. 95-14-084, § 458-40-680, filed 6/30/95, effective 7/31/95. Statutory Authority: Chapter 84.33 RCW. 87-02-023 (Order 86-4), § 458-40-680, filed 12/31/86.]

Chapter 458-61 WAC REAL ESTATE EXCISE TAX

WAC

458-61-100

Refunds of tax paid.

WAC 458-61-100 Refunds of tax paid. (1) Introduction. Taxpayers who have paid the real estate excise tax or who have received a notice of assessment of tax and who wish to contest the application of the real estate excise tax to a particular transfer may file a petition for refund or correction of assessment as provided in this section. Only the taxpayer or the taxpayer's authorized agent may petition for a refund of tax.

(2) **Petitioning for a refund.** Any person who has overpaid any tax, interest, or penalty, may apply for a refund within four years from the date of sale by petitioning in writing for a refund of the amount overpaid. Claims for refund are to be made on forms prescribed by the department and made available at the county treasurers' offices and at the department.

(a) The taxpayer shall submit the completed form and all documentation supporting the claim for refund to the county treasurer's office in the county where the tax was originally paid.

(b) If the taxpayer originally paid the tax directly to the department or wants to petition for the correction of an assessment, the form and supporting documentation shall be submitted to the department in accordance with the requirements of WAC 458-20-100, appeal procedures.

(3) **County treasurer's responsibilities—Petition received prior to sending affidavit to department.** If the taxpayer submits the petition for refund before the county treasurer has sent to the department the copy of the affidavit which receipted the tax payment now in question, the county treasurer is authorized to void the receipted affidavit copies, based upon the criteria listed in subsection (5) of this section, and issue the refund. If the county treasurer authorizes and issues such refund, the voided copy of the affidavit, with a copy of the refund petition attached, must be included in the monthly affidavit batch sent to the department. If the county treasurer does not authorize such refund, the treasurer shall send the petition for refund, along with a copy of the affidavit and all supporting records, to the department. The procedure for petitions sent to the department shall follow subsection (4) of this section.

(4) **County treasurer's responsibilities—Petition received after sending affidavit to department.** If the taxpayer submits the petition for refund after the county treasurer has sent to the department the copy of the affidavit which receipted the payment now in question, the county treasurer shall verify the information on the petition and forward it to the department with a copy of the affidavit and any

other supporting records furnished by the taxpayer. The department shall approve or deny the refund. The taxpayer may then appeal the imposition of the tax under the appeal procedures. See WAC 458-20-100, appeals procedures. If such petition is denied, the department will return to the petitioner all supporting documents which are submitted with the petition for refund.

(5) **Circumstances under which a refund of tax is authorized.** The authority to issue tax refunds under this chapter is limited to:

(a) The conveyance back to the grantor for transactions that are completely rescinded as defined in WAC 458-61-590;

(b) The conveyance back to the grantor for sales rescinded by court order. In such case a copy of the court decision must be attached to the department's affidavit copy by the county treasurer (see also WAC 458-61-330: Foreclosure—Deeds in lieu of foreclosure);

(c) The initial conveyance recorded in error by an escrow agent before the closing date, provided the property is conveyed back to the grantor;

(d) The conveyance back to the grantor in (c) above;

(e) The initial conveyance recorded before a purchaser assumes an outstanding loan that represents the only consideration to be paid for the property, provided (i) the purchaser is unable to assume the loan and (ii) the property is conveyed back to the grantor. The refund is allowed because the transaction lacked valuable consideration;

(f) The conveyance back to the grantor in (e) above;

(g) Double payment of the tax;

(h) Overpayment of the tax through error of computation; and

(i) Failure of a taxpayer to claim tax exemption for a transfer which was properly exempt.

[Statutory Authority: RCW 82.45.150, 82.32.300, and 82.01.060(2). 03-18-023, § 458-61-100, filed 8/25/03, effective 9/25/03. Statutory Authority: RCW 82.32.300 and 1993 sp.s. c 25. 94-04-088, § 458-61-100, filed 2/1/94, effective 3/4/94. Statutory Authority: RCW 82.45.120 and 82.45.150. 86-16-080 (Order PT 86-3), § 458-61-100, filed 8/6/86; 84-17-002 (Order PT 84-3), § 458-61-100, filed 8/2/84; 83-02-022 (Order PT 82-10), § 458-61-100, filed 12/28/82; 82-15-070 (Order PT 82-5), § 458-61-100, filed 7/21/82.]

Title 468 WAC TRANSPORTATION, DEPARTMENT OF (Formerly: Highway Commission, etc.)

Chapters

468-06

Public access to information and records.

468-15

Small works roster.

468-38

Vehicle size and weight—Restricted highways—Equipment.

468-58

Limited access highways.

468-70

Motorist information signs.

468-95

Manual on uniform traffic control devices for streets and highways.

468-300 State ferries and toll bridges.
468-510 Lane use restrictions.

468-15-030 Public notice required by department establishing small works roster.
 468-15-040 Contractors questionnaire form—Information required.
 468-15-050 Denial or removal of contractor from small works roster—Reasons.
 468-15-060 Hearings procedure.

Chapter 468-06 WAC

PUBLIC ACCESS TO INFORMATION AND RECORDS

WAC
 468-06-040 Description of central and field organization of the Washington state department of transportation.

WAC 468-06-040 Description of central and field organization of the Washington state department of transportation. (1) The department of transportation is a statutorily created agency of the state of Washington. The central office of the department of transportation is located in the Transportation Building, Olympia, WA 98504.

(2) The department of transportation is headed by a secretary who is the executive head of the department and is appointed by the Washington state transportation commission.

(a) Serving directly under the secretary are the chief of staff, audit office, equal opportunity office, engineering and regional operations division, Washington state ferries division and the finance and administration division. There are also assistant attorney generals assigned to the department who provide legal services in department matters.

(b) Reporting directly to the chief of staff are the following offices: Communications, governmental liaison office, ombudsman, freight strategy and policy, highways and local programs, public transportation and rail, aviation and transportation economic partnerships.

(c) The following programs report to the assistant secretary for engineering and regional operations, depending upon their needs. Environmental and engineering programs, urban corridors and northwest coordination, maintenance and operations programs and planning and capital program management.

(d) The department field functions are carried out by six regions which are each headed by a region administrator. The central regional office locations are: Seattle, Wenatchee, Tumwater, Vancouver, Yakima, and Spokane. The regions have various project and maintenance area offices which are headed by a supervisor. Region administrators report directly to the assistant secretary for the engineering and regional operations division.

[Statutory Authority: RCW 47.01.031, 03-09-103, § 468-06-040, filed 4/22/03, effective 5/23/03; 02-10-021, § 468-06-040, filed 4/23/02, effective 5/24/02. Statutory Authority: RCW 47.01.101, 99-07-013, § 468-06-040, filed 3/8/99, effective 4/8/99. Statutory Authority: Chapter 42.17 RCW and RCW 47.01.101, 96-16-004 (Order 163), § 468-06-040, filed 7/24/96, effective 8/24/96. Statutory Authority: RCW 42.17.250 through 42.17.340, 89-17-047 (Order 120), § 468-06-040, filed 8/14/89, effective 9/14/89; 85-23-040 (Order 97), § 468-06-040, filed 11/18/85. Statutory Authority: 1977 ex.s. c 151, 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-06-040, filed 12/20/78. Formerly WAC 252-03-030.]

Chapter 468-15 WAC

SMALL WORKS ROSTER

WAC
 468-15-010 Purpose and authority.
 468-15-020 Contractor prequalification.

WAC 468-15-010 Purpose and authority. This chapter is adopted pursuant to RCW 39.04.155, which requires a state agency establishing a small works roster or rosters to adopt rules implementing the statute. It is further intended to:

(1) Establish procedures for solicitation of contractors interested in being placed on the department's small works roster(s).

(2) Provide a fair cost effective alternative method of contracting through the small works roster process.

(3) Provide for a clear concise method for a contractor to qualify for placement on the department's small works roster(s).

(4) Provide for an appeal and for a hearing procedure, for denial, suspension, or removal from a small works roster.

[Statutory Authority: RCW 47.01.101, 39.04.155, 03-03-012, § 468-15-010, filed 1/7/03, effective 2/7/03.]

WAC 468-15-020 Contractor prequalification. No contract for the construction, alteration, improvement, or repair of any state highway, or of any other public highway to be awarded and administered by the department of transportation, may be awarded to any contractor who has not first been prequalified to perform the work per the requirements of chapter 468-16 WAC. Bidding proposals will be issued only to prequalified contractors. Only prequalified contractors will be placed on a small works roster.

[Statutory Authority: RCW 47.01.101, 39.04.155, 03-03-012, § 468-15-020, filed 1/7/03, effective 2/7/03.]

WAC 468-15-030 Public notice required by department establishing small works roster. The department will at a minimum once per year provide a public notice to the contracting community encouraging contractors to submit applications for inclusion on the small works roster. Such notice may be mailed directly to trade associations or to individual contractors, by publishing the notice in one trade publication of general circulation within the state, a minimum once per week for two weeks, preceding the date for establishment of the small works roster, or by any method reasonably calculated to assure that all contractors in the state of Washington are aware of the opportunity to be included on the small works roster. The notice shall include the address and phone number, of the department's contract ad and award office from which to request the required questionnaire form for application and approval to be placed on the small works roster.

[Statutory Authority: RCW 47.01.101, 39.04.155, 03-03-012, § 468-15-030, filed 1/7/03, effective 2/7/03.]

WAC 468-15-040 Contractors questionnaire form—Information required. Contractors desiring to be included on a small works roster established by Washington state department of transportation pursuant to RCW 39.04.155, shall submit a completed standard questionnaire and financial form on a form prescribed by the secretary of transportation.

Copies of the form may be obtained from the department's contract ad and award office. The completed questionnaire shall be prepared and transmitted to the secretary, attention: Contractor prequalification office. The questionnaire shall include the following information:

(1) The contractor's name, address, telephone number, fax number, e-mail address, and type of organization (corporation, partnership, sole proprietorship, etc.);

(2) A statement of ownership of the firm and, if a corporation, the name of the parent corporation, if any, and the names of any affiliated or subsidiary companies;

(3) State contractor's license number;

(4) State of Washington unified business identifier number (UBI) and UBI expiration date;

(5) Federal tax ID number;

(6) List of classes of work as enumerated on the form that the firm desires to be considered for such work class;

(7) Indication of those counties in which the contractor is interested in being considered for small works projects;

(8) Indication whether the contractor is certified as a minority or women's business enterprise or a disadvantaged business enterprise by the office of minority women business enterprises;

(9) List all contracts or subcontracts performed in whole or in part within the immediate three preceding years. Include the contract amount, date of completion, classes of work performed, owner or prime contractor's name, mailing address, phone number, fax number, and name of a contact person for the owner/prime for which the contractor performed the work. Only that work completed by the contractor's own organization under its own supervision will be considered for qualification. A minimum three completed projects must be listed.

(a) Personnel requirements.

(i) List principal officers and key employees indicating their years of experience in the classes of work for which qualification is sought.

(ii) A firm must have, within its own organization, qualified permanent, full-time personnel having the skills and experience including, if applicable, technical or specialty licenses, for each work class for which qualification is sought. Those firms seeking qualification for electrical work (classes 9, 16, and 42) must provide photocopies of current Washington state electrical licenses. The skills and experience must be substantiated by education and practical experience on completed construction projects.

(iii) "Its own organization" shall be construed to include only the contractor's permanent, full-time employed office and site supervisory personnel. Workers of the organization shall be employed and paid directly by the prime contractor.

(b) The applicant shall list the following occurrences within the previous three years:

(i) Instances of having been denied qualification, or a license, or instances of having been deemed other than responsible by any public agency.

(ii) Convictions for felonies listed in WAC 468-16-050.

(iii) Failure to complete contract.

(c) Complete financial statement for the contracting firm's last fiscal year. The contractor firm must have a positive net worth.

(d) A wholly owned subsidiary firm may file the latest consolidated financial statement of its parent corporation in lieu of a financial statement prepared solely for the subsidiary.

(e) The standard questionnaire shall be processed as follows:

(i) A standard questionnaire will be reviewed and a written notice provided to the applicant, within thirty days of its receipt, stating whether or not the applicant has qualified for or been denied qualification for the small works roster. The applicant will be advised of lack of receipt of data corroborating project completion and error or omissions in the questionnaire and a request for additional information necessary to complete the evaluation of the applicant. If the information is not provided within twenty calendar days of the request, the application will be processed, if possible, with the information available or it will be returned to the applicant without further action.

(ii) The department will enter the contractor's information on the appropriate small works roster. The department will notify the contractor by letter of placement on the appropriate small works roster. An applicant should not consider itself enrolled on the small works roster until receipt of such written notice.

It is the responsibility of the contractor to notify the department of any incorrect information set forth in the notice, and to notify the department of any change in the information set forth in its application.

[Statutory Authority: RCW 47.01.101, 39.04.155. 03-03-012, § 468-15-040, filed 1/7/03, effective 2/7/03.]

WAC 468-15-050 Denial or removal of contractor from small works roster—Reasons. A contractor may be denied placement on or, after such placement, may be removed from a small works roster for any one or more of the following reasons:

(1) Information set forth in the contractor's application is not accurate or can not be verified;

(2) The contractor fails to notify the department maintaining the small works roster of any changes in the information set forth in its original application for placement on the small works roster within thirty days of the effective date of the change;

(3) The contractor fails to respond to five solicitations for bids on jobs offered through the small works roster;

(4) The contractor's past performance demonstrates a lack of qualification in any specialty area indicated by the contractor in the application for placement on the small works roster;

(5) The contractor fails to complete and return to the department maintaining the small works roster any periodic update submitted by the department to determine the contractor's ongoing interest in maintaining its placement on the small works roster;

(6) Conviction of the firm or its principals of violating a federal or state antitrust law by bid-rigging, collusion, or restraint of competition between bidders; or conviction of violating any other federal or state law related to bidding or contract performance; or

(7) Knowingly concealing any deficiency in the performance of a prior contract; or

(8) Falsification of information or submission of deceptive or fraudulent statements in connection with prequalification, bidding, performance of a contract, or in legal proceedings; or

(9) Debarment of the contractor by a federal or state agency; or

(10) Willful disregard for applicable laws, rules or regulations.

The reasons for the denial or removal from the small works roster must be based on acts or omissions which took place within the five years preceding the date of the most recent submitted questionnaire.

[Statutory Authority: RCW 47.01.101, 39.04.155. 03-03-012, § 468-15-050, filed 1/7/03, effective 2/7/03.]

WAC 468-15-060 Hearings procedure. (1) Whenever the department believes that grounds exist to deny the contractor placement on a small works roster or to suspend or remove the contractor from the roster, notice of such grounds shall be given to the contractor by first-class mail. If the contractor fails to object or request a hearing within twenty calendar days after the mailing of said notice, then the denial, suspension or removal shall be made effective. If the contractor requests a hearing by certified mail within twenty calendar days after the mailing of the notice, a hearing shall be conducted in accordance with the procedure set forth in this section. Unless the department is otherwise prohibited from contracting with the contractor, the denial, suspension or revocation shall not become effective until the final decision of the secretary has been rendered.

(2) The secretary shall designate a hearing official to conduct any hearing held under this section. The hearing official shall furnish written notice by certified mail of a hearing to the contractor and any named affiliates at least twenty calendar days before the effective date of suspension or revocation or denial of qualification for placement on the small works roster. The notice shall state:

(a) That suspension or revocation or denial of qualification for placement on the small works roster is being considered.

(b) The effective date of the proposed action.

(c) The facts giving cause for the proposed action.

(d) The cause or causes relied upon for proposing the action, i.e., fraud, statutory violations, etc.

(e) If suspension is proposed, the duration of the suspension.

(f) That the contractor may, within twenty calendar days of receipt of the notice, submit to the hearing official by certified mail, return receipt requested, information and argument in opposition to or in clarification of the proposed action.

(g) When the action is based on a conviction, judgment, or admission, fact finding shall be conducted if the hearing official determines that the contractor's submission raises a genuine dispute over material facts upon which the denial, suspension or revocation is based or whether the causes relied upon for proposing suspension or revocation exist.

(h) The time, place, and date of the hearing.

(i) The name and mailing address of the hearing official.

(j) That proposals shall not be issued nor contracts awarded to the contractor subsequent to the dispatch of the notice of hearing pending the final decision of the secretary.

(3) The hearing official may extend the date of any hearing upon request of the contractor, but the hearing shall not be extended beyond forty-five calendar days from the date of the notice. The hearing official shall schedule and conduct the hearing within thirty calendar days of the date of the notice, except when an extension is granted as provided in this subsection.

(4) In the course of the hearing, the hearing official shall:

(a) Regulate the course and scheduling of the hearings;

(b) Rule on offers of proof, receipt of relevant evidence, and acceptance of proof and evidence as part of the record;

(c) Take action necessary to insure an orderly hearing; and

(d) At the conclusion of the hearing, issue written findings of fact and recommended administrative action to the secretary. The hearing officer shall deliver the entire record to the secretary.

(5) The contractor shall have the opportunity to be present and appear with counsel, submit evidence, present witnesses, and cross-examine all witnesses. A transcribed or taped record shall be made of the hearing unless the secretary and the contractor waive the transcript or taping requirement. The transcript or tape shall be made available, at cost, to the contractor and all named affiliates upon request.

In actions where it has been established by conviction, judgment or admission, or where it has been established by findings made in accordance with this chapter, that the named contractor has engaged in conduct described in WAC 468-15-050 and the sole issue before the hearing official is the appropriateness of revocation of qualification or the length of suspension of qualification to be recommended to the secretary, prior judicial or administrative decision or findings shall not be subject to collateral attack.

The secretary, after receiving the record, findings of fact, and recommendations of the hearing official shall determine the administrative action to be taken. The secretary shall notify the contractor of his determination in writing.

Upon denial, suspension or revocation of qualification for placement on the small works roster, the respondent may appeal there from to the superior court of Thurston County pursuant to RCW 47.28.070. If the appeal is not made within the time prescribed in that statute, the department's action shall be conclusive.

[Statutory Authority: RCW 47.01.101, 39.04.155. 03-03-012, § 468-15-060, filed 1/7/03, effective 2/7/03.]

Chapter 468-38 WAC

VEHICLE SIZE AND WEIGHT—RESTRICTED HIGHWAYS—EQUIPMENT

WAC

468-38-110	Escort vehicle requirements.
468-38-265	Emergency operation of tow trucks.
468-38-340	Speed limits.

WAC 468-38-110 Escort vehicle requirements. (1) When the escort vehicle is in front of the permitted vehicle, the operator shall:

(a) Warn oncoming traffic of the presence of the permitted vehicle by use of signs and lights as provided in subsections (4) and (8) of this section.

(b) Notify the driver of the permitted vehicle, and driver(s) of any trailing escorts, by two-way radio, of all hazards; overhead clearances; obstructions; traffic congestion; pedestrians; and any other circumstances evident to the operator that could affect either the safe movement of the permitted vehicle, the safety of the traveling public, or the efficient movement of traffic in sufficient time for the driver of the permitted vehicle to take corrective action, as necessary.

(c) To the extent necessary, locate safe places (if available) adjacent to the highway and notify the driver of the permitted vehicle, and driver(s) of trailing escorts, in ample time for the permitted vehicle and the escort vehicle(s) to clear the highway, allowing the traffic following to safely pass, or for any other reasons necessary to provide for the safety of the traveling public.

(d) Be far enough in front of the permitted vehicle to signal oncoming motorists to stop in a timely manner, or as specified by local jurisdiction, before such motorists enter any narrow structures or other restrictions on the highway, to permit the safe passage of the permitted vehicle.

(2) When the escort vehicle is behind the permitted vehicle, the operator shall:

(a) Warn traffic approaching from the rear of the presence of the permitted vehicle ahead, by use of signs and lights as provided in subsections (4) and (8) of this section.

(b) Notify the driver of the permitted vehicle, and driver of any lead escort, by two-way radio of flat tires or other problems with the permitted vehicle; objects coming loose from the permitted vehicle; other traffic approaching or passing the permitted vehicle; and any other circumstances evident to the operator that could affect either the safe movement of the permitted vehicle, the safety of the traveling public, or the efficient movement of traffic, in sufficient time for the driver of the permitted vehicle to take corrective action.

(c) Notify the front escort driver and the driver of the permitted vehicle by two-way radio of traffic build-up and other delays to the normal flow and efficient movement of traffic caused by the movement of the permitted vehicle.

(d) Notify the driver of the permitted vehicle, and driver of any lead escort, by two-way radio of other vehicles attempting to pass the permitted vehicle or load.

(e) Be far enough behind the permitted vehicle to signal motorists following the permitted vehicle to slow or stop in a timely manner, or as specified by local jurisdiction, before narrow structures or other restrictions in the highway, to permit the safe passage of the permitted vehicle.

(3) The escort vehicle operator shall ensure that the escort vehicle is in safe and reliable operating condition.

(4) An escort vehicle shall, in addition to any other equipment required by traffic law, be equipped with a minimum of two flashing or rotating amber lights, positioned above the roof line, visible from a minimum of five hundred feet to traffic approaching from the front or rear of the escort. The light apparatus must not obstruct, or be obstructed by, the required OVERSIZE LOAD sign.

(5) The escort vehicle shall:

(a) Be either a single unit passenger car or a two-axle truck;

(b) Not exceed a maximum gross vehicle weight rating of fourteen thousand pounds;

(c) Be at least sixty inches wide;

(d) Not exceed the legal limits of size and weight, as defined in chapter 46.44 RCW; and

(e) Be equipped with outside rear-view mirrors on each side of the vehicle.

(6) The escort vehicle shall not carry any passengers, human or animal, except for certified individuals in training status or necessary flag persons. No equipment or load may be carried in or on the escort vehicle which:

(a) Exceeds the height, length, or width of the escort vehicle, or overhangs the escort vehicle, or otherwise impairs its immediate recognition as a safety escort vehicle by the motoring public; or

(b) Obstructs the view of the flashing or rotating yellow lights, or the signs used by the escort vehicle; or

(c) Causes safety risks; or

(d) Otherwise impairs the performance by the operator or the escort vehicle of the duties required by these rules.

(7) The escort vehicle operator shall properly load and secure any item(s) or equipment or load carried by the escort vehicle to ensure compliance with the requirements of this section.

(8) An escort vehicle shall display "oversize load" signs, in clear readable condition, which shall be mounted above the roofline of the escort vehicle and be visible to approaching traffic from the front and the rear. All such signs shall be a minimum of five feet wide, ten inches high with one-inch wide brush stroke, black letters a minimum of eight inches high on yellow background.

(9) The escort vehicle(s) shall have its headlights activated at all times when escorting a permitted vehicle.

(10) The escort vehicle shall be equipped with a two-way radio capable of providing reliable two-way voice communication between the driver of the permitted vehicle and the driver(s) of the escort vehicle(s) when the permitted vehicle is in motion on a public highway.

(11) An escort vehicle shall carry the following items of equipment at all times when escorting a permitted vehicle:

(a) Standard eighteen inch STOP & SLOW paddle sign.

(b) Three bi-directional emergency reflective triangles.

(c) A minimum of one 5 pound B, C, fire extinguisher, or equivalent.

(d) A reflectorized high visibility orange or other color vest, shirt or jacket, as permitted by the *Manual on Uniform Traffic Control Devices*, and a yellow or other highly visible colored hard hat to be worn by the operator while directing traffic, in accordance with WAC 296-155-305, Signaling.

(e) A height measuring device which is nonconductive and nondestructive to overhead clearances, when required by the terms of the permit or regulations.

(f) First-aid supplies must be readily available as described in WAC 296-800-15020.

(g) A flashlight in working order with red nose cone.

(12) An escort vehicle is prohibited from escorting more than one permitted vehicle at the same time, unless expressly authorized by the department.

(13) A front escort vehicle shall use a height pole at all times when escorting a permitted vehicle exceeding fourteen feet six inches in height, unless otherwise expressly autho-

rized/directed by the department on the permit. The height pole shall not extend less than three inches nor more than six inches above the maximum height of the permitted vehicle being escorted. When the escort vehicle is not escorting a permitted vehicle, but is moving on the highway, the height pole shall be removed, tied down, or shortened to within legal limits, unless involved in the act of prerunning a route to determine height acceptance.

(14) When an escort vehicle is not escorting a permitted vehicle, or prerunning a route, but is moving on a public highway, the signs, described in subsection (8) of this section, shall either be removed, lowered to a position not readily visible, or covered, and the flashing yellow lights, described in subsection (4) of this section, shall not be operated: Provided, the flashing yellow lights may be used as traffic warning devices during the prerunning of a route when the escort vehicle is sitting stationary on the shoulder of the road during the measurement of structures.

(15) In the performance of the duties required by these rules, the operator of the escort vehicle may be required to advise the permitted vehicle to stop, allowing other traffic to proceed safely. The operator of the escort vehicle shall signal the permitted vehicle to stop, and the permitted vehicle shall stop, as far off the roadway as practicable to allow other traffic to pass in the following situations:

(a) When the permitted vehicle becomes disabled; or

(b) When the movement of the permitted vehicle on a particular section of public highway presents a safety risk or unreasonably interferes with the efficient movement of other traffic, based upon such factors as the widths of the permitted vehicle and the roadway, volume of other traffic, visibility and limited sight distance, and mountainous terrain; or

(c) When driving conditions for the permitted vehicle are hazardous for any other reason, including weather.

(16) The operator of the permitted vehicle and the operator(s) of the escort vehicle(s) shall comply with the following procedures:

(a) Before trip:

(i) Discuss aspects of the move, including the permitted vehicle, the route, and specific responsibilities.

(ii) Review permit special conditions.

(iii) Review the permitted route.

(iv) Determine the proper position of the escort vehicle(s).

(v) Establish any necessary procedures.

(vi) Check mandatory equipment, each operator being responsible for their own vehicle.

(vii) Mount signs, adjust mirrors, turn on lights.

(viii) Check each two-way radio to ensure clear communication on a selected channel.

(ix) Assure special motor vehicle permit(s) is in the possession of the appropriate operator(s).

(x) Determine if additional flagpersons will be necessary and, if so, have them available.

(b) During the trip:

(i) Obey all traffic laws.

(ii) Do not follow or precede more closely than is reasonably prudent, considering the speed of the permitted vehicle, other traffic, and highway conditions.

(iii) Do not exceed 1/2 mile distance between permitted vehicle and the escort vehicle to maintain radio contact,

except when necessary to safely travel a long narrow section of highway.

(c) Traffic lights:

(i) If the front escort vehicle goes through a traffic light but the permitted vehicle does not, the escort vehicle must pull over to the right side of the highway, where practicable, to wait for the permitted vehicle.

(ii) If the permitted vehicle goes through the traffic light but the escort vehicle does not, then the permitted vehicle must pull over to the right side of the highway, where practicable, to wait for the rear escort vehicle.

(17) Compliance with the rules of this chapter requires safe consistent operating procedures for the interaction between escort vehicle, escorted load and the surrounding traffic. Operators of escort vehicles, therefore, must be certified as having received a predefined base level of training as an escort vehicle operator. An escort vehicle operator with a Washington state driver's license must have a valid Washington state escort vehicle operator certificate/card which must be on the operator's person while performing escort vehicle operator duties. Escort vehicle operators with a driver's license from a jurisdiction other than Washington state may acquire a Washington state escort vehicle operator certificate/card, or operate with a certification from another department approved jurisdiction, subject to ongoing department reviews and approval of the issuing jurisdiction's certification program. A current list of approved programs will be maintained by the department's motor carrier services office. Washington state pilot/escort vehicle operator cards must be renewed every three years.

(18) When uniformed off-duty law enforcement officers act as escorts, using official police cars or motorcycles, the requirements of this section may be amended as necessary.

[Statutory Authority: RCW 46.44.090, 03-20-070, § 468-38-110, filed 9/29/03, effective 10/30/03; 00-11-020 (Order 198), § 468-38-110, filed 5/9/00, effective 6/9/00; 99-08-025 (Order 191), § 468-38-110, filed 3/30/99, effective 4/30/99; 98-16-048 (Order 179), § 468-38-110, filed 7/31/98, effective 8/31/98; 82-18-010 (Order 31, Resolution No. 156), § 468-38-110, filed 8/20/82. Formerly WAC 468-38-190. Statutory Authority: 1977 ex.s.c 151. 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-38-110, filed 12/20/78. Formerly WAC 252-24-110.]

WAC 468-38-265 Emergency operation of tow trucks. The permitting of overweight tow trucks that respond to emergencies shall be governed by the following procedures:

(1) An emergent tow is defined as the movement of a disabled vehicle(s) from any public roadway, including ramps and shoulder, and due to the necessity for an immediate response (referred to as the "initial tow truck service" in RCW 46.44.015), the appropriate overweight permit cannot be determined until the operator arrives at the disabled vehicle.

(2) When a tow truck operator/dispatcher has been called to respond to an emergent situation, the operator/dispatcher will telephone the nearest traffic management center (TMC) and be logged in to clear the obstacle. The TMC employee on duty shall consult the map "*Washington State Highways Tow Truck Restrictions: For Emergency Use Only* (as last revised)." Bridges that may be crossed by tandem axle loadings estimated by the tow truck operator may be approved for the emergency move.

(3) To log in with the TMC, the tow truck operator/dispatcher shall provide the following: Name of company, name of individual making request, telephone number, tow vehicle license, excess weight needed, the origin and destination, the state route numbers to be used during the tow and description of vehicle being towed. The TMC employee on duty, after verifying the requested route with the map, will issue an identification or clearance number for the tow. This approval is for state routes only and gives no authorization for movement on county roads or city streets.

(4) If the map showing tow truck restrictions does not indicate that the routes can safely tolerate the weight being requested, the tow truck operator is limited to moving the vehicle off the road to the nearest place of safety. When the weight is too heavy to be moved on some bridges or highways, a request during regular working hours for a permit and a bridge analysis will be required before the load may be transported.

(5) The tow truck operator/dispatcher shall apply for and acquire the appropriate permit on the next business day from the department's motor carrier services office.

(6) Permits for routine movements other than emergency tow truck moves shall be requested through available DOT permits offices, agents or facsimile services.

[Statutory Authority: RCW 46.44.090 and 46.44.015. 03-19-026, § 468-38-265, filed 9/8/03, effective 10/9/03. Statutory Authority: RCW 46.44.090. 95-24-074, § 468-38-265, filed 12/4/95, effective 1/4/96.]

WAC 468-38-340 Speed limits. (1) Unless otherwise stated, maximum speeds for vehicles, combination of vehicles, or vehicles and loads being operated under permit shall be as posted for trucks.

(2) When travel on the roadway shoulder is required on a two-lane highway to allow overtaking traffic to pass, the speed will not exceed 25 miles per hour.

(3) If a speed limit is stated in a permit it becomes one of the conditions upon which the permit has been issued. This stated speed limit shall not be exceeded, but if a lower limit is posted on any highway, it shall take precedence. Violation of the speed limit stated in the permit will render the permit null and void.

[Statutory Authority: RCW 46.44.090. 03-03-035, § 468-38-340, filed 1/10/03, effective 1/10/03; 82-18-010 (Order 31, Resolution No. 156), § 468-38-340, filed 8/20/82. Statutory Authority: 1977 ex.s. c 151. 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-38-340, filed 12/20/78. Formerly WAC 252-24-357.]

Chapter 468-58 WAC

LIMITED ACCESS HIGHWAYS

WAC

468-58-010
468-58-080

Definitions.
Guides for control of access on crossroads and interchange ramps.

WAC 468-58-010 Definitions. The following definitions shall designate limited access highways and shall indicate the control of access to be exercised by each:

(1) "Fully controlled limited access highway" is a highway where the right of owner or occupants of abutting land or other persons to access, light, air, or view in connection with the highway is controlled to give preference to through traffic

by providing access connections with selected public roads only, and by prohibiting crossings or direct private driveway connections at grade, with the exception of Type C and F approaches, where no other reasonable means of access exists as solely determined by the department.

(2) "Partially controlled limited access highway" is a highway where the right of owner or occupants of abutting land or other persons to access, light, air, or view in connection with the highway is controlled to give preference to through traffic to a degree that, in addition to access connections with selected public roads, there may be some crossings and some private driveway connections at grade. Commercial approaches to partially controlled limited access highways are allowed only to frontage roads or by means of public road intersections. A partially controlled limited access highway may be designed to provide for separation of a part or all road crossings and the elimination of a part or all direct private driveway connections under a stage plan of future construction.

(3) "Modified controlled limited access highway" is a highway where the right of owner or occupants of abutting land or other persons to access, light, air, or view in connection with the highway is controlled to give preference to through traffic to such a degree that most approaches, including commercial approaches, existing and in use at the time of the establishment, may be allowed.

(4) "An expressway limited access highway" is a partially controlled limited access highway of four or more traffic lanes with the opposing lanes of travel separated by a median strip of arbitrary width.

(5) "A freeway limited access highway" is a fully controlled limited access highway of four or more traffic lanes with the opposing traffic lanes separated by a median strip of arbitrary width.

[Statutory Authority: RCW 47.52.027. 03-23-048, § 468-58-010, filed 11/14/03, effective 12/15/03. Statutory Authority: RCW 47.52.020. 79-08-061 (Order 34), § 468-58-010, filed 7/23/79. Statutory Authority: 1977 ex.s. c 151. 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-58-010, filed 12/20/78. Formerly WAC 252-20-010.]

WAC 468-58-080 Guides for control of access on crossroads and interchange ramps. (1) Fully controlled highways, including interstate.

(a) There shall be no connections to abutting property or local service or frontage roads within the full length of any "off" or "on" interchange ramp from a fully controlled limited access highway. Such ramp shall be considered to terminate at its intersection with the local road which undercrosses or overcrosses the limited access facility, provided that in urban areas "off" and "on" ramps may be terminated at local streets other than crossroads where necessary to service existing local traffic.

(b) There shall be no direct connections from the limited access facility in rural areas to local service or frontage roads except through interchanges.

(c) In both urban and rural areas access control on a fully controlled highway shall be established along the crossroad at an interchange for a minimum distance of three hundred feet beyond the centerline of the ramp or terminus of transition taper. If a frontage road or local road is located in a generally parallel position within three hundred fifty feet of a

ramp, access control should be established along the crossroad and in addition for a minimum distance of one hundred thirty feet in all directions from the center of the intersection of the parallel road and crossroad.

(d) Full control of access should be provided along the crossroad from the centerline of a ramp or terminus of a transition taper for a minimum distance of three hundred feet. Upon determination by the department, full control of access may be provided for the first one hundred thirty feet from the centerline of the ramp or terminus of a transition taper and partial control or modified control of access may be provided for the remainder of the distance to the frontage road or local road for a total minimum distance for the two types of control of three hundred feet. Type A, B, C, D, E, and F road approaches, as defined hereafter under subsection (3) of this section, "general," may be permitted on that portion of the crossroad on which partial or modified control of access is established.

(2) Partially controlled highways.

(a) There shall be no connections to abutting property or local service or frontage roads within the full length of any "off" or "on" interchange ramp from a partially controlled limited access highway. Such ramp shall be considered to terminate at its intersection with the local road which undercrosses or overcrosses the limited access facility, provided that in urban areas "off" and "on" ramps may be terminated at local streets other than crossroads where necessary to service existing local traffic.

(b) In both urban and rural areas access control on a partially controlled highway shall be established along the crossroad at an interchange for a minimum distance of three hundred feet beyond the centerline of the ramp or terminus of transition taper. If a frontage road or local road is located in a generally parallel position within three hundred fifty feet of a ramp, access control should be established along the crossroad and in addition for a minimum distance of one hundred thirty feet in all directions from the center of the intersection of the parallel road and crossroad.

(c) Access control limits at the crossroads on a partially controlled highway should be established along the crossroad at a grade intersection for a minimum distance of three hundred feet from the centerline of the nearest directional roadway. If a parallel road is located within three hundred fifty feet of said grade intersection, access control should be established along the crossroad and in addition for a minimum distance of one hundred thirty feet in all directions from the center of the intersection of the parallel road and crossroad. Type D, E, and F approaches may be permitted closer than one hundred thirty feet from the center of the intersection only when they already exist and cannot reasonably be relocated.

(d) Access control limits at intersections on modified control highways should be established along the cross road for a minimum distance of one hundred thirty feet from the centerline of a two-lane highway or for a minimum of one hundred thirty feet from centerline of the nearest directional roadway of a four-lane highway. Type D, E, and F approaches should be allowed within this area only when no other reasonable alternative is available.

(3) General.

(a) Access control may be increased or decreased beyond or under the minimum requirements to fit local conditions if so determined by the department.

(b) Type A, B, C, D, E, and F approaches are defined as follows:

(i) Type A approach. Type A approach is an off and on approach in legal manner, not to exceed thirty feet in width, for sole purpose of serving a single family residence. It may be reserved by abutting owner for specified use at a point satisfactory to the state at or between designated highway stations.

(ii) Type B approach. Type B approach is an off and on approach in legal manner, not to exceed fifty feet in width, for use necessary to the normal operation of a farm, but not for retail marketing. It may be reserved by abutting owner for specified use at a point satisfactory to the state at or between designated highway stations.

(iii) Type C approach. Type C approach is an off and on approach in legal manner, for special purpose and width to be agreed upon. It may be specified at a point satisfactory to the state at or between designated highway stations.

(iv) Type D approach is an off and on approach in a legal manner not to exceed fifty feet in width for use necessary to the normal operation of a commercial establishment. It may be specified at a point satisfactory to the state at or between designated highway stations.

(v) Type E approach is a separated off and on approach in a legal manner, with each opening not exceeding thirty feet in width, for use necessary to the normal operations of a commercial establishment. It may be specified at a point satisfactory to the state at or between designated highway stations.

(vi) Type F approach is an off and on approach in a legal manner, not to exceed thirty feet in width, for the sole purpose of serving a wireless communication site. It may be specified at a point satisfactory to the state at or between designated highway stations.

The state shall only authorize such approach by the issuance of a nonassignable permit. The permit allows site access for the normal construction, operation and maintenance of the wireless communication site for the permit holder and its contractors but not its subtenants. If a sale or merger occurs that affects an existing wireless communication site, the new wireless communication provider will be authorized to utilize said approach upon the state's receipt of written notice of the sale or merger action. The wireless communication site access permit may be canceled upon written notice for reasons specified in the wireless communication site access permit general provisions. The permit will only be issued if it meets all state criteria, including, but not limited to, design and safety standards.

Only one wireless communication site access user per permit shall be allowed, but more than one permit may be issued for a single Type F approach.

Each permitted access user shall be required to pay to the state five hundred dollars annually in compensation for use of the state-owned access rights, at the time of the issuance of the permit and each year thereafter.

Since the state is the owner of the access, Type F approach permits shall not be issued pursuant to chapter 47.50 RCW and shall not confer a property right upon the

permittee(s). An applicant for a Type F approach permit shall pay a nonrefundable access application fee when application is made in the amount of five hundred dollars for investigating, handling and granting the permit.

An application for wireless communication site access permit shall receive a response from the department of transportation within thirty working days from date of receipt of said application.

(c) Under no circumstances will a change in location or width of an approach be permitted unless approved by the secretary. Noncompliance or violation of these conditions will result in the immediate closure of the approach.

(d) Commercial approaches shall not be permitted within the limits of access control except where modified access control has been approved by the department.

(e) All access control shall be measured from the centerline of the ramps, crossroads or parallel roads or from the terminus of transition tapers. On multiple lane facilities measurement shall be from the centerline of the nearest directional roadway.

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ACCESS CONTROL FOR TYPICAL ROUNDABOUT

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ACCESS CONTROL LIMITS AT INTERSECTIONS

[Statutory Authority: RCW 47.52.027. 03-11-076, § 468-58-080, filed 5/20/03, effective 6/20/03. Statutory Authority: RCW 47.01.101(5). 87-15-021 (Order 109), § 468-58-080, filed 7/8/87. Statutory Authority: RCW 47.52.020. 79-08-061 (Order 34), § 468-58-080, filed 7/23/79. Statutory Authority: 1977 ex.s. c 151. 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-58-080, filed 12/20/78. Formerly WAC 252-20-051.]

Chapter 468-70 WAC
MOTORIST INFORMATION SIGNS

WAC

468-70-050	Business eligibility.
468-70-070	Permits and procedure.
468-70-080	Repealed.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

468-70-080	Fee schedule. [Statutory Authority: Chapter 34.05 RCW and RCW 47.42.060. 00-01-184 (Order 196), § 468-70-080, filed 12/22/99, effective 1/22/00. Statutory Authority: Chapter 47.42 RCW. 87-01-054 (Order 106), § 468-70-080, filed 12/16/86; 85-17-012 (Order 96), § 468-70-080, filed 8/12/85. Statutory Authority: RCW 47.42.060. 85-03-031 (Order 94), § 468-70-080, filed 1/10/85. Statutory Authority: 1977 ex.s. c 151. 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-70-080, filed 12/20/78. Formerly WAC 252-42-070.] Repealed by 03-20-082, filed 9/30/03, effective 10/31/03. Statutory Authority: RCW 47.36.325 and the 2002 supplemental appropriation bill.
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WAC 468-70-050 Business eligibility. (1) To be eligible for placement of a business sign on a motorist information sign panel a motorist service activity must conform to the following standards:

- (a) Gas activity:
 - (i) Provide vehicle services including fuel, oil, tire repair and water; and
 - (ii) Be in continuous operation at least sixteen hours a day, seven days a week; and
 - (iii) Provide restroom facilities, drinking water and a telephone access;
 - (iv) Motorist information sign panels may be installed and existing signing will not be removed when the motorist service activity is closed for a short period of time or when its hours of operation have been reduced as a result of a shortage of gasoline;
 - (v) Activities not meeting the tire repair requirement of (i) of this subsection but have gas, oil, and water may qualify for signing provided that the motorist information sign panel displays fewer than the full complement of business signs. A telephone must also be available at no cost for a person to use to acquire tire repair;
 - (vi) Business signs for card-lock gas activities may be installed, provided that the activities serve the general motoring public, without membership, and accept a variety of credit cards available to the general public. Card-lock gas activities must also meet the applicable requirements of (a)(i) through (v) of this subsection.
- (b) Food activity:
 - (i) Be licensed or approved by the county health office; and
 - (ii) Be in continuous operation for a minimum of twelve hours a day to serve meals six days a week; and
 - (iii) Have inside seating for a minimum of twenty patrons and parking facilities for a minimum of ten vehicles; and
 - (iv) Provide telephone and restroom facilities.
- (c) Lodging activity:
 - (i) Be licensed or approved by the Washington department of health; and

- (ii) Provide adequate sleeping and bathroom accommodations available without reservations for rental on a daily basis; and
- (iii) Provide public telephone facilities.
- (d) Camping activity (applicable only for activities available from interstate highways):
 - (i) Have a valid business license;
 - (ii) Consist of at least twenty camping spaces, at least fifty percent of which will accommodate tents, and have adequate parking, modern sanitary and drinking water facilities for such spaces; and
 - (iii) Have an attendant on duty to manage and maintain the facility twenty-four hours a day while in operation.
- (e) Recreation activity (applicable only for activities available from noninterstate highways):
 - (i) Consist of activities and sports of interest to family groups and the public generally in which people participate for purposes of active physical exercise, collective amusement or enjoyment of nature; e.g., hiking, golfing, skiing, boating, swimming, picnicking, camping, fishing, tennis, horseback riding, ice skating and gun clubs; and
 - (ii) Be licensed or approved by the state or local agency regulating the particular type of business; and
 - (iii) When the recreational activity is a campground, it must meet the criteria specified in WAC 468-70-050 (1)(d)(i) thru (iii).
 - (f) Tourist-oriented business activity:
 - (i) A natural, recreational, historical, cultural, educational, or entertainment activity, or a unique or unusual commercial or nonprofit activity, the major portion of whose income or visitors are derived during its normal business seasons from motorists not residing in the immediate area of the activity.
 - (ii) Activities must be open to the motoring public without appointment, at least six hours a day, five days a week including Saturday and/or Sunday.
- (2) Distances prescribed herein will be measured from the center of the interchange or intersection along the centerline of the most direct public road to the facility access.
- (3) The maximum distance that **gas, food, lodging, camping, recreational, or tourist-oriented** activities can be located on either side of an interchange or intersection to qualify for a business sign shall be as follows:
 - (a) From an interstate highway, **gas, food and lodging** activities shall be located within three miles in either direction. **Camping or tourist-oriented** activities shall be located within five miles in either direction;
 - (b) From a noninterstate highway, **gas, food, lodging, recreation, or tourist-oriented** activities shall be located within five miles in either direction.
 - (c) Where there are fewer than the maximum number, as specified in WAC 468-70-060 (3)(a), of eligible services within the distance limits prescribed in subsection (3)(a) and (b) of this section, the distance limits may be increased up to a maximum of fifteen miles to complete the balance of allowable signs.
 - (i) In reference to WAC 468-70-040(3), the department may erect and maintain signs on an alternate route that is longer than fifteen miles if it is safer and still provides reasonable and convenient travel to an eligible activity.

(ii) The department may erect and maintain signs on a route up to a maximum of twenty miles if an activity qualifies as eligible and is located within a distressed area under the criteria set forth in chapter 43.165 RCW.

(4) Within cities and towns having a population greater than twenty-two thousand five hundred, the department shall obtain concurrence from the municipality of locations for installing panels, and may request that the municipality install the panels.

(5) A **gas, food, lodging, camping/recreational, or tourist-oriented** activity visible from the mainline at least three hundred feet prior to an intersection shall not qualify for a business sign on such highway. The activity's on-premise sign is considered part of that activity in determining the three hundred foot visibility.

(6) When a multiple business activity qualifies for business sign placement on more than one type of motorist information sign panel, placement will be made on that type of panel which, as determined by the department, best describes the main product or service. Additional business signs for a qualifying multiple business activity may only be placed on more than one type of motorist information sign panel where the applicable panels display fewer than a full complement of business signs. Where these additional business signs complete the full complement of business signs on a motorist information sign panel, the most recently installed of such additional business signs shall be substituted for in the event that a qualifying single business activity applies to receive business signs.

(7) Motorist information sign panels will not be erected and maintained by the department until adequate follow-through signing, as specified by the department, is erected on local roads and/or streets. Written assurance that the follow-through signs will be maintained is required.

(8) Where operations are seasonal, business signs for each specific location shall be removed or covered during the appropriate period as determined by the department.

[Statutory Authority: RCW 47.36.310 and 47.36.320. 03-20-084, § 468-70-050, filed 9/30/03, effective 10/31/03. Statutory Authority: Chapter 34.05 RCW and RCW 47.42.060. 00-01-184 (Order 196), § 468-70-050, filed 12/22/99, effective 1/22/00. Statutory Authority: Chapter 47.42 RCW and RCW 47.01.101. 91-17-012 (Order 129), § 468-70-050, filed 8/13/91, effective 9/13/91. Statutory Authority: Chapter 47.42 RCW. 87-01-054 (Order 106), § 468-70-050, filed 12/16/86; 85-17-012 (Order 96), § 468-70-050, filed 8/12/85. Statutory Authority: RCW 47.42.060. 85-03-031 (Order 94), § 468-70-050, filed 1/10/85. Statutory Authority: 1977 ex.s. c 151. 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-70-050, filed 12/20/78. Formerly WAC 252-42-040.]

WAC 468-70-070 Permits and procedure. (1) No business signs will be installed on motorist information sign panels prior to issuance of a permit by the department. Permits will be issued by the department in accordance with this chapter.

(2) Permit applications will be accepted at the appropriate department of transportation regional office in care of the regional administrator. Applications transmitted by mail shall be effective from date of receipt rather than of mailing.

(3) One permit application will be for all the signing that the applicant will qualify for at a single interchange or intersection.

(4) Application forms, which may be obtained from the department, shall contain the following information:

(a) Name and address of the owner of the business to be advertised.

(b) The highway for which the applicant seeks signing.

(c) A description of the interchange or intersection for which the business sign is to be installed.

(d) A statement of the business location including exact travel distance from the interchange or intersection and precise roads used for access.

(e) An agreement to limit the height of any on-premise sign to no greater than fifteen feet higher than the roof of the main building, measured to the bottom of the sign for businesses located within one mile of an interchange or intersection. (Not applicable along interstate highways if the sign is not visible to the highway.)

Pursuant to RCW 47.36.310, for on-premise signs visible along rural interstate highways the department may waive the fifteen-foot height requirement, on a case-by-case basis, where granting the waiver will not preclude another business having an on-premise sign which complies with the fifteen-foot height requirement from receiving business signs.

(f) Such other information as may be required by the department.

(5) Each permit application will include a sketch, drawing or picture of the message to be placed on the business signs. Business signs may not display messages advertising products or services incidental to the qualifying motorist service activity. The department shall have final approval of the design of the business sign and may modify such submissions to achieve uniformity.

(6) Any party aggrieved by an application determination of the department shall be accorded hearing rights before the secretary of transportation or his designee pursuant to chapter 34.05 RCW.

(7) Fabrication and installation of business signs:

(a) Once an application is approved, the department will request the business to provide the signs for installation. Such signs shall be built to the department's specifications prescribed by WAC 468-70-060. Prior to installation the business shall agree to reimburse the department for the actual installation costs.

(b) The reimbursable business sign installation fees referenced in (a) of this subsection may vary from sign site to sign site.

(8) Business sign and motorist information sign panel maintenance and replacement:

(a) Maintenance replacement business signs shall be provided by the business, when requested by the department to replace weather worn business signs. The department will install the replacement business sign after the business agrees to reimburse the department for the actual installation costs as described in subsection (7) of this section.

(b) The annual maintenance replacement fee charged to each business for motorist information sign back panels is one hundred dollars for businesses signed at interchanges and thirty-five dollars for businesses signed at intersections.

(c) Annual maintenance fees shall be paid within thirty calendar days after the anniversary of the permit issue. These fees will not be prorated for fractions of the year in the event of business sign removal or coverage. Failure to pay the

annual maintenance fees within thirty calendar days after the anniversary of the permit issue will cause the permit to expire and the business signs to be removed from the motorist information sign panels.

(9) In the event of change of ownership or operation, assignment of permits in good standing shall be effective only upon receipt of assignment by the department. The department will not reassign permits in the event of change of both ownership and operation.

(10) Revocation and expiration:

(a) After hearing before the secretary of transportation or his designee, as required by chapter 34.05 RCW (Administrative Procedure Act) and the rules and regulations of the department adopted pursuant thereto, any permit may be revoked by the secretary or the secretary's designee who has conducted the hearing for any of the following reasons:

(i) For the making of any false or misleading statements in the application for any permit, whether or not the same is material to or relied upon by the department in the issuance of such permit when such false or misleading statement or information shall remain uncorrected after the expiration of thirty days following written notification thereof.

(ii) For allowing or suffering any on-premise sign to remain that exceeds the height requirements set forth in this chapter.

(iii) For failure to provide the services and/or facilities required by WAC 468-70-050 and this section.

(b) If a permit is revoked or is allowed to expire, a new application may be accepted by the department and the motorist service activity must meet the requirements of any other applying motorist service activity.

[Statutory Authority: RCW 47.36.325 and the 2002 supplemental appropriation bill. 03-20-082, § 468-70-070, filed 9/30/03, effective 10/31/03. Statutory Authority: Chapter 34.05 RCW and RCW 47.42.060. 00-01-184 (Order 196), § 468-70-070, filed 12/22/99, effective 1/22/00. Statutory Authority: RCW 47.36.030. 95-23-098 (Order 153), § 468-70-070, filed 11/21/95, effective 1/1/96. Statutory Authority: Chapter 47.42 RCW and RCW 47.01.101. 91-17-012 (Order 129), § 468-70-070, filed 8/13/91, effective 9/13/91. Statutory Authority: RCW 47.42.046 and 47.42.047. 88-22-001 (Order 115), § 468-70-070, filed 10/20/88. Statutory Authority: Chapter 47.42 RCW. 87-01-054 (Order 106), § 468-70-070, filed 12/16/86; 85-17-012 (Order 96), § 468-70-070, filed 8/12/85. Statutory Authority: 1977 ex.s. c 151. 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-70-070, filed 12/20/78. Formerly WAC 252-42-060.]

WAC 468-70-080 Repealed. See Disposition Table at beginning of this chapter.

Chapter 468-95 WAC

MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES FOR STREETS AND HIGHWAYS

WAC

468-95-010	General.
468-95-020	Repealed.
468-95-025	Repealed.
468-95-030	Repealed.
468-95-035	Repealed.
468-95-037	Repealed.
468-95-040	Repealed.
468-95-050	Repealed.
468-95-055	Repealed.
468-95-060	Repealed.
468-95-070	Repealed.
468-95-080	Repealed.
468-95-090	Repealed.
468-95-100	Repealed.

468-95-110	Parking for the disabled in urban areas.
468-95-120	Traffic signal signs.
468-95-130	High occupancy vehicle signs.
468-95-140	Signing to regional shopping centers.
468-95-150	No passing zone markings.
468-95-160	Other yellow longitudinal markings.
468-95-170	White lane line markings.
468-95-180	Other white longitudinal pavement markings.
468-95-190	Pavement edge lines and raised pavement markers supplementing other markings.
468-95-200	Approach markings for obstructions.
468-95-210	Raised pavement markers substituting for pavement markings.
468-95-220	Stop line locations.
468-95-230	Crosswalk markings.
468-95-240	Preferential lane longitudinal markings for motorized vehicles.
468-95-250	Meaning of signal indications.
468-95-260	Application of steady signal indications.
468-95-270	Meaning of lane-use control indications.
468-95-280	Operation of lane-use control signals.
468-95-290	County road signing.
468-95-300	Temporary traffic control.
468-95-310	Temporary pavement markings.
468-95-320	School advance warning sign (S-1).
468-95-330	School speed limit assembly (S4-1, S4-2, S4-3, S4-4, S5-1).
468-95-340	School speed limit assembly (S4-1, S4-2, S4-3, S4-4, S5-1).
468-95-350	When children are present.
468-95-360	Crosswalk markings.
468-95-370	Pavement markings for obstructions.
468-95-400	Sign borders.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

468-95-020	Parking for the disabled in urban areas. [Statutory Authority: RCW 46.61.581. 88-22-003 (Order 117), § 468-95-020, filed 10/20/88. Statutory Authority: RCW 47.36.030. 85-01-056 (Order 93), § 468-95-020, filed 12/17/84.] Repealed by 03-06-053, filed 2/28/03, effective 3/31/03. Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030.
468-95-025	Signing to regional shopping centers. [Statutory Authority: Chapter 47.36 RCW and 1987 c 469. 87-19-065 (Order 110), § 468-95-025, filed 9/16/87.] Repealed by 03-06-053, filed 2/28/03, effective 3/31/03. Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030.
468-95-030	No passing zone markings. [Statutory Authority: RCW 47.36.030. 85-01-056 (Order 93), § 468-95-030, filed 12/17/84.] Repealed by 03-06-053, filed 2/28/03, effective 3/31/03. Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030.
468-95-035	Pavement edgelines and raised pavement markers supplementing other markings. [Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 93-17-018 (Order 137), § 468-95-035, filed 8/10/93, effective 9/10/93.] Repealed by 03-06-053, filed 2/28/03, effective 3/31/03. Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030.
468-95-037	Stop line locations. [Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 93-17-018 (Order 137), § 468-95-037, filed 8/10/93, effective 9/10/93.] Repealed by 03-06-053, filed 2/28/03, effective 3/31/03. Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030.
468-95-040	Meaning of signal indications. [Statutory Authority: RCW 47.36.030. 85-01-056 (Order 93), § 468-95-040, filed 12/17/84.] Repealed by 03-06-053, filed 2/28/03, effective 3/31/03. Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030.
468-95-050	Meaning of lane-use control indications. [Statutory Authority: RCW 47.36.030. 85-01-056 (Order 93), § 468-95-050, filed 12/17/84.] Repealed by 03-06-053, filed 2/28/03, effective 3/31/03. Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030.
468-95-055	"MUTCD Part VI." [Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 95-23-097 (Order 154), § 468-95-055, filed 11/21/95, effective 1/10/96.] Repealed by 03-06-053, filed 2/28/03, effective 3/31/03. Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030.
468-95-060	When children are present. [Statutory Authority: RCW 47.36.030. 85-01-056 (Order 93), § 468-95-060, filed

- 12/17/84.] Repealed by 03-06-053, filed 2/28/03, effective 3/31/03. Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030.
- 468-95-070 Meaning of signal indications. [Statutory Authority: RCW 47.36.030. 85-01-056 (Order 93), § 468-95-070, filed 12/17/84.] Repealed by 03-06-053, filed 2/28/03, effective 3/31/03. Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030.
- 468-95-080 Functions. [Statutory Authority: RCW 47.36.030. 85-01-056 (Order 93), § 468-95-080, filed 12/17/84.] Repealed by 03-06-053, filed 2/28/03, effective 3/31/03. Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030.
- 468-95-090 County road signing. [Statutory Authority: RCW 47.36.030. 85-01-056 (Order 93), § 468-95-090, filed 12/17/84.] Repealed by 03-06-053, filed 2/28/03, effective 3/31/03. Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030.
- 468-95-100 Compliance dates. [Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 95-23-097 (Order 154), § 468-95-100, filed 11/21/95, effective 1/10/96; 95-11-022 (Order 151), § 468-95-100, filed 5/8/95, effective 6/8/95; 91-02-008 (Order 127), § 468-95-100, filed 12/21/90, effective 1/21/91.] Repealed by 03-06-053, filed 2/28/03, effective 3/31/03. Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030.

WAC 468-95-010 General. The June 2001 Millennium Edition of the *Manual on Uniform Streets and Highway for Streets and Highways (MUTCD)*, published by the Federal Highway Administration and approved by the Federal Highway Administrator as the national standard for all highways open to public travel, was duly adopted by the Washington state secretary of transportation. The manual includes in part many illustrations, some of which depend on color for proper interpretation. The code reviser has deemed it inexpedient to convert these regulations and illustrations to the prescribed form and style of WAC and therefore excludes them from publication. The document is available for public inspection at the headquarters office and all region offices of the Washington state department of transportation. Further, each city, town, and county engineering office in the state will have a copy of the MUTCD, with revisions and modifications for Washington, in its possession.

[Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-010, filed 2/28/03, effective 3/31/03; 91-02-008 (Order 127), § 468-95-010, filed 12/21/90, effective 1/21/91. Statutory Authority: RCW 47.36.030. 87-05-043 (Order 108), § 468-95-010, filed 2/18/87; 85-23-041 (Order 98), § 468-95-010, filed 11/18/85; 85-01-056 (Order 93), § 468-95-010, filed 12/17/84.]

WAC 468-95-020 Repealed. See Disposition Table at beginning of this chapter.

WAC 468-95-025 Repealed. See Disposition Table at beginning of this chapter.

WAC 468-95-030 Repealed. See Disposition Table at beginning of this chapter.

WAC 468-95-035 Repealed. See Disposition Table at beginning of this chapter.

WAC 468-95-037 Repealed. See Disposition Table at beginning of this chapter.

WAC 468-95-040 Repealed. See Disposition Table at beginning of this chapter.

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WAC 468-95-050 Repealed. See Disposition Table at beginning of this chapter.

WAC 468-95-055 Repealed. See Disposition Table at beginning of this chapter.

WAC 468-95-060 Repealed. See Disposition Table at beginning of this chapter.

WAC 468-95-070 Repealed. See Disposition Table at beginning of this chapter.

WAC 468-95-080 Repealed. See Disposition Table at beginning of this chapter.

WAC 468-95-090 Repealed. See Disposition Table at beginning of this chapter.

WAC 468-95-100 Repealed. See Disposition Table at beginning of this chapter.

WAC 468-95-110 Parking for the disabled in urban areas. Pursuant to RCW 46.61.581 the following modifications to the MUTCD are established:

(1) A paragraph is added to the standard of MUTCD Section 2B.35, Design of Parking, Standing, and Stopping Signs: A parking space or stall for a physically disabled person shall be indicated by a vertical sign with the international symbol of access, whose colors are white on a blue background, described under RCW 70.92.120 and the notice State Disabled Parking Permit Required.

(2) A second Standard is added to MUTCD Section 2B.36 to read: Signs indicating a parking space or stall for a physically disabled person shall be installed between thirty-six and eighty-four inches off the ground.

[Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-110, filed 2/28/03, effective 3/31/03.]

WAC 468-95-120 Traffic signal signs. Pursuant to RCW 46.61.055 amend the second Standard of MUTCD Section 2B.40 to read:

The NO TURN ON RED sign (R10-11a, R10-11b) shall be used to prohibit any right turn on red; or a left turn on red from a one-way or two-way street into a one-way street carrying traffic in the direction of the left turn.

[Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-120, filed 2/28/03, effective 3/31/03.]

WAC 468-95-130 High occupancy vehicle signs. Amend the fourth paragraph of the Standard of MUTCD Section 2B.50 to read:

For concurrent-flow HOV lanes, ground-mounted HOV signs (R3-11) shall be located at intervals based on engineering judgment. Overhead HOV signs (R3-14) should be used to supplement the ground-mounted HOV signs (R3-11) at intervals based on an engineering study.

[Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-130, filed 2/28/03, effective 3/31/03.]

WAC 468-95-140 Signing to regional shopping centers. Pursuant to RCW 47.36.270 a regional shopping center may be signed as a supplemental guide sign destination from state highways in accordance with the applicable sections of MUTCD Part II-D, Guide Signs - Conventional Roads and Part II-E Guide Signs - Freeways and Expressways, and in accordance with subsections (1) through (8) of this section.

(1) There shall be at least 500,000 square feet of leasable retail floor space;

(2) There shall be at least three major department stores owned by national or regional retail chain organizations;

(3) The center shall be located within one highway mile of the state highway;

(4) The center shall generate at least 9,000 daily one-way vehicle trips to the center;

(5) Sufficient sign space as specified in the MUTCD shall be available for installation;

(6) Supplemental follow-through directional signing is required on county roads or city streets at key motorist decision points, if the center is not clearly visible from the point of exit from the state highway. The required supplemental follow-through directional signs shall be installed by the city or county prior to the installation of signs on the state highway;

(7) Signing on the state highway to a county road or city street that bears the name of the regional shopping center fulfills the statutory requirements for signing to those centers;

(8) The costs of materials and labor for fabricating, installing, and maintaining regional shopping center signs shall be borne by the center.

[Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-140, filed 2/28/03, effective 3/31/03.]

WAC 468-95-150 No passing zone markings. Amend the third Standard of MUTCD Section 3B.02, to read:

On two-way, two- or three-lane roadways where centerline markings are installed, no-passing zones shall be established at vertical curves and other locations where an engineering study indicates that passing must be prohibited because of inadequate sight distances or other special conditions.

On two-way, two- and three-lane roadways where centerline markings are installed, no-passing zones shall be established at horizontal curves where an engineering study indicates passing must be prohibited because of inadequate sight distances or other special conditions. A January 17, 2007, compliance date is established.

On three-lane roadways where the direction of travel in the center lane transitions from one direction to the other, a no-passing buffer zone shall be provided in the center lane as shown in Figure 3B-4. A lane transition shall be provided at each end of the buffer zone.

The buffer zone shall be a median island consisting of a lane transition in each direction and a minimum of a 15 m (50 ft) buffer zone. In areas where no-passing zones are required because of limited passing sight distances, the buffer zone shall be the distances between the beginnings of the no-passing zones in each direction.

[Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-150, filed 2/28/03, effective 3/31/03.]

WAC 468-95-160 Other yellow longitudinal markings. Amend the second Standard of MUTCD Section 3B.03 to read:

If a continuous median island formed by pavement markings separating travel in opposite directions is used, the island may be formed by two single normal solid yellow lines, a combination of two single normal solid yellow lines with yellow crosshatching between the lines with a total width not less than eighteen inches, two sets of double solid yellow lines, or a solid yellow line not less than eighteen inches in width. All other markings in the median island area shall be yellow, except crosswalk markings, which shall be white (see MUTCD Section 3B.17).

[Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-160, filed 2/28/03, effective 3/31/03.]

WAC 468-95-170 White lane line markings. Amend the third Standard of MUTCD Section 3B.04 to read:

Where crossing is prohibited, the lane line markings shall consist of two normal solid white lines or a single wide white line, supplemented with lane change prohibition signing.

[Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-170, filed 2/28/03, effective 3/31/03.]

WAC 468-95-180 Other white longitudinal pavement markings. Amend MUTCD Section 3B.05, to change the dimensions shown on Figure 3B-10 for drop lane markings from 3' markings with a 9' gap to 3' markings with a 12' gap.

[Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-180, filed 2/28/03, effective 3/31/03.]

WAC 468-95-190 Pavement edge lines and raised pavement markers supplementing other markings. Pursuant to RCW 47.36.280, the Standard in MUTCD Section 3B.07, is revised as follows:

Edge lines shall be used on all interstate highways, on rural multilane divided highways, on all principal arterials and minor arterials within urbanized areas, except when curb or sidewalk exists, and may be used on other classes of roads. Jurisdictions shall conform to these requirements at such time that it undertakes to renew or install permanent markings on new or existing roadways. The lines shall be white except that on the left edge of each roadway of divided streets and highways and one-way roadway in the direction of travel, the lines shall be yellow.

These standards shall be in effect, as provided in this section, unless the legislative authority of the local governmental body finds that special circumstances exist affecting vehicle and pedestrian safety that warrant a site-specific variance.

Pursuant to RCW 47.36.280, the first paragraph under Option of MUTCD Section 3B.13 is revised to read as follows:

Raised pavement markers may also be used to supplement other markings for channelizing islands or approaches to other objects. The general use of raised pavement markers along right edge lines is strongly discouraged because they can cause steering difficulties and make bicyclists lose control of their vehicles. Raised or recessed pavement markers may be used along right edge lines on the taper in lane transition sections, on approaches to objects and within channeliza-

tion at intersections. Raised or recessed pavement markers can only be used along right edge lines at other locations where an engineering study has determined the markers are essential to preserving pedestrian, bicycle, and motor vehicle safety. At the initiation of the engineering study, local bicycling organizations, the regional member of the state bicycling advisory committee, or the WSDOT bicycle and pedestrian program manager shall be notified of the study for review and comment. Positioning and spacing of the markers in such cases must be determined by engineering judgment taking into consideration their effect on bicycle, pedestrian, and motor vehicle safety. Other applications of raised or recessed pavement markers along right edge lines of arterials are considered to be nonconforming with this section. Cities and counties shall remove nonconforming raised pavement markings at the time that they prepare to resurface roadways, or earlier at their option.

These standards shall be in effect, as provided in this section, unless the legislative authority of the local governmental body finds that special circumstances exist affecting vehicle and pedestrian safety that warrant a site-specific variance.

[Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-190, filed 2/28/03, effective 3/31/03.]

WAC 468-95-200 Approach markings for obstructions. Amend the first Standard of MUTCD Section 3B.10 to read:

Pavement markings shall be used to guide traffic away from fixed obstructions within a paved roadway. Approach markings for bridge supports, refuge islands, median islands, and channelization islands (except channelization islands formed by paint stripes or raised pavement markers) shall consist of a diagonal line or lines extending from the centerline or the lane line to a point 0.3 to 0.6 m (1 to 2 ft) to the right side, or to both sides, of the approach end of the obstruction (see Figure 3B-13).

Amend the third Standard of MUTCD Section 3B.10 to read:

If traffic is required to pass only to the right of the obstruction, the markings shall consist of a no-pass marking, approaching the obstruction, at least twice the length of the diagonal portion as determined by the appropriate taper formula (see Figure 3B-13).

Modify MUTCD Figure 3B-13, Item a - Center of two-lane road, to show a single no-pass marking on the approach to the obstruction.

[Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-200, filed 2/28/03, effective 3/31/03.]

WAC 468-95-210 Raised pavement markers substituting for pavement markings. Amend the first sentence in the first Standard of MUTCD Section 3B.14 to read:

If raised pavement markers are substituted for broken line markings, a group of 3 to 5 markers equally spaced at no greater than $N/8$ (see Section 3A.06), or at the one-third points of the line segment if N is other than 12 m (40 ft), with a least one retroreflective or internally illuminated marker used per group.

[Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-210, filed 2/28/03, effective 3/31/03.]

[2004 WAC Supp—page 2044]

WAC 468-95-220 Stop line locations. Amend the second Guidance of MUTCD Section 3B.16 to read:

Stop or yield lines, where used, should ordinarily be placed four feet in advance of and parallel to the nearest crosswalk line. In the absence of a marked crosswalk, the stop or yield line should be placed at the desired stopping point, in no case less than 4 feet from the nearest edge of intersecting roadway.

Stop lines at midblock signalized locations should be placed at least 40 feet in advance of the nearest signal indication (see MUTCD Section 4D.15).

[Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-220, filed 2/28/03, effective 3/31/03.]

WAC 468-95-230 Crosswalk markings. Amend the second Guidance in MUTCD Section 3B.17 to read:

If used, the diagonal or longitudinal lines should form a 24-inch wide marking pattern consisting of two 8-inch wide markings separated by an 8-inch wide gap or a 24-inch wide solid marking pattern. The marking patterns should be spaced 12 to 60 inches apart but with the maximum gap between marking patterns not to exceed 2.5 times the marking pattern width. Longitudinal marking patterns should be located to avoid the wheel paths and should be oriented parallel with the wheel paths.

[Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-230, filed 2/28/03, effective 3/31/03.]

WAC 468-95-240 Preferential lane longitudinal markings for motorized vehicles. Amend the second Standard of MUTCD Section 3B.23, item C.1 to read:

A double solid wide white line or a single wide white line, supplemented with lane change prohibition signing where crossing is prohibited (see Figure 3B-25b and 3B-25c).

Amend the second Standard of MUTCD Section 3B.23, item D.4 to read:

A single dotted normal white line or a single dotted wide white line is permitted for any vehicle to perform a right turn maneuver (see Figure 3B-25b).

Amend all references in Table 3B-2 for double wide white line to allow single solid wide white line, each with lane change prohibition signing.

Amend the callout in figure 3B-25 for a SINGLE DOTTED NORMAL WHITE on the approach to the limited access exit, side-street, or commercial entrance to say SINGLE DOTTED NORMAL WHITE or SINGLE DOTTED WIDE WHITE.

[Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-240, filed 2/28/03, effective 3/31/03.]

WAC 468-95-250 Meaning of signal indications. Pursuant to RCW 46.61.055, amend the second paragraph of the Standard of MUTCD Section 4D.04, item C.1 to read:

Vehicle operators facing a steady circular red signal may, after stopping, proceed to make a right turn from a one-way or two-way street into a two-way street or into a one-way street carrying traffic in the direction of the right turn; or a left turn from a one-way or two-way street into a one-way street carrying traffic in the direction of the left turn; unless a sign posted by a competent authority prohibits such movement. Vehicle operators planning to make such turns shall remain stopped to allow other vehicles lawfully within or approach-

ing the intersection control area to complete their movements. Vehicle operators planning to make such turns shall also remain stopped for pedestrians who are lawfully within the intersection control area.

Pursuant to RCW 46.61.055, amend the MUTCD Section 4D.04, item C.2 to read:

Vehicle operators facing a steady red arrow indication may, after stopping, proceed to make a right turn from a one-way or two-way street or into a one-way street carrying traffic in the direction of the right turn, or a left turn from a one-way street or two-way street into a one-way street carrying traffic in the direction of the left turn, unless a sign posted by a competent authority prohibits such movement. Vehicle operators planning to make such turns shall remain stopped to allow other vehicles lawfully within or approaching the intersection control area to complete their movements. Vehicle operators planning to make such turns shall also remain stopped for pedestrians who are lawfully within the intersection control area.

[Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-250, filed 2/28/03, effective 3/31/03.]

WAC 468-95-260 Application of steady signal indications. Pursuant to RCW 46.61.055, amend MUTCD Section 4D.05, item D to read:

A steady RED ARROW signal indication shall be displayed when it is intended to prohibit vehicular traffic from entering the intersection or other controlled area to make the indicated turn when regulatory signing is in place prohibiting such movement. Pedestrians directed by a pedestrian signal head may enter the intersection or other controlled area.

[Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-260, filed 2/28/03, effective 3/31/03.]

WAC 468-95-270 Meaning of lane-use control indications. Pursuant to RCW 46.61.072, amend MUTCD Section 4J.02 paragraph B to read:

A steady YELLOW X or a flashing RED X means that a driver should prepare to vacate, in a safe manner, the lane over which the signal is located because a lane control change is being made, and to avoid occupying that lane when a steady RED X is displayed.

[Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-270, filed 2/28/03, effective 3/31/03.]

WAC 468-95-280 Operation of lane-use control signals. Pursuant to RCW 46.61.072, in MUTCD Section 4J.04, amend the first sentence of the first paragraph after item G to read:

A moving condition in one direction shall be terminated either by the immediate display of a RED X signal indication or by a YELLOW X signal indication followed by a RED X signal indication or a flashing RED X indication followed by a RED X indication.

[Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-280, filed 2/28/03, effective 3/31/03.]

WAC 468-95-290 County road signing. Pursuant to RCW 36.75.300, there is added to Part 5 of the MUTCD, the following regulation pertaining to signing of county roads:

The legislative authority of each county may by resolution classify and designate portions of county roads as primitive roads where the designated road portion:

- (1) Is not classified as part of the county primary road system, as provided for in RCW 36.86.070;
- (2) Has a gravel or earth driving surface; and
- (3) Has an average annual daily traffic of 100 or fewer vehicles.

Any road designated as a primitive road shall be marked with a PRIMITIVE ROAD sign at all places where the primitive road portion begins or connects with a highway other than a primitive road.

A sign with the caption CAUTION - NO WARNING SIGNS may be installed on the same post with the PRIMITIVE ROAD sign, and may be individually erected at intermediate points along the road section if conditions warrant. In addition, a sign with the caption NEXT . . . MILES may be installed on the same post below the CAUTION - NO WARNING SIGNS sign.

[Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-290, filed 2/28/03, effective 3/31/03.]

WAC 468-95-300 Temporary traffic control. Amend MUTCD Section 6C.04, Table 6C-1 and MUTCD Section 6H.01, Table 6H-3 to read:

Sign Spacing (1)		
Freeways & Expressways	55/70 MPH	1500' ± or per MUTCD
Rural Highways	60/65 MPH	1000' ±
Rural Roads	45/55 MPH	500' ±
Rural Roads & Urban Arterials	35/40 MPH	350' ±
Rural Roads, Urban Streets, Residential Business Districts	25/30 MPH	200' ± (2)
Urban Streets	25 MPH or less	100' ± (2)

(1) All spacing may be adjusted to accommodate interchange ramps, at-grade intersections, and driveways.

(2) This spacing may be reduced in urban areas to fit roadway conditions.

[Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-300, filed 2/28/03, effective 3/31/03.]

WAC 468-95-310 Temporary pavement markings. Amend the first Support of MUTCD Section 6F.66 to read:

Temporary pavement markings are those that may be used until it is practical and possible to install permanent pavement markings that meet MUTCD standards. Normally, it should not be necessary to leave temporary pavement markings in place for more than 2 weeks, except on roadways being paved with bituminous surface treatment (BST) and having traffic volumes under 2,000 ADT. All temporary pavement markings, including pavement markings for no-passing zones, shall conform to the requirements of Sections 3A and 3B.

Amend the first Guidance of MUTCD Section 6F.66 to read:

For temporary situations of 14 calendar days or less, for a two-lane or three-lane road, no-passing zones may be identified by using W 14-3 No Passing Zone signs (see Section 2C.32) rather than pavement markings (see Section 3B.02). Signs may also be used in lieu of pavement markings on low-

volume roads for longer periods, when this practice is in keeping with the state's or other highway agency's policy. These signs should be placed in accordance with Sections 2B.24 and 2B.25.

[Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-310, filed 2/28/03, effective 3/31/03.]

WAC 468-95-320 School advance warning sign (S-1). Amend MUTCD Section 7B.08, Figure 7B-1 by deleting the words SCHOOL PROPERTY LINE and replacing with the words SCHOOL GROUNDS. Amend MUTCD Section 7B.08, Figure 7B-1 to show the school zone 300 feet on either side of the marked school crosswalk.

[Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-320, filed 2/28/03, effective 3/31/03.]

WAC 468-95-330 School speed limit assembly (S4-1, S4-2, S4-3, S4-4, S5-1). Pursuant to RCW 46.61.440 delete the first Guidance paragraph and add the following paragraph to the first Standard of MUTCD Section 7B.11:

The reduced school speed zone shall begin at a point 90 m (300 ft) in advance of the crosswalk and end at a point 90 m (300 ft) after the crosswalk. These distances may be modified to fit the field conditions by regulation.

[Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-330, filed 2/28/03, effective 3/31/03.]

WAC 468-95-340 School speed limit assembly (S4-1, S4-2, S4-3, S4-4, S5-1). Amend the Option to the second Standard of MUTCD Section 7B.11 to read:

The School Speed Limit assembly shall be either a fixed-message sign assembly or a changeable message sign. The fixed-message School Speed Limit assembly shall consist of a top plaque (S4-3) with the legend SCHOOL, a Speed Limit (R2-1) sign, and a bottom plaque (S4-1, S4-2, S4-4, or S4-501) indicating the specific periods of the day and/or days of the week that the special school speed limit is in effect.

[Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-340, filed 2/28/03, effective 3/31/03.]

WAC 468-95-350 When children are present. Amend MUTCD Section 7B.11 by adding the following supplemental paragraph to the second Standard:

The supplemental or lower panel of a School Speed Limit 20 sign which reads When Children are Present shall indicate to the motorist that the 20 mile per hour school speed limit is in force under any of the following conditions:

(1) School children are occupying or walking within the marked crosswalk.

(2) School children are waiting at the curb or on the shoulder of the roadway and are about to cross the roadway by way of the marked crosswalk.

(3) School children are present or walking along the roadway, either on the adjacent sidewalk or, in the absence of sidewalks, on the shoulder within the posted school speed limit zone extending 300 feet, or other distance established by regulation, in either direction from the marked crosswalk.

[Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-350, filed 2/28/03, effective 3/31/03.]

[2004 WAC Supp—page 2046]

WAC 468-95-360 Crosswalk markings. Amend the second Guidance of MUTCD Section 7C.03 to read:

If used, the diagonal or longitudinal lines should form a 24-inch wide marking pattern consisting of two 8-inch wide markings separated by an 8-inch wide gap or a 24-inch wide solid marking pattern. The marking patterns should be spaced 12 to 60 inches apart but with the maximum gap between marking patterns not to exceed 2.5 times the marking pattern width. Longitudinal marking patterns should be located to avoid the wheel paths and should be oriented parallel with the wheel paths.

[Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-360, filed 2/28/03, effective 3/31/03.]

WAC 468-95-370 Pavement markings for obstructions. Amend MUTCD Section 9C.07, Figure 9C.07, to show a normal solid white line instead of a wide solid white line.

[Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030. 03-06-053, § 468-95-370, filed 2/28/03, effective 3/31/03.]

WAC 468-95-400 Sign borders. The following MUTCD sections are adopted as modified herein, until Revision 2 to the June 2001 Millennium Edition of the MUTCD is adopted by the Washington state secretary of transportation:

(1) **Section 2A.15, Sign Borders**

Amend the Standard to read:

Unless specifically stated otherwise, each sign illustrated herein shall have a border of the same color as the legend, at or just inside the edge. The corners of all sign borders shall be rounded, except for STOP signs.

Amend the Guidance to read:

A dark border on a light background should be set in from the edge, while a light border on a dark background should extend to the edge of the panel. A border for 750 mm (30 in) signs with a light background should be from 13 to 19 mm (0.5 to 0.75 in) in width, and 13 mm (0.5 in) from the edge. For similar size signs with a light border, a border width of 25 mm (1 in) should be used. For other sizes, the border width should be of similar proportions, but should not exceed the stroke-width of the major lettering of the sign. On signs exceeding 1800 x 3000 mm (72 x 120 in) in size, the border should be 50 mm (2 in) wide. For signs larger than 1800 x 3000 mm (72 x 120 in), the border should be 75 mm (3 in) wide. Where practical, the corners of the sign should be rounded parallel to the border, except for STOP sign corners which are not rounded.

(2) **Section 2A.19, Lateral Offset**

Change the first Standard to read:

For overhead sign supports (cantilever or sign bridges), the minimum lateral offset from the edge of the shoulder (or if no shoulder exists, from the edge of the pavement) to the near edge of the supports shall be 1.8 m (6 ft).

Overhead sign supports shall have a barrier or crash cushion to shield them if they are within the clear zone.

Roadside-mounted sign supports shall be breakaway, yielding, or shielded with a longitudinal barrier or crash cushion if within the clear zone.

(3) **Section 2C.04 Page 2C-4, Table 2C-2, Warning Sign Sizes**

Replace the table with the following:

Table 2C-2. Warning Sign Sizes

Description		Conventional Roads	Expressways	Freeways	Minimum	Oversized
Shape	Sign Series					
Diamond	W1, W2, W7, W8, W9, W11, W14, W15-1, W17-1	750 x 750 (30 x 30)	900 x 900 (36 x 36)	1200 x 1200 (48 x 48)	600 x 600 (24 x 24)	
Diamond	W3, W4, W5, W6, W8-3, W10, W12	900 x 900 (36 x 36)	1200 x 1200 (48 x 48)	1200 x 1200 (48 x 48)	750 x 750 (30 x 30)	
Rectangular	W1 - Arrows	1200 x 600 (48 x 24)			900 x 450 (36 x 18)	1500 x 750 (60 x 30)
Rectangular	W1 - Chevron	450 x 600 (18 x 24)	750 x 900 (30 x 36)	900 x 1200 (36 x 48)	300 x 450 (12 x 18)	
	W7-4	1950 x 1200 (78 x 48)	1950 x 1200 (78 x 48)	1950 x 1200 (78 x 48)		
	W7-4a, b, c	1950 x 1500 (78 x 60)	1950 x 1500 (78 x 60)	1950 x 1500 (78 x 60)		
	W10-9, W10-10	750 x 225 (30 x 9)				
	W12-2P	2100 x 600 (84 x 24)	2100 x 600 (84 x 24)	2100 x 600 (84 x 24)		
	W13, W25	600 x 750 (24 x 30)	900 x 1200 (36 x 48)	1200 x 1500 (48 x 60)	600 x 750 (24 x 30)	1200 x 1500 (48 x 60)
Pennant	W14-3	900 x 1200 x 1200 (36 x 48 x 48)			750 x 1000 x 1000 (30 x 40 x 40)	1200 x 1600 x 1600 (48 x 64 x 64)
Circular	W10-1	900 (36) Dia.	1200 (48) Dia.		750 (3) Dia.	1200 (48) Dia.

Note: 1. Larger signs may be used when appropriate.
 2. Dimensions are shown in millimeters followed by inches in parentheses and are shown as width x height.

(4) Section 2C.05, Table 2C-4, Guidelines for Advance Placement of Warning Signs (English Units).

Replace the table and notes with the following:

Table 2C-4. Guidelines for Advance Placement of Warning Signs (English Units)

Posted or 85th Percentile Speed	Advance Placement Distance ¹								
	Condition A: Speed reduction and lane changing in heavy traffic ²	Condition B: Deceleration to the listed advisory speed (mph) for the condition ⁴							
		0 ³	10	20	30	40	50	60	70
20 mph	225 ft	N/A ⁵	N/A ⁵	–	–	–	–	–	–
25 mph	325 ft	N/A ⁵	N/A ⁵	N/A ⁵	–	–	–	–	–
30 mph	450 ft	N/A ⁵	N/A ⁵	N/A ⁵	–	–	–	–	–
35 mph	550 ft	N/A ⁵	N/A ⁵	N/A ⁵	N/A ⁵	–	–	–	–
40 mph	650 ft	125 ft	N/A ⁵	N/A ⁵	N/A ⁵	–	–	–	–
45 mph	750 ft	175 ft	125 ft	N/A ⁵	N/A ⁵	N/A ⁵	–	–	–
50 mph	850 ft	250 ft	200 ft	150 ft	100 ft	N/A ⁵	–	–	–
55 mph	950 ft	325 ft	275 ft	225 ft	175 ft	100 ft	N/A ⁵	–	–
60 mph	1100 ft	400 ft	350 ft	300 ft	250 ft	175 ft	N/A ⁵	–	–
65 mph	1200 ft	475 ft	425 ft	400 ft	350 ft	275 ft	175 ft	N/A ⁵	–
70 mph	1250 ft	550 ft	525 ft	500 ft	425 ft	350 ft	250 ft	150 ft	–
75 mph	1350 ft	650 ft	625 ft	600 ft	525 ft	450 ft	350 ft	250 ft	100 ft

Notes: ¹The distances are adjusted for a sign legibility distance of 50 m (175 ft) for Condition A. The distances for Condition B have been adjusted for a sign legibility distance of 75 m (250 ft), which is appropriate for an alignment warning symbol sign.

²Typical conditions are locations where the road user must use extra time to adjust speed and change lanes in heavy traffic because of a complex driving situation. Typical signs are Merge, Right Lane Ends, etc. The distances are determined by providing the driver a PIEV time of 14.0 to 14.5 seconds

for vehicle maneuvers (2001 AASHTO Policy, Exhibit 3-3, Decision Sight Distance, Avoidance Maneuver E) minus the legibility distance of 50 m (175 ft) for the appropriate sign.

³Typical condition is the warning of a potential stop situation. Typical signs are Stop Ahead, Yield Ahead, Signal Ahead, and Intersection Advance Warning signs. The distances are based on the 2001 AASHTO Policy, Stopping Sight Distance, Exhibit 3-1, providing a PIEV time of 2.5 seconds, a deceleration rate of 3.4 m/second² (11.2 ft/second²), minus the sign legibility distance of 50 m (175 ft).

⁴Typical conditions are locations where the road user must decrease speed to maneuver through the warned condition. Typical signs are Turn, Curve, Reverse Turn, or Reverse Curve. The distance is determined by providing a 2.5 second PIEV time, a vehicle deceleration rate of 3 m/second² (10 ft/second²), minus the sign legibility distance of 75 m (250 ft).

⁵No suggested minimum distances are provided for these speeds, as the placement location is dependent on-site conditions and other signing to provide an adequate advance warning for the driver.

(5) Section 2C.27 CROSS TRAFFIC DOES NOT STOP Plaque (W4-4)

Replace the entire Section text with the following:

Option:

The CROSS TRAFFIC DOES NOT STOP (W4-4) plaque (see Figure 2C-9) may be used in combination with a STOP sign when engineering judgment indicates that drivers frequently misinterpret the intersection to be a multiway stop condition.

Standard:

If the W4-4 plaque is used, it shall be installed below the STOP sign.

(6) Section 2C.28 Merge Signs (W4-1, W4-1a)

W4-2 Lane End sign is included in MUTCD Revision 2 Section 2C.30.

(7) Section 2C.34 Intersection Warning Signs (W2-1 through W2-6)

Amend the section to read:

Option:

A Cross Road (W2-1) symbol, Side Road (W2-2 or W2-3) symbol, T-Symbol (W2-4), or Y-Symbol (W2-5) sign (see Figure 2C-9) may be used in advance of an intersection to indicate the presence of an intersection and the possibility of turning or entering traffic. The relative importance of the intersecting roadways may be shown by different widths of lines in the symbol.

The Circular Intersection (W2-6) symbol sign accompanied by an educational word message plaque may be installed in advance of a circular intersection.

An advance street name plaque (see Section 2C.45) may be installed below an Intersection Warning sign.

Guidance:

The Intersection Warning sign should illustrate and depict the general configuration of the intersecting roadway, such as cross road, side road, T-intersection, or Y-intersection. Where the side roads are not opposite of each other, the symbol for the intersection should indicate a slight offset.

Intersection Warning signs, other than the Circular Intersection symbol (W2-6) sign should not be used on approaches controlled by STOP signs, YIELD signs, signals, or where Junction signing (see Sections 2D.13 and 2D.28) or advance route turn assembly signs (see Section 2D.29) are present. The Circular Intersection symbol (W2-6) sign should be installed on the approach to a roundabout intersection controlled by a YIELD sign.

(8) Section 2C.37 Crossing Signs (W11-1, W11-2, W11-3, W11-4, W16-7P)

Rename and replace the entire section with the following:

Section 2C.37 Nonvehicular Signs (W11-1, W11-2, W11-3, W11-4, W11-11, W11-14, W11-14a, W11-15)

Option:

Nonvehicular signs (see Figure 2C-10) may be used to alert road users in advance of locations where unexpected entries into the roadway or shared use of the roadway by pedestrians, bicyclists, golf carts, animals, horse-drawn vehicles, and other crossing activities might occur.

Support:

These conflicts might be relatively confined, or might occur randomly over a segment of roadway.

Option:

When used in advance of a crossing, Nonvehicular warning signs may be supplemented with supplemental plaques (see Section 2C.39) with the legend AHEAD, XX METERS (XX FEET), or NEXT XX KILOMETERS (NEXT XX MILES) to provide advance notice to road users of possible crossing activity.

Standard:

When used at the crossing, Nonvehicular warning signs shall be supplemented with a diagonal downward pointing arrow (W16-7) plaque (see Figure 2C-10) showing the location of the crossing.

Option:

The crossing location may be defined with crosswalk markings (see Section 3B.17). Pedestrian, Bicycle, School Advance Crossing, and School Crossing signs and their related supplemental plaques may have a fluorescent yellow-green background with a black legend and border.

Guidance:

When a fluorescent yellow-green background is used, a systematic approach featuring one background color within a zone or area should be used. Mixing standard yellow and fluorescent yellow-green backgrounds within a selected site area should be avoided.

Nonvehicular signs should be used only at locations where the crossing activity is unexpected or at locations not readily apparent.

(9) Section 2C.46 Dead End/No Outlet Plaques (W14-1P, W14-2P)

Amend the section to read:

Option:

DEAD END (W14-1P) or NO OUTLET (W14-2P) plaques (see Figure 2C-11) may be used in combination with Street Name (D3-1) signs (see Section 2D.38) to warn turning traffic that the cross street ends in the direction indicated by the arrow.

At locations where the cross street does not have a name, DEAD END or NO OUTLET plaques may be used alone in place of a street name sign.

(10) Section 3B.13 B1 Raised Pavement Markers Supplementing Other Markings

Under Guidance, amend the section to read:

B. Longitudinal Spacing

1. When supplementing solid line markings, raised pavement markers at a spacing no greater than N (see Section 3A.06) should be used, except when supplementing left edge line markings a spacing no greater than N/2 should be used.

Raised markers should not supplement right edge line markings, unless they are spaced closely enough (no greater than 3 m (10 ft) apart) to approximate the appearance of a solid line.

2. When supplementing broken line markings, a spacing no greater than 3N should be used. However, when supplementing broken line markings identifying reversible lanes, a spacing no greater than N should be used.

3. When supplementing dotted line markings, a spacing appropriate for the application should be used.

4. When supplementing longitudinal line markings through at-grade intersections, one raised pavement marker for each short line segment should be used.

5. When supplementing edge line extensions through freeway interchanges, a spacing of N should be used.

(11) Section 3B.24 Markings for Roundabouts

Replace Figure 3B-27, Typical Markings for Roundabouts with Two Lanes, with the same figure in MUTCD Revision 2 available at <http://mutcd.fhwa.dot.gov/pdfs/millennium/pr2/3r2.pdf>. Page 69.

(12) Section 3B.25 General

Amend the section to read:

Support:

When used for guidance or regulation of traffic, colored pavements are traffic control devices. Colored pavements also are sometimes used to supplement other traffic control devices. Colored pavement located between crosswalk lines

to emphasize the presence of the crosswalk is not considered to be a traffic control device.

Guidance:

Colored pavements used as traffic control devices should be used only where they contrast significantly with adjoining paved areas. Colors that degrade the contrast of white crosswalk lines, or that might be mistaken by road users as a traffic control application, should not be used for colored pavement located between crosswalk lines.

Standard:

Colored pavements shall not be used as a traffic control device, unless the device is applicable at all times. Colored pavements used as traffic control devices shall be limited to the following colors and applications:

A. Yellow shall be used only for flush or raised median islands separating traffic flows in opposite directions.

B. White shall be used for delineation on shoulders, and for flush or raised channelizing islands where traffic passes on both sides in the same direction of travel.

(13) Section 4D.18-2 Design, Illumination, and Color of Signal

Delete the entire last Guidance.

(14) Section 7A.04 Scope

Under the Standard, delete the second paragraph.

(15) Section 7B.01 Size of School Signs

Replace Table 7B-1 size of School Signs with the following figure:

Table 7B-1. Size of School Area Signs and Plaques

Sign Minimum	MUTCD Code	Conventional Roads		
		Standard	Special	
School Crossing	S1-1	750 x 750 mm (30 x 30 in)	900 x 900 mm (36 x 36 in)	1200 x 1200 mm (48 x 48 in)
School Bus Stop Ahead	S3-1	750 x 750 mm (30 x 30 in)	750 x 750 mm (30 x 30 in)	900 x 900 mm (36 x 36 in)
School Speed Limit Ahead	S4-5, S4-5a	750 x 750 mm (30 x 30 in)	900 x 900 mm (36 x 36 in)	1200 x 1200 mm (48 x 48 in)
School Speed Limit XX When Flashing (English)	S5-1	600 x 1200 mm (24 x 48 in)	900 x 1800 mm (36 x 72 in)	1200 x 2400 mm (48 x 96 in)
School Speed Limit XX When Flashing (Metric)	S5-1	600 x 1350 mm (24 x 54 in)	900 x 1950 mm (36 x 78 in)	1200 x 2550 mm (48 x 102 in)
End School Zone	S5-2	600 x 750 mm (24 x 30 in)	900 x 1125 mm (36 x 45 in)	1200 x 1500 mm (48 x 60 in)
Speed Limit (School Use) (English)	R2-1	600 x 750 mm (24 x 30 in)	900 x 1125 mm (36 x 45 in)	1200 x 1500 mm (48 x 60 in)
Speed Limit (School Use) (Metric)	R2-1	600 x 900 mm (24 x 36 in)	900 x 1275 mm (36 x 51 in)	1200 x 1650 mm (48 x 66 in)

Plaque Minimum	MUTCD Code	Conventional Roads		
		Standard	Special	
When Children Are Present	S4-2	600 x 250 mm (24 x 10 in)	900 x 375 mm (36 x 15 in)	1200 x 500 mm (48 x 20 in)
School	S4-3	600 x 200 mm (24 x 8 in)	900 x 300 mm (36 x 12 in)	1200 x 400 mm (48 x 16 in)
When Flashing	S4-4	600 x 250 mm (24 x 10 in)	900 x 375 mm (36 x 15 in)	1200 x 500 mm (48 x 20 in)
XXX FT or XXX M	W16-2	600 x 300 mm (24 x 12 in)	750 x 375 mm (30 x 15 in)	900 x 450 mm (36 x 18 in)
XXX FT or XXX M	W16-2a	600 x 450 mm (24 x 18 in)	750 x 525 mm (30 x 21 in)	900 x 600 mm (36 x 24 in)

Plaque Minimum	MUTCD Code	Conventional Roads		
		Standard	Special	
Ahead	W16-9p	600 x 250 mm (24 x 10 in)	900 x 375 mm (36 x 15 in)	1200 x 500 mm (48 x 20 in)
Diagonal Arrow	W16-7	600 x 300 mm (24 x 12 in)	750 x 375 mm (30 x 15 in)	900 x 450 mm (36 x 18 in)

(16) Section 7B.07, Sign Color for School Warning Signs

Under Option D, amend the reference to the School Speed Limit sign (S5-1) to become a reference to the SCHOOL portion of the School Speed Limit sign (S5-1).

[Statutory Authority: Chapter 34.05 RCW and RCW 47.36.030, 03-06-053, § 468-95-400, filed 2/28/03, effective 3/31/03.]

(17) Section 9B.04, Bicycle Lane Signs (R3-16, R3-17)

Amend the Standard to read:

The BIKE LANE (R3-17) sign (see Figure 9B-2) shall be used only in conjunction with marked bicycle lanes as described in Chapter 9C, and shall be placed at periodic intervals along the bicycle lanes.

WAC

- 468-300-010 Ferry passenger tolls.
- 468-300-020 Vehicle under 20', motorcycle, and stowage ferry tolls.
- 468-300-040 Oversize vehicle ferry tolls.
- 468-300-220 Calculation of charter rates for vessels owned by the Washington state ferry system.
- 468-300-700 Preferential loading.

**Chapter 468-300 WAC
STATE FERRIES AND TOLL BRIDGES
(Formerly chapter 252-300 WAC.)**

WAC 468-300-010 Ferry passenger tolls.

EFFECTIVE 03:00 A.M. MAY 4, 2003

ROUTES	Full Fare	Senior/ Disabled	Youth Fare 18 and under	Frequent User Coupon Book 20 Rides ¹	Monthly Pass ⁵	Quarterly Pass ⁵	Annual Pass ⁵	Bicycle Surcharge ^{2,6}
Via Passenger-Only Ferry *Seattle-Vashon	7.40	3.70	6.40	63.20	101.20	303.60	1,214.40	1.00
Via Passenger-Only Ferry Seattle to Bremerton	6.40	3.20	5.40	43.20 ⁷	101.20	303.60	1,214.40	1.00
Via Passenger-Only Ferry Bremerton to Seattle	1.00	0.50	1.00	N/A	101.20	303.60	1,214.40	N/C
Via Auto Ferry *Fauntleroy-Southworth	4.20	2.10	3.40	33.60	53.80	161.40	645.60	1.00
*Seattle-Bremerton *Seattle-Bainbridge Island								
*Edmonds-Kingston	5.40	2.70	4.40	43.20	69.20	207.60	830.40	1.00
Port Townsend-Keystone	2.10	1.05	1.70	33.60	53.80	161.40	645.60	0.50
*Fauntleroy-Vashon *Southworth-Vashon								
*Pt. Defiance-Tahlequah	3.50	1.70	2.80	28.00	44.80	134.40	537.60	1.00
*Mukilteo-Clinton	3.20	1.60	2.60	25.60	41.00	123.00	492.00	1.00
*Anacortes to Lopez, Shaw, Orcas or Friday Harbor - Sun- day-Tuesday	8.00	4.00	6.40	57.20	N/A	N/A	N/A	2.00 ⁸
*Anacortes to Lopez, Shaw, Orcas or Friday Harbor - Wednesday-Saturday	8.80	4.40	7.10	57.20	N/A	N/A	N/A	2.00 ⁸
Between Lopez, Shaw, Orcas and Friday Harbor ⁴	N/C	N/C	N/C	N/C	N/A	N/A	N/A	N/C
<i>International Travel</i>								
Anacortes to Sidney and Sidney to all destinations	13.10	6.50	10.50	N/A	N/A	N/A	N/A	4.00 ⁹
From Lopez, Shaw ¹ , Orcas and Friday Harbor to Sidney [@]	4.75	2.25	4.00	N/A	N/A	N/A	N/A	1.00 ¹⁰
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ³	17.85	8.75	14.50	N/A	N/A	N/A	N/A	5.00 ¹¹

EFFECTIVE 03:00 A.M. MAY 2, 2004

ROUTES	Full Fare	Senior/ Disabled	Youth Fare 18 and under	Frequent User Coupon Book 20 Rides ¹	Monthly Pass ⁵	Quarterly Pass ⁵	Annual Pass ⁵	Bicycle Surcharge ^{2,6}
Via Passenger-Only Ferry *Seattle-Vashon	7.70	3.80	6.60	65.60	105.00	315.00	1,260.00	1.00
Via Passenger-Only Ferry Seattle to Bremerton	6.70	3.30	5.60	45.60 ⁷	105.00	315.00	1,260.00	1.00

ROUTES	Full Fare	Senior/ Disabled	Youth Fare 18 and under	Frequent User Coupon Book 20 Rides ¹	Monthly Pass ⁵	Quarterly Pass ⁵	Annual Pass ⁵	Bicycle Surcharge ^{2,6}
Via Passenger-Only Ferry Bremerton to Seattle	1.00	0.50	1.00	N/A	105.00	315.00	1,260.00	N/C
Via Auto Ferry *Fauntleroy-Southworth *Seattle-Bremerton *Seattle-Bainbridge Island	4.40	2.20	3.60	35.20	56.40	169.20	676.80	1.00
*Edmonds-Kingston Port Townsend-Keystone	5.70	2.80	4.60	45.60	73.00	219.00	876.00	1.00
*Fauntleroy-Vashon *Southworth-Vashon	2.20	1.10	1.80	35.20	56.40	169.20	676.80	0.50
*Pt. Defiance-Tahlequah *Mukilteo-Clinton	3.70	1.80	3.00	29.60	47.40	142.20	568.80	1.00
*Anacortes to Lopez, Shaw, Orcas or Friday Harbor - Sun- day-Tuesday	3.40	1.70	2.80	27.20	43.60	130.80	523.20	1.00
*Anacortes to Lopez, Shaw, Orcas or Friday Harbor - Wed- nesday-Saturday	8.60	4.30	6.90	61.80	N/A	N/A	N/A	2.00 ⁸
Between Lopez, Shaw, Orcas and Friday Harbor ⁴	9.50	4.70	7.60	61.80	N/A	N/A	N/A	2.00 ⁸
<i>International Travel</i>	N/C	N/C	N/C	N/C	N/A	N/A	N/A	N/C
Anacortes to Sidney and Sidney to all destinations	13.80	6.90	11.10	N/A	N/A	N/A	N/A	4.00 ⁹
From Lopez, Shaw ¹ , Orcas and Friday Harbor to Sidney [@]	5.00	2.50	4.00	N/A	N/A	N/A	N/A	1.00 ¹⁰
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ³	18.80	9.40	15.10	N/A	N/A	N/A	N/A	5.00 ¹¹

[@] These fares rounded to the next multiple of \$.25. All other fares rounded to the next multiple of \$0.10.

* These routes operate as a one-point toll collection system.

¹FREQUENT USER COUPONS - Shall be valid only for 90-days from date of purchase after which time the tickets shall not be accepted for passage. Unused coupons will not be eligible for refund or exchange.

²BICYCLE SURCHARGE - Is an addition to the appropriate passenger fare.

³ROUND TRIP - Round trip tickets for international travel available for trips beginning or ending on one of the Islands served.

⁴INTER-ISLAND FARES - Passenger fares included in Anacortes tolls.

⁵PASSES - Passenger passes are available for all routes except Anacortes/San Juan Island/Sidney. It is valid for the period printed on the pass and will be presented to Washington state ferries staff whenever a passenger fare is collected. This pass is based on 16 days of passenger travel with a 20% discount. The quarterly pass is based on 48 days of travel with a 20% discount and the annual pass is based on 192 days with a 20% discount. A \$1.00 retail/shipping and handling fee will be added to the price of the pass. A combination ferry-transit pass may be available for a particular route when determined by Washington state ferries and a local public transit agency to be a viable fare instrument. The WSF portion of the fare is based on 16 days of passenger travel per month at a 20% discount. Passes may be available in monthly, quarterly or annual denominations.

⁶BICYCLE PASS - A bicycle pass is available on all routes except: Anacortes/San Juan Island/Sidney for a \$20.00 annual fee subject to meeting WSF specified conditions. The pass is valid for one year. A cyclist with a valid pass shall have the bicycle surcharge waived.

⁷SEATTLE TO BREMERTON PASSENGER ONLY - Riders on Seattle to Bremerton passenger only need to supplement frequent user coupon with an additional surcharge fare of \$1.00 (\$0.50 for Senior/Disabled).

⁸BICYCLE SURCHARGE - This becomes \$4.00 during peak season (first Sunday in May until second Sunday in October).

⁹BICYCLE SURCHARGE - This becomes \$6.00 during peak season.

¹⁰BICYCLE SURCHARGE - This becomes \$2.00 during peak season.

¹¹BICYCLE SURCHARGE - This becomes \$8.00 during peak season.

CHILDREN/YOUTH - Children under five years of age will be carried free when accompanied by parent or guardian. Children/youths five through eighteen years of age will be charged the youth fare, which will be 80% of full fare rounded to the next multiple of \$0.10.

SENIOR CITIZENS - Passengers age 65 and over, with proper identification establishing proof of age, may travel at half-fare passenger tolls on any route where passenger fares are collected.

PERSONS OF DISABILITY - Any individual who, by reason of illness, injury, congenital malfunction, or other incapacity or disability is unable without special facilities or special planning or design to utilize ferry system services, upon presentation of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes a disability may travel at half-fare passenger tolls on any route. In addition, those persons with disabilities who require attendant care while traveling on the ferries, and are so certified by their physician, may obtain an endorsement on their WSF Disability Travel Permit and such endorsement shall allow the attendant to travel free as a passenger.

BUS PASSENGERS - Passengers traveling on public transit buses pay the applicable fare. Passengers traveling in private or commercial buses will be charged the half-fare rate.

MEDICARE CARD HOLDERS - Any person holding a Medicare card duly issued to that person pursuant to Title II or Title XVIII of the Social Security Act may travel at half-fare passenger tolls on any route upon presentation of a WSF Disability Travel Permit or a Regional Reduced Fare Permit at time of travel.

PROMOTIONAL TOLLS - A promotional rate may be established at the discretion of the WSF CEO for a specific discount in order to enhance total revenue and effective only at designated times on designated routes.

Special passenger fare rate(s) may be established for a pilot program in conjunction with the Central Puget Sound Regional Fare Integration project on ferry route(s) serving King, Pierce, Sno-

homish and Kitsap counties. The rate(s) may be established at the discretion of the WSF CEO for a specific discount not to exceed fifty percent of full fare.

in exchange for the opportunity to participate in the income generated by the event.

SCHOOL GROUPS - Passengers traveling in authorized school groups for institution-sponsored activities will be charged a flat rate of \$1 per walk-on group or per vehicle of students and/or advisors and staff. Starting September 1, 1999, all school groups require a letter of authorization. Vehicles and drivers will be charged the fare applicable to vehicle size. The special school rate is \$2 on routes where one-point toll systems are in effect. Due to space limitations, authorized school groups will not be permitted to use one of the passenger-only routes without prior WSF approval.

BUNDLED SINGLE FARE BOOKS - WSF may bundle single fare types into multiple trip books as a customer convenience. These books shall be valid only until the first Sunday of May following the date of purchase, after which time the coupons shall not be accepted for passage. Unused coupons are not refundable. Anacortes to San Juan Islands senior/disabled fares will be bundled at the applicable early week price.

PEAK SEASON SURCHARGE - A 20% surcharge shall be applied to passengers from the first Sunday in May to the second Sunday in October, except those using frequent user tickets, on the Anacortes to Lopez, Shaw, Orcas and Friday Harbor routes.

GROUP OR VOLUME SALES - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiple trip books or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.

SPECIAL EVENTS - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares

[Statutory Authority: RCW 47.56.030, 47.60.326, 03-08-072, § 468-300-010, filed 4/1/03, effective 5/2/03; 02-09-010, § 468-300-010, filed 4/5/02, effective 5/6/02; 01-11-010, § 468-300-010, filed 5/3/01, effective 6/3/01; 00-24-050, § 468-300-010, filed 11/30/00, effective 12/31/00; 99-08-066, § 468-300-010, filed 4/5/99, effective 5/6/99; 98-08-051, § 468-300-010, filed 3/27/98, effective 4/27/98; 96-05-046 and 96-05-047 (Orders 79 and 80), § 468-300-010, filed 2/16/96, effective 3/19/96; 94-18-014 (Order 77), § 468-300-010, filed 8/25/94, effective 9/25/94; 94-07-104 (Order 75), § 468-300-010, filed 3/18/94, effective 4/18/94; 93-18-005, § 468-300-010, filed 8/19/93, effective 9/19/93; 92-18-005, § 468-300-010, filed 8/20/92, effective 9/20/92; 91-18-022 (Order 72), § 468-300-010, filed 8/27/91, effective 9/27/91; 89-14-052 (Order 67, Resolution No. 354), § 468-300-010, filed 6/30/89; 89-04-014 (Order 66, Resolution No. 343), § 468-300-010, filed 1/23/89, effective 7/1/89; 87-12-005 (Order 61, Resolution No. 298), § 468-300-010, filed 5/21/87. Statutory Authority: RCW 47.60.290, 47.60.300 and 47.60.326. 86-24-009 (Order 59, Resolution No. 287), § 468-300-010, filed 11/21/86. Statutory Authority: RCW 47.60.326. 86-06-010 (Order 54, Resolution No. 263), § 468-300-010, filed 2/21/86; 85-11-007 (Order 44, Resolution No. 241), § 468-300-010, filed 5/3/85; 84-11-052 (Order 42, Resolution Nos. 221 and 222), § 468-300-010, filed 5/17/84; 84-10-002 (Order 41, Resolution No. 218), § 468-300-010, filed 4/20/84; 83-07-062 (Order 33, Resolution No. 175), § 468-300-010, filed 3/22/83; 82-07-063 (Order 28, Resolution No. 143), § 468-300-010, filed 3/22/82. Statutory Authority: RCW 47.60.325 and 47.56.030. 81-15-099 (Order 23, Resolution No. 117), § 468-300-010, filed 7/22/81. Statutory Authority: RCW 47.60.325. 81-08-044 (Order 17, Resolution No. 104), § 468-300-010, filed 3/31/81; 80-16-012 (Order 16, Resolution No. 90), § 468-300-010, filed 10/27/80; 80-04-104 (Order 15, Resolution No. 72), § 468-300-010, filed 4/1/80; 79-09-136 (Order 11, Resolution No. 57), § 468-300-010, filed 9/5/79; 79-04-047 (Order 6, Resolution No. 44), § 468-300-010, filed 3/27/79; 78-06-040 (Order 2, Resolution No. 21), § 468-300-010, filed 5/19/78.]

WAC 468-300-020 Vehicle under 20', motorcycle, and stowage ferry tolls.

EFFECTIVE 03:00 A.M. MAY 4, 2003

ROUTES	Vehicle Under 20' Incl. Driver One Way	Vehicle Under 20' w/Sr Citizen or Disabled Driver ⁴	Vehicle Under 20' Over Height Charge ¹	Frequent User Coupon book 20 Rides ²	Motorcycle ⁵ Incl. Driver Stowage ¹ One Way@	Motorcycle w/Sr Citizen or Disabled Driver Stowage ¹ One Way@	Motorcycle Oversize Charge ¹	Motorcycle Frequent User Ticket book 20 Rides ² @
Fauntleroy-Southworth Port Townsend/Keystone	7.50	6.45	7.50	120.00	3.20	2.15	1.10	51.20
Seattle-Bainbridge Island	9.50	8.15	9.50	152.00	4.10	2.75	1.40	65.60
Seattle-Bremerton Edmonds-Kingston								
*Fauntleroy-Vashon	12.25	10.45	12.25	98.00	5.30	3.50	1.80	42.40
*Southworth-Vashon								
*Pt. Defiance-Tahlequah								
Mukilteo-Clinton	5.75	4.95	5.75	92.00	2.50	1.70	0.90	40.00
				10 Rides - 5 Round Trips				
*Anacortes to Lopez - Sunday-Tuesday	20.00	16.00	20.00	82.50	10.60	6.60	2.60	87.80
*Lopez - Wednesday-Saturday	22.00	17.60	22.00	82.50	11.70	7.30	2.90	87.80
*Shaw, Orcas - Sunday-Tuesday	23.50	19.50	23.50	97.50	11.30	7.30	3.30	93.80
*Shaw, Orcas - Wednesday-Saturday	26.00	21.60	26.00	97.50	12.50	8.10	3.70	93.80
*Friday Harbor - Sunday-Tuesday	26.50	22.50	26.50	109.75	11.90	7.90	3.90	99.00
*Friday Harbor - Wednesday-Saturday	29.25	24.85	29.25	109.75	13.20	8.80	4.40	99.00
Between Lopez, Shaw, Orcas and Friday Harbor ³	11.25	11.25	11.25	45.00	3.50	3.50	3.50	N/A
<u>International Travel</u>								
Anacortes to Sidney and Sidney to all destinations	35.25	28.65	35.25	N/A	17.60	11.00	4.50	N/A

State Ferries and Toll Bridges

468-300-020

ROUTES	Vehicle Under 20' Incl. Driver One Way	Vehicle Under 20' w/Sr Citizen or Disabled Driver ⁴	Vehicle Under 20' Over Height Charge ¹	Frequent User Coupon book 20 Rides ²	Motorcycle ⁵ Incl. Driver Stowage ¹ One Way@	Motorcycle w/Sr Citizen or Disabled Driver Stowage ¹ One Way@	Motorcycle Oversize Charge ¹	Motorcycle Frequent User Ticket book 20 Rides ² @
Travelers with advanced reservations (\$15 fee) Anacortes to Sidney and Sidney to all destinations ⁶	20.25	13.65	35.25	N/A	N/A	N/A	N/A	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney	10.25	7.75	10.25	N/A	6.25	3.75	1.50	N/A
Travelers with advanced reservations (\$7 fee) from Lopez, Shaw, Orcas and Friday Harbor to Sidney ⁷	3.25	0.75	10.25	N/A	N/A	N/A	N/A	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ⁵	45.50	36.40	45.50	N/A	23.85	14.75	6.00	N/A

EFFECTIVE 03:00 A.M. MAY 2, 2004

ROUTES	Vehicle Under 20' Incl. Driver One Way	Vehicle Under 20' w/Sr Citizen or Disabled Driver ⁴	Vehicle Under 20' Over Height Charge ¹	Frequent User Coupon book 20 Rides ²	Motorcycle ⁵ Incl. Driver Stowage ¹ One Way@	Motorcycle w/Sr Citizen or Disabled Driver Stowage ¹ One Way@	Motorcycle Oversize Charge ¹	Motorcycle Frequent User Ticket book 20 Rides ² @
Fauntleroy-Southworth Port Townsend/Keystone	7.75	6.65	7.75	124.00	3.40	2.30	1.20	54.40
Seattle-Bainbridge Island Seattle-Bremerton Edmonds-Kingston	10.00	8.55	10.00	160.00	4.30	2.85	1.45	68.80
*Fauntleroy-Vashon								
*Southworth-Vashon								
*Pt. Defiance-Tahlequah	13.00	11.10	13.00	104.00	5.60	3.70	1.90	44.80
Mukilteo-Clinton	6.00	5.15	6.00	96.00	2.60	1.75	0.90	41.60
10 Rides - 5 Round Trips								
*Anacortes to Lopez - Sunday-Tuesday	20.75	16.45	20.75	86.25	11.10	6.80	2.50	92.30
*Lopez - Wednesday-Saturday	23.00	18.20	23.00	86.25	12.30	7.50	2.80	92.30
*Shaw, Orcas - Sunday-Tuesday	25.00	20.70	25.00	104.25	12.00	7.70	3.40	99.80
*Shaw, Orcas - Wednesday-Saturday	27.75	22.95	27.75	104.25	13.30	8.50	3.80	99.80
*Friday Harbor - Sunday-Tuesday	29.25	24.95	29.25	121.00	12.80	8.50	4.20	106.50
*Friday Harbor - Wednesday-Saturday	32.25	27.45	32.25	121.00	14.20	9.40	4.70	106.50
Between Lopez, Shaw, Orcas and Friday Harbor ³	12.50	12.50	12.50	50.00	3.75	3.75	3.75	N/A
<i>International Travel</i>								
Anacortes to Sidney and Sidney to all destinations	37.25	30.35	37.25	N/A	18.50	11.60	4.70	N/A
Travelers with advanced reservations (\$15 fee) Anacortes to Sidney and Sidney to all destinations ⁶	22.25	15.35	37.25	N/A	N/A	N/A	N/A	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney	11.00	8.50	11.00	N/A	6.75	4.25	1.75	N/A
Travelers with advanced reservations (\$7 fee) from Lopez, Shaw, Orcas and Friday Harbor to Sidney ⁷	4.00	1.50	11.00	N/A	N/A	N/A	N/A	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ⁵	48.25	38.85	48.25	N/A	25.25	15.85	6.45	N/A

@ These fares rounded to the next multiple of \$0.10. All other fares rounded to the next multiple of \$.25.

* These routes operate as a one-point toll collection system.

¹SIZE - All vehicles up to 20' in length and under 7'6" shall pay the vehicle under 20' toll. Vehicles up to 20' but over 7'6" in height shall pay an overheight charge of 100% of the vehicle full fare.

Motorcycles with trailers, sidecars, or any vehicle licensed as a motorcycle with three or more wheels will pay an oversize motorcycle charge of 100% of the motorcycle full fare. Upon presentation by either the driver or passenger of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes disability, the height charge will be waived

for vehicles equipped with wheel chair lift or other mechanism designed to accommodate the person with disability.

²FREQUENT USER COUPONS - Shall be valid only for 90 days from date of purchase after which time the ticket shall not be accepted for passage. Unused coupons will not be eligible for refund.

³INTER-ISLAND FARES - Tolls collected westbound only. Vehicles traveling between islands may request a single transfer ticket good for one transfer at an intermediate island. The transfer may only be obtained when purchasing the appropriate vehicle fare for inter-island travel (westbound at Lopez, Shaw, or Orcas) and is free of charge. Transfers shall be valid for 24 hours from time of purchase.

⁴SENIOR CITIZEN, DISABLED DRIVER OR DISABLED ATTENDANT DRIVER - Half fare discount applies to driver portion of the vehicle-driver fare and only when the driver is eligible. Those persons with disabilities who require attendant care while traveling on the ferries, and are so certified by their physician, may obtain an endorsement on their WSF Disability Travel Permit and such endorsement shall allow the attendant, when driving, to have the driver portion of the vehicle fare waived.

⁵ROUND TRIP - Round trip tickets for international travel available for trips beginning or ending on one of the islands served.

⁶RESERVATION FARES - These fares apply only to travelers that have made advanced reservations and paid the \$15 nonrefundable reservation fee. The reservation fee shall be a \$30 nonrefundable fee when the peak season surcharge is in effect.

⁷RESERVATION FARES - These fares apply only to travelers that have made advanced reservations and paid the \$7 nonrefundable reservation fee. The reservation fee shall be a \$15 nonrefundable fee when the peak season surcharge is in effect.

RIDE SHARE VEHICLES - A commuter ride share vehicle which carries five or more persons on a regular and expense-sharing basis for the purpose of travel to and from work or school and which is certified as such by a local organization approved by the Washington state ferry system, may purchase for a \$20 fee, a permit valid for one year valid only during the hours shown on the permit. The \$20.00 fee shall include the driver. Remaining passengers shall pay the applicable passenger fare. Except that the minimum total paid for all passengers in the van shall not be less than four times the applicable passenger fare. Carpools of three or more registered in WSF's preferential loading program must also pay a \$20.00 yearly permit fee.

STOWAGE - Stowage carry-on items including kayaks, canoes and other items of comparable size which are typically stowed on the vehicle deck of the vessel shall be charged at the motorcycle rate. This rate includes the walk-on passenger carrying on the item to be stowed.

PEAK SEASON SURCHARGE - A 25% surcharge shall be applied to vehicles from the first Sunday in May to the second Sunday in October except those using frequent user coupons. A 35% surcharge shall be applied on vehicle fares from Anacortes to Lopez,

Shaw, Orcas and Friday Harbor, except those using frequent user coupons.

PENALTY CHARGES - Owner of vehicle without driver will be assessed a \$100.00 penalty charge.

PROMOTIONAL TOLLS - A promotional rate may be established at the discretion of the WSF CEO for a specified discount in order to enhance total revenue and effective only at designated times on designated routes.

GROUP OR VOLUME SALES - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiple trip books or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.

SPECIAL EVENTS - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.

BUNDLED SINGLE FARE BOOKS - WSF may bundle single fare types into multiple trip books as a customer convenience. These books shall be valid only until the first Sunday of May following the date of purchase after which time the coupons shall not be accepted for passage. Unused coupons are not refundable. Anacortes to San Juan Islands senior/disabled fares will be bundled at the applicable early week price.

[Statutory Authority: RCW 47.56.030, 47.60.326. 03-08-072, § 468-300-020, filed 4/1/03, effective 5/2/03; 02-09-010, § 468-300-020, filed 4/5/02, effective 5/6/02; 01-11-010, § 468-300-020, filed 5/3/01, effective 6/3/01; 00-24-050, § 468-300-020, filed 11/30/00, effective 12/31/00; 99-08-066, § 468-300-020, filed 4/5/99, effective 5/6/99; 98-08-051, § 468-300-020, filed 3/27/98, effective 4/27/98; 96-19-045 (Order 82), § 468-300-020, filed 9/12/96, effective 10/13/96; 94-18-014 (Order 77), § 468-300-020, filed 8/25/94, effective 9/25/94; 94-07-104 (Order 75), § 468-300-020, filed 3/18/94, effective 4/18/94; 93-18-005, § 468-300-020, filed 8/19/93, effective 9/19/93; 92-18-005, § 468-300-020, filed 8/20/92, effective 9/20/92; 91-18-022 (Order 72), § 468-300-020, filed 8/27/91, effective 9/27/91; 89-14-052 (Order 67, Resolution No. 354), § 468-300-020, filed 6/30/89; 89-04-014 (Order 66, Resolution No. 343), § 468-300-020, filed 1/23/89, effective 7/1/89; 87-12-005 (Order 61, Resolution No. 298), § 468-300-020, filed 5/21/87. Statutory Authority: RCW 47.60.326. 86-06-010 (Order 54, Resolution No. 263), § 468-300-020, filed 2/21/86; 85-11-007 (Order 44, Resolution No. 241), § 468-300-020, filed 5/3/85; 84-11-052 (Order 42, Resolution Nos. 221 and 222), § 468-300-020, filed 5/17/84; 84-10-002 (Order 41, Resolution No. 218), § 468-300-020, filed 4/20/84; 83-07-062 (Order 33, Resolution No. 175), § 468-300-020, filed 3/22/83; 82-07-063 (Order 28, Resolution No. 143), § 468-300-020, filed 3/22/82. Statutory Authority: RCW 47.60.325 and 47.56.030. 81-15-099 (Order 23, Resolution No. 117), § 468-300-020, filed 7/22/81. Statutory Authority: RCW 47.60.325. 81-08-044 (Order 17, Resolution No. 104), § 468-300-020, filed 3/31/81; 80-04-104 (Order 15, Resolution No. 72), § 468-300-020, filed 4/1/80; 79-09-136 (Order 11, Resolution No. 57), § 468-300-020, filed 9/5/79; 79-04-047 (Order 6, Resolution No. 44), § 468-300-020, filed 3/27/79; 78-06-040 (Order 2, Resolution No. 21), § 468-300-020, filed 5/19/78.]

WAC 468-300-040 Oversize vehicle ferry tolls.

EFFECTIVE 03:00 A.M. MAY 4, 2003

ROUTES	Oversize Vehicle Ferry Tolls ¹							Cost Per Ft. Over 80' @
	Overall Unit Length - Including Driver							
	20' To Under	20' To Under	30' To Under	40' To Under	50' To Under	60' To under	70' To and include	
Fauntleroy-Southworth								
Port Townsend/Keystone	11.25	22.50	30.00	37.50	45.00	52.50	60.00	0.80

State Ferries and Toll Bridges

468-300-040

ROUTES	Oversize Vehicle Ferry Tolls ¹							Cost Per Ft. Over 80' @
	Overall Unit Length - Including Driver							
	20' To Under 30' Under 7'6" High	20' To Under 30' Over 7'6" High	30' To Under 40'	40' To Under 50'	50' To Under 60'	60' To under 70'	70' To and include 80'	
Seattle-Bainbridge Island Seattle/Bremerton								
Edmonds-Kingston	14.25	28.50	38.00	47.50	57.00	66.50	76.00	1.00
*Fauntleroy-Vashon								
*Southworth-Vashon								
*Pt. Defiance-Tahlequah	18.50	36.75	49.00	61.25	73.50	85.75	98.00	1.30
Mukilteo-Clinton	8.75	17.25	23.00	28.75	34.50	40.25	46.00	0.60
*Anacortes to Lopez - Sunday-Tuesday ²	30.00	60.00	80.00	100.00	120.00	140.00	160.00	2.00
*Anacortes to Shaw, Orcas - Sunday-Tuesday ²	35.25	70.50	94.00	117.50	141.00	164.50	188.00	2.40
*Anacortes to Friday Harbor - Sunday-Tuesday	35.25	70.50	94.00	117.50	141.00	164.50	188.00	2.40
*Anacortes to Lopez - Wednesday-Saturday ²	33.00	66.00	88.00	110.00	132.00	154.00	176.00	2.20
*Anacortes to Shaw, Orcas - Wednesday-Saturday ²	39.00	78.00	104.00	130.00	156.00	182.00	208.00	2.60
*Anacortes to Friday Harbor - Wednesday-Saturday	39.00	78.00	104.00	130.00	156.00	182.00	208.00	2.60
Between Lopez, Shaw, Orcas and Friday Harbor ³	17.00	33.75	45.00	56.25	67.50	78.75	90.00	N/A
<i>International Travel</i>								
Anacortes to Sidney and Sidney to all destina- tions	53.00	105.75	141.00	176.25	211.50	246.75	282.00	3.60
Travelers with advanced reservations (\$15 fee)								
Anacortes to Sidney and Sidney to all destinations ⁵	38.00	90.75	126.00	161.25	196.50	231.75	267.00	3.60
Lopez, Shaw, Orcas and Friday Harbor to Sidney								
Travelers with advanced reservations (\$7 fee) from								
Lopez, Shaw, Orcas and Friday Harbor to Sidney ⁶	8.50	23.75	34.00	44.25	54.50	64.75	75.00	1.10
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ⁴	68.50	136.50	182.00	227.50	273.00	318.50	364.00	4.70

EFFECTIVE 03:00 A.M. MAY 2, 2004

ROUTES	Oversize Vehicle Ferry Tolls ¹							Cost Per Ft. Over 80' @
	Overall Unit Length - Including Driver							
	20' To Under 30' Under 7'6" High	20' To Under 30' Over 7'6" High	30' To Under 40'	40' To Under 50'	50' To Under 60'	60' To under 70'	70' To and include 80'	
Fauntleroy-Southworth								
Port Townsend/Keystone	11.75	23.25	31.00	38.75	46.50	54.25	62.00	0.80
Seattle-Bainbridge Island Seattle/Bremerton								
Edmonds-Kingston	15.00	30.00	40.00	50.00	60.00	70.00	80.00	1.00
*Fauntleroy-Vashon								
*Southworth-Vashon								
*Pt. Defiance-Tahlequah	19.50	39.00	52.00	65.00	78.00	91.00	104.00	1.30
Mukilteo-Clinton	9.00	18.00	24.00	30.00	36.00	42.00	48.00	0.60
*Anacortes to Lopez - Sunday-Tuesday ²	31.25	62.25	83.00	103.75	124.50	145.25	166.00	2.10
*Anacortes to Shaw, Orcas - Sunday-Tuesday ²	37.50	75.00	100.00	125.00	150.00	175.00	200.00	2.50
*Anacortes to Friday Harbor - Sunday-Tuesday	39.00	78.00	104.00	130.00	156.00	182.00	208.00	2.60
*Anacortes to Lopez - Wednesday-Saturday ²	34.50	69.00	92.00	115.00	138.00	161.00	184.00	2.30
*Anacortes to Shaw, Orcas - Wednesday-Saturday ²	41.75	83.25	111.00	138.75	166.50	194.25	222.00	2.80

ROUTES	Oversize Vehicle Ferry Tolls ¹							Cost Per Ft. Over 80' @
	Overall Unit Length - Including Driver							
	20' To Under 30' Under 7'6" High	20' To Under 30' Over 7'6" High	30' To Under 40'	40' To Under 50'	50' To Under 60'	60' To under 70'	70' To and include 80'	
*Anacortes to Friday Harbor - Wednesday-Saturday	43.25	86.25	115.00	143.75	172.50	201.25	230.00	2.90
Between Lopez, Shaw, Orcas and Friday Harbor ³	18.75	37.50	50.00	62.50	75.00	87.50	100.00	N/A
<i>International Travel</i>								
Anacortes to Sidney and Sidney to all destinations	56.00	111.75	149.00	186.25	223.50	260.75	298.00	3.80
Travelers with advanced reservations (\$15 fee)								
Anacortes to Sidney and Sidney to all destinations ⁵	41.00	96.75	134.00	171.25	208.50	245.75	283.00	3.80
Lopez, Shaw, Orcas and Friday Harbor to Sidney	16.50	33.00	44.00	55.00	66.00	77.00	88.00	1.10
Travelers with advanced reservations (\$7 fee) from Lopez, Shaw, Orcas and Friday Harbor to Sidney ⁶	9.50	26.00	37.00	48.00	59.00	70.00	81.00	1.10
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ⁴	72.50	144.75	193.00	241.25	289.50	337.75	386.00	4.90

@ These fares rounded to the next multiple of \$0.05. All other fares rounded to the next multiple of \$.25.

* These routes operate as a one-point toll collection system.

¹OVERSIZE VEHICLES - Includes all vehicles 20 feet in length and longer regardless of type: Commercial trucks, recreational vehicles, vehicles under 20' pulling trailers, etc. Length shall include vehicle and load to its furthest extension. Overheight charge is included in oversize vehicle toll. Vehicles 11 feet in width or wider pay double the fare applicable to their length. Private and commercial passenger buses or other passenger vehicles pay the applicable oversize vehicle tolls. Public transit buses and drivers shall travel free upon display of an annual permit which may be purchased for \$10.

²TRANSFERS - Tolls collected westbound only. Oversize vehicles traveling westbound from Anacortes may purchase a single intermediate transfer when first purchasing the appropriate fare. The transfer is valid for a 24-hour period and is priced as follows: May 4, 2003 - May 1, 2004, \$20.00 base season, \$27.50 peak season; May 2, 2004 - April 30, 2005, \$28.75 base season, \$38.75 peak season.

³INTER-ISLAND - Tolls collected westbound only. Vehicles traveling between islands may request a single transfer ticket good for one transfer at an intermediate island. The transfer may only be obtained when purchasing the appropriate vehicle fare for inter-island travel (westbound at Lopez, Shaw, or Orcas) and is free of charge. Transfers shall be valid for 24 hours from time of purchase.

⁴ROUND TRIP - Round trip tickets for international travel available for trips beginning or ending on one of the islands served.

⁵RESERVATION FARES - These fares apply only to travelers that have made advanced reservations and paid the \$15 nonrefundable reservation fee. The reservation fee shall be a \$30 nonrefundable fee when the peak season surcharge is in effect.

⁶RESERVATION FARES - These fares apply only to travelers that have made advanced reservations and paid the \$7 nonrefundable reservation fee. The reservation fee shall be a \$15 nonrefundable fee when the peak season surcharge is in effect.

COMMERCIAL VEHICLE RESERVATION FEES - For commercial vehicles traveling with reservations a participation fee (\$200 for summer schedule season, \$100 for each of the other schedule seasons) will be charged. Fees will be collected when reservations are confirmed.

PEAK SEASON SURCHARGE - A peak season surcharge of 25% shall apply to all oversize vehicles, except for Anacortes to Lopez, Shaw, Orcas, and Friday Harbor. The senior citizen discount shall apply to the driver of an oversize vehicle. A 35% surcharge will apply to oversized vehicles traveling from Anacortes to Lopez, Shaw, Orcas and Friday Harbor.

SENIOR CITIZEN DISCOUNTS - Discounts of 50% for the driver of the above vehicles shall apply. Senior citizen discount is determined by subtracting full-fare passenger rate and adding half-fare passenger rate.

PENALTY CHARGES - Owner of vehicle without driver will be assessed a \$100.00 penalty charge.

DISCOUNT FROM REGULAR TOLL - Effective May 4, 2003, through May 4, 2004, oversize vehicles making 12 or more, one-way crossings per week (Sunday through Saturday) will qualify for a 10% discount from the regular ferry tolls. This discount is discontinued effective May 5, 2004.

GROUP OR VOLUME SALES - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiple trip books or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.

SPECIAL EVENTS - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.

EMERGENCY TRIPS DURING NONSERVICE HOURS - While at locations where crew is on duty charge shall be equal to the cost of fuel consumed to make emergency trip. Such trips shall only be offered as a result of official requests from an emergency services agency and only in the case of no reasonable alternative.

BULK NEWSPAPERS - Per 100 lbs. \$2.20

(Shipments exceeding 60,000 lbs. in any month shall be assessed \$1.10 per 100 lbs.)

Daily Newspapers, in bundles, and medical supplies, to be received and delivered without receipt and subject to owner's risk, will be transported between ferry terminals on regular scheduled sailings.

EXPRESS SHIPMENTS - A flat handling charge of \$25.00 per parcel is charged.

(Shipments exceeding 100 lbs. assessed \$8.30 for each 25 lbs. or fraction thereof.)

Express shipments will be handled on scheduled sailings when no other means of shipment is available to shipper. Shipments must be of a size and weight that can easily be handled by carrier's employees.

Carrier reserves the right to refuse shipment of any item. Carrier assumes no liability for loss or damage to any shipment. Minimum rate for any shipment shall be the rate for 100 pounds.

San Juan inter-island express shipments will be handled at \$5.00 per parcel.

MEDICAL SUPPLIES - A flat handling charge of \$5.00 per shipment is charged.

DISCLAIMER - Under no circumstances does Washington state ferries warrant the availability of ferry service at a given date or time; nor does it warrant the availability of space on board a vessel on a given sailing.

[Statutory Authority: RCW 47.56.030, 47.60.326. 03-08-072, § 468-300-040, filed 4/1/03, effective 5/2/03; 02-09-010, § 468-300-040, filed 4/5/02, effective 5/6/02; 01-11-010, § 468-300-040, filed 5/3/01, effective 6/3/01; 00-24-050, § 468-300-040, filed 11/30/00, effective 12/31/00; 99-08-066, § 468-300-040, filed 4/5/99, effective 5/6/99; 98-08-051, § 468-300-040, filed 3/27/98, effective 4/27/98; 96-19-045 (Order 82), § 468-300-040, filed 9/12/96, effective 10/13/96; 94-18-014 (Order 77), § 468-300-040, filed 8/25/94, effective 9/25/94; 94-07-104 (Order 75), § 468-300-040, filed 3/18/94, effective 4/18/94; 93-18-005, § 468-300-040, filed 8/19/93, effective 9/19/93; 92-18-005, § 468-300-040, filed 8/20/92, effective 9/20/92; 91-18-022 (Order 72), § 468-300-040, filed 8/27/91, effective 9/27/91; 89-14-052 (Order 67, Resolution No. 354), § 468-300-040, filed 6/30/89; 89-04-014 (Order 66, Resolution No. 343), § 468-300-040, filed 1/23/89, effective 7/1/89; 87-12-005 (Order 61, Resolution No. 298), § 468-300-040, filed 5/21/87. Statutory Authority: RCW 47.60.290, 47.60.300 and 47.60.326. 86-24-009 (Order 59, Resolution No. 287), § 468-300-040, filed 11/21/86. Statutory Authority: RCW 47.60.326. 86-06-010 (Order 54, Resolution No. 263), § 468-300-040, filed 2/21/86; 85-11-007 (Order 44, Resolution No. 241), § 468-300-040, filed 5/3/85; 84-11-052 (Order 42, Resolution Nos. 221 and 222), § 468-300-040, filed 5/17/84; 83-07-062 (Order 33, Resolution No. 175), § 468-300-040, filed 3/22/83; 82-18-009 (Order 29, Resolution No. 153), § 468-300-040, filed 8/20/82; 82-07-063 (Order 28, Resolution No. 143), § 468-300-040, filed 3/22/82. Statutory Authority: RCW 47.60.325 and 47.56.030. 81-15-099 (Order 23, Resolution No. 117), § 468-300-040, filed 7/22/81. Statutory Authority: RCW 47.60.325. 81-08-044 (Order 17, Resolution No. 104), § 468-300-040, filed 3/31/81; 80-04-104 (Order 15, Resolution No. 72), § 468-300-040, filed 4/1/80; 79-09-136 (Order 11, Resolution No. 57), § 468-300-040, filed 9/5/79; 79-04-047 (Order 6, Resolution No. 44), § 468-300-040, filed 3/27/79; 78-06-040 (Order 2, Resolution No. 21), § 468-300-040, filed 5/19/78.]

WAC 468-300-220 Calculation of charter rates for vessels owned by the Washington state ferry system. Pursuant to chapter 323, Laws of 1997, vessels owned by the Washington state ferry system may be made available for charter subject to operational availability. Execution of a charter agreement as set forth in the statute must precede a commitment to charter. The following actual hourly vessel operating costs have been calculated for establishing the rates to be charged for vessel charters from July 1, 2002, through June 30, 2003:

Vessel Class	Deck Crew On Overtime	Deck Crew On Straight Time
Jumbo Mark II	\$ 1,077.29	\$ 895.07
Jumbo	1,037.39	868.24
Super	999.22	835.96
Evergreen	775.62	640.56
Issaquah	810.73	675.67

Vessel Class	Deck Crew On Overtime	Deck Crew On Straight Time
Steel	649.13	542.27
Rhododendron	622.13	515.27
Hiyu	439.40	380.09
Passenger Only	521.78	445.57
Passenger Only Fast Ferry	595.00	516.34

The rate for an individual charter will be calculated by:

(1) Multiplying the actual operating cost set forth above for the vessel that is chartered by the number of hours, or fraction thereof, for which the vessel is chartered;

(2) Adding labor costs, mileage and per diem expenses to determine the total actual costs if the particular charter requires a crew callout; and

(3) Increasing the total actual costs calculated pursuant to subsections (1) and (2) of this section by an appropriate profit margin based on market conditions, and rounding to the nearest fifty dollars.

In the case of charters for the transport of hazardous materials, the transporter is required to pay for all legs necessary to complete the charter, even if the vessel is simultaneously engaged in an operational voyage on behalf of the Washington state ferry system.

[Statutory Authority: RCW 47.56.030, 47.60.326. 03-08-072, § 468-300-220, filed 4/1/03, effective 5/2/03; 02-09-010, § 468-300-220, filed 4/5/02, effective 5/6/02; 01-11-010, § 468-300-220, filed 5/3/01, effective 6/3/01; 99-08-066, § 468-300-220, filed 4/5/99, effective 5/6/99; 98-08-051, § 468-300-220, filed 3/27/98, effective 4/27/98. Statutory Authority: RCW 47.01.061, 47.56.032 and 1997 c 323. 97-15-110 (Order 83), § 468-300-220, filed 7/22/97, effective 8/22/97.]

WAC 468-300-700 Preferential loading. In order to protect public health, safety and commerce; to encourage more efficient use of the ferry system; and to reduce dependency on single occupant private automobiles:

(1) Preferential loading privileges on vessels operated by Washington state ferries (WSF), exempting vehicles from the standard first-come first-served rule, shall be granted in the order set forth below:

(a) An emergency medical vehicle, medical unit, aid unit, or ambulance dispatched to and returning from an emergency or nonemergency call while in service. Up to one additional vehicle may accompany a qualifying emergency medical vehicle or authorized med-evac when going to, but not when returning from, an emergency.

(b) A public police or fire vehicle only when responding to an emergency call, but not when returning from either an emergency or a nonemergency call. However, these vehicles will receive priority loading when they are returning from either an emergency or nonemergency call to Vashon Island or the San Juan Islands.

(c) A public utility or public utility support vehicle only when responding to an emergency call, but not when returning from either an emergency or a nonemergency call.

(d) Where a vehicle occupant states that an extended wait would cause detrimental health risks to a vehicle occupant, that vehicle will be allowed preferential loading whenever the afflicted occupant has provided a medical form certified by a physician that such preferential loading is required.

However, when that vehicle occupant has not submitted the proper medical form, preferential loading will be permissible based upon appropriate terminal staff determination.

(e) Preferential loading may be granted for vehicles carrying passengers needing to attend to a family member subject to risk of physical threat/harm or medical emergencies which requires the customer's timely access to the vessel's destination.

(f) A visibly marked school vehicle owned, operated, or sponsored by a school** when operating on regular schedules preapproved by the WSF or when advance notice is provided to each affected WSF terminal (**as defined in RCW 28A.150.010 (K-12), RCW 28A.150.020 (public schools), RCW 28A.195.010 (K-12 private schools), and RCW 28B.195.070 (secondary schools)).

(g) A visibly marked, preapproved or regularly scheduled publicly or privately owned public transportation vehicle** operating under a Washington state utilities and transportation commission certificate for public convenience and necessity (**as defined in RCW 81.68.010 (regular route/fixed termini), RCW 81.70.010 (charter and excursion)).

(h) A visibly marked nonprofit or publicly supported transportation vehicle** having provided each affected WSF terminal with advance notice and displaying a WSF permit making it readily identifiable as a public transportation vehicle (**as defined in chapter 81.66 RCW (private, nonprofit special needs)).

(i) A visibly marked and randomly scheduled private for profit transportation vehicle** operating under a Washington state utilities and transportation commission certificate for public convenience and necessity traveling on routes where WSF is the only major access for land-based traffic only when that private for profit transportation vehicle has provided each affected WSF terminal with a preapproved schedule and/or advance notice of its proposed sailing(s), (**as defined in chapter 81.68 RCW (regular route/fixed termini), chapter 81.70 RCW (charter and excursion), chapter 81.66 RCW (private nonprofit special needs), chapter 46.72 RCW (private, for hire)).

(j) A ride-sharing vehicle for persons with special transportation needs** transporting a minimum of three elderly and/or disabled riders or two elderly and/or disabled riders and an attendant displaying WSF ride-share registration program permit only when the operator of that vehicle has provided each affected WSF terminal with advance notice of its proposed sailing(s) (**as defined in RCW 46.74.010 (ride sharing for persons with special transportation needs)).

(k) A visibly marked, public ride-share vehicle** owned by a transit agency and leased out to members of the public through the transit agency's registration program only when the operator of that vehicle has provided each affected WSF terminal with advance notice of its proposed sailing(s) (**as defined in RCW 46.74.010 (commuter ride sharing)).

(l) A privately owned commuter ride-share vehicle** that visibly displays WSF approved identification markings readily identifiable by the public. There must be a minimum of three occupants in any such vehicle to receive preferential loading. Any such ride-share vehicle must be registered and in good standing in the WSF ride-share regis-

tration program (**as defined by RCW 46.74.010 (commuter ride sharing)).

(m) Specific to the Anacortes-San Juan Islands routes, a vehicle carrying livestock and traveling on routes where Washington state ferries is the only major access for land-based traffic, where such livestock (i) is raised for commercial purposes and is recognized by the department of agriculture, county agriculture soil and conservation service, as raised on a farm; or (ii) is traveling to participate in a 4H event sanctioned by a county extension agent.

(n) Specific to the Seattle-Bainbridge and Edmonds-Kingston ferry routes, where a vehicle occupant claims that an extended wait would cause detrimental health risks to their livestock en route to veterinarian services not available in the local community, that vehicle will be allowed preferential loading whenever the vehicle occupant has provided a medical form certified by a veterinarian that such preferential loading is required.

(o) Specific to the Fauntleroy-Vashon, Seattle-Bainbridge, Mukilteo-Clinton, and Anacortes-San Juan ferry routes, any mail delivery vehicle with proper documentation from the U.S. Postal Service showing that such vehicle is in the actual process of delivering mail.

(p) Specific to the Anacortes-San Juan Islands routes, a vehicle 20 ft. and over in length and 10,000 lbs. or greater in weight, provided that the vehicle is carrying or returning from carrying article(s) of commerce for purchase or sale in commercial activity.

(q) Vehicles 20 feet and over in length engaged in the conduct of commerce and/or transportation of passengers where and when WSF management has determined that the sale of vehicle space may promote higher utilization of available route capacity and an increase in revenues.

(r) An oversized or overweight vehicle (20 ft. and over in length, and/or over 8 1/2 ft. in width, and 80,000 lbs. or greater in weight) requiring transport at special times due to tidal conditions, vessel assignments, or availability of space.

(s) A scheduled bicycle group as determined by WSF only when a representative of that group has provided WSF with advance notice of the proposed travel schedule.

(2) Preferential loading privileges shall be subject to the following conditions:

(a) Privileges shall be granted only where physical facilities are deemed by WSF management to be adequate to allow granting the privilege and achieving an efficient operation.

(b) Subject to specified exceptions, documentation outlining qualifications for preferential loading and details of travel will be required in advance from all agencies, companies, or individuals requesting such privileges.

(c) Privileges may be limited to specified time periods as determined by WSF management.

(d) Privileges may require a minimum frequency of travel, as determined by WSF management.

(e) Privileges may be limited to a specific number of vehicle deck spaces and passenger capacity for any one sailing.

(f) Privileges may require arriving at the ferry terminal at a specified time prior to the scheduled sailing.

(3) To obtain more information about the documentation required and conditions imposed under subsection (2) of this

section, call WSF's general information number, (206) 464-6400, or a terminal on a route for which the preferential boarding right is requested.

[Statutory Authority: RCW 47.56.030, 47.60.326, 03-08-072, § 468-300-700, filed 4/1/03, effective 5/2/03. Statutory Authority: RCW 47.56.030, 47.60.140 and 47.60.326, 99-07-059, § 468-300-700, filed 3/17/99, effective 4/17/99. Statutory Authority: RCW 47.56.030 and 47.60.326, 96-05-048 (Order 81), § 468-300-700, filed 2/16/96, effective 3/18/96; 93-18-006, § 468-300-700, filed 8/19/93, effective 9/19/93; 87-12-005 (Order 61, Resolution No. 298), § 468-300-700, filed 5/21/87. Statutory Authority: RCW 47.60.326, 86-16-011 (Order 55, Resolution No. 273), § 468-300-700, filed 7/25/86. Statutory Authority: RCW 47.60.140, 80-09-056 (Order 57), § 468-300-700, filed 7/15/80.]

Chapter 468-510 WAC LANE USE RESTRICTIONS

WAC

468-510-010 High occupancy vehicles (HOVs).

WAC 468-510-010 High occupancy vehicles (HOVs).

Pursuant to RCW 46.61.165 and 47.52.025, the department has reserved portions of interstate highways, state highways, and ramps, as HOV lanes for the exclusive use of public transportation vehicles or private motor vehicles with the number of occupants specified on signs. Motor vehicles authorized to use HOV lanes are:

- (1) Rubber tired municipal transit vehicles conforming to RCW 46.04.355.
- (2) Buses with a carrying capacity of sixteen or more persons, including the operator.
- (3) Motorcycles conforming to RCW 46.04.330.
- (4) Recreational vehicles with the number of occupants specified on signs.
- (5) Official marked law enforcement vehicles equipped with emergency lights and siren, issued by a state, local or county law enforcement agency and operated by an on-duty state patrol, local, or county law enforcement personnel.
- (6) All other vehicles with the number of occupants specified on signs, except that trucks in excess of 10,000 lb. G.V.W. are prohibited from the use of HOV lanes regardless of the number of occupants. Tow trucks that would be otherwise prohibited because of weight or number of occupants may use HOV lanes when en route to an emergency on a specific roadway or roadside.

[Statutory Authority: RCW 46.61.165 and 47.52.025, 03-20-083, § 468-510-010, filed 9/30/03, effective 10/31/03. Statutory Authority: Chapters 34.05 and 34.08 RCW, 98-12-062 (Order 178), § 468-510-010, filed 6/1/98, effective 7/2/98.]

Title 478 WAC UNIVERSITY OF WASHINGTON

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Chapter 478-04 WAC ORGANIZATION

WAC

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478-04-040

Organization—Operation—Information.

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Board of regents exercise of powers.

WAC 478-04-020 Organization—Operation—Information. (1) Organization. The University of Washington is established in Title 28B RCW as a public institution of higher education. The institution is governed by a ten-member board of regents, appointed by the governor. The board employs a president, who acts as the chief executive officer of the institution. The president establishes the structure of the administration.

(2) Operation. The administrative office of the University of Washington is at the following address:

University of Washington
Office of the President
301 Gerberding Hall
Box 351230
Seattle, WA 98195-1230

(3) Information. Additional and detailed information concerning the educational offerings may be obtained from the catalog, copies of which are available at the following address:

University of Washington
Office of the Registrar
209 Schmitz Hall
Box 355850
Seattle, WA 98195-5850

[Statutory Authority: RCW 28B.20.130 and 34.05.220, 03-24-046, § 478-04-020, filed 11/26/03, effective 12/27/03. Statutory Authority: RCW 28B.20.130, 42.17.260, 42.17.290, 42.17.300 and chapter 34.05 RCW, 97-14-004, § 478-04-020, filed 6/19/97, effective 7/20/97. Statutory Authority: Chapter 34.05 RCW, 90-15-005, § 478-04-020, filed 7/6/90, effective 8/6/90.]

WAC 478-04-030 Meetings of the board of regents. (1) Regular meetings. Regular meetings of the board shall be held pursuant to a schedule established yearly by resolution of the board. Meetings of the board will be held in the Walker-Ames Room of Kane Hall on the campus in Seattle, Washington, or at such other place as the board may direct from time to time. The president of the board, with the concurrence of a majority of the members of the board, may can-

cel any regular meeting. All such regular meetings will be conducted in conformance with the laws of the state of Washington governing such meetings.

The board shall give no less than twenty-four hours notice of cancellation of a regular meeting.

(2) Special meeting. The president of the university, the president of the board, or any six members of the board may call a special meeting at any time. Not less than twenty-four hours before any special meeting, the secretary shall have notified each member of the board by written notice of the time, place, and the business to be transacted at the meeting. Such notice shall be distributed and posted in accordance with the laws of the state governing such meetings. The presence of a regent at the meeting or the regent's written waiver of notice filed with the secretary shall constitute a waiver of receiving written notice of the meeting. When the meeting is called to deal with an emergency involving injury or damage, or the likelihood of injury or damage, to persons or property, and the time requirements for notice provided for above would be impractical and increase the likelihood of such injury or damage, such required notice may be dispensed with and the secretary shall notify each member of the board by the best means possible under the circumstances.

(3) Notice of agenda for regular meeting. Not less than four days before any regular meeting, the secretary shall mail to each member of the board a reminder of the regular meeting and a preliminary agenda setting forth the matters which are to be considered at the meeting.

(4) Addenda to the agenda at regular or special meetings. Addenda to the agenda of either a regular or a special meeting may be permitted at the commencement of or during such meeting, except that final disposition shall not be taken on addenda to the agenda of a special meeting unless notice as required by applicable law has been given.

(5) Quorum. A majority of the entire board shall be necessary to constitute a quorum at all regular meetings and special meetings.

(6) Order of business. The following shall be the order of business at each regular meeting of the board:

- Report of the president of the board;
- Report of the president of the university;
- Consent agenda (including approval of minutes);
- Reports of standing committees of the board;
- Reports of special committees of the board; and
- Any other business that may properly come before the board.

The following shall be the order of business at each special meeting of the board:

- Reading of notice of meeting;
- The special business for which the meeting was called;
- and

Any other business that may properly come before the board.

The order of business of the board may be changed or suspended at any meeting by a majority of the regents present. An item shall be removed from the consent agenda by request of any regent.

(7) Minutes. The minutes of all regular and special meetings of the board shall be kept by the secretary. Such minutes, following approval, shall be open to public inspection in the

office of the secretary of the board of regents during regular university business hours.

(8) Public meetings. Regular and special meetings of the board of regents and committees thereof as required by applicable law shall be open to the public, except for executive sessions which may be held as permitted by applicable law. Board members may appear at any meeting through a telephone or video-conferencing device that permits communications with all other persons at the meeting. Persons wishing to appear before the board to make a presentation shall comply with the procedures as specified in subsection (11) of this section.

(9) Committee of the whole meetings. Meetings of the board as a committee of the whole may be held before regular or special meetings of the board or at such time and such place as the president of the board may direct from time to time.

(10) Executive sessions. During any regular or special meeting of the board, the board may hold an executive session to discuss matters as permitted in applicable laws of the state of Washington.

(11) Communications to and appearance before the board. Any persons who wish to communicate to the board or appear before the board shall do so as follows:

(a) Communications to the board. Any person who wishes to bring a matter to the attention of the board may do so by submitting such communication in writing to the secretary of the board of regents. The secretary shall bring such written communications to the attention of the president of the board and the president of the university for direction as to response and/or transmittal to the board.

(b) Appearance before the board. The meetings of the board of regents are intended for presentation of agenda items by the chairs of the respective standing committees and by the president of the university for discussion and action by the members of the board. Public testimony on agenda items, or on other relevant items which any person may wish to call to the attention of the board, may be taken by the appropriate standing committee or by the committee of the whole. The chair of each committee shall have the discretion to limit the time and order of appearances as deemed desirable for a fair presentation of views consistent with the other business before the committee. In an unusual case, this subsection may be waived by the president of the board or by any other six members of the board.

(c) Petition to board for promulgation, amendment, or repeal of rule. Persons having an interest in the promulgation, amendment, or repeal of a "rule" as defined in RCW 34.05.-010 may submit a written petition to the administrative procedures office, rules coordinator for the University of Washington. Any petition so submitted shall contain the name and address of the petitioner or petitioners, a description of the persons on whose behalf the petition is presented if it is presented in a representative capacity, a statement of the interest of the petitioner and/or the persons on whose behalf it is presented, and a statement of the reasons supporting the petition. If the petition is for the promulgation of a rule, it shall contain the proposed rule. If the petition is for an amendment of an existing rule, it shall contain the rule with the proposed deletions lined out and proposed additions underlined or italicized. If the petition is for the repeal of a rule, it shall contain

a copy of the rule proposed to be repealed. The petition shall be considered by the board at the first regular meeting held not less than thirty days after the date the petition was submitted to the administrative procedures office, provided that the board may consider the petition at any earlier regular or special meeting of the board.

Within sixty days after submission of a petition to the administrative procedures office that is for the promulgation, amendment, or repeal of a "rule," as defined in RCW 34.05.-010, the board shall either deny the petition in writing or initiate rule-making procedures in accordance with RCW 34.05.330.

(12) Rules of procedure. *Robert's Rules of Order*, latest revised edition, shall govern all meetings of the board and its committees except where such rules of order are superseded by the bylaws of the board of regents or standing orders of the board. Any member of the board may make a motion which need not be seconded in order to bring the subject of the motion before the board for action.

[Statutory Authority: RCW 28B.20.130, 34.05.330 and chapter 42.30 RCW. 03-24-046, § 478-04-030, filed 11/26/03, effective 12/27/03. Statutory Authority: RCW 28B.20.130 and 42.30.075. 92-02-038, § 478-04-030, filed 12/24/91, effective 1/24/92.]

WAC 478-04-040 Board of regents exercise of powers. The board and its committees shall act only at meetings called as provided by applicable law and the bylaws of the board of regents, and all matters coming before the board or its committees for action shall be determined by the majority vote of its members present, the members present being not less than a quorum, except as otherwise specified in Article III of the bylaws of the board of regents. The member of the board who is presiding at a meeting shall be entitled to make motions, second motions, vote, and otherwise participate in the meeting to the same extent as the other members of the board. The student regent shall excuse himself or herself from participation or voting on matters relating to the hiring, discipline, or tenure of faculty members and personnel.

[Statutory Authority: RCW 28B.20.130. 03-24-046, § 478-04-040, filed 11/26/03, effective 12/27/03.]

Chapter 478-132 WAC

ACADEMIC CALENDAR FOR THE UNIVERSITY OF WASHINGTON

WAC
478-132-030 University calendar.

WAC 478-132-030 University calendar. The calendar at the university consists of four quarters, which normally begin and end as follows:

- (1) The autumn quarter shall begin on the last Wednesday in September and end on the twelfth Friday thereafter.
- (2) The winter quarter shall begin on the first Monday after January 1 and end on the eleventh Friday thereafter. When January 1 falls on Sunday, the winter quarter shall begin on Tuesday January 3; when January 1 falls on Monday, the winter quarter shall begin on Wednesday January 3.
- (3) The spring quarter shall begin on the second Monday after the close of winter quarter and end on the eleventh Fri-

day thereafter. The June commencement shall be the Saturday immediately following the last day of spring quarter.

(4) The summer quarter shall begin on the second Monday following the June commencement and end on the ninth Friday thereafter.

(5) Certain academic programs may begin or end on schedules different from those in subsections (1) through (4) of this section with the approval of the provost. In such cases, it will be the responsibility of the appropriate dean to provide advance notice to the affected students.

[Statutory Authority: RCW 28B.20.130. 03-08-040, § 478-132-030, filed 3/27/03, effective 4/1/04; 00-04-038, § 478-132-030, filed 1/25/00, effective 2/25/00. Statutory Authority: RCW 28B.20.130(1). 80-03-049 (Order 79-7), § 478-132-030, filed 2/22/80; Order 72-10, § 478-132-030, filed 11/30/72.]

Chapter 478-136 WAC
USE OF UNIVERSITY OF WASHINGTON
FACILITIES

WAC
478-136-030 Limitations on use.
478-136-060 Safety and liability.

WAC 478-136-030 Limitations on use. (1) Freedom of expression is a highly valued and indispensable quality of university life. However, university facilities may not be used in ways which obstruct or disrupt university operations, the freedom of movement, or any other lawful activities. Additionally, use of university facilities may be subject to reasonable time, place and manner restrictions.

(2) University facilities may be used for events and forums regarding ballot propositions and/or candidates who have filed for public office so long as the event has received preliminary approval by an administrative or academic unit and final approval by the committee on the use of university facilities. There are, however, certain limitations on the use of university facilities for these political activities.

(a) First priority for the use of campus facilities shall be given to regularly scheduled university activities.

(b) University facilities may be used for political purposes such as events and forums regarding ballot propositions and/or candidates who have filed for public office only when the full rental cost of the facility is paid. However, use of state funds for payment of facility rental costs is prohibited.

(c) Forums or debates may be scheduled at full facility rental rates if all parties to a ballot proposition election or all candidates who have filed for office for a given position, regardless of party affiliation, are given equal access to the use of facilities within a reasonable time.

(d) No person shall solicit contributions on university property for political uses, except in instances where this limitation conflicts with applicable federal law regarding interference with the mails.

(e) Public areas outside university buildings may be used for political purposes such as events and forums regarding ballot propositions and/or candidates who have filed for public office, excluding solicitation of funds, provided the other normal business of the university is not disrupted and entrances to and exits from buildings are not blocked.

(f) University facilities or services may not be used to establish or maintain offices or headquarters for political candidates or partisan political causes.

(3) University facilities may not be used for private or commercial purposes such as sales, advertising, or promotional activities unless such activities serve an educational purpose, as determined by the committee on the use of university facilities.

(4) Nothing in these rules is intended to alter or affect the regular advertising, promotional, or underwriting activities carried on, by, or in the regular university media or publications. Policies concerning advertising, promotional or underwriting activities included in these media or publications are under the jurisdiction of and must be approved by their respective management or, where applicable, advisory committees, in accordance with applicable state and federal laws.

(5) In accordance with WAC 478-136-010, the university will make its facilities available only for purposes related to the educational mission of the university, as determined by the committee on the use of university facilities, including but not limited to instruction, research, public assembly, and student activities. When permission is granted to use university facilities for approved instructional or related purposes, as a condition of approval, the user of university facilities agrees to include in all materials nonendorsement statements in the form approved by the committee on the use of university facilities. "Materials" includes all communications, advertisement, and any other printed, electronic, or broadcast/telecast information related to the user's activities offered in university facilities. The committee will determine the content, size of print and placement of the nonendorsement language. The university will not make its facilities available for instructional or related purposes that compete with courses or programs offered by the university.

(6) Solicitation, or distribution of handbills, pamphlets and similar materials by anyone, whether a member of the university community or of the general public, is not permitted in those areas of campus to which access by the public is restricted or where such solicitation or distribution would significantly impinge upon the primary business being conducted.

(7) Solicitation and distribution of materials in university residence halls are governed by residence hall policies. No solicitation of a commercial nature is permitted in university residence halls. Commercial advertising may be allowed, and is restricted to certain designated areas of each residence hall, when it is related to the university's mission and approved by the department of housing and food services.

(8) Electronic amplification on the grounds of the campus is prohibited with the following exceptions:

(a) The lawn area immediately west of the Husky Union Building will be available for open-air speaking events using directional and volume-controlled speech amplification equipment provided by the university. Use of the Husky Union Building lawn site will be available to registered or official student organizations and faculty or staff groups on a first-come, first-served basis. The amplification system will be issued upon presentation of a currently valid student, faculty or staff identification card at the Husky Union Building Reservation Office.

(b) The committee on the use of university facilities may grant permission, under special circumstances, for the use of other amplification equipment on the lawn site west of the Husky Union Building or in other outdoor locations. Permission should be requested through:

University of Washington
Secretary to the Committee on the
Use of University Facilities
400 Gerberding Hall
Box 351210
Seattle, WA 98195-1210

(or phone: 206-543-2560), sufficiently in advance of the program to allow timely consideration.

(9)(a) No person may use university facilities to camp, except if permission to do so has been granted in accordance with the provisions of chapters 478-116 and 478-136 WAC or except as provided in (b) of this subsection. "Camp" means to remain overnight, to erect a tent or other shelter, or to use sleeping equipment, a vehicle, or a trailer camper, for the purpose of or in such ways as will permit remaining overnight. Violators are subject to arrest and criminal prosecution under applicable state, county and city laws.

(b) This provision does not prohibit use of the university residence facilities in accordance with chapter 478-156 WAC or the use of facilities where the employee remains overnight to fulfill the responsibilities of his or her position or where a student remains overnight to fulfill the requirements of his or her course of study.

(10) Within the limits of applicable laws, the University of Washington is committed to establishing and maintaining safe conditions for persons attending football games in Husky Stadium or other athletic events or concerts in campus facilities. Accordingly, the rules enumerated below will apply to all such events and be strictly enforced.

(a) The possession or consumption of alcoholic beverages or illegal drugs is prohibited, except for alcohol allowed under a permit or license obtained under subsection (13) of this section. In addition to having the beverages or drugs confiscated, violators may be subject to university disciplinary action and/or legal proceedings, and removal from the events.

(b) Air horns, glass bottles, cans, picnic baskets, bota bags, ice chests, and thermoses (in excess of two-quart capacity) are prohibited. Individuals possessing such will not be admitted to, or will be removed from, Husky Stadium or other athletic or concert facilities until the items have been stored temporarily at locations provided for that purpose or disposed of in some other manner.

(c) Smoking is prohibited in the seating areas of all athletic stadia. Smoking is permitted on pedestrian concourses.

(d) All persons entering events in Husky Stadium or other athletic venues or events in other campus auditoria or facilities shall be subject to having all containers, bags, backpacks, coolers, or similar items visually inspected. Security personnel shall first ask permission to visually inspect the item and advise the person that he/she may refuse. Persons who refuse to allow inspection shall be allowed to return the item to a vehicle or otherwise dispose of it, after which admission shall be allowed. Persons who refuse the visual

inspection and refuse to dispose of the item shall be denied entry.

(11) Only public service announcements and acknowledgment of sponsors will be allowed on scoreboards at athletic venues.

(a) For purposes of this section, a public service announcement is defined as an announcement which promotes the activities or services of federal, state or local governments, including the University of Washington, or non-profit organizations, or generally contributes to the community's welfare and interests.

(b) In acknowledgment of their sponsorship of the scoreboards or sponsorship of events and programs, sponsors may propose public service announcements for display on the scoreboard during athletic events. The public service announcement may be accompanied by a sponsor's name or logo, but in keeping with university policy may not directly promote the products or services of the company. The text and graphics of public service announcements must be submitted at least three days in advance to the department of intercollegiate athletics for approval by the university.

(c) In addition to these public service announcements, sponsors also may be acknowledged by the display of corporate logos, trademarks, or other approved messages upon panels located on the scoreboard.

(12) The University of Washington is committed to maintaining a safe and healthful work and educational environment for all faculty, staff, students, and visitors. Accordingly, the University of Washington establishes the following smoking policy to protect nonsmokers from exposure to smoke in their university-associated environments and to protect life and property against fire hazards:

(a) Except as provided in subsections (10)(c) and (12)(b) of this section, smoking is prohibited in all university vehicles, inside all buildings owned or occupied by the university and/or used by the university's faculty, staff or students and at any outside areas or locations that may directly or indirectly affect the air supply of buildings or carry smoke into buildings.

(b) Smoking may be permitted in student rooms in university residence halls and apartments in university student housing in accordance with smoking regulations established for those facilities by the vice-president for student affairs.

(c) The director of environmental health and safety may designate specific outdoor locations as no smoking areas.

(d) Any student, staff, or faculty member who violates the university smoking policy may be subject to disciplinary action. In addition, violations of the university smoking policy may be subject to enforcement by the University of Washington police department.

(13) Alcoholic beverages may be possessed, sold, served, and consumed at university facilities only if the procedures set forth in this section are followed.

(a) The appropriate permits/licenses for possession, sale, service, and consumption of alcohol must be obtained from the Washington state liquor control board.

(b) Permits/licenses must be displayed during the event and all other guidelines and restrictions established by the Washington state liquor control board must be followed.

(c) Alcoholic beverages may be possessed, sold, served, and consumed at the faculty center, as so designated by the

university board of regents to the Washington state liquor control board, pursuant to a spirits, beer, and wine private club license issued by the Washington state liquor control board.

(d) Alcoholic beverages may be possessed, sold, served, and consumed at university facilities leased to a commercial tenant under a lease that includes authorization for the tenant to apply and hold a license issued by the Washington state liquor control board.

(e) Except as provided in (c) and (d) of this subsection, alcoholic beverages may be possessed, sold, served, and consumed at university facilities only under permits/licenses issued by the Washington state liquor control board and only as follows:

(i) Events at which alcohol is to be sold must be approved by the committee on the use of university facilities and an application to the committee must be accompanied by a request for written authorization under (f) or (g) of this subsection or proof that the seller holds an appropriate license; and

(ii) Events at athletic venues at which alcohol is to be possessed, sold, served, or consumed must not be within the spectator viewing areas and must have restricted attendance, and a university unit, or an individual or organization applying for a permit/license must have obtained approval under (f) or (g) of this subsection; and

(iii) A university unit, or an individual or organization applying for a permit/license must have obtained approval under (f) or (g) of this subsection; and

(iv) Sale, service, and consumption of alcohol is to be confined to specified room(s) or area(s) specified on the license or permit. Unopen containers may not be sold or served. No alcohol is permitted to be taken off-premises.

(f) Written authorization to apply for a special occasion license to sell alcoholic beverages at university facilities must be obtained from the committee on the use of university facilities prior to applying for a special occasion license from the Washington state liquor control board. Authorization should be requested through the University of Washington, secretary to the committee on the use of university facilities, sufficiently in advance of the program to allow timely consideration. (Note: Some license applications must be filed with the Washington state liquor control board at least thirty days or more before the event.) Written authorization to apply for such license shall accompany the license application filed with the Washington state liquor control board.

(g) Written authorization to apply for a banquet permit to serve and consume alcoholic beverages at university facilities must be obtained from the vice-president for student affairs prior to applying for the permit from the Washington state liquor control board. Authorization should be requested through the University of Washington, office of the vice-president for student affairs, sufficiently in advance of the program to allow timely consideration. Written authorization to apply for such permit shall accompany the permit application filed with the Washington state liquor control board.

(h) Consumption, possession, dispensation, or sale of alcohol is prohibited except for persons of legal age.

[Statutory Authority: RCW 28B.20.130, 03-24-045, § 478-136-030, filed 11/26/03, effective 12/27/03; 02-06-020, § 478-136-030, filed 2/25/02, effective 3/28/02; 01-11-135, § 478-136-030, filed 5/23/01, effective

6/23/01; 97-24-047, § 478-136-030, filed 11/26/97, effective 12/27/97; 91-14-024, § 478-136-030, filed 6/25/91, effective 7/26/91. Statutory Authority: Chapter 34.05 RCW. 90-12-034, § 478-136-030, filed 5/30/90, effective 9/1/90. Statutory Authority: RCW 28B.20.130. 88-19-045 (Order 88-05), § 478-136-030, filed 9/14/88; 85-01-045 (Order 84-5), § 478-136-030, filed 12/14/84. Statutory Authority: RCW 28B.20.130(1). 82-16-001 (Order 82-2), § 478-136-030, filed 7/22/82, effective 10/1/82; Order 73-2, § 478-136-030, filed 1/10/73.]

WAC 478-136-060 Safety and liability. (1) It is the responsibility of any person or organization requesting the use of university facilities to comply with all applicable university policies, procedures, rules and regulations, and applicable local, state and federal laws, including but not limited to fire, health and safety regulations.

(2) Permission to a nonuniversity organization or to a registered student organization for the use of university facilities is granted with the express understanding and condition that such organization assumes full responsibility for any loss, damage or claims arising out of such use.

When the event involves physical activity, the sale of alcohol, or otherwise will increase the risk of bodily injury above the level inherent in the facilities to be used, proof of appropriate liability insurance coverage with limits of at least \$1,000,000 per occurrence must be provided to the university's office of risk management before approval for the requested use will be granted.

[Statutory Authority: RCW 28B.20.130. 03-24-045, § 478-136-060, filed 11/26/03, effective 12/27/03; 97-24-047, § 478-136-060, filed 11/26/97, effective 12/27/97. Statutory Authority: RCW 28B.20.130(1). 82-16-001 (Order 82-2), § 478-136-060, filed 7/22/82, effective 10/1/82.]

Chapter 478-138 WAC

USE OF UNIVERSITY STADIUM BOAT MOORAGE FACILITIES

WAC

478-138-060 Schedule of fees.

WAC 478-138-060 Schedule of fees. Fees for stadium boat moorage and the effective date thereof shall be established by the director of intercollegiate athletics with approval of the special assistant to the president. The approved fee schedule shall be published on the intercollegiate athletics website.

[Statutory Authority: RCW 28B.20.130. 03-12-007, § 478-138-060, filed 5/22/03, effective 6/22/03; 92-14-060, § 478-138-060, filed 6/26/92, effective 7/27/92.]

Chapter 478-140 WAC

RULES AND REGULATIONS FOR THE UNIVERSITY OF WASHINGTON GOVERNING STUDENT EDUCATION RECORDS

WAC

478-140-018 Education records—Student's right to inspect.

WAC 478-140-018 Education records—Student's right to inspect. (1) A student has the right to inspect and review his or her education records except where otherwise provided in this chapter.

(a) The term "education records" means those records, files, documents and other materials which contain informa-

tion directly related to a student and are maintained by the university.

(b) Types of education records, and the university officials responsible for those records, include, but are not limited to:

(i) Official transcripts of courses taken and grades received, records relating to prior education experience, and admission records. The executive director of admissions and records, whose office is located in Schmitz Hall, is responsible for the maintenance of such records. In addition, the director of graduate admissions, whose office is located in Loew Hall, is responsible for the maintenance of certain admission and current education status records for graduate students, as are the admission directors of the professional schools of dentistry, law, medicine and pharmacy.

(ii) Tuition and fee payment records. The manager of the student accounts office, located in Schmitz Hall, is responsible for the maintenance of such records.

(iii) Student disciplinary records. The vice president for student affairs, whose office is located in Schmitz Hall, is responsible for the maintenance of such records.

(iv) Education records relating to a student's particular field of study may be maintained by the departments and colleges throughout the university. Where such education records are so maintained, the respective chair or dean of the department or college is responsible for maintenance of the records.

(c) The term "education records" does not include:

(i) Any record of instructional, supervisory, administrative or educational personnel which is in the sole possession of the maker thereof and not accessible or revealed to any other person except a substitute. For the purposes of this subsection, substitute means:

(A) A person who is providing instruction in place of or as assistant to the regularly assigned faculty member in a course in which knowledge of the performance of individual students is essential to the provision of instruction, or

(B) A person who is supervising a student's thesis or research progress in place of or as an assistant to the regularly assigned faculty member during a prolonged absence.

(ii) Records created and maintained by the University of Washington police department for the purposes of law enforcement, except that education records created by another university department remain education records while in the possession of the police department.

(iii) Records made and maintained in the normal course of business which relate exclusively to the person's capacity as an employee and are not available for any other purposes; however, records concerning a student who is employed as a result of his or her status as a student (e.g., graduate student service appointments) shall not be considered to relate exclusively to a student's capacity as an employee.

(iv) Health care records on a student that are created or maintained by a health care provider or health care facility in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, the student, or a health care provider of the student's choice (see also chapter 70.02 RCW).

(v) Records of an institution which contain only information relating to a person after that person is no longer a stu-

dent at the university (e.g., information pertaining to the accomplishment of an alumnus or alumna).

(2)(a) Confidential recommendations, evaluations or comments concerning a student, shall nonetheless be made available to the student, except as provided in (b), (c) and (d) of this subsection.

(b) The student may specifically waive his or her right to inspect and review education records where the information consists only of confidential recommendations respecting the student's:

(i) Admission to the University of Washington or any other educational institution, or component part thereof, or

(ii) Application for employment, or

(iii) Receipt of an honor or honorary recognition.

(c) A student's waiver of his or her right to inspect and review confidential statements shall be valid only if:

(i) The student is, upon request, notified of the names of all persons making confidential statements concerning the student, the dates of such confidential statements and the purpose or purposes for which the statements were provided, and

(ii) Such confidential statements are used solely for the purpose or purposes for which they were provided, and

(iii) Such waivers are not required as a condition for admission to, receipt of financial aid from or receipt of any other services or benefits from the university, and

(iv) Such waiver is in writing and signed and dated by the student.

(d) Such a waiver may be revoked, in writing, by the student; however, the revocation will be effective only for confidential statements or records dated after the date of the revocation.

(e) Confidential recommendations, evaluations or comments concerning a student prior to January 1, 1975, shall not be subject to release under WAC 478-140-018 (2)(a); however, upon request the student shall be notified of the names of the authors of all such confidential records, the dates appearing on such confidential records and the purpose for which each such confidential record was provided. Such records shall remain confidential and shall be released only with the consent of the author. Such records shall be used by the university only for the purpose or purposes for which they were provided.

(3) Where requested education records include information on more than one student, the student making the request shall be entitled to inspect, review or be informed of only the specific portion of the record about that student.

(4) A student may not inspect and review education records that are or contain financial records of his or her parents.

(5) Students may obtain copies of their education records. Charges for copies shall not exceed the cost normally charged by a University of Washington copy center (except in cases where charges have previously been approved for certain specified services).

(a) The university may refuse to provide copies of education records including transcripts and diplomas in the following circumstances:

(i) If the record is a secure exam as determined by the department that maintains the exam, so that the integrity of such exams may be protected;

(ii) If the student has outstanding debts owed to the university, so that the university may facilitate collection of such debts;

(iii) If disciplinary action is pending or sanctions are not completed.

(b) The university must provide copies of education records, subject to the provisions of (a) of this subsection, in the following circumstances:

(i) If failure to do so would effectively prevent the student from inspecting and reviewing a record;

(ii) When records are released pursuant to a student's consent and the student requests copies; and

(iii) When the records are transferred to another educational agency or institution where the student seeks or intends to enroll and the student requests copies.

(6) The office of the registrar is the only office which may issue an official transcript of the student's academic record.

(7) Student education records may be destroyed in accordance with a department's routine retention schedule. In no case will any record which is requested by a student for review in accordance with WAC 478-140-018 or 478-140-021 be removed or destroyed prior to providing the student access.

[Statutory Authority: RCW 28B.20.130. 03-12-007, § 478-140-018, filed 5/22/03, effective 6/22/03; 99-12-110, § 478-140-018, filed 6/2/99, effective 7/3/99. Statutory Authority: RCW 28B.20.130(1). 79-05-025 (Order 79-1), § 478-140-018, filed 4/18/79; Order 75-3, § 478-140-018, filed 5/22/75; Order 75-1, § 478-140-018, filed 3/5/75.]

Chapter 478-160 WAC

ADMISSION AND REGISTRATION PROCEDURES FOR THE UNIVERSITY OF WASHINGTON

WAC

478-160-085 Application forms.

WAC 478-160-085 Application forms. Prospective applicants to the graduate school may obtain information about degree programs and the online application process on the graduate school website or by an e-mail request to uwgrad@u.washington.edu (for U.S. citizens, permanent residents and immigrants) or to intlgrad@u.washington.edu for international applicants. Secondarily, an "Application for admission to the graduate school" form is available upon request by writing to the graduate program adviser of the department in which the applicant expects to engage in a program of study or by writing to the following address:

University of Washington
Office of Graduate Admissions
301 Loew Hall
P.O. Box 84808
Seattle, WA 98124-6108

[Statutory Authority: RCW 28B.20.130. 03-12-007, § 478-160-085, filed 5/22/03, effective 6/22/03. Statutory Authority: RCW 28B.20.130, 42.17.260, 42.17.290, 42.17.300 and chapter 34.05 RCW. 97-14-004, § 478-160-085, filed 6/19/97, effective 7/20/97. Statutory Authority: RCW 28B.20.130. 92-12-011, § 478-160-085, filed 5/22/92, effective 6/22/92; Order 72-5, § 478-160-085, filed 11/6/72.]

Chapter 478-168 WAC
REGULATIONS FOR THE UNIVERSITY OF
WASHINGTON LIBRARIES

WAC

478-168-170 Library borrowers.

WAC 478-168-170 Library borrowers. The following categories of individuals are eligible for library borrowing privileges:

- (1) Campus borrowers:
 - (a) Undergraduate and unclassified students.
 - (b) Graduate and professional students.
 - (c) Graduate students with on-leave graduate status.
 - (d) University extension participants.
 - (e) Faculty, consisting of the president, the vice presidents, professors, associate professors, assistant professors, instructors, research associates, and lecturers, whether serving under acting, research, clinical, or affiliate appointment, whether serving part time or full time, and whether serving in an active or emeritus capacity; academic personnel, and administrative personnel as determined by the office of the provost.
 - (f) Professional staff.
 - (g) Classified staff.
 - (h) Visiting scholars with official visiting scholar status.
 - (i) Individuals affiliated with the university who do not have official University of Washington identification cards but who have been granted borrowing privileges by the director of libraries.
- (2) Off-campus borrowers who are granted free borrowing privileges:
 - (a) Spouses of faculty and staff as defined in subdivisions (1)(e), (f), and (g) of this section.
 - (b) Retired faculty and staff as defined in subdivisions (1)(e), (f), and (g) of this section.
 - (c) Spouses of retired staff as defined in subdivisions (1)(e), (f), and (g) of this section.
 - (d) Spouses of visiting scholars.
 - (e) Faculty and other academic staff of each of the Washington state four year colleges and universities.
 - (f) Federal and state governmental employees who have need of library materials in an official capacity.
 - (g) Other individuals accorded borrowing privileges by the director of libraries.
- (3) Off-campus individuals who have need for research purposes of material not available from other sources and other individuals accorded borrowing privileges by the director of libraries are granted borrowing privileges for a non-refundable charge. The charge is set by the director of libraries or his/her designee. The approved schedule of charges shall be published on the university libraries website.
- (4) Organizations which have need for research purposes of material not available from other sources will be granted borrowing privileges for a nonrefundable charge. The charge is set by the director of libraries or his/her designee. The approved schedule of charges shall be published on the university libraries website.
- (5) Individuals granted privileges through contracts or agreements with the University of Washington libraries.

[Statutory Authority: RCW 28B.20.130 and 28B.15.031. 03-12-007, § 478-168-170, filed 5/22/03, effective 6/22/03; 95-14-045, § 478-168-170, filed

[2004 WAC Supp—page 2066]

6/28/95, effective 9/18/95. Statutory Authority: RCW 28B.20.130(1), 79-10-016 (Order 79-4), § 478-168-170, filed 9/7/79; Order 73-1, § 478-168-170, filed 1/8/73.]

Chapter 478-276 WAC**GOVERNING ACCESS TO PUBLIC RECORDS****WAC**

478-276-140 Public records and open public meetings office—Address.

WAC 478-276-140 Public records and open public meetings office—Address. All requests for public records to the University of Washington shall be addressed as follows:

University of Washington
 Public Records and Open Public Meetings Office
 4014 University Way N.E.
 Seattle, WA 98105-6203

(for internal campus mail use: Box 355502). The telephone number of the public records and open public meetings office is 206-543-9180.

[Statutory Authority: RCW 28B.20.130 and chapter 42.17 RCW. 03-12-007, § 478-276-140, filed 5/22/03, effective 6/22/03. Statutory Authority: RCW 28B.20.130, 42.17.260, 42.17.290, 42.17.300 and chapter 34.05 RCW. 01-11-136, § 478-276-140, filed 5/23/01, effective 6/23/01; 97-14-004, § 478-276-140, filed 6/19/97, effective 7/20/97. Statutory Authority: RCW 28B.20.130(1), 81-20-049 (Order 81-2), § 478-276-140, filed 10/2/81; Order 73-5, § 478-276-140, filed 5/29/73.]

Chapter 478-324 WAC

RULES AND REGULATIONS FOR THE
UNIVERSITY OF WASHINGTON
IMPLEMENTATION OF THE STATE
ENVIRONMENTAL POLICY ACT

WAC

478-324-020	Adoption by reference.
478-324-045	SEPA advisory committee responsibility.
478-324-140	Additional methods of public notice.
478-324-145	No administrative appeal.
478-324-180	Designation of responsible official.

WAC 478-324-020 Adoption by reference. The university hereby adopts by reference the following sections of the SEPA rules, chapter 197-11 of the Washington Administrative Code.

General Requirements**WAC**

197-11-040	Definitions.
197-11-050	Lead agency.
197-11-055	Timing of the SEPA process.
197-11-060	Content of environmental review.
197-11-070	Limitations on actions during SEPA process.
197-11-080	Incomplete or unavailable information.
197-11-090	Supporting documents.
197-11-100	Information required of applicants.
197-11-250	SEPA/Model Toxics Control Act integration.
197-11-253	SEPA lead agency for MTCA actions.
197-11-256	Preliminary evaluation.
197-11-259	Determination of nonsignificance for MTCA remedial actions.

- 197-11-262 Determination of significance and EIS for MTCA remedial actions.
 197-11-265 Early scoping for MTCA remedial actions.
 197-11-268 MTCA interim actions.

Categorical Exemptions and Threshold Determination

WAC

- 197-11-300 Purpose of this part.
 197-11-305 Categorical exemptions.
 197-11-310 Threshold determination required.
 197-11-315 Environmental checklist.
 197-11-330 Threshold determination process.
 197-11-335 Additional information.
 197-11-340 Determination of nonsignificance (DNS).
 197-11-350 Mitigated DNS.
 197-11-360 Determination of significance (DS)/initiation of scoping.
 197-11-390 Effect of threshold determination.

Environmental Impact Statement (EIS)

WAC

- 197-11-400 Purpose of EIS.
 197-11-402 General requirements.
 197-11-405 EIS types.
 197-11-406 EIS timing.
 197-11-408 Scoping.
 197-11-410 Expanded scoping. (Optional)
 197-11-420 EIS preparation.
 197-11-425 Style and size.
 197-11-430 Format.
 197-11-435 Cover letter or memo.
 197-11-440 EIS contents.
 197-11-442 Contents of EIS on nonproject proposals.
 197-11-443 EIS contents when prior nonproject EIS.
 197-11-444 Elements of the environment.
 197-11-448 Relationship of EIS to other considerations.
 197-11-450 Cost-benefit analysis.
 197-11-455 Issuance of DEIS.
 197-11-460 Issuance of FEIS.

Commenting

WAC

- 197-11-500 Purpose of this part.
 197-11-502 Inviting comment.
 197-11-504 Availability and cost of environmental documents.
 197-11-508 SEPA register.
 197-11-510 Public notice.
 197-11-535 Public hearings and meetings.
 197-11-545 Effect of no comment.
 197-11-550 Specificity of comments.
 197-11-560 FEIS response to comments.
 197-11-570 Consulted agency costs to assist lead agency.

Using Existing Environmental Documents

WAC

- 197-11-600 When to use existing environmental documents.
 197-11-610 Use of NEPA documents.
 197-11-620 Supplemental environmental impact statement—Procedures.
 197-11-625 Addenda—Procedures.
 197-11-630 Adoption—Procedures.

- 197-11-635 Incorporation by reference—Procedures.
 197-11-640 Combining documents.

SEPA and Agency Decisions

WAC

- 197-11-650 Purpose of this part.
 197-11-655 Implementation.
 197-11-660 Substantive authority and mitigation.
 197-11-680 Appeals.

Definitions

WAC

- 197-11-700 Definitions.
 197-11-702 Act.
 197-11-704 Action.
 197-11-706 Addendum.
 197-11-708 Adoption.
 197-11-710 Affected tribe.
 197-11-712 Affecting.
 197-11-714 Agency.
 197-11-716 Applicant.
 197-11-718 Built environment.
 197-11-720 Categorical exemption.
 197-11-721 Closed record appeal.
 197-11-722 Consolidated appeal.
 197-11-724 Consulted agency.
 197-11-726 Cost-benefit analysis.
 197-11-728 County/city.
 197-11-730 Decision maker.
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 197-11-734 Determination of nonsignificance (DNS).
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 197-11-738 EIS.
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 197-11-742 Environmental checklist.
 197-11-744 Environmental document.
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 197-11-750 Expanded scoping.
 197-11-752 Impacts.
 197-11-754 Incorporation by reference.
 197-11-756 Lands covered by water.
 197-11-758 Lead agency.
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 197-11-764 Major action.
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 197-11-768 Mitigation.
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 197-11-772 NEPA.
 197-11-774 Nonproject.
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 197-11-778 Preparation.
 197-11-780 Private project.
 197-11-782 Probable.
 197-11-784 Proposal.
 197-11-786 Reasonable alternative.
 197-11-788 Responsible official.
 197-11-790 SEPA.
 197-11-792 Scope.
 197-11-793 Scoping.
 197-11-794 Significant.

- 197-11-796 State agency.
- 197-11-797 Threshold determination.
- 197-11-799 Underlying governmental action.

Categorical Exemptions

WAC

- 197-11-800 Categorical exemptions.
- 197-11-810 Exemptions and nonexemptions applicable to specific state agencies.
- 197-11-820 Department of licensing.
- 197-11-825 Department of labor and industries.
- 197-11-830 Department of natural resources.
- 197-11-835 Department of fisheries.
- 197-11-840 Department of game.
- 197-11-845 Department of social and health services.
- 197-11-850 Department of agriculture.
- 197-11-855 Department of ecology.
- 197-11-860 Department of transportation.
- 197-11-865 Utilities and transportation commission.
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- 197-11-880 Emergencies.
- 197-11-890 Petitioning DOE to change exemptions.

Agency Compliance

WAC

- 197-11-900 Purpose of this part.
- 197-11-902 Agency SEPA policies.
- 197-11-904 Agency SEPA procedures.
- 197-11-906 Content and consistency of agency procedures.
- 197-11-910 Designation of responsible official.
- 197-11-912 Procedures of consulted agencies.
- 197-11-914 SEPA fees and costs.
- 197-11-916 Application to ongoing actions.
- 197-11-917 Relationship to chapter 197-10 WAC.
- 197-11-918 Lack of agency procedures.
- 197-11-920 Agencies with environmental expertise.
- 197-11-922 Lead agency rules.
- 197-11-924 Determining the lead agency.
- 197-11-926 Lead agency for governmental proposals.
- 197-11-928 Lead agency for public and private proposals.
- 197-11-930 Lead agency for private projects with one agency with jurisdiction.
- 197-11-932 Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city.
- 197-11-934 Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies.
- 197-11-936 Lead agency for private projects requiring licenses from more than one state agency.
- 197-11-938 Lead agencies for specific proposals.
- 197-11-940 Transfer of lead agency status to a state agency.
- 197-11-942 Agreements on lead agency status.
- 197-11-944 Agreements on division of lead agency duties.
- 197-11-946 DOE resolution of lead agency disputes.
- 197-11-948 Assumption of lead agency status.
- 197-11-950 Severability.

- 197-11-955 Effective date.

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WAC

- 197-11-960 Environmental checklist.
- 197-11-965 Adoption notice.
- 197-11-970 Determination of nonsignificance (DNS).
- 197-11-980 Determination of significance and scoping notice (DS).
- 197-11-985 Notice of assumption of lead agency status.
- 197-11-990 Notice of action.

[Statutory Authority: RCW 28B.20.130 and 43.21C.120. 03-12-007, § 478-324-020, filed 5/22/03, effective 6/22/03. Statutory Authority: RCW 43.21C.120. 00-04-039, § 478-324-020, filed 1/25/00, effective 2/25/00. Statutory Authority: RCW 43.21C.120 and WAC 197-11-904. 84-20-074 (Order), § 478-324-020, filed 10/2/84.]

WAC 478-324-045 SEPA advisory committee responsibility. (1) The responsible official shall consult with the committee as follows:

- (a) After completion of an environmental checklist but before threshold determination.
- (b) Prior to the responsible official's reconsideration of the threshold determination if substantive comments have been received regarding the DNS.
- (c) Prior to the responsible official issuing a mitigated DNS.

(d) Prior to the issuance of a scoping notice.

(e) Prior to the publication of any draft EIS.

(f) Prior to the publication of any final EIS.

(2) Committee review of DNS and mitigated DNS may occur without a formal meeting.

(3) The university shall give the committee notice of public hearings on the environmental impact of a proposal.

(4) The committee's recommendations shall be advisory and shall not relieve the responsible officials of their responsibilities as established by these procedures.

[Statutory Authority: RCW 28B.20.130 and 43.21C.120. 03-12-007, § 478-324-045, filed 5/22/03, effective 6/22/03. Statutory Authority: RCW 43.21C.120. 00-04-039, § 478-324-045, filed 1/25/00, effective 2/25/00.]

WAC 478-324-140 Additional methods of public notice. The university shall provide public notice of scoping, DNS with comment period, public hearings scheduled in accordance with these procedures and availability of draft and final EIS's by:

(1) Posting a notice on or near the proposed site (for project EIS's).

(2) Providing notice in such form as a press release or advertisement in a legal newspaper of general circulation in the area where the property which is the subject of the action is located (e.g., *Daily Journal of Commerce*).

(3) Providing notice in such form as a press release or advertisement in the *University Week* and *University of Washington Daily*. If the *University Week* and/or the *University of Washington Daily* is not in publication, then notice shall instead be published in a newspaper of general circulation in the area where the property which is the subject of the action is located (e.g., *The Seattle Times* or *The Seattle Post-Intelligencer*).

[Statutory Authority: RCW 28B.20.130 and 43.21C.120. 03-12-007, § 478-324-140, filed 5/22/03, effective 6/22/03. Statutory Authority: RCW

43.21C.120. 00-04-039, § 478-324-140, filed 1/25/00, effective 2/25/00. Statutory Authority: RCW 43.21C.120 and WAC 197-11-904. 84-20-074 (Order), § 478-324-140, filed 10/2/84.]

WAC 478-324-145 No administrative appeal. There is no administrative appeal of any university determination relating to SEPA. Any appeal must be a judicial appeal under WAC 197-11-680(4).

[Statutory Authority: RCW 28B.20.130 and 43.21C.120. 03-12-007, § 478-324-145, filed 5/22/03, effective 6/22/03.]

WAC 478-324-180 Designation of responsible official. The associate vice-president for capital projects or his or her designee shall serve as the responsible official for all university projects.

[Statutory Authority: RCW 28B.20.130 and 43.21C.120. 03-12-007, § 478-324-180, filed 5/22/03, effective 6/22/03. Statutory Authority: RCW 43.21C.120. 00-04-039, § 478-324-180, filed 1/25/00, effective 2/25/00. Statutory Authority: RCW 43.21C.120 and WAC 197-11-904. 84-20-074 (Order), § 478-324-180, filed 10/2/84.]

Title 479 WAC

TRANSPORTATION IMPROVEMENT BOARD

(Formerly: Urban Arterial Board)

Chapters

479-01	Description of organization.
479-05	Program requirements.
479-12	Submission of proposed urban arterial trust account projects to transportation improvement board.

Chapter 479-01 WAC

DESCRIPTION OF ORGANIZATION

WAC

479-01-010	Organization of transportation improvement board.
479-01-050	Administration costs.

WAC 479-01-010 Organization of transportation improvement board. The transportation improvement board is a twenty-one member board, organized under the provisions of chapter 269, Laws of 1995. The board administers the urban arterial trust account and the transportation improvement account. The board evaluates petitions requesting any additions to or deletions from the state highway system and forwards recommendations to the legislature. Board membership is defined in RCW 47.26.121.

[Statutory Authority: Chapter 47.26 RCW. 03-16-077, § 479-01-010, filed 8/4/03, effective 9/4/03. Statutory Authority: Chapters 47.26 and 47.66 RCW. 99-24-038, § 479-01-010, filed 11/23/99, effective 12/24/99. Statutory Authority: 1995 c 269 § 2601. 95-22-056, § 479-01-010, filed 10/30/95, effective 11/30/95. Statutory Authority: Chapter 47.26 RCW. 95-04-072, § 479-01-010, filed 1/30/95, effective 3/2/95; 90-11-035, § 479-01-010, filed 5/10/90, effective 6/10/90; 83-22-021 (Order 83-01, Resolution Nos. 770, 771 and 772), § 479-01-010, filed 10/26/83; Order 31 (part), § 479-01-010, filed 11/8/67.]

WAC 479-01-050 Administration costs. The board costs for necessary staff services and facilities that are attributable to the urban arterial trust account and the transportation improvement account shall be paid as determined by the biennial appropriation.

[Statutory Authority: Chapter 47.26 RCW. 03-16-077, § 479-01-050, filed 8/4/03, effective 9/4/03. Statutory Authority: Chapters 47.26 and 47.66 RCW. 99-24-038, § 479-01-050, filed 11/23/99, effective 12/24/99. Statutory Authority: 1995 c 269 § 2601. 95-22-056, § 479-01-050, filed 10/30/95, effective 11/30/95.]

Chapter 479-05 WAC

PROGRAM REQUIREMENTS

WAC

479-05-010	Time and place for submission of proposed transportation improvement board projects.
479-05-050	Procedures for project approval.
479-05-240	Procedure to request increase in board funds.

WAC 479-05-010 Time and place for submission of proposed transportation improvement board projects. Prospectuses for design phase shall be requested by the board after:

- (1) Submitted project applications have been evaluated as to priority;
- (2) The legislative appropriation authority has been reviewed and capacity to authorize additional projects determined.

Prospectuses for design phase shall be received by the board by the first day of the month preceding the month in which project authorization is proposed unless a later receipt is approved by the director.

Prospectuses for the construction phase shall be received by the twentieth day of the month preceding the month in which construction project authorization is proposed unless a later receipt date is approved by the director.

[Statutory Authority: Chapter 47.26 RCW. 03-16-077, § 479-05-010, filed 8/4/03, effective 9/4/03. Statutory Authority: Chapters 47.26 and 47.66 RCW. 99-24-038, § 479-05-010, filed 11/23/99, effective 12/24/99.]

WAC 479-05-050 Procedures for project approval.

Design proposals and related construction projects authorized by the board for financial assistance shall be selected for authorization based upon the following factors:

The proposed project scope shall include improvements that will address or mitigate the items for which the project was selected.

The board shall evaluate the project scope and may reduce the project scope if the scope exceeds that which is necessary to address or mitigate items.

The following factors relative to each project, in addition to other factors required by law, shall be evaluated:

- (1) Each project shall be evaluated on the availability and source of matching funds.
- (2) Construction prospectuses for projects previously approved for design and right of way funding by the board shall be required to be accompanied by the following information demonstrating the readiness of the project to be placed under contract for construction.

(a) A certification from the legislative body or other designated responsible official, of the administering agency, that

an environmental impact analysis has been conducted and an environmental impact statement including the conformity with the state and Federal Clean Air Acts or negative declaration of environmental impact, as appropriate, has been circulated pursuant to chapter 43.21C RCW, and that the results have been utilized in arriving at the decisions reflected in the prospectus for the construction project.

(b) A certification that all right of way required for the project is available or if right of way remains to be acquired that the agency has obtained a possession and use agreement on the parcels in question.

(c) A certification from the legislative body that the project is completely designed and ready to be advertised for bids.

(d) The date the project will be advertised for bids.

(e) Each construction project prospectus shall identify changes between the scope of work of the proposed project and the work contemplated in the current six-year transportation program or the project design prospectus. An explanation and justification for such changes shall also be included.

(f) The board shall consider adjustments to the amount previously requested in accordance with the board's rule on increases in transportation improvement board funds.

[Statutory Authority: Chapter 47.26 RCW, 03-16-077, § 479-05-050, filed 8/4/03, effective 9/4/03. Statutory Authority: Chapters 47.26 and 47.66 RCW, 99-24-038, § 479-05-050, filed 11/23/99, effective 12/24/99.]

WAC 479-05-240 Procedure to request increase in board funds. The amount of funds approved will be based upon the amount requested at project application. This amount may be adjusted from the amount shown in the project application with adequate justification. Board fund increases are not approved at design phase.

Local agencies may request an increase in funds over the amount set forth in the application, at the construction phase, bid opening or contract completion of a project in accordance with the following procedures:

(1) At the construction phase all requests shall be reviewed by the director. The director shall report the findings to the board for its review, consideration and final action. The board shall not grant a request for increase at this phase if:

(a) The requested increase is to pay for an expansion of the scope of the work that is beyond the work required to accomplish the intent of the project as approved at the design phase.

(b) The granting of the request will obligate funding beyond the level acceptable to the board or will in any way adversely affect authorized funds previously approved by the board.

(2) Request for increases at bid opening shall not exceed the amount set by board policy. Requests for increases at this phase will take priority over design and construction phase approvals. Such requests shall be reviewed by the director and will not be approved if:

(a) The requested increase is to pay for an expansion of the authorized scope of the work; or

(b) If the request is not substantiated and the director determines that the increased funds should have been anticipated by the local agency at the construction phase of the project.

(3) Requests for increases in funds submitted to the board at contract completion shall not exceed the amount set by board policy. Requests for increases at this phase will take priority over design and construction phase approvals. Such requests shall be reviewed by the director and will not be approved if:

(a) The requested increase is to pay for an expansion of the authorized scope of the work; or

(b) If the request is not substantiated and the director determines that the increased funds should have been anticipated by the local agency at the construction approval phase of the project.

(4) If the director or the board, as the case may be, does not approve the request of a local agency for an increase, the administering agency may:

(a) Proceed with the project, paying for any additional costs with local or other funds; or

(b) Withdraw the request for participation; or, if applicable

(c) Within the authorized amount, and subject to approval by the director, reduce the scope of the project while retaining a usable and functional improvement.

[Statutory Authority: Chapter 47.26 RCW, 03-16-077, § 479-05-240, filed 8/4/03, effective 9/4/03; 01-19-040, § 479-05-240, filed 9/14/01, effective 10/15/01. Statutory Authority: Chapters 47.26 and 47.66 RCW, 99-24-038, § 479-05-240, filed 11/23/99, effective 12/24/99.]

Chapter 479-12 WAC

SUBMISSION OF PROPOSED URBAN ARTERIAL TRUST ACCOUNT PROJECTS TO TRANSPORTATION IMPROVEMENT BOARD

WAC

479-12-260	Repealed.
479-12-430	Apportionment of funds to pedestrian safety and mobility program regions.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

479-12-260	Increases in small city program projects. [Statutory Authority: Chapters 47.26 and 47.66 RCW, 99-24-038, § 479-12-260, filed 11/23/99, effective 12/24/99.] Repealed by 03-16-077, filed 8/4/03, effective 9/4/03. Statutory Authority: Chapter 47.26 RCW.
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WAC 479-12-260 Repealed. See Disposition Table at beginning of this chapter.

WAC 479-12-430 Apportionment of funds to pedestrian safety and mobility program regions. Of the funds obligated to pedestrian safety and mobility projects within urban areas, the amount apportioned to projects in a region will be within plus or minus five percent of the ratio which the population of urban areas in a region bears to the statewide population for urban areas as last determined by the office of financial management.

Of the funds obligated to pedestrian safety and mobility projects within small cities, the amount apportioned to projects in a region will be within plus or minus five percent of the ratio which the population of cities under five thousand in a region bears to the statewide population for cities under five thousand as last determined by the office of financial management.

[Statutory Authority: Chapter 47.26 RCW. 03-16-077, § 479-12-430, filed 8/4/03, effective 9/4/03. Statutory Authority: Chapters 47.26 and 47.66 RCW. 99-24-038, § 479-12-430, filed 11/23/99, effective 12/24/99.]

480-04-090 Requests for public records.
 480-04-095 Disclosure procedure.
 480-04-100 Copying and service charges.
 480-04-110 Repealed.
 480-04-120 Review of denials of public records requests.
 480-04-130 Protection of public records.

Title 480 WAC UTILITIES AND TRANSPORTATION COMMISSION

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Chapter 480-04 WAC

PUBLIC ACCESS TO INFORMATION AND RECORDS

WAC

- 480-04-020 Definitions.
- 480-04-030 Organization of the Washington utilities and transportation commission.
- 480-04-035 Physical address—Telephone—Facsimile—E-mail—Internet.
- 480-04-050 Public information; public submissions or requests other than requests for public documents.
- 480-04-060 Public records available; hours for inspection and copying.
- 480-04-065 Records index.
- 480-04-070 Repealed.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

- 480-04-070 Public records officer. [Statutory Authority: RCW 80.01.040, 80.04.160 and 81.04.160. 98-02-011 (Order R-446, Docket No. A-970591), § 480-04-070, filed 12/29/97, effective 1/29/98. Statutory Authority: RCW 80.01.040. 92-07-006 (Order R-368, Docket No. A-910530), § 480-04-070, filed 3/5/92, effective 4/5/92; Order R-43, § 480-04-070, filed 4/5/73.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
- 480-04-110 Information for commercial purposes. [Statutory Authority: RCW 80.01.040, 80.04.160 and 81.04.160. 98-02-011 (Order R-446, Docket No. A-970591), § 480-04-110, filed 12/29/97, effective 1/29/98. Statutory Authority: RCW 80.01.040. 92-07-006 (Order R-368, Docket No. A-910530), § 480-04-110, filed 3/5/92, effective 4/5/92; Order R-43, § 480-04-110, filed 4/5/73.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.

WAC 480-04-020 Definitions. (1) "Public record" includes any writing (defined in subsection (5) of this section) prepared, owned, used, or retained by the commission, which contains information relating to the conduct of government or the performance of any governmental or proprietary function.

(2) "Public records officer" means the official responsible for the commission's compliance with the Public Records Act, chapter 42.17 RCW, and for the implementation of this chapter. The commission's secretary is designated as its public records officer. The secretary may designate one or more persons to assist in the implementation and application of this rule.

(3) "Secretary," also referred to as "executive secretary," means the secretary of the commission appointed pursuant to RCW 80.01.030. Unless otherwise restricted, the term "secretary" also refers to the acting secretary and to the secretary's designee.

(4) "Washington utilities and transportation commission," referred to in this chapter as "the commission," is the commission appointed by the governor under RCW 80.01.010. Where appropriate, the term "commission" also refers to the staff and employees of the Washington utilities and transportation commission.

(5) "Writing" means any information (e.g., words, numbers, symbols, images, and sounds) recorded in any media (e.g., handwritten, typewritten, printed, electronic, photographic, and video and audio recording), as defined in RCW 42.17.020(42).

(6) The word "you," or "your," when used in this chapter, refers to a person who requests access to public records.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-04-020, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040, 80.04.160 and 81.04.160. 98-02-011 (Order R-446, Docket No. A-970591), § 480-04-020, filed 12/29/97, effective 1/29/98. Statutory Authority: RCW 80.01.040. 92-07-006 (Order R-368, Docket No. A-910530), § 480-04-020, filed 3/5/92, effective 4/5/92; Order R-43, § 480-04-020, filed 4/5/73.]

WAC 480-04-030 Organization of the Washington utilities and transportation commission. (1) The Washington utilities and transportation commission consists of three members appointed by the governor under RCW 80.01.010. The governor designates one member as the commission chair.

(2) The commission is organized into the following principal sections and divisions: Regulatory services; safety and consumer protection; policy and public information; administrative law; knowledge management; financial and budget services; and employee services. The head of each section or division is directly responsible to the secretary, and through the secretary to the commissioners.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-04-030, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040, 80.04.160 and 81.04.160. 98-02-011 (Order R-446, Docket No. A-970591), § 480-04-030, filed 12/29/97, effective 1/29/98. Statutory Authority: RCW 80.01.040. 94-11-002 (Order R-412, Docket No. TV-940121), § 480-04-030, filed 5/4/94, effective 6/4/94; 92-07-006 (Order R-368, Docket No. A-910530), § 480-04-030, filed 3/5/92, effective 4/5/92. Statutory Authority: RCW 80.01.040 (1) and (4). 81-06-061 (Order R-157, Cause No. TV-1429), § 480-04-030, filed 3/4/81; Order R-43, § 480-04-030, filed 4/5/73.]

WAC 480-04-035 Physical address—Telephone—Facsimile—E-mail—Internet. The information included in this section is current at the time of rule adoption, but may change. Current information and additional contact information are available on the commission's internet site, in person at the commission's offices, or by telephone call to the commission's main public number.

Physical address; address for U.S. mail or hand-delivery	Washington Utilities and Transportation Commission 1300 S. Evergreen Park Drive S.W. P.O. Box 47250 Olympia, WA 98504-7250
Telephone (general)	360-664-1160
Telephone (records center)	360-664-1234
Telefacsimile (records center)	360-586-1150
Electronic mail (records center)	records@wutc.wa.gov
Internet	www.wutc.wa.gov

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-04-035, filed 11/24/03, effective 1/1/04.]

WAC 480-04-050 Public information; public submissions or requests other than requests for public documents. Anyone who wishes to obtain general information concerning topics within the commission's jurisdiction may find such information on the commission's internet site or may contact the commission by letter, telephone, or e-mail, as described in this section. The commission will route all inquiries to staff who can best respond to the inquiry.

(1) Written requests for information should be sent to the commission's public records officer at the commission's mailing address.

(2) Electronic mail and telefacsimile requests for information should be sent to the commission's records center.

(3) Telephone requests for information may be made by contacting the commission's records center, or by call to the commission's general telephone number.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-04-050, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040, 80.04.160 and 81.04.160. 98-02-011 (Order R-446, Docket No. A-970591), § 480-04-050, filed 12/29/97, effective 1/29/98. Statutory Authority: RCW 80.01.040. 92-07-006 (Order R-368, Docket No. A-910530), § 480-04-050, filed 3/5/92, effective 4/5/92; Order R-43, § 480-04-050, filed 4/5/73.]

WAC 480-04-060 Public records available; hours for inspection and copying. (1) All of the commission's public records are available for inspection and copying unless the public record is exempt from disclosure under chapter 42.17 RCW (the Public Records Act), protected from disclosure under RCW 80.04.095 (records that contain valuable commercial information), WAC 480-07-160 (Confidential information), WAC 480-07-420 (Discovery—Protective orders), or under other provision of law. Except as provided in RCW 42.17.260(6), the commission will not give, sell, or provide access to lists of individuals if the information is requested for commercial purposes.

(2) The commission will promptly respond to requests for inspection and copying of public records.

(3) Public records are available for inspection and copying during the commission's customary office hours which are from 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding official state holidays as defined in RCW 1.16.050 (legal holidays and legislatively recognized days).

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-04-060, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040, 80.04.160 and 81.04.160. 98-02-011 (Order R-446, Docket No. A-970591), § 480-04-060, filed 12/29/97, effective 1/29/98. Statutory Authority: RCW 80.01.040. 92-07-006 (Order R-368, Docket No. A-910530), § 480-04-060, filed 3/5/92, effective 4/5/92. Order R-43, § 480-04-060, filed 4/5/73.]

WAC 480-04-065 Records index. The commission will publish and index its significant adjudicative decisions; declaratory orders; interpretive statements; and policy statements.

(1) The commission will publish and make available to the public its adjudicative orders that resolve contested issues or which it believes will be of interest or significance, its declaratory orders, its interpretive statements, and its policy statements. The commission will publish these documents by the means it deems best suited to achieve broad availability, consistent with staff resources and technology, including distribution of paper copies, electronic mail, and internet website posting. The commission will contemporaneously publish a summary of the decisions, orders, and statements.

(2) The commission will annually publish indices of the principles that are applied in the text of published decisions, orders, and statements.

(3) The commission will make paper copies of its indices available for sale at the commission's estimated actual cost of reproduction and distribution.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-04-065, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040, 80.04.160 and 81.04.160. 98-02-011 (Order R-446, Docket No. A-970591), § 480-04-065, filed 12/29/97,

effective 1/29/98. Statutory Authority: RCW 80.01.040, 92-07-006 (Order R-368, Docket No. A-910530), § 480-04-065, filed 3/5/92 effective 4/5/92.]

WAC 480-04-070 Repealed. See Disposition Table at beginning of this chapter.

WAC 480-04-090 Requests for public records. (1) Many requests for public records can be handled quickly and informally without the need for a formal written request. You may ask orally, in person, or by telephone to look at a document, or get a copy of a document. You may also ask informally in writing, by letter or electronic mail. Requests may be made by electronic mail to the commission records center. Commission staff will advise you if a formal written request, as described in subsection (4) of this section, is required.

(2) The commission may require any person who seeks access to public records to present a formal written request. The commission may require a formal written request, for example, if you ask for large quantities of information or make an unusual request. The formal written request helps the commission make sure that you get all the information you have requested and that any charges for copies are proper.

(3) The commission may require a formal written request if the information you ask for might be within one of the exceptions to the law requiring disclosure. In this situation, your formal written request helps the commission make sure that its decision to disclose or withhold the information is made properly and that you get the public records you are entitled to receive. Examples of information that might be exempt from disclosure include documents that have been designated "confidential" by the person providing them to the commission, documents containing private or personal information, and documents that may be involved in litigation or hearings.

(4) If you need to make a formal written request for information, you may use a "public records request" form provided by the commission or you may write a letter that contains the information listed below. If you want to use the form, you can get a copy at the commission's internet site or office, or you can ask to have it sent to you.

(5) Formal written requests must include the following information:

- (a) Your name, address, and telephone number.
- (b) The date on which you submit your request.
- (c) The identity of any individual, business, or other organization for whom you are making the request, if not only for yourself personally.
- (d) A clear indication, such as a document heading or title that you are requesting public records, to help make sure that the request is handled properly.
- (e) Whether you want to inspect the public records or get copies, or both.
- (f) A clear description of the public records you want so that commission staff can find the records. If you know how the public records are described in the index maintained by the commission, provide that description to assist the commission to identify the public records you want to review.
- (g) A statement of whether you are making the request in order to obtain a list of individuals to be used for any commercial purposes.

(6) Commission staff will make a reasonable effort to assist in identifying and providing all public records that you request.

(7) The commission may waive the need for a completed form when doing so supports the commission's administrative convenience and is not inconsistent with legal requirements or public policies.

[Statutory Authority: RCW 80.01.040 and 80.04.160, 03-24-028 (General Order R-510, Docket No. A-010648), § 480-04-090, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040, 80.04.160 and 81.04.160, 98-02-011 (Order R-446, Docket No. A-970591), § 480-04-090, filed 12/29/97, effective 1/29/98. Statutory Authority: RCW 80.01.040, 92-07-006 (Order R-368, Docket No. A-910530), § 480-04-090, filed 3/5/92, effective 4/5/92; Order R-43, § 480-04-090, filed 4/5/73.]

WAC 480-04-095 Disclosure procedure. (1) The public records officer will promptly notify you if your request is found to be incomplete, and will tell you what the problem is. The public records officer will assist you to complete or correct your request. Notifying you of a deficiency is not a denial of your request. The public records officer may act on a deficient request to the extent that doing so is reasonable.

(2) Upon receiving a complete request, the public records officer will review the requested record to determine whether the record or a portion of it is exempt from disclosure under the Public Records Act, chapter 42.17 RCW, protected from disclosure under RCW 80.04.095 (records that contain valuable commercial information), WAC 480-07-160 (Confidential information), WAC 480-07-420 (Discovery—Protective orders), or under another provision of law.

(3) The commission will delete identifying details from a public record to protect the personal privacy interests as provided by law when it makes the record available or publishes it. The commission will explain the reasons for any such deletion.

(4) Only the public records officer is authorized to deny requests for public records. Any action other than granting access to public records, when taken by a person other than the public records officer, is a deferral of action and not a denial of a request. Any commission staff member who does not grant access to a public record when a complete written request is made must immediately take or send the requested document, together with the written request, to the public records officer for a prompt decision granting or denying the request.

(5) If the public records officer does not grant access to all or part of a requested public record, the public records officer will give you a written statement identifying the exemption authorizing the action and how it applies to the requested record. Any portion of the record that is not subject to exemption shall be promptly disclosed.

(6) If you request a public record that contains information that has been designated confidential under RCW 80.04.095, WAC 480-07-160, or a protective order, and you have not specifically asked to be provided with confidential information, the public records officer will tell you that material has been designated confidential, and ask whether you want the confidential information, before processing your request.

The commission will process any request for a record designated as confidential under RCW 80.04.095 or WAC 480-07-160 in accordance with those provisions of law.

(7) If the public records officer denies your public records request in whole or in part, the public records officer will provide you a written explanation of the basis for the denial. If you want to contest the denial, you may request a review under WAC 480-04-120.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-04-095, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040, 80.04.160 and 81.04.160. 98-02-011 (Order R-446, Docket No. A-970591), § 480-04-095, filed 12/29/97, effective 1/29/98. Statutory Authority: RCW 80.01.040. 92-07-006 (Order R-368, Docket No. A-910530), § 480-04-095, filed 3/5/92, effective 4/5/92.]

WAC 480-04-100 Copying and service charges. The commission will provide copies of public records upon request.

(1) The commission may charge a published fee for copying public records, if you request copies. The commission may, by order, within the requirements of RCW 42.17.-300, establish and change prices and establish the maximum number of various kinds of copies that will be provided without charge.

(2) The commission's schedule of charges for copies, except as provided in WAC 480-07-145 (3)(b), is published in Administrative Policy 1.60c, which is available from the commission's website or by contacting the commission's records center. Out-of-state customers and governmental agencies are not charged sales tax.

(3) WAC 480-07-145 (3)(b) fixes the charge for copies when a party to an adjudicative proceeding fails to file the number of copies required to meet the commission's internal distribution needs.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-04-100, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040, 80.04.160 and 81.04.160. 98-02-011 (Order R-446, Docket No. A-970591), § 480-04-100, filed 12/29/97, effective 1/29/98. Statutory Authority: RCW 80.01.040. 91-07-025 (Order R-340, Docket No. A-900424), § 480-04-100, filed 3/14/91, effective 4/14/91. Statutory Authority: RCW 80.01.040 (1) and (4). 81-06-061 (Order R-157, Cause No. TV-1429), § 480-04-100, filed 3/4/81. Statutory Authority: RCW 42.17.300. 78-02-020 (Order R-112), § 480-04-100, filed 1/11/78; Order R-43, § 480-04-100, filed 4/5/73.]

WAC 480-04-110 Repealed. See Disposition Table at beginning of this chapter.

WAC 480-04-120 Review of denials of public records requests. (1) If the commission does not disclose a public record that you have requested and you disagree with the denial, you may ask the public records officer, in writing, for a review of the denial. Your written request for review must describe or enclose the public records officer's written statement that explains the reasons for the denial, as provided in WAC 480-04-095(5).

(2) You may hand deliver, or have a courier deliver, your written request for review in person at the commission's administrative office or you may send it by mail or electronic mail.

(3) The public records officer will promptly review your written request. The public records officer may personally reconsider the denial decision, or may refer the request to the commission for review.

(4) The public records officer's initial denial becomes final unless the commission modifies the decision within two

days after the commission receives your request for review. The commission, however, still may modify a denial decision at a later time. Once the public records officer's initial denial decision becomes final or is modified by the commission, you may seek judicial review under RCW 42.17.340.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-04-120, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040, 80.04.160 and 81.04.160. 98-02-011 (Order R-446, Docket No. A-970591), § 480-04-120, filed 12/29/97, effective 1/29/98. Statutory Authority: RCW 80.01.040. 92-07-006 (Order R-368, Docket No. A-910530), § 480-04-120, filed 3/5/92, effective 4/5/92; Order R-43, § 480-04-120, filed 4/5/73.]

WAC 480-04-130 Protection of public records. (1) Only commission staff may copy public documents unless the public records officer decides that copying by others will not disrupt commission business operations or pose any risk to the integrity and safety of the documents.

(2) No person may take any public record from the area the public records officer designates for public inspection of public records unless expressly authorized to do so by the public records officer.

(3) When a member of the public asks to examine an entire file or group of public records, as distinguished from specific public records that can be individually identified and made available, the commission may take a reasonable time to inspect the file or group of public records to remove any material designated as confidential and any information protected from disclosure by chapter 42.17 RCW, or other provision of law.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-04-130, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040, 80.04.160 and 81.04.160. 98-02-011 (Order R-446, Docket No. A-970591), § 480-04-130, filed 12/29/97, effective 1/29/98. Statutory Authority: RCW 80.01.040. 92-07-006 (Order R-368, Docket No. A-910530), § 480-04-130, filed 3/5/92, effective 4/5/92; Order R-43, § 480-04-130, filed 4/5/73.]

Chapter 480-07 WAC PROCEDURAL RULES

WAC

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WAC 480-07-010 Scope of this chapter. This chapter includes rules that explain how to conduct business with the Washington utilities and transportation commission (the commission). The commission interacts both informally and formally with the public and with the businesses it regulates.

Part I of this chapter includes basic information about the commission such as the agency's office hours, its physical address and other contact information, and general requirements for communicating with the commission.

Part II includes provisions that relate specifically to rule-making proceedings, such as how a person may submit comments that will be taken into account when the commission considers making changes to its rules.

Part III concerns adjudicative proceedings including hearings on formal complaints, general rate proceedings, applications for authority, petitions for relief, and abbreviated proceedings that may be used in some circumstances.

Part IV concerns other types of commission proceedings including regular and special open public meetings, interpretive and policy statements, declaratory orders, and informal complaints.

These rules are authorized by and supplement the Administrative Procedure Act, chapter 34.05 RCW, and the principal statutes that define the commission's authority and responsibility. These statutes are found principally in Titles 80 and 81 of the Revised Code of Washington (RCW). These procedural rules should be read and understood in conjunction with the Administrative Procedure Act and Titles 80 and 81 RCW. Certain of these statutes establish procedural requirements for conducting particular types of business with the commission.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-010, filed 11/24/03, effective 1/1/04.]

WAC 480-07-100 Scope of Part I. Part I of this chapter contains information about the commission, and general rules that apply in rule-making, adjudicative, and other proceedings described in this chapter.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-100, filed 11/24/03, effective 1/1/04.]

WAC 480-07-110 Exceptions from and modifications to the rules in this chapter; special rules. (1) Exceptions and modifications. The commission may modify the application of these rules in individual cases if consistent with the public interest, the purposes underlying regulation, and applicable statutes.

(2) **Special rules.** When statutes, or rules in other chapters of Title 480 of the Washington Administrative Code, apply to specific types of companies regulated by the commission or to others who may conduct business with the commission, or to particular proceedings, those statutes or special rules govern if they conflict with the rules in this chapter.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-110, filed 11/24/03, effective 1/1/04.]

WAC 480-07-120 Office hours. "Business day," as used in this chapter, means any day when the commission's offices are open to the public. Commission offices are open to the public between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except on official state holidays, as defined in RCW 1.16.050, Legal holidays and legislatively recognized days.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-120, filed 11/24/03, effective 1/1/04.]

WAC 480-07-125 Physical address; telephone; facsimile; e-mail; internet. The information included in this section is current at the time of rule adoption, but may change. Current information and additional contact information are available on the commission's internet site, in person at the commission offices, or by a telephone call to the commission's main public number.

Physical address; address for U.S. mail or hand-delivery	Washington Utilities and Transportation Commission 1300 S. Evergreen Park Drive S.W. P.O. Box 47250 Olympia, WA 98504-7250
Telephone (general)	360-664-1160
Telephone (commission records center)	360-664-1234
Telefacsimile (commission records center)	360-586-1150
Electronic mail (commission records center)	records@wutc.wa.gov
Internet	www.wutc.wa.gov

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-125, filed 11/24/03, effective 1/1/04.]

WAC 480-07-130 Time periods specified for acts governed by this chapter. (1) **Computation of time.** "Day" means calendar day whenever used in this chapter, unless otherwise specified. The period of time for doing an act governed by this chapter is determined by excluding the first day and including the last day, unless the last day is an official state holiday, Saturday, or Sunday, in which event the period runs until the end of the next day that is not an official state holiday, Saturday, or Sunday. For example, if a formal complaint is served on the first day of the month, any answer to the complaint must be filed by the twenty-first day of the same month, unless the twenty-first day is an official state holiday, in which case the answer will be timely if filed on the next business day after the holiday.

(2) **Variation from time limits.** The commission may modify the time limits stated in chapter 34.05 RCW, subject to the requirements of RCW 34.05.080. The commission may modify the time limits stated in a commission rule, subject to other requirements of law. WAC 480-07-385 sets out procedures for and governs when the commission will grant continuances or extensions of time in adjudicative proceedings.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-130, filed 11/24/03, effective 1/1/04.]

WAC 480-07-140 Communicating with the commission. (1) **Scope of rule.** This rule includes general requirements for effective communication with the commission. Communications that concern rule-making proceedings, adjudicative proceedings, or public records requests must also conform to specific requirements as follows:

(a) In rule-making proceedings, WAC 480-07-143 and Part II of this chapter.

(b) In adjudicative proceedings, WAC 480-07-145 and Part III of this chapter.

(c) For public records requests, chapter 42.17 RCW and chapter 480-04 WAC.

(2) **Content of letters and electronic mail messages to the commission.** Letters and electronic mail messages to the commission should include only one subject.

(3) **Where to send letters and electronic mail messages.** WAC 480-07-125 includes the commission's mailing address and other contact information current at the time of rule publication. Persons who communicate with the commission are encouraged to do so by electronic mail to the commission's records center. The commission's internet site includes current and additional contact information.

(4) **Identification of sender; identification of permit, license, or certificate; identification of proceeding.**

(a) **Identification of sender.** All persons who communicate with the commission must provide their name and a mailing address, and are asked to provide telephone, facsimile, and electronic mail address to assist the commission in responding. Persons who communicate with the commission on behalf of a business, organization, or other entity must state their name and title or position, the name of the entity on whose behalf the communication is sent, in addition to the contact information described above.

(b) **Identification of permit, license, or certificate held by sender.** Any person or entity that holds a commission-issued permit, license, or certificate must identify the permit, license, or certificate number (if any), including the exact name under which the authority is held, when communicating with the commission concerning the permit, license, or certificate.

(c) **Identification of proceeding.** Persons who communicate with the commission concerning a formal commission proceeding (e.g., rule-making or adjudication) must identify the proceeding to the best of their ability, including the docket number and name of the proceeding, if known.

(5) **Electronic file format requirements.**

(a) **Acceptable media.** Electronic submissions may be provided by electronic mail (e-mail) file attachment addressed to the commission's records center, or submitted to the records center on a 3 1/2 inch IBM formatted high-density disk or compact disc (CD). The submission must be labeled with the docket number of the proceeding, the name of the party submitting the document, and a description of the contents (e.g., "direct evidence," "motion to dismiss," etc.) and the date filed.

(b) **Acceptable format.** The commission prefers to receive electronic documents in Word or WordPerfect file format supplemented by a copy in Adobe Acrobat (i.e., .pdf) file format created directly from the word processing software used for the original document. Parties that cannot create Adobe Acrobat files directly are requested to provide a

copy of the document converted to Adobe Acrobat via scanning or other available technology.

(c) **File naming conventions.** Electronic files must be named in a way that describes the file contents. Parties should use the format identified in the following examples, identifying the docket number, the nature of the document, and the party submitting it:

Testimony	UE-010101 Smith direct (name of party) (date) UT-020202 Jones rebuttal attachment 1 (name of party) (date)
Motions	UG-030303 motion to dismiss (name of party) (date) UW-040404 answer to motion to dismiss (name of party) (date)
Correspondence	TG-010203 (name of party) request for continuance (date)

(d) **Acceptable organization.** Each party must submit all files to meet a single deadline at the same time and in the same message or diskette. When a party submits two or more files at the same time, the files must be organized into folders, and the party must provide a printed index. The index may be included in a cover letter or provided as an attachment to a cover letter. The index also must be provided in the form of an electronic file.

Example:

Folder and diskette name	I. U-020304 (name of party) direct evidence (date)
Subfolders	A. U-020304 (name of party) (name of witness) direct (date) B. U-020304 (name of party) (name of witness) direct (date)
Files	1. U-020304 (name of witness) direct (name of party) (date) 2. U-020304 (name of witness) direct att 1 (name of party) (date)

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-140, filed 11/24/03, effective 1/1/04.]

WAC 480-07-143 Submitting documents in rule-making proceedings. (1) **Scope of rule.** This section governs communications to the commission in rule-making proceedings (including letters, electronic mail messages, comments, and other documents). These rules are in addition to the general rules for communicating with the commission in WAC 480-07-140.

(2) **Submitting comments.** All written comments submitted in a rule making must be addressed to the commission secretary.

(3) **Methods for delivering comments and other communications.**

(a) **By electronic mail message or telefacsimile.** A person may submit comments in rule-making proceedings by electronic mail message (e-mail), e-mail file attachment, or telefacsimile transmission without supplementation by paper copy.

(i) **Where to send electronic documents.** All electronic mail and telefacsimile transmissions made under this rule

should be directed to the commission's records center. Courtesy or informational copies may be sent to other electronic mail addresses or telefacsimile numbers for individual commission staff members. When a person files a document by e-mail or telefacsimile, the document should not be sent more than once except to cure transmission or receiving errors.

(ii) **When deemed received.** A document submitted by electronic mail or telefacsimile is deemed received only when the entire electronically mailed document successfully reaches the commission's records center electronic mailbox or telefacsimile machine. Documents received electronically in the commission's records center after 5:00 p.m. are not considered officially received or filed until the next business day when they are stamped with the date and time.

(b) **By mail or hand delivery (e.g., courier delivery service).** A person may submit comments or otherwise communicate with the commission concerning rule-making proceedings by mail or by hand delivery (e.g., courier delivery service).

(i) **When deemed received/ filed.** A document submitted in a rule-making proceeding by mail or hand delivery is deemed received or filed when physically received by the commission records center and stamped with the date and time. Documents delivered to the commission's records center after 5:00 p.m. are not considered officially received or filed until the next business day when they are stamped with the date and time.

(ii) **Electronic file supplement.** The commission encourages parties who submit written comments in rule-making proceedings to supplement any paper filing delivered by mail or courier with an electronic version, as specified in WAC 480-07-140(5).

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-143, filed 11/24/03, effective 1/1/04.]

WAC 480-07-145 Filing documents in adjudicative proceedings. (1) **Scope of rule.** This section governs communications to the commission by parties in adjudicative proceedings (including letters and electronic mail messages, pleadings, and other documents). These rules are in addition to the general rules for communicating with the commission in WAC 480-07-140.

(2) **Mail or hand delivery service is required for all documents.** Parties to adjudicative proceedings before the commission must file original, signed documents and paper copies by mail or hand delivery (e.g., courier delivery service) as provided in this rule to satisfy official filing requirements and meet the commission's administrative needs. The commission may provide for the expedited exchange of documents among parties and the commission by electronic mail and telefacsimile transmission when necessary for process requirements in individual adjudicative proceedings.

(a) **When deemed received/ filed.** A document submitted in an adjudicative proceeding is officially received for filing only when the original document, including the required certificate of service under subsection (6) of this section, and the required number of copies, are physically received at the commission's records center by mail or in-hand delivery and stamped with the date and time. The date-stamped time will determine whether a document meets any deadline that

applies and will determine the timing of any later deadlines based on filing. Documents that are delivered to the commission's records center after 5:00 p.m. are not considered officially received or filed until the next business day when they are stamped with the date and time.

(b) **Exception for documents offered and received at hearing.** When authorized by the presiding officer in an adjudicative proceeding before the commission, a document may be officially received for purposes of the proceeding when the presiding officer receives the document for the record at hearing. The presiding officer may also require that a copy be filed in the commission records center.

(c) **Where to mail/deliver.** All written communications mailed or hand-delivered to the commission must be addressed to the commission's secretary at the address specified in WAC 480-07-125.

(d) **Filings must be supplemented by an electronic version of the document.** Parties filing pleadings, motions, pre-filed testimony and exhibits, and briefs must supplement their filing by submitting the document in electronic form, as specified in WAC 480-07-140(5), unless excused from the obligation by the presiding officer.

(3) Number of copies; failure to file sufficient number of copies.

(a) **Number of copies.** Unless the commission specifies a different number of copies, every pleading, motion, response, and brief submitted to the commission by mail or courier must be filed with twelve copies. A party for whom providing the required number of copies would be a hardship may describe the hardship and request permission to file fewer copies.

(b) **Failure to file sufficient number of copies.** If a person files fewer than the required number of copies of a document, the commission may reject the filing or the commission may make the additional copies for distribution and processing within the commission. If the commission makes copies to meet the total number required, the commission will bill the filing person at a rate of thirty cents per page, plus sales tax. This rate compensates for the loss of the worker's attention to assigned duties, the unscheduled use of equipment, and the cost of materials.

(4) **Filing and service are separate requirements.** Filing documents with the commission under this rule and service of the documents to parties under WAC 480-07-150 are both required in all adjudicative proceedings. Filing a document with the commission does not constitute service upon the assistant attorney general or any other party. Likewise, service upon the assistant attorney general does not constitute a filing with the commission.

(5) **Service and certificate of service are required.** Filing a pleading, motion, response, or brief with the commission in an adjudicative proceeding is not complete unless service has been made upon all parties to the proceeding pursuant to WAC 480-07-150. Service must be confirmed by submitting with the filing a valid certificate of service, or its equivalent, as provided in WAC 480-07-150(9).

(6) **Electronic mail or telefacsimile transmission may be used to expedite the filing process, when authorized.**

(a) **When permitted; paper copy supplementation is required.** The presiding officer may, when necessary because of the demands of schedule or other sufficient rea-

son, provide a one-day extension of the filing requirement by authorizing electronic mail or telefacsimile delivery of documents on the date established for filing under the procedural schedule in an adjudicative proceeding subject to the following conditions:

(i) **Paper copy supplementation is required.** The commission must physically receive the original and required number of copies by 12:00 noon on the first business day following the filing deadline established under the procedural schedule.

(ii) **Exact copy is required.** The original and paper copies of the document delivered to the commission on the day following the filing deadline must conform exactly in form and content to the electronic version or the document will not be considered to have been timely filed and may be rejected on that basis.

(iii) **Authorization for electronic submission must be indicated.** All electronic documents submitted to the commission by electronic mail message or facsimile transmission on a filing deadline date must be accompanied by an electronic message or facsimile cover sheet that states the basis for authority to effect timely filing and service by electronic mail or telefacsimile transmission.

(iv) **Simultaneous delivery to all parties is required.** All electronic documents submitted to the commission by electronic mail message or facsimile transmission on a filing deadline date must be simultaneously delivered to all parties by electronic message or telefacsimile. Service by other required means is not excused, subject to the requirements of WAC 480-07-150.

(b) **Where to send electronic mail message or telefacsimile transmission.** All electronic mail and telefacsimile transmissions made under this rule should be directed to the commission's records center. Courtesy or informational copies may be sent to other electronic mail addresses or telefacsimile numbers for individual commission staff members. When a person files a document by telefacsimile or e-mail, the document should not be sent more than once except to cure transmission or receiving errors.

(c) **When deemed received.** A document submitted by electronic mail or telefacsimile is deemed received when the entire document successfully reaches the commission's records center electronic mailbox or telefacsimile machine.

(7) **Additional rules regarding adjudicative proceedings.** Rules relating to general rate proceedings (subpart B of this chapter) and abbreviated adjudicative proceedings (subpart C of this chapter) govern filing requirements in those proceedings.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-145, filed 11/24/03, effective 1/1/04.]

WAC 480-07-150 Service of documents in adjudicative proceedings. (1) **Service defined.** Service means sending or delivering, in accordance with pertinent law and rule, documents relating to commission adjudications, to parties and any other persons to whom service may be required by statute. Service includes the formal exchange of documents among parties to adjudicative proceedings.

(2) **Designation of person to receive service.**

(a) Each party in an adjudicative proceeding must designate one person to receive service of documents relating to the adjudication.

(b) When any party has appeared by an attorney or other authorized representative in a proceeding before the commission, the party must name the representative, or one of the representatives if there is more than one, to receive service of documents. Service on the representative is valid service upon the party. When an individual party appears on his or her own behalf, she or he must be the person to receive service.

(c) The commission may order different arrangements for service in individual proceedings.

(3) **Person to receive service of orders.**

(a) The commission will serve orders in adjudicative proceedings upon the party's representative and also on the party. Therefore, all parties must provide their names and mailing addresses for purposes of service.

(b) In addition, parties that are a partnership, corporation, association, governmental subdivision or other entity other than an individual person must designate one individual person within their business, government unit, or organization to receive service of commission orders.

(4) **Contact information.** Each party must supply the following information about every individual that it names to receive service:

- (a) Name.
- (b) Mailing address.
- (c) Telephone number.
- (d) Facsimile number, if any.
- (e) Electronic mail address, if any.
- (f) Relationship to party (e.g., executive director, etc.).

(5) **Waiver of service by statutory means.**

(a) A party may choose to waive service of process by means of personal delivery, United States mail or parcel delivery service, in whole or in part, and elect to receive service by electronic means.

(b) Waiver must be made in writing, filed with the commission, and must specify alternative methods of communication to effect service. Alternates may include telefacsimile or electronic mail.

(c) Waiver excuses other parties and the commission from the obligation to use methods of service specified in rule or statute.

Neither the commission nor any party is foreclosed from making service by statutory means upon a party that has waived such service, and timely service by a method specified in the statute will satisfy legal requirements for service when it is used.

(6) **Service by parties.** Parties must serve documents by delivering one copy to each other party by one of the following methods:

- (a) In person.
- (b) By mail, properly addressed with first class postage prepaid.
- (c) By delivering to a commercial parcel delivery company and making or arranging payment of the pertinent fee.
- (d) By telefacsimile transmission, if other forms of service are waived.

(e) By electronic mail, if other forms of service are waived.

(7) **Service by commission.** All notices, complaints, petitions, findings of fact, opinions, and orders required to be served by the commission may be served by one of the following methods:

- (a) In person.
- (b) By mail, properly addressed with first class postage prepaid.
- (c) By commercial parcel delivery company.
- (d) By telefacsimile transmission, when a paper copy is simultaneously mailed or tendered to a commercial parcel delivery company.

(e) By electronic mail if originals are simultaneously mailed or sent by commercial parcel delivery company.

(8) **When service is deemed complete.** Unless otherwise ordered by the commission in a particular proceeding, service is complete as follows:

- (a) Service by mail is complete when a copy of the document is properly addressed, stamped, and deposited in the United States mail.
- (b) Service by commercial parcel delivery is complete when the parcel delivery company accepts a copy of the document for delivery.

(c) Service by telefacsimile transmission is complete when the party receiving service has filed a waiver of service by statutory methods and requested service by telefacsimile transmission, and the document being served has been entirely received in the recipient's telefacsimile machine.

(d) Service by electronic mail is complete when the party receiving service has filed a waiver of service by statutory methods and requested service by electronic mail, and the document being served has been entirely received at the recipient's designated electronic mail address.

(e) Proof of service by electronic means. Parties effecting service by electronic means are encouraged to secure electronic return receipts or otherwise confirm successful delivery.

(9) **Certificate of service.** Each person filing a pleading, motion, response, or brief with the commission must include with or on the original of the document either an acknowledgment of service or the following certificate:

"I hereby certify that I have this day served this document upon all parties of record in this proceeding, by (state the authorized method of service selected under WAC 480-07-150)"

Dated at this day of

(signature of person who served the document)

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-150, filed 11/24/03, effective 1/1/04.]

WAC 480-07-160 Confidential information. The commission will provide special handling and limited access to confidential information submitted in compliance with this rule. This rule applies to any information submitted under a claim of confidentiality. See also, WAC 480-07-420 regarding protective orders in adjudicative proceedings.

(1) **Implementation.**

(a) **Designated official.** The commission's secretary is the designated official responsible for the commission's compliance with the Public Records Act, chapter 42.17 RCW, and for the implementation of this rule. The secretary may designate one or more persons to serve as public records officer to assist in the implementation and application of this rule.

(b) **Provider.** Any person who submits information to the commission or commission staff under a claim of confidentiality pursuant to this rule is a "provider," as that term is used in this rule.

(c) **Requester.** Any person who submits a request for public records under the Public Records Act, chapter 42.17 RCW, or a data request in an adjudicative proceeding is a "requester," as that term is used in this rule.

(2) **Confidential information defined.** Confidential information is information that meets any of the following criteria:

(a) Information protected from inspection or copying under an exemption from disclosure requirements under the Public Records Act, chapter 42.17 RCW.

(b) Information protected under the terms of a protective order in an adjudicative proceeding.

(c) Valuable commercial information, including trade secrets or confidential marketing, cost, or financial information, or customer-specific usage and network configuration and design information, as provided in RCW 80.04.095.

(3) **How to designate and seek protection of confidential information under this section.** A provider may claim the protection of this rule only by strict compliance with the following requirements. Any failure to comply with these requirements may result in the submission not being accepted as one including confidential information and its return to the provider for correction and resubmission.

(a) **Contents.** The provider must submit the claim of confidentiality in writing, in the same form (i.e., paper or electronic) and at the same time the information claimed to be confidential is submitted. The provider must state the basis upon which the information is claimed to be confidential under this rule, and must identify any person (other than the provider) that might be directly affected by disclosure of the confidential information.

(b) **Marking.**

(i) **Paper copies.** When the document is in paper format, the provider must clearly mark each copy with the designation "confidential per WAC 480-07-160." The provider must place this mark on the first page of a multipage document and each specific page where the provider claims there is confidential information.

(ii) **Electronic copies.** When the document is in electronic format, such as an electronic mail message, or a word processing or spreadsheet file, the "confidential per WAC 480-07-160" mark must be inserted on the first page in the file and on each page that the provider claims contains confidential information.

(iii) **Protective order, if any, must be cited.** If the provider submits confidential information under the provisions of a protective order, the "confidential" mark on each page that includes confidential information must state: "Confiden-

tial per protective order in WUTC Docket No. [insert docket number]."

(c) **Unredacted version under seal; redacted version.** The provider must submit a version of the document as to which confidentiality is claimed as a complete document (unredacted version) and a version of the document with the information claimed to be confidential masked (redacted version). The redacted version must be so labeled and submitted along with a set of any confidential documents in a sealed envelope or similar wrapping. The unredacted version must be so labeled and submitted in a sealed envelope or similar wrapping. A party submitting multiple confidential documents must collate the documents into sets and, to the extent feasible, must enclose each set of confidential and each set of highly confidential documents for filing in a single envelope. Each page of the unredacted version that includes information claimed to be confidential must be printed on yellow or canary paper with the confidential information marked by contrasting highlighter or, if designated highly confidential under a protective order, light blue paper with the highly confidential information marked by contrasting highlighter. The redacted version must be submitted in the same manner as a document as to which confidentiality is not claimed. The redacted version will be available for public disclosure if requested. The redacted and unredacted versions must have the same pagination and line numbering.

(4) **Challenges to claims of confidentiality.** The commission or a party to a proceeding in which a provider submits a document with a claim of confidentiality may challenge the claim. When a challenge is made, the commission will provide an opportunity to respond before ruling on the challenge. If a confidential designation is challenged, the provider of the confidential information bears the burden to show that part or all of a document should be protected from disclosure under chapter 42.17 RCW, RCW 80.04.095, or a protective order. The commission may express its ruling orally on the record in an adjudicative proceeding, or in a written order.

(5) **Requests for "confidential" information.** Subject to subsections (6) and (7) of this section, the commission will release information designated confidential in response to a request properly filed under the following requirements:

(a) The requester must submit a written request to the commission's secretary on a form provided by the commission or in a letter containing equivalent supporting information, including the requester's name and address and the name and address of any organization on whose behalf or for whose benefit the request is being made. The requester must state whether the information sought is to be used for a commercial purpose.

(b) The request must be sufficiently specific to allow the secretary to readily identify the document or other material that contains the requested information. Following receipt of a request for confidential information, the secretary will notify the requester of any deficiency in the request. The requester is required to correct the request and resubmit it pursuant to this rule. The commission will take no action pending resubmission.

(c) If a requester wants copies of any documents identified in response to a request, the requester must make

arrangements with the commission's secretary to pay the designated copying fees, if any.

(6) **Informal resolution.** When the secretary and the requester agree that the requester's need for information can be satisfied without disclosing confidential information, the secretary will make the information available.

(7) **Notice of request for information designated confidential; release of information designated confidential.** The commission will provide written notice of any request for information designated confidential to the provider and any person identified by the provider as a person who might be directly affected by release of the information. This is to permit any person asserting confidentiality or who might be affected by the release of the information to invoke the statutory procedures for securing a court order to protect the records from disclosure or to take similar steps in compliance with a protective order in an adjudicative proceeding. The commission will issue such notice not more than two days after the requested materials are located and it determines that they contain information claimed to be confidential. The commission will send a copy of the notice to the requester at the same time it sends a copy to the provider.

If the provider consents in writing to the release of the information, or does not restrain disclosure by way of court order within ten days following notice, the commission will consider the information public, remove the confidential designation from its files, and release the information to the requester.

(8) **Judicial intervention by the commission.** The commission need not assist any person in seeking or resisting judicial intervention, but may participate in any such proceeding.

(9) **Designation or redesignation of confidential information in adjudications.** At the conclusion of an adjudication in which confidentiality was asserted as to documents or portions of the record, the party originally asserting confidentiality must, no later than the time for filing briefs or, if no briefs are filed, within ten days after the close of the record, do the following:

(a) Verify the accuracy of all confidential designations in the record and in the exhibit list for the proceeding, and submit any proposed corrections or changes. Absent a statement of proposed corrections or changes, the designations in the record and in the exhibit list are final and will be changed only if the party asserting confidentiality voluntarily removes, or is required to remove, a confidential designation. If there is conflict between designations, the designation that is least restrictive to public access will be adopted.

(b) File a redacted and unredacted copy of any document as to which confidentiality was asserted during the proceeding but which is not reflected in the record or exhibit list as a document designated confidential.

(c) File an unredacted version of any document designated as confidential during the proceeding, but as to which the party claiming confidentiality wishes to remove the confidential designation, or as to which the confidential designation was terminated by order. In the case of briefs, testimony, and similar documents, the authoring party must file the unredacted version.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-160, filed 11/24/03, effective 1/1/04.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

WAC 480-07-170 Official communications from the commission. A communication from the commission is not an "official communication" unless the commissioner, the commission's secretary, or the secretary's designee signs it. In addition, the presiding administrative law judge or the administrative law judge's designee may sign official communications relating to an adjudicative proceeding.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-170, filed 11/24/03, effective 1/1/04.]

WAC 480-07-180 Incorporated and referenced materials in commission rules and orders. Any document that is incorporated by reference in a commission rule or order is available for public inspection at the commission unless exempt from the public disclosure requirements in chapter 42.17 RCW, or under a protective order in an adjudicative proceeding. The commission's secretary will provide a copy of a referenced document upon request, allowing reasonable time for any necessary copying, subject to any pertinent charge, and subject to copyright restrictions or statutory exemptions from public disclosure. The commission incorporates or references the version of the incorporated or referenced material that is current on the day the commission adopts a rule or enters an order that makes the incorporation or reference, unless the commission specifies another version or unless another version is apparent from the reference. In most instances, such information is available to the public on the commission's website (see WAC 480-07-125).

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-180, filed 11/24/03, effective 1/1/04.]

WAC 480-07-200 Scope of Part II. The rules in this part apply to all rule-making proceedings before the commission.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-200, filed 11/24/03, effective 1/1/04.]

WAC 480-07-210 Administrative Procedure Act requirements. The commission conducts rule-making proceedings in compliance with the requirements of RCW 34.05.310 through 34.05.395.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-210, filed 11/24/03, effective 1/1/04.]

WAC 480-07-220 Monitoring rule-making proceedings; lists of interested persons. (1) Internet. The commission's internet website includes information about pending rule-making proceedings.

(2) **Mail or electronic mail.** The commission maintains lists of persons interested in potential rule-making proceedings that concern particular regulated industries and other

areas of potential interest. The commission sends notice of rule-making proceedings to persons on these lists. Any person may request in writing that the commission's records center include them on the relevant list or lists for the person's area(s) of interest. The commission may establish a fee for this service.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-220, filed 11/24/03, effective 1/1/04.]

WAC 480-07-230 Inquiring about rule-making proceedings. Persons who wish to inquire about rules being proposed or considered by the commission may contact the commission's rules coordinator, whose contact information is available on the commission's internet website.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-230, filed 11/24/03, effective 1/1/04.]

WAC 480-07-240 Petitions for rule making, amendment, or repeal. Any interested person may petition the commission to request that the commission adopt, amend, or repeal any rule. RCW 34.05.330 and chapter 82-05 WAC govern petitions for new rules or for the amendment or repeal of existing rules.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-240, filed 11/24/03, effective 1/1/04.]

WAC 480-07-300 Scope of Part III. (1) Scope. The rules in this subpart apply to all adjudicative proceedings described in this chapter, except to the extent of any conflict with special rules that govern general rate proceedings (subpart B of this chapter) or abbreviated adjudicative proceedings (subpart C of this chapter). An "adjudicative proceeding," for purposes of this chapter, is a proceeding in which an opportunity for hearing is required by statute or constitutional right before or after the commission enters an order, or as to which the commission voluntarily enters an adjudication, and as defined and described in chapter 34.05 RCW.

(2) Examples of adjudicative proceedings before the commission. The following are examples of proceedings that are adjudicative proceedings for purposes of this chapter, if set for hearing:

- (a) Formal complaint proceedings commenced pursuant to RCW 80.04.110 or 81.04.110.
- (b) General rate proceedings.
- (c) Applications for authority (e.g., certificates, licenses, and permits).
- (d) Petitions for enforcement of interconnection agreements.
- (e) Objections to closures of highway-railroad grade crossings.
- (f) Declaratory order proceedings.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-300, filed 11/24/03, effective 1/1/04.]

WAC 480-07-305 Commencement of an adjudicative proceeding. (1) Commencement. The commission may commence an adjudicative proceeding at any time with

respect to any matter within its jurisdiction and within the scope of its authority. An adjudicative proceeding begins when the commission or presiding officer notifies a party that a prehearing conference, hearing, or other stage of an adjudicative proceeding will be conducted.

(2) Who may file a pleading seeking to initiate an adjudicative proceeding. A person involved in an actual case or controversy subject to the commission's jurisdiction may apply to the commission for an adjudicative proceeding by filing the appropriate form of pleading.

(3) Types of pleadings that may initiate an adjudicative proceeding. The following pleadings, when properly and timely filed, constitute applications for adjudicative proceedings:

- (a) Formal complaints.
- (b) Petitions, when the action sought requires adjudication.
- (c) Petitions for declaratory orders under RCW 34.05-240, when the commission determines that an adjudicative process is necessary to provide parties the opportunity to resolve contested issues.
- (d) Filings for general rate increases, as defined in this chapter.
- (e) Applications for authority that are not protested, if the commission is required by law to conduct a hearing or determines, in its discretion, that it should set the matter for hearing.
- (f) Petitions for review of the denial of unprotested authority and petitions for mitigation of penalties assessed without hearing.

(g) Protests to applications for authority.

The commission will not initiate an adjudicative proceeding in response to such an application when contrary to statute or rule, when the application is presented during an existing adjudication (except pursuant to the commission's discretion under RCW 34.05.413(1)), or when the subject raised by the application is not required to be resolved in an adjudicative proceeding, as defined in chapter 34.05 RCW.

(4) Commission notification of any deficiencies in a pleading. Within thirty days after receiving an application for an adjudicative proceeding, the commission may notify the applicant of any obvious errors or omissions, request any additional information it requires regarding the application for adjudicative proceeding, and notify the applicant of the name, mailing address, and telephone number of a person on the commission staff that may be contacted regarding the application.

(5) Commission determination to conduct adjudicative proceeding. Within ninety days after a party files and serves a pleading or a party files and serves a response, whichever comes later, the commission will:

(a) Commence an adjudicative proceeding by serving the parties with a notice of hearing pursuant to RCW 34.05.434; or

(b) Decide not to conduct an adjudicative proceeding and furnish the applicant with a copy of its written decision, which will include a brief statement of reasons and notice of any administrative review available.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-305, filed 11/24/03, effective 1/1/04.]

WAC 480-07-310 Ex parte communication. (1) **General.** RCW 34.05.455 and this section govern ex parte communications. After an adjudicative proceeding begins and before a final determination, no person who has a direct or indirect interest in the outcome of the proceeding, including the commission's advocacy, investigative, or prosecutorial staff, may directly or indirectly communicate about the merits of the proceeding with the commissioners, the administrative law judge, or the commissioners' staff assistants, legal counsel, or consultants assigned to advise the commissioners in that proceeding, unless reasonable notice is given to all parties to the proceeding, so that they may participate in, or respond to, the communication.

(2) **Communications not considered ex parte for purposes of this section.** The following communications are not considered ex parte:

(a) **Procedural aspects.** Communications necessary to procedural aspects of maintaining an orderly process, such as scheduling, are not ex parte communications prohibited by RCW 34.05.455, or by this section.

(b) **Commissioners.** The commissioners may communicate with one another regarding the merits of any adjudicative proceeding.

(c) **Commission employees and consultants.** A presiding officer may receive legal counsel, or consult with staff assistants or consultants who are subject to the presiding officer's supervision or who have not participated in the proceeding in any manner, and who are not engaged in any investigative or prosecutorial functions in the same or a factually related case.

(3) **Communication prior to service as presiding officer.** If, before serving as presiding officer in an adjudicative proceeding, a person receives an ex parte communication of a type that could not properly be received while serving, the presiding officer must disclose the communication as prescribed in subsection (4) of this section promptly after starting to serve.

(4) **What is required if an ex parte communication occurs.** A presiding officer who receives any communication that appears to violate RCW 34.05.455, or this section, will place on the record of the pending matter any such written communication received, any written response to the communication, and a memorandum stating the substance of any such oral communication received, any response made, and the identity of each person from whom the presiding officer received an ex parte communication. The presiding officer will advise all parties that these matters have been placed on the record. Upon request made within ten days after notice of the ex parte communication, any party who wants to respond to the communication may place a written rebuttal statement on the record. Portions of the record pertaining to ex parte communications or rebuttal statements do not constitute evidence of any fact at issue in the proceeding unless a party moves to admit any portion of the record for purposes of establishing a fact at issue and that portion is admitted pursuant to RCW 34.05.452.

(5) **Sanctions.** The commission may prescribe appropriate sanctions, including default, for any violation of RCW 34.05.455 or this section. The commission will, and any party may, report any violation of this section to appropriate authorities for any disciplinary proceedings provided by law.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-310, filed 11/24/03, effective 1/1/04.]

WAC 480-07-320 Consolidation of proceedings. The commission, in its discretion, may consolidate two or more proceedings in which the facts or principles of law are related. Parties may request consolidation or may request the severance of consolidated matters by motion to the commission. The commission may act on its own motion to consolidate matters for hearing, or to sever consolidated matters.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-320, filed 11/24/03, effective 1/1/04.]

WAC 480-07-330 Presiding officers. (1) **Commissioners.** The commissioners may preside in any adjudicative proceeding with or without the assistance of an administrative law judge. When the commissioners preside, they are "presiding officers" as that term is used in chapter 34.05 RCW and in this chapter. When the commissioners preside with the assistance of an administrative law judge, the administrative law judge also is a presiding officer, except for purposes of making final decisions on substantive matters in the proceeding. The administrative law judge may enter procedural and other interlocutory orders. When the commissioners preside, they may enter procedural and other interlocutory orders and will enter one or more final orders in the proceeding to resolve the substantive matters presented.

(2) **Administrative law judge.** The supervisor of the administrative law judge function within the agency will designate one or more administrative law judges to preside in individual proceedings, subject to the commissioners' approval. An administrative law judge may be designated to assist the commissioners in their role as presiding officers as described in subsection (1) of this section, or may be designated to serve alone as presiding officer. When serving alone as the presiding officer, the administrative law judge will enter one or more initial orders, unless the parties and the commission agree to waive an initial order, or law prohibits entry of an initial order. The commissioners will enter a final order following the opportunity for administrative review of an initial order, upon waiver of an initial order, or as otherwise provided by law.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-330, filed 11/24/03, effective 1/1/04.]

WAC 480-07-340 Parties—General. (1) **Defined; appearance requirement.** A "party" is a person (meaning an individual, partnership, corporation, association, governmental subdivision or unit, or public or private organization or entity of any character) that has complied with all requirements for establishing and maintaining party status in any proceeding before the commission. The commission will not grant party status to a person who fails to appear at the earliest prehearing conference, if one is held, or hearing session, if there is no prehearing conference, unless the party is excused from appearing by the presiding officer or shows good cause for failing to timely appear. The commission staff and the public counsel section of the attorney general's office

become parties to an adjudicative proceeding for all purposes upon entering an appearance. When the commission's regulatory staff appears as a party it will be called "commission staff" or "staff." When the public counsel section of the office of the Washington attorney general appears as a party, it will be called "public counsel."

(2) **Classification of parties.** Parties to proceedings before the commission will be called applicants, complainants, petitioners, respondents, intervenors, or protestants, according to the nature of the proceeding and the relationship of the parties, as follows:

(a) **Applicants.** Persons applying for any right or authority that the commission has jurisdiction to grant are "applicants."

(b) **Complainants.** Persons who file a formal complaint with the commission are "complainants." When the commission commences an adjudicative proceeding on its own complaint seeking to impose a penalty or other sanction based upon alleged acts or omissions of the respondent, the commission is the "complainant."

(c) **Petitioners.** Persons petitioning for relief other than by complaint are "petitioners."

(d) **Movants.** Persons filing a motion for relief are "movants" or "moving parties."

(e) **Respondents.** Persons against whom any formal complaint, petition, or motion is filed are "respondents." In general rate proceedings that are set for hearing on the commission's motion or complaint, the party seeking to increase rates is a "respondent," but bears the burden of proof in the proceeding pursuant to RCW 80.04.130 or 81.04.130.

(f) **Intervenors.** Persons, other than the original parties, that are permitted to appear and participate as parties are "intervenors."

(g) **Protestants.** Persons that file a protest to oppose an application are "protestants."

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-340, filed 11/24/03, effective 1/1/04.]

WAC 480-07-345 Appearance and practice before the commission. (1) **Minimum qualifications.** No person may appear before the commission as a representative of a party to an adjudicative proceeding without meeting one of the following qualifications:

(a) Membership in good standing in the Washington State Bar Association;

(b) Admission to practice, in good standing, before the highest court of any other state or the District of Columbia;

(c) Status as an officer or employee of a party or person seeking party status, if granted permission by the presiding officer to represent the party;

(d) Status as a legal intern admitted to limited practice under Rule 9 of the Washington state supreme court's admission to practice rules. No legal intern, however, may appear without the presence of a supervising lawyer unless the presiding officer approves the intern's appearance in advance.

The presiding officer may refuse to allow a person who does not have the requisite degree of legal training, experience, or skill to appear in a representative capacity.

(2) **Written notice of appearance and withdrawal by counsel or other representative is required.** Attorneys or

other authorized representatives that wish to appear on behalf of a party or person seeking party status, or to withdraw from a proceeding, must immediately provide separate written notice to the commission and all parties to the proceeding. Parties must supplement the written notice by submitting the document in electronic form as specified in WAC 480-07-140(5). A party's initial pleading filed in the proceeding must designate the party's representative. Later changes to the designation of authorized representative must be made by written notice to the commission, and a copy must be served on each other party in the proceeding. The party's initial pleading must also designate one person as its representative to accept service for the party itself.

(3) **Unethical conduct is not permitted.** Persons appearing in proceedings before the commission in a representative capacity must conform to the standards of ethical conduct required of attorneys before the courts of Washington. Representatives are required to be familiar with, and conform to, the requirements of the rules of professional conduct that are part of the Washington court rules. If any representative fails to conform to those standards, the commission may exclude the person from the proceeding, may report the ethical violation to any appropriate licensing authority, and may refuse to permit the person to appear before it in a representative capacity in any future proceeding.

(4) **Former employees.** Former employees of the commission are subject to the provisions of RCW 42.52.080, which governs employment after public service.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-345, filed 11/24/03, effective 1/1/04.]

WAC 480-07-350 Access for limited-English speakers and hearing-impaired persons. (1) **Interpreters.** The commission incorporates WAC 10-08-150 (rules of procedure governing interpreters) by reference in this rule so that limited-English-speaking and hearing-impaired persons have equal access to the administrative process and the opportunity for full and equal participation in adjudicative proceedings.

(2) **Notice to limited-English-speaking parties.** When the commission knows that a limited-English-speaking person is a party in an adjudicative proceeding, it will serve on that party a version of all notices concerning the hearing, including notices of hearing, continuances, and dismissals, in the primary language of the party or will include in the service of each notice a supplemental notice in the party's primary language that describes the significance of the notice and how the party may receive assistance in understanding and responding to the notice.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-350, filed 11/24/03, effective 1/1/04.]

WAC 480-07-355 Parties—Intervention. (1) **Petition to intervene.**

(a) **Who may petition; when petitions must be filed.** Any person (other than the original parties to any proceeding before the commission, commission staff, and public counsel) who desires to appear and participate as a party should file a written petition for leave to intervene at least three busi-

ness days before the initial hearing date or prehearing conference date, whichever occurs first. A person may petition orally for leave to intervene at the time of the initial hearing or prehearing conference, unless the commission requires written petitions to intervene in a notice prior to the first hearing or prehearing date. The commission may extend the period for filing timely petitions to intervene.

(b) **Late-filed petition to intervene.** Any petition to intervene made after the deadline for filing or presenting the petition is a "late-filed petition to intervene." The commission will grant a late-filed petition to intervene only on a showing of good cause, including a satisfactory explanation of why the person did not timely file a petition.

(c) **Contents of petition.** Any petition to intervene must disclose:

- (i) The petitioner's name and address.
- (ii) The petitioner's interest in the proceeding.
- (iii) The petitioner's position(s) with respect to the matters in controversy.
- (iv) Whether the petitioner proposes to broaden the issues in the proceeding and, if so, a statement of the proposed issues and an affidavit or declaration that clearly and concisely sets forth the facts supporting the petitioner's interest in broadening the issues.
- (v) The name and address of petitioner's attorney or other representative, if any. Attorneys and other party representative must separately file their notice of appearance as required by WAC 480-07-345(2).

(2) **Response.** Parties may respond to any petition to intervene. Responses may be written, or may be heard orally at a prehearing conference or at hearing. A party's written response to a petition to intervene must be filed and served at least two business days before the next prehearing conference or hearing date, or at such other time as the commission may establish by notice.

(3) **Disposition of petitions to intervene.** The commission may consider petitions to intervene at hearings or prehearing conferences, or, if persons have responded to a petition, before or after a hearing or prehearing conference. If the petition discloses a substantial interest in the subject matter of the hearing or if the petitioner's participation is in the public interest, the presiding officer may orally grant the petition at a hearing or prehearing conference, or in writing at any time. The presiding officer may impose limits on an intervenor's participation in accordance with RCW 34.05.443(2). If the commission grants intervention, the petitioner becomes a party to the proceeding as an "intervenor."

(4) **Dismissal of intervenor.** The commission may dismiss an intervenor from a proceeding after notice and a reasonable opportunity to be heard if the commission determines at any time that the intervenor has no substantial interest in the proceeding, or that the public interest will not be served by the intervenor's continued participation.

(5) **Interlocutory review by commission.** The commission may review a decision regarding a petition to intervene or dismissal of an intervenor pursuant to WAC 480-07-810.

[Statutory Authority: RCW 80.01.040 and 80.04.160, 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-355, filed 11/24/03, effective 1/1/04.]

WAC 480-07-360 Parties—Master service list. The commission will maintain a master service list for each adjudicative proceeding, which will be available upon request and which to the extent feasible will be available on the commission's website. The list will contain the name, mailing address, e-mail address, telephone number, and telefacsimile number of each party to the proceeding and of each party's representative. The commission will provide a courtesy copy to the parties of contact information provided by each party at the initial prehearing conference. Each party must also designate one person to receive service of all documents that are required to be served and may request that additional representatives receive courtesy service. Parties that are individuals will be individually served with all commission orders entered in the proceeding. Parties that are a partnership, corporation, association, governmental subdivision or unit, or public or private organization or entity of any character, must designate an individual within their organization for purposes of service of commission orders.

[Statutory Authority: RCW 80.01.040 and 80.04.160, 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-360, filed 11/24/03, effective 1/1/04.]

WAC 480-07-370 Pleadings—General. (1) **Types of pleadings permitted.** Pleadings include formal complaints, petitions, answers, replies, counterclaims, answers to counterclaims, cross-claims, answers to cross-claims, third-party complaints, answers to third-party complaints, applications for authority, and protests. The commission may allow other pleadings upon written motion or on the commission's own motion.

(a) **Formal complaints.**

(i) **Defined.** "Formal complaints" are complaints filed in accordance with RCW 80.04.110 and 81.04.110, complaints filed under RCW 80.54.030, and commission complaints in proceedings designated by the commission as formal commission proceedings.

(ii) **Contents.** A formal complaint must be in writing and must clearly and concisely set forth the ground(s) for the formal complaint and the relief requested. A formal complaint must state:

(A) The name and address of the complainant and the name and address of complainant's attorney or other representative, if any;

(B) The full name and address of the person complained against;

(C) Facts that constitute the basis of the formal complaint, including relevant dates; and

(D) Citations to relevant statutes or commission rules.

(iii) **Proceedings under RCW 80.04.110 or 81.04.110.** In proceedings under RCW 80.04.110 or 81.04.110, the provisions of the respective statute will also apply.

(b) **Petitions.**

(i) **Defined.** Except for formal complaints and applications, as defined in this section, all original pleadings that seek relief and all pleadings that seek relief from a commission order are "petitions." Examples of petitions are petitions to intervene, petitions for declaratory orders that the commission converts into adjudications under RCW 34.05.310, petitions for enforcement of interconnection agreements under WAC 480-07-650, petitions for accounting orders, petitions

for crossing or alteration of railroad crossings under RCW 81.53.030 and 81.53.060 and petitions for exemptions from or waiver of commission rules. Petitions that seek relief from a commission order include petitions for administrative review of an initial order, petitions for reconsideration of a final order, petitions for rehearing of a final order, and petitions for stay of the effectiveness of a final order. The commission may undertake an action that would be the proper subject of a party's petition, such as authorizing exemption from a commission rule, without receiving a petition from a party. The commission will provide written notice and allow for appropriate process when it acts in the absence of a party's petition.

(ii) *Contents.* A petition must be in writing and must clearly and concisely set forth the ground(s) for the petition and the relief requested. A petition must state:

(A) The petitioner's name and address and the name and address of the petitioner's attorney or other representative, if any;

(B) Facts that constitute the basis of the petition, including relevant dates;

(C) Citations to relevant statutes or commission rules.

(c) *Answer to formal complaint or petition.*

(i) *Defined.* A response to a formal complaint or petition is an answer. Answers must admit or deny specifically, and in detail, all material allegations of the formal complaint or petition and must fully and completely disclose the nature of the respondent's affirmative defenses, if any. A respondent must separately state and number each affirmative defense asserted.

(ii) *When required.* A named respondent must file an answer to a complaint brought by any party other than the commission.

(iii) *When optional; when prohibited.* A party may file an answer in any case, but an answer may not be filed in response to petition for reconsideration unless the commission expressly requests an answer be filed.

(iv) *Timing of answer.* A respondent must answer a formal complaint within twenty days after the commission serves the formal complaint on the respondent or such shorter time as the commission specifies in its notice. A person who desires to respond to a petition must file the answer within twenty days after the petition is filed. The presiding officer will establish the time for answers to interlocutory petitions. The commission may alter the time allowed for any answer to be filed.

(d) *Reply.*

(i) *Defined.* The pleading responding to an answer is a "reply." A party must not file a reply without authorization from the commission, upon a showing of cause.

(ii) *Motion for permission to reply.* A party that wishes to respond to an answer must file a motion requesting permission to reply within five business days after the answer is served. Motions for permission to reply should address whether the answer raises new material requiring a response, or state other reason(s) why a reply is necessary. A party may file a proposed reply as an attachment to its motion. If the commission grants a motion to file a reply and no reply is attached to the motion, the commission will set the time for filing the reply. Unless the commission grants a motion for

permission to reply within five business days after filing, it is deemed denied.

(iii) *Commission direction or invitation for a reply.* The commission may require or invite a party to file a reply.

(e) *Application.* An "application" is a request for authority, license, or a certificate authorizing a person to provide a service regulated by the commission. The term also includes a request to transfer or amend any such authority, license, or certificate. Examples of applications are requests for certificates of convenience and necessity under Title 81 RCW and requests for transfers of property under chapter 80.12 or 81.12 RCW.

(f) *Protest.* A person who asserts that its interests would be adversely affected if an application is granted may file a "protest." A protest to an application must conform to the requirements of any special rules that apply to the type of application being protested. A protestant must serve a copy of the protest upon the applicant.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-370, filed 11/24/03, effective 1/1/04.]

WAC 480-07-375 Motions. (1) Defined. A party's written or oral request for commission action in the context of an adjudicative proceeding is a "motion." Persons who file motions are "movants" or "moving parties." Motions should be in writing unless made during a hearing session before the presiding officer. The commission may require an action that would be the proper subject of a party's motion, such as the rejection of proffered evidence without receiving a motion from a party. The commission will provide oral or written notice and allow for appropriate process when it acts in the absence of a party's motion. The commission recognizes four basic categories of motion:

(a) *Dispositive motions.* Dispositive motions request the commission to determine one or more of the issues in a proceeding or to terminate a party's participation. Examples of dispositive motions are motions to dismiss all or part of a complaint, petition, or application (see WAC 480-07-380(1)); motions for summary determination (see WAC 480-07-380(2)); and motions to dismiss an intervenor (see WAC 480-07-355(4) and 480-07-450) or find a party in default (see WAC 480-07-450).

(b) *Procedural motions.* Procedural motions request establishment of or modifications to process or the procedural schedule in a proceeding. Examples of procedural motions are motions for continuance (see WAC 480-07-385), motions for extensions of time (see WAC 480-07-385), and motions to reopen the record (see WAC 480-07-830).

(c) *Discovery motions.* Discovery motions are requests to promote or limit the exchange of information among parties during the discovery phase of a proceeding. Examples of discovery motions are motions to compel (see WAC 480-07-405(3) and 480-07-425), motions for sanctions (see WAC 480-07-425), and motions for protective orders (see WAC 480-07-420).

(d) *Evidentiary motions.* Motions related to evidence are requests to limit or add to the record in a proceeding. Examples of motions related to evidence are motions to strike, motions in limine, and motions requesting authority to file supplemental or additional testimony.

(2) **Written motions must be filed separately.** Parties must file motions separately from any pleading or other communication with the commission. The commission will not consider motions that are merely stated in the body of a pleading or within the text of correspondence. The commission may refer to the Washington superior court rules for civil proceedings as guidelines for handling motions.

(3) **Oral motions.** A party may bring an oral motion during a hearing, unless foreclosed from doing so by rule or in the presiding officer's discretion. The presiding officer will provide an opportunity for other parties to respond to any oral motion. The presiding officer may require that an oral motion be reduced to writing and may provide an opportunity for written response.

(4) **Responses to written motions.** A party who opposes a written motion, other than a dispositive motion (WAC 480-07-380) or a motion for continuance (WAC 480-07-385), may file a written response within five business days after the motion is served, or may make an oral or written response at such other time as the presiding officer may set.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-375, filed 11/24/03, effective 1/1/04.]

WAC 480-07-380 Motions that are dispositive— Motion to dismiss; motion for summary determination; motion to withdraw. (1) Motion to dismiss.

(a) **General.** A party may move to dismiss another party's claim or case on the asserted basis that the opposing party's pleading fails to state a claim on which the commission may grant relief. The commission will consider the standards applicable to a motion made under CR 12 (b)(6) and 12(c) of the Washington superior court's civil rules in ruling on a motion made under this subsection. If a party presents an affidavit or other material in support of its motion to dismiss, and the material is not excluded by the commission, the commission will treat the motion as one for summary determination as provided in subsections (2) and (3) of this section.

(b) **Time for filing motion to dismiss.** A party that opposes a pleading must file any motion directed to the pleading no later than the time the responsive pleading is due, or within twenty days after the pleading is served, whichever time is less, unless the party shows good cause for delay. Filing a motion to dismiss a pleading, or seeking a similar remedy, does not extend the time for answering the pleading.

(c) **Response.** A party who opposes a written motion to dismiss may file a response within ten days after service of the motion, or at such other time as may be set by the commission or the presiding officer. The commission may allow oral argument.

(2) Motion for summary determination.

(a) **General.** A party may move for summary determination of one or more issues if the pleadings filed in the proceeding, together with any properly admissible evidentiary support (e.g., affidavits, fact stipulations, matters of which official notice may be taken), show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In considering a motion made under this subsection, the commission will consider the

standards applicable to a motion made under CR 56 of the Washington superior court's civil rules.

(b) **Time for filing motion for summary determination.** A party must file any motion for summary determination at least thirty days before the next applicable hearing session, unless the commission establishes by order a different specific date for any such motion to be filed.

(c) **Response.** A party that answers a motion for summary determination must file its answer and any cross-motion for summary determination within twenty days after the motion is served, unless the commission establishes by order a different specific date for a response to be filed.

(d) **Continuance not automatic.** Filing a motion for summary determination will not automatically stay any scheduled procedures. The commission may order a continuance of any procedure and may order that an oral or written response to a motion for summary determination be made at a time that is consistent with any established hearing schedule in the proceeding.

(3) **Motion to withdraw.** A party may withdraw from a proceeding only upon permission granted by the commission in response to a written motion if:

(a) In the case of a matter initiated by a tariff filing, the commission has entered a complaint and order suspending the filing; or

(b) In all other cases, the commission has issued a hearing notice or otherwise commenced an adjudicative proceeding pursuant to chapter 34.05 RCW.

The commission will grant a party's motion to withdraw from a proceeding when the party's withdrawal is in the public interest.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-380, filed 11/24/03, effective 1/1/04.]

WAC 480-07-385 Motion for continuance, postponement, or extension of time. (1) Definitions.

(a) "Continuance," means any postponement or extension of time.

(b) A continuance to which all parties agree is an "agreed request."

(2) **Procedure.** Any party may request a continuance by oral or written motion. The commission may require a confirmation letter if a party makes an oral request. The presiding officer may rule on such motions orally at a prehearing conference or hearing session, or by letter, notice, or order. The commission will grant a continuance if the requesting party demonstrates good cause for the continuance and the continuance will not prejudice any party or the commission. The commission will grant a timely request to which all parties expressly agree unless it is inconsistent with the public interest or the commission's administrative needs.

(3) Timing.

(a) A party must file any written motion for continuance at least five business days prior to the deadline as to which the continuance is requested and must serve the motion by means that ensure its receipt by other parties the next business day after filing. Parties must file any written response within three business days after the motion is served, or two days prior to the deadline that is sought to be continued, whichever

is earlier. Parties may orally respond when a hearing session is held prior to the stated deadline for a written response.

(b) A party must make any oral request for continuance on the record in a proceeding at least two business days prior to the deadline as to which the continuance is requested. The commission will permit oral responses at the time the oral request is made.

(c) The commission may consider requests for continuance that are made after the deadlines stated in this rule if the requester demonstrates good cause that prevented a timely request.

(4) **Date certain.** The commission will grant continuances only to a specified date.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-385, filed 11/24/03, effective 1/1/04.]

WAC 480-07-390 Briefs; oral argument; findings and conclusions. The commission may require the parties to a proceeding to present their arguments and authority orally at the close of the hearing, by written brief, or both. The commission may require parties to file proposed findings of fact and conclusions of law. The first brief filed following the close of hearing, if any, should be captioned "initial brief of [party]." A responding brief, if any, should be captioned "reply brief of [party]."

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-390, filed 11/24/03, effective 1/1/04.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

WAC 480-07-395 Pleadings, motions, and briefs—Format requirements; citation to record and authorities; verification; errors; construction; amendment. (1) **Format.** All pleadings, motions, and briefs must meet the following format requirements:

(a) **Paper size; legibility; margins.** All pleadings, motions, and briefs must be:

- Submitted on three-hole punched 8 1/2 x 11 inch paper.
- Presented in double-spaced, 12-point type, Palatino, Times New Roman, or an equally legible serif font, with footnotes in the same font and of at least 10-point type.
- Printed with margins at least one inch from each edge of the page.

Documents that are electronically filed must meet these requirements when printed.

(b) **Length.** Pleadings, motions, and briefs must not exceed sixty pages (exclusive of exhibits, appended authorities, supporting affidavits and other documents). The presiding officer may alter the page limit, either shortening or lengthening the number of pages allowed, considering the number and complexity of the issues.

(c) **Organization.** Every pleading, motion, and brief must be organized as follows:

(i) **Caption.** At the top of the first page must appear the phrase, "before the Washington utilities and transportation commission." On the left side of the page, the caption of the proceeding must be set out or, if no caption exists, the following: "In the matter of the (complaint, petition, motion, etc.) of (name of the pleading party) for (identify relief sought)."

On the right side of the page, opposite the caption, the pleading party must include the docket number if one has been assigned, identify the name of the document (e.g., petition, motion, answer, reply, etc., of (role of party: E.g., petitioner, respondent, protestant, etc., and name of the party if more than one party has the same role in the proceeding)). The caption also must briefly state the relief sought (e.g., "petition for an accounting order"; "motion for continuance").

(ii) **Body of pleading.** The body of the pleading must be set out in numbered paragraphs. The first paragraph must state the pleading party's name and address and if it is the party's initial pleading, the name and address of its representative, if any. The second paragraph must state all rules or statutes that the pleading puts in issue. Succeeding paragraphs must set out the statement of facts relied upon in a form similar to complaints in civil actions before the superior courts of this state. The concluding paragraphs must state the relief the pleading party requests.

(iii) **Body of motion.** A motion must include the following information:

(A) **Relief requested.** A statement of the specific relief the commission is requested to grant or deny.

(B) **Statement of facts.** A succinct statement of the facts that the moving party contends are material to the requested remedy.

(C) **Statement of issues.** A concise statement of the legal issue or issues upon which the commission is requested to rule.

(D) **Evidence relied upon.** Any evidence on which the motion or opposition is based must be specified. Any affidavits, depositions or portions of affidavits or depositions relied upon must be specified. If a party relies on affidavits, deposition transcripts, or documentary evidence, the party must quote the cited material verbatim or attach a photocopy of relevant pages to an affidavit that identifies and verifies the documents. Parties should highlight or otherwise clearly identify the portions of the cited evidence upon which they place substantial reliance.

(iv) **Body of brief.** The commission may require the parties to organize their briefs according to a common outline. The presiding officer, in consultation with the parties, will establish the elements of the common outline taking into account the issues in the proceeding, the parties' preferences, and the commission's needs.

(v) **Citation to record.** Portions of the record relied on or quoted in the body of a brief must be cited using footnotes.

(A) **Transcript.** Transcript references should be as follows: TR. [page]: [line(s)], ([witness's surname]). If the transcript reference spans multiple pages, the reference should be as follows: TR. [page]: [line] - [page]: [line] ([witness's surname]).

(B) **Exhibits.** Exhibit references should be as follows: Exh. No. [insert number assigned at hearing]. In the case of prefiled testimony offered or received as an exhibit, page number(s), line number(s), and the witness's surname should be added following the style specified in this section for transcript references. In other exhibits, references to page(s), line(s) for text, row(s) and column(s) for tables, or other specific references may be added to clarify the information cited.

(vi) **Citation to authority.** Parties must use the citation formats specified in the current edition of the style sheet of

the Washington supreme court reporter of decisions. The presiding officer may require parties to file copies of non-Washington authorities that are cited in parties' briefs and upon which parties place substantial reliance.

(2) **Verification.** All pleadings and motions, except complaints brought by the commission or matters raised by the commission on its own motion must be dated and signed by at least one attorney or representative of record in his or her individual name, stating his or her address, or by the party, if the party is not represented. Parties who are not represented by an attorney must include a statement in any pleading that the facts asserted in the pleading are true and correct to the best of the signer's belief. Parties who bring certain complaints under RCW 80.04.110 or 81.04.110 that challenge the reasonableness of the rates or charges of jurisdictional utilities must provide additional verification as specified in those statutes.

(3) **Errors in pleadings or motions.** The commission may return a pleading or motion to a party for correction when the commission finds the pleading or motion to be defective or insufficient. The commission may disregard or correct obvious typographical errors, errors in captions, or errors in spelling of names of parties.

(4) **Liberal construction of pleadings and motions.** The commission will liberally construe pleadings and motions with a view to effect justice among the parties. The commission, at every stage of any proceeding, will disregard errors or defects in pleadings, motions, or other documents that do not affect the substantial rights of the parties.

(5) **Amendments.** The commission may allow amendments to pleadings, motions, or other documents on such terms as promote fair and just results.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-395, filed 11/24/03, effective 1/1/04.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

WAC 480-07-400 Discovery. (1) General.

(a) **No limitation on commission authority to audit and inspect.** Nothing in this section imposes any limitation on the commission's ability to audit or obtain the books and records of public service companies, or the public service companies' obligation to provide information to the commission, whether or not in the context of an adjudicative proceeding.

(b) **Informal discovery procedures.** Parties in an adjudicative proceeding may agree to informal discovery procedures in addition to, or in place of, the procedures contained in this section.

(c) **Definitions.** For purposes of WAC 480-07-400 through 480-07-425, the following terms have the following meanings:

(i) **Party.** Any party as defined by WAC 480-07-340.

(ii) **Data.** As used in this section, "data" means information of any type, in any form.

(iii) **Data request.** A party's written request that calls for another party to produce data in connection with an adjudicative proceeding is a "data request." Generally, data requests seek documents, an analysis, compilation or summary of documents into a requested format, a narrative response explaining a policy, position, or a document, or the admission of a

fact asserted by the requesting party. If a party relies on a cost study, it is expected that the party will, on request, rerun the study based on different assumptions, subject to the standards in subsection (5) of this section. The commission will not order a party to respond to a data request that seeks production of a new cost study unless there is a compelling need for such production.

(iv) **Record requisition.** A request for data made on the record during a conference or hearing session or during a deposition is a "record requisition."

(v) **Bench request.** A request for data made by or on behalf of the presiding officer is a "bench request."

(vi) **Depositions.** Depositions are described in WAC 480-07-410.

(2) When discovery available.

(a) **Subpoenas always available.** The only discovery procedure available in all adjudicative proceedings before the commission is the subpoena, including a subpoena duces tecum. A commissioner, an administrative law judge, or the attorney of any party to the proceeding may issue a subpoena. Witnesses are required to comply with subpoenas in the manner prescribed in Title 80 or 81 RCW and chapter 34.05 RCW. Witnesses will be paid as provided in RCW 34.05.446 (7). Each subpoena must bear the name of the party requesting or issuing the subpoena and the party responsible for paying witness fees.

(b) **When other discovery methods available.** If the commission finds that an adjudicative proceeding meets one of the following criteria, the methods of discovery described in subsections (1)(c)(iii) through (vi) of this section and in WAC 480-07-410 and 480-07-415 will be available to parties:

(i) Any proceeding involving a change in the rate levels of an electric company, natural gas company, pipeline company, telecommunications company, water company, solid waste company, low-level radioactive waste disposal site, or a segment of the transportation industry;

(ii) Any proceeding that the commission declares to be of a potentially precedential nature;

(iii) Any complaint proceeding involving claims of discriminatory or anticompetitive conduct, unjust or unreasonable rates, violations of provisions in Titles 80 and 81 RCW; or

(iv) Any proceeding in which the commission, in its discretion, determines that the needs of the case require the methods of discovery specified in this rule.

(3) **Signature on discovery requests.** A party, or the party's attorney or other representative, must sign each discovery request or group of requests issued. The signature constitutes a certification that the request complies with the standards of CR 26(g) of the Washington superior court civil rules and that no request made substantially duplicates a request previously made by the requesting party to the same party in the same proceeding, unless the duplication is reasonably necessary and the reason for duplication is clearly stated.

(4) **Frequency, extent, and scope of discovery.** Data requests must seek only information that is relevant to the issues in the adjudicative proceeding or that may lead to the production of information that is relevant. A party may not object to a data request on grounds that the information

sought will be inadmissible at the hearing, if the information sought appears reasonably calculated to lead to discovery of admissible evidence. Parties must not seek discovery that is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive. A discovery request is inappropriate when the party seeking discovery has had ample opportunity to obtain the information sought or the discovery is unduly burdensome or expensive, taking into account the needs of the adjudicative proceeding, limitations on the parties' resources, scope of the responding party's interest in the proceeding, and the importance of the issues at stake in the adjudicative proceeding.

(5) **Schedule.** The commission may establish and set forth in a prehearing order a schedule for discovery. Any such schedule will provide deadlines sufficient to allow a timely opportunity for responses and for disputes to be resolved. The presiding officer may impose or modify time limits to the extent necessary to conform to the commission's hearing schedule.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-400, filed 11/24/03, effective 1/1/04.]

WAC 480-07-405 Discovery—Data requests, record requisitions, and bench requests. (1) Grouping and numbering.

(a) **Grouping.** Parties must group their data requests by subject or witness and present data requests in an electronic format agreed upon by the parties whenever possible, unless the parties agree to a different procedure or the presiding officer orders a different procedure. Requests not presented in electronic format must include no more than one request per page. Parties with similar interests are encouraged, and may be required, to coordinate their issuance of data requests to avoid duplication.

(b) **Numbering.** Each party must number sequentially its data requests, as submitted. The presiding officer will ensure that record requisitions and bench requests are adequately described on the record and consecutively numbered.

(2) **Service of data requests, records requisitions, and responses to parties.** Written data requests must be sent to the party to whom the request is made, with copies to all other parties. The commission staff copy must be sent to the assistant attorney general who represents the commission staff. The commission encourages parties to agree to exchange data in electronic format by e-mail, on diskette, or by other mutually acceptable electronic means.

(3) **Motion to compel; filing data requests, objections, and responses.** Parties must not file data requests and responses to data requests with the commission or provide them to any presiding officer, except when a party files a motion to compel. A party's motion to compel must include the relevant data request, any objection, and any response.

(4) **Limitation on numbers of data requests.** The presiding officer may limit the number of data requests that a party may submit and may require parties to certify that they have coordinated discovery with other parties of similar interest and that no substantial duplication exists with other parties' submissions.

(5) **Responding party to seek clarification.** If a party to whom a data request is submitted finds the meaning or scope of a request to be unclear the responding party must immediately initiate a clarification call to the requesting party. Lack of clarity is not a basis for objection to a data request unless the responding party has made a good faith effort to obtain clarification.

(6) **Objections; consequence of failure to object.**

(a) **Data request.** A party that wishes to object to a data request must present the objection to the requesting party in writing by the time the response is due, or at such other time as may be ordered. A party that fails to interpose a timely objection to providing a full response to a data request waives any right to object for purposes of discovery and must provide a full response. A party that fails to make an objection when responding to data requests does not lose the opportunity to raise an objection at hearing if another party seeks to introduce as evidence all or part of the party's response to a data request.

(b) **Records requisition.** A party to whom a record requisition is addressed may object to the request at the time it is made or, if it later discovers a reason for objection not reasonably known at the time of the record requisition, within five days thereafter. A party may object to the admission of its response to a records requisition at the time the response is offered into evidence.

(7) **Responses.**

(a) **Data requests and records requisitions.** Parties must send responses to data requests and record requisitions to the requesting party and to any other party who requests a copy, consistent with the terms of any protective order entered in the proceeding. Parties must send the commission staff copy to the assistant attorney general who represents the commission staff unless the attorney requests an alternative method.

(b) **Timing.** A party to whom a data request is directed must provide a full response to the data request within ten business days after the request is received. If the data cannot be supplied within ten business days, the responding party must give written notice to the requesting party no later than two business days before the response is due. The notice must state why the ten-day limit cannot be met. The responding party must also provide a schedule by which it will produce the requested data and must explain why any portion of the data cannot be supplied. The presiding officer may modify these time limits.

(c) **Identification of respondent and witness.** Each data response must state the date the response is produced, the name of the person who prepared the response, and the name of any witness who is knowledgeable about and can respond to questions concerning the response.

(d) **Bench requests.** Parties must file responses to bench requests with the commission and serve all parties within ten business days after the request is made, unless the presiding officer specifies another schedule.

(8) **Supplementation.** Parties must immediately supplement any response to a data request, record requisition, or bench request upon learning that the prior response was incorrect or incomplete when made or upon learning that a response, correct and complete when made, is no longer correct or complete.

(9) **Use of responses to data requests, record requisitions or bench requests.** The commission will not consider or treat as evidence any response to a data request, record requisition, or bench request unless and until it is entered into the record.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-405, filed 11/24/03, effective 1/1/04.]

WAC 480-07-410 Discovery—Depositions. (1) **Who may be deposed.** A party may depose any person identified by another party as a potential witness. A party may depose a person who has not been identified as a potential witness, if the presiding officer approves the deposition on a finding that the person appears to possess information significant to the party's case.

(2) **Required notice; deposition conference.** A party who intends to depose one or more persons must give notice to the commission and all parties. The presiding officer will consult with the parties and may schedule a deposition conference to facilitate the deposition process. The deposition conference schedule will be adjusted as needed considering any changes in the case schedule. Deposition conferences will be convened at the commission's offices in Olympia unless the parties and the presiding officer agree to another location.

(3) **How conducted.** Parties should use CR 30 of the Washington superior court civil rules as a guide when conducting depositions. Parties must limit the scope of questioning in a deposition to the same standard set forth in WAC 480-07-400(4). A court reporter provided by the party requesting the deposition will record the deposition. Each party will be responsible for the attendance of any of its prospective witnesses, or any of its employees, who have been scheduled for deposition. A party may interrupt a deposition, if necessary, to present a dispute regarding the deposition process to the presiding officer. However, to avoid interruption, such disputes should be reserved to the conclusion of the deposition, if possible.

(4) **Use of depositions.** Parties may use depositions for any lawful purpose, subject to the requirements of this subsection. A party may use a deposition to impeach a witness. If a party seeks to offer into evidence the deposition of a witness who is available to testify to the matters addressed in the witness's deposition, the party must do the following:

(a) Offer only those portions of the deposition on which the party intends to rely; and

(b) Provide five business-days' written notice to other parties and to the presiding officer prior to the hearing session at which the witness is expected to appear. The party must attach to the notice the portion(s) of the deposition that the party proposes to offer so that the presiding officer can mark it for identification as in the case of all other proposed hearing exhibits.

If portions of a deposition are admitted into evidence, other parties may offer additional portions of the deposition when necessary to provide a balanced representation of the witness's testimony.

(5) **Correcting/supplementing deposition testimony.**

(a) **Correction.** A party may file a motion to correct a transcription error in a deposition transcript within ten days after the deposition transcript is delivered.

(b) **Supplementation.** Every witness must supplement any response given in a deposition immediately upon learning that the prior response was incorrect or incomplete when made, or upon learning that a response, correct and complete when made, is no longer correct or complete.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-410, filed 11/24/03, effective 1/1/04.]

WAC 480-07-415 Discovery conference. The purpose of a discovery conference is to allow witnesses and others who have knowledge relating to the proceeding (e.g., consultants or employees) to talk directly and informally, to reduce or avoid the need for written data requests and time for their preparation, to allow discussions of potential stipulations regarding individual facts and settlement of individual issues to occur in an informal setting, to discuss the availability of supporting information, and to enhance the parties' ability to acquire or expand their knowledge about the case of one or more designated other parties. The commission may request or require the parties to attend a discovery conference along with designated witnesses to discuss with each other questions about the party's position or evidence and the availability of supporting information. Discovery conferences will not be reported and statements made by participants at discovery conferences are not admissible as evidence unless the parties agree otherwise. The commission may designate a person to facilitate a discovery conference. The designated facilitator must not be associated with any party or with a member of the commission advisory staff who is involved in the proceeding.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-415, filed 11/24/03, effective 1/1/04.]

WAC 480-07-420 Discovery—Protective orders. (1) **Standard form.** The commission may enter a standard form of protective order designed to promote the free exchange of information when parties reasonably anticipate that discovery in a proceeding will call for the production of confidential information.

(2) **Amendment.** The commission may, upon motion by a party, or on its own initiative, amend its standard form of protective order to meet the parties' and the commission's needs in individual cases.

(3) **Special order.** Upon motion by a party or by the person from whom discovery is sought that establishes a need to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, the presiding officer may make any order, including one or more of the following, that:

(a) The discovery will not be allowed;

(b) The discovery will be allowed only on specified terms and conditions;

(c) The discovery will be allowed only by a method of discovery other than the method selected by the party seeking discovery;

(d) Certain matters may not be inquired into, or that the scope of the discovery will be limited to certain matters;

(e) Discovery will be conducted with no one present except persons designated by the commission or the presiding officer;

(f) The contents of a deposition will not be disclosed or will be disclosed only in a designated way;

(g) A trade secret or other confidential research, development, or commercial information will not be disclosed or will be disclosed only in a designated way; or

(h) The parties must file specified documents or information enclosed in sealed envelopes to be opened as directed by the commission or the presiding officer.

The presiding officer may order that any party or person provide or permit discovery on such terms and conditions as are just, if the commission denies a motion for a protective order in whole or in part.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-420, filed 11/24/03, effective 1/1/04.]

WAC 480-07-423 Discovery—Protective orders—Submission requirements for documents. Protective orders entered in individual proceedings may allow for parties to designate portions of documents exchanged during discovery or submitted during a proceeding (e.g., by filing, or by offering as an exhibit) as "confidential" or "highly confidential." In general, parties must strictly limit the amount of information they designate as confidential or highly confidential. Designation of documents as highly confidential is not permitted under the commission's standard form of protective order, and may only occur if the commission so orders.

(1) Designations.

(a) The "confidential" designation is intended to protect information that might compromise a company's ability to compete fairly or that otherwise might impose a business risk if disseminated without the protections provided in the commission's protective order.

(b) The "highly confidential" designation is reserved for information the dissemination of which, for example, imposes a highly significant risk of competitive harm to the disclosing party without enhanced protections provided in the commission's protective order. A party that wishes to designate information as highly confidential must first file a motion for an amendment to the standard protective order, supported by a sworn statement that sets forth the specific factual and/or legal basis for the requested level of protection and an explanation of why the standard protective order is inadequate. The motion and sworn statement must identify specific parties, persons, or categories of persons, if any, to whom a party wishes to restrict access, and state the reasons for such proposed restrictions.

(2) Submission.

(a) **Confidential information.** The first page and individual pages of a document determined in good faith to include confidential information must have the legend that reads: "Confidential per protective order in WUTC Docket No. [insert]." Placing a confidential legend on the first page of an exhibit indicates only that one or more pages contain confidential information and will not serve to protect the entire contents of the multipage document. Each page that

contains confidential information must be marked separately to indicate where confidential information is redacted. Confidential information must be submitted on yellow or canary paper with contrasting highlighter (e.g., gray or blue) used to mark the confidential portions.

(b) **Highly confidential information.** The first page and individual pages of a document determined in good faith to include highly confidential information must be marked by a stamp that reads: "Highly confidential per protective order in WUTC Docket No. [insert]." A "highly confidential" stamp on the first page of a document indicates only that one or more pages contain highly confidential information and will not serve to protect the entire contents of a multipage document. Each page that contains highly confidential information must be highlighted to indicate where highly confidential information is redacted. The unredacted versions of each page containing highly confidential information, and provided under seal, also must be marked with the "highly confidential. . ." stamp and must be submitted on light blue paper with contrasting highlighter (e.g., gray or yellow) used to mark the highly confidential portions.

(c) **Redacted version.** A separate version of each document that is designated as confidential or highly confidential must be provided on white paper with all of the confidential or highly confidential information redacted either by blacking out the information or replacing it with brackets and blank space. The first page must be marked as required in subsections (a) and (b) of this section, and additionally must be marked "redacted."

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-423, filed 11/24/03, effective 1/1/04.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

WAC 480-07-425 Discovery disputes. (1) Procedure for resolving disputes. Parties must make good faith efforts to resolve informally all discovery disputes. The commission may designate a person to assist the parties to resolve discovery issues, at the request or with the consent of the disputants. A party may file a written motion, or move orally at prehearing conference, to compel discovery if a dispute cannot be informally resolved. The presiding officer will hear discovery disputes, on shortened notice, at the earliest reasonable time. The presiding officer may conduct telephone hearings or conferences for the argument of discovery disputes. The presiding officer may make discovery rulings orally on the record or by written order. The presiding officer's discovery rulings are subject to review under WAC 480-07-810.

(2) **Sanctions for failure to comply.** Any party may by motion, or the commission may on its own motion, propose that sanctions be imposed if a party fails or refuses to comply with an oral or written order resolving a dispute under this section. The commission may impose sanctions including, but not limited to, default, dismissal, striking of testimony, evidence, or cross-examination, or monetary penalties as provided by law.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-425, filed 11/24/03, effective 1/1/04.]

WAC 480-07-430 Prehearing conferences. (1) **General.** The commission may require, by written notice or by oral notice on the record of the hearing, that all parties and all persons who seek to intervene attend a prehearing conference. The following topics are proper subjects for discussion at a prehearing conference:

- (a) Identification and simplification of the issues;
- (b) The necessity or desirability of amendments to the pleadings;
- (c) The possibility of obtaining stipulations of fact and to documents that might avoid unnecessary proof;
- (d) Limitations on the number of witnesses;
- (e) Coordinated examination of witnesses;
- (f) Procedure at the hearing;
- (g) The need for, and timing of, distribution of written testimony and exhibits to the parties and the bench prior to the hearing;
- (h) Disposition of petitions for leave to intervene;
- (i) Resolution of discovery disputes;
- (j) Resolution of pending motions; and
- (k) Any other matters that may aid in the disposition of the proceeding, whether by commission decision or by settlement.

(2) **Notice.** The commission will provide reasonable notice of the time and place established for a prehearing conference and the matters to be addressed. The notice may provide that failure to attend may result in a party being dismissed, being found in default, or the commission's refusal to consider a later petition for intervention except upon a showing of good cause for the failure to attend. A party's failure to attend a prehearing conference constitutes the party's waiver of all objections to any order or ruling arising out of the conference or any agreement reached at conference, unless the party shows good cause for its failure to attend.

(3) **Oral statement or written order.** The presiding officer may make an oral statement on the record or may enter an order describing the actions taken at the prehearing conference and agreements among the parties concerning all of the matters considered. Parties may object to the oral statement on the record at the time the oral statement is made, or may object to any written prehearing conference order within ten days after the date the order is served. The results of the prehearing conference will control the course of the proceeding unless modified by subsequent order or decision of the presiding officer to accommodate the needs of the case.

(4) **Prehearing conferences to facilitate evidentiary hearing.** The presiding officer may require parties to attend a prehearing conference prior to an evidentiary or other hearing session, or may recess an evidentiary or other hearing session to conduct a prehearing conference.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-430, filed 11/24/03, effective 1/1/04.]

WAC 480-07-440 Hearing notice. (1) **Initial hearing notice.**

(a) **Timing.** The commission will set the time and place of the first hearing session or prehearing conference in any adjudication in a notice served to all parties twenty days before the hearing or conference. The commission may shorten the notice period to seven days, as provided by RCW

34.05.434. The commission will set all hearings sufficiently in advance so that all parties will have a reasonable time to prepare, considering the procedural schedule, other pending matters, and the need to minimize continuances.

(b) **Provisions for appointment of interpreter.** The initial notice of hearing must state that if a limited-English-speaking or hearing-impaired party needs an interpreter, a qualified interpreter will be appointed at no cost to the party or witness. The notice will include a form for a party to indicate whether an interpreter is needed and to identify the primary language or hearing-impaired status of the party.

(2) **Notice of continued hearing sessions.**

(a) **Permitted forms of notice.** When a hearing is not concluded as scheduled, the time and place for continued hearing sessions may be set:

(i) On the record without further written notice to the parties;

(ii) By letter or formal notice from the secretary of the commission; or

(iii) By letter or formal notice from the presiding officer.

(b) **Timing.** There are no specific timing requirements for giving prior notice of continued hearing sessions.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-440, filed 11/24/03, effective 1/1/04.]

WAC 480-07-450 Hearing—Failure to appear. (1) **Dismissal or default.** The commission may dismiss a party or find a party in default for failure to appear at the time and place set for hearing. The presiding officer may recess a hearing for a brief period to provide an additional opportunity for the party to appear. If the party is not present or represented when the hearing resumes, the commission may dismiss the party or find the party in default. When the commission dismisses a party or finds a party in default, it will implement the dismissal or default by a written order. When a party is found in default, the commission's order stating that finding may also dispose of the issues in the proceeding, as provided by RCW 34.05.440.

(2) **Review of order of dismissal or default.** A party who is dismissed from a proceeding or found in default may contest the order of dismissal or default by written motion filed within ten days after service of the order. A dismissed party or party found in default may request that the order be vacated and, if the order is dispositive of the proceeding, that the proceeding be reopened for further process.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-450, filed 11/24/03, effective 1/1/04.]

WAC 480-07-460 Hearing—Predistribution of exhibits and prefiled testimony. (1) **Predistribution of evidence.** The commission may require parties to distribute their proposed evidence to other parties before the start of the evidentiary hearing. In general rate proceedings for electric, natural gas, pipeline, and telecommunications companies, the petitioner must prefile its proposed direct testimony and exhibits at the time it files its rate increase request, in accordance with WAC 480-07-510. The commission may convene a prehearing conference shortly before a scheduled hearing

and require all parties to predistribute their proposed cross-examination exhibits.

(a) **Number of copies to be filed or submitted; service.** When predistribution of evidence other than proposed exhibits for use in cross-examination is required, each party must file the original plus twelve copies of its evidence with the commission unless the commission specifies a different number. When the commission requires parties to predistribute their proposed exhibits for use in cross-examination, each party must submit six copies to the bench if the commissioners are sitting as presiding officers and three copies if the commissioners are not sitting. The presiding officer may change the number of copies required. All proposed evidence must be served on all other parties to a proceeding whenever predistribution of evidence is required.

(b) **Changes or corrections.**

(i) **Substantive corrections.** Prefiled testimony may be revised to correct mistakes of fact asserted by a witness. Such mistakes may arise from a variety of causes such as scrivener's error, error in calculation, or error of misreported fact. Each party must advise all other parties of substantive corrections to any prefiled evidence as soon as the need for correction is discovered.

(ii) **Substantive changes.** Parties must seek leave from the presiding officer by written motion if they wish to submit testimony that includes substantive changes other than to simply correct errors of fact asserted by a witness. A party proposing such changes may submit the proposed revisions with its motion.

(iii) **Minor corrections.** Minor revisions to prefiled testimony and exhibits may be made to correct typographical errors, printing errors, and nonsubstantive changes (e.g., a change in a witness's address or employment). Counsel should not ask a witness on the stand to correct obvious typographical errors in the prefiled testimony or to make more than three minor substantive corrections. If more than three minor revisions are required, parties must prepare an errata sheet or a revised exhibit for submission at least one business day prior to the hearing to show such corrections to the prefiled evidence. Parties that submit revisions to predistributed or previously admitted testimony or exhibits must prominently label them "REVISED" and indicate the date of the revision. The revised portions must be highlighted, in legislative style or other manner that clearly indicates the change from the original submission. This practice must be followed even with minor changes that involve only one page of an exhibit. Counsel must identify partial revisions by page and date when an exhibit is presented for identification, sponsored, or offered into evidence, as appropriate.

(c) **Distribution at hearing.** When a party offers new exhibits, revised exhibits, or errata sheets at a hearing, the party must provide sufficient copies for all parties and for the commission's distribution requirements. When the commission requires parties to predistribute their exhibits, a party may be required to establish good cause for any failure to predistribute a proposed exhibit, other than an exhibit offered solely for impeachment of the witness's testimony on the stand, or the exhibit may be excluded.

(2) **Prefiled testimony.**

(a) **Exhibit numbers—Official record.** The presiding officer will assign exhibit numbers to all prefiled testimony

and exhibits at the final prehearing conference prior to hearing, or at hearing. These assigned numbers will be the exhibit numbers for purposes of the official record in the proceeding.

(b) **Parties are required to mark prefiled testimony and exhibits for identification.** Parties must mark all written testimony and exhibits for identification in the upper right-hand corner of the first page prior to submission as follows:

(i) State "Exhibit No.," followed by a blank underline. Then, on the same line, identify the sponsoring witness by including the witness's initials.

(ii) Place a hyphen after the witness's initials and insert a number, beginning with Arabic numeral 1, and sequentially number each subsequent exhibit (including any subsequent written testimony) throughout the proceeding.

(iii) Place the capital letter "C" after the number if the testimony or exhibit includes information asserted to be confidential under any protective order that has been entered in the proceeding.

(iv) Place the capital letter "T" after the number if the exhibit is a witness's prefiled testimony.

For example, John Q. Witness's prefiled testimony and accompanying exhibits must be marked as follows:

Testimony or Exhibit	Marked for Identification
John Q. Witness's prefiled direct testimony	Exhibit No. ____ (JQW-1T)
First exhibit to John Q. Witness's prefiled direct testimony (nonconfidential)	Exhibit No. ____ (JQW-2)
Second exhibit to John Q. Witness's prefiled direct testimony (confidential)	Exhibit No. ____ (JQW-3C)
Third exhibit to John Q. Witness's prefiled direct testimony (nonconfidential)	Exhibit No. ____ (JQW-4)
John Q. Witness's prefiled rebuttal testimony (with portions marked confidential)	Exhibit No. ____ (JQW-5CT)
First exhibit to John Q. Witness's prefiled rebuttal testimony (nonconfidential)	Exhibit No. ____ (JQW-6)

Counsel and other party representatives who are unfamiliar with this method of identification may ask the presiding officer for further guidance.

(c) **Summary of testimony.** Each witness must present a short summary of his or her prefiled testimony on the opening page or two of the testimony. Counsel or other party representative will be expected to ask as a foundation question when the witness takes the stand the subjects that will be covered by the witness. This foundation question should request, and the witness's response should include, only a statement of the subject(s) to be covered by the witness (e.g., rate of return on equity, cost of debt, prudence) and not a summary of the witness's positions on the subject(s) identified.

(d) **Form of testimony and exhibits.** All prefiled testimony and exhibits must be paginated. In addition, line numbers must be set out on all prefiled testimony to facilitate transcript or exhibit references. All copies of prefiled testimony and exhibits must be provided on 8 1/2 x 11 inch, three-

hole punched paper, with margins of at least one inch on all sides. Oversized documents may be used at the hearing for illustrative purposes but must be provided on 8 1/2 x 11 inch paper if offered into evidence and reduction to that format is feasible.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-460, filed 11/24/03, effective 1/1/04.]

WAC 480-07-470 Hearing guidelines. These guidelines are of a general nature and are provided to assist the presiding officer in regulating the course of the proceeding. The presiding officer may suspend or modify the guidelines or use measures not specified in this rule.

(1) **Starting times.** Starting times will be strictly observed. The proceeding may go forward in the absence of counsel, parties, or witnesses who are late. Counsel may advise the bench by message to the records center when an emergency prevents timely arrival.

(2) **Appearances.** All persons who will be representing a party in a formal proceeding must give their names and addresses in writing to the court reporter immediately before the first hearing session in which they appear. The presiding officer conducting the hearing or prehearing conference will require appearances to be stated orally at the initial prehearing or hearing session, and may also ask for oral appearances at subsequent sessions in the same proceeding, so that all persons attending the hearing will know the identity and interest of all parties present. Oral appearance at hearing does not substitute for the requirement for written notice of appearance in WAC 480-07-345(2).

(3) **Matters to be handled at beginning of session.** Parties must notify the presiding officer no later than the start of the hearing session of any motion that a party anticipates may be presented during the hearing, such as one that may require foundation regarding the admissibility of evidence. The presiding officer will give the parties an appropriate opportunity to state and argue any motions related to evidence or to the procedural course of the hearing.

(4) **Summary by public counsel.** At the beginning of a hearing session during which the commission will hear testimony from members of the public, the commission may provide public counsel an opportunity to inform the public of the major contested issues and to state public counsel's positions on those issues. The commission will give other parties an opportunity to respond.

(5) **Evidence; exhibits; stipulations of fact.** The presiding officer may receive evidence as provided by RCW 34.05.452.

(6) **Order of presentation.** Evidence will ordinarily be received in the following order:

- (a) Party having the burden of proof;
- (b) Parties supporting the party having the burden of proof;
- (c) Parties opposing the party having the burden of proof;
- (d) Rebuttal by the party having the burden of proof;

The presiding officer may direct a modified order of presentation considering the needs of the parties, the commission, and the proceeding, and the parties' preferences.

(7) **Testimony under oath.** The presiding officer will administer an oath or affirmation to each witness before the witness testifies in an adjudicative proceeding. When members of the public testify, they will be sworn in the same fashion as other witnesses.

(8) **Addressing the presiding officer or witnesses.** All counsel and other party representatives must address all comments, objections, and statements to the presiding officer and not to other counsel. Questions that concern testimony or exhibits sponsored by a witness must be addressed to the witness and not to counsel or other party representatives.

(9) **Resolving matters off the record.** Counsel or other party representatives who request off-the-record discussions must ask leave to go off the record and state the purpose for the request. Extended colloquies regarding procedural issues may be conducted off the record, but will be summarized for the record by the presiding officer subject to comments from party representatives.

(10) **Witness panels.** The commission may direct or allow two or more witnesses to take the stand simultaneously when doing so allows a benefit such as the integrated response to a line of questions, minimizing referral of questions from one witness to another, or comparing witnesses' positions. The presiding officer will also allow cross-examination of each witness upon matters within the witness's direct evidence.

(11) **Cross-examination.** Counsel and other party representatives should be prepared to provide time estimates for cross-examination of witnesses. The presiding officer will limit cross-examination to one round unless good cause exists for allowing additional questions. Witnesses must not be asked to perform detailed calculations or extract detailed data while on the stand. Any such questions must be provided to the witness at least two business days prior to the date the witness is expected to testify, must ask the witness to provide the answer for the record later in the hearing session, or must provide an answer and ask the witness to accept it "subject to check." When a witness accepts information "subject to check," the witness must perform the "check" as soon as possible. A response given "subject to check" will be considered accurate unless the witness disputes it by filing an affidavit, stating reasons, within five business days following the witness's testimony.

(12) **Redirect examination.** A party whose witness has been cross-examined may conduct redirect examination of the witness on those issues raised during cross-examination.

(13) **Post-hearing planning.** The presiding officer will confer with the parties concerning post-hearing process. The presiding officer will determine whether oral argument, briefs, or both will be required, taking into consideration the needs of the commission and the parties' preferences. The presiding officer may determine a common format or outline to be used by all parties if briefs are required. Briefs must comply with the requirements of WAC 480-07-395.

(14) **Transcript.** Each party will bear its own costs for transcripts or tape recordings, including charges for expedited service when a party requests it.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-470, filed 11/24/03, effective 1/1/04.]

WAC 480-07-480 Hearing—Stipulation of facts. A stipulation is an agreement among parties intended to establish one or more operative facts in a proceeding. The commission encourages parties to enter stipulations of fact. The parties to any proceeding or investigation before the commission may agree to all of the facts or any portion of the facts involved in the controversy. The parties to a stipulation may file it in writing or enter it orally into the record. A stipulation, if accepted by the commission, is binding on the stipulating parties. The parties may present the stipulation as evidence at the hearing. The commission may reject the stipulation or require proof of the stipulated facts, despite the parties' agreement to the stipulation.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-480, filed 11/24/03, effective 1/1/04.]

WAC 480-07-490 Hearing—Exhibits and documentary evidence. (1) **Designation of part of document as evidence.** A party who offers evidence that consists of a portion of a document must designate the portion that is offered. If irrelevant matter included in the document would unnecessarily encumber the record, the document will not be received in evidence, but the relevant or material matter may be read into the record, or the presiding officer may receive a copy of the excerpt as an exhibit. If only a portion is offered or received, other parties may examine the document and offer other portions into evidence.

(2) **Official records.** An official document prepared and issued by any governmental authority may be introduced in the form of a certified copy. Official records contained in official publications or nationally recognized reporting service publications that are in general circulation and readily accessible to all parties may be introduced by reference, provided that the party offering the document clearly identifies the record and its source. The presiding officer may require the party offering such evidence to provide a copy for the record and to each party.

(3) **Commission's files.** The presiding officer may receive documents on file with the commission by reference to number, date, or by any other method of identification satisfactory to the presiding officer. If only a portion of a document is offered in evidence, the part offered must be clearly designated. The presiding officer may require the party offering the evidence to provide a copy to the record and to each party.

(4) **Records in other proceedings.** A portion of the record of any other commission proceeding that is otherwise admissible may be received as an exhibit in the form of a copy; by citation to the transcript or exhibit number; or by incorporation into the transcript of the current proceeding, as determined by the presiding officer.

(5) **Documents from the public.** When a member of the public presents a document in conjunction with his or her testimony, the commission may receive the document as an illustrative exhibit. The commission may receive as illustrative exhibits any letters that have been received by the secretary of the commission and by public counsel from members of the public regarding a proceeding. Documents a public witness presents that are exceptional in their detail or probative value may be separately received into evidence as proof

of the matters asserted after an opportunity for cross-examination.

(6) **Resolutions.** The presiding officer may receive in evidence authenticated resolutions of the governing bodies of municipal corporations and of chambers of commerce, boards of trade, commercial, mercantile, agricultural, or manufacturing societies and other civic organizations. Any recital of facts contained in a resolution may not be considered as proof of those facts.

(7) **Objections.** Any evidence offered is subject to appropriate and timely objection. The presiding officer need not specifically ask each representative whether that party objects to an offer of evidence or other motion or proposed action. Parties that have objections must state them. Failure to object constitutes a waiver of the right to object.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-490, filed 11/24/03, effective 1/1/04.]

WAC 480-07-495 Hearing—Rules of evidence; official notice. (1) **Admissibility; exclusion; offer of proof.** All relevant evidence is admissible if the presiding officer believes it is the best evidence reasonably obtainable, considering its necessity, availability, and trustworthiness. The presiding officer will consider, but is not required to follow, the rules of evidence governing general civil proceedings in non-jury trials before Washington superior courts when ruling on the admissibility of evidence.

The presiding officer may exclude evidence that is irrelevant, repetitive, or inadmissible, whether or not a party objects to the evidence. Parties objecting to the introduction of evidence must state the grounds for the objection at the time the evidence is offered. The presiding officer may permit the party offering rejected evidence to describe briefly for the record its nature and purpose as an offer of proof. A written offer of proof may be required.

(2) **Official notice.**

(a) The commission may take official notice of:

(i) Any judicially cognizable fact. Examples of such facts include, but are not limited to:

(A) Rules, regulations, administrative rulings and orders, exclusive of findings of fact, of the commission and other governmental agencies;

(B) Contents of certificates, permits, and licenses issued by the commission; and

(C) Tariffs, classifications, and schedules regularly established by or filed with the commission as required or authorized by law.

(ii) Technical or scientific facts within the commission's specialized knowledge; and

(iii) Codes or standards that have been adopted by an agency of the United States, or this state or of another state, or by a nationally recognized organization or association.

(b) The commission may, in its discretion upon notice to all parties, inspect physical conditions that are at issue and take official notice of the results of its inspection.

(c) The presiding officer will notify parties of material officially noticed and its source. The presiding officer will afford parties an opportunity to contest facts and material so noticed. The presiding officer may require a party proposing

that official notice be taken to provide copies of officially noted matter to the record and to all other parties.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-495, filed 11/24/03, effective 1/1/04.]

WAC 480-07-498 Hearing—Public comment. The commission will receive as a bench exhibit any public comment filed, or otherwise submitted by nonparties, in connection with an adjudicative proceeding. The exhibit will be treated as an illustrative exhibit that expresses public sentiment received concerning the pending matter. The commission may convene one or more public comment hearing sessions to receive oral and written comments from members of the public who are not parties in the proceeding. When the commission conducts a public comment hearing, the presiding officer will make an opening statement explaining the purpose of the hearing and will briefly summarize the principal issues in the matter. The presiding officer will administer an oath to those members of the public that indicate a desire to testify concerning their views on the issues. The presiding officer will call each member of the public who wishes to testify, will inquire briefly into the identity and interests of the witness, and will provide an opportunity for a brief statement by the party. Typically, public witnesses may expect to have three to five minutes to make an oral statement. Oral statements may be supplemented by written comments.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-498, filed 11/24/03, effective 1/1/04.]

WAC 480-07-500 General rate proceedings—Statement of policy. (1) **Scope of this subpart.** This subpart explains the special requirements for certain rate increase filings by electric, natural gas, pipeline, telecommunications, and water companies, low-level radioactive waste sites, and solid waste collection companies.

(2) **Inconsistencies with subpart A requirements.** If there is any inconsistency between the requirements in subpart B and those in subpart A, the requirements in subpart B control.

(3) **Purpose of special rules.** The special requirements in subpart B are designed to standardize presentations, clarify issues, and speed and simplify processing.

(4) **Summary rejection for failure to comply.** The commission may summarily reject any filing for a general rate proceeding that does not conform to the requirements of subpart B. If the commission summarily rejects a filing for a general rate, it will provide a written statement of its reasons and will provide an opportunity for the case to be refiled in conformance with these rules.

(5) **Less than statutory notice.** The commission may grant requests to alter tariffs on less than statutory notice for good cause shown, in accordance with RCW 80.28.060 and 81.28.050. A company that seeks to implement general rate proceeding tariff changes on less than statutory notice must include with its filing a complete explanation of the reasons that support such treatment.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-500, filed 11/24/03, effective 1/1/04.]

WAC 480-07-505 General rate proceedings—Definition. (1) **Rate filings that are considered general rate proceedings.** A general rate proceeding filing is a filing by any regulated company specified in WAC 480-07-500 for an increase in rates that meets any of the following criteria:

(a) The amount requested would increase gross annual revenue of the company from activities regulated by the commission by three percent or more.

(b) Tariffs would be restructured such that the gross revenue provided by any customer class would increase by three percent or more.

(c) The company requests a change in its authorized rate of return on common equity or a change in its capital structure.

(d) The company is a solid waste company regulated under chapter 81.77 RCW, except for filings specified under subsection (3)(a) of this section.

(2) **Rate filings under Title 80 RCW that are not considered general rate proceedings.** The following proceedings are not considered general rate increases even though the revenue requested may exceed three percent of the company's gross annual revenue from Washington regulated operations:

(a) Periodic rate adjustments for electric and natural gas companies that may be authorized by the commission (e.g., power cost adjustments and purchased gas cost adjustments).

(b) Emergency or other short-notice increases caused by disaster or weather-related conditions unexpectedly and substantially increasing a public service company's expense.

(c) Rate increases designed to recover government-imposed increases in costs of doing business such as changes in tax laws or ordinances.

(d) Other increases designed to recover increased expenses arising on short notice and beyond a public service company's control.

(3) **Rate filings under chapter 81.77 RCW that are not considered general rate proceedings.** The following filings are not considered general rate proceedings for solid waste companies regulated under chapter 81.77 RCW even though the request may meet one or more criteria identifying general rate proceedings:

(a) Filings by companies that provide neither traditional residential or commercial solid waste operations. This category includes specialized carriers generally hauling specific waste products for specific customers and carriers providing only on-call or nonscheduled service (i.e., "class C" companies, as defined in WAC 480-70-041).

(b) Disposal fee pass-through charges for drop-box service, provided there are no affiliated interest relationships.

(c) Filings for collection of per-customer pass-through surcharges and taxes imposed by the jurisdictional local government based on the current year customer count either as a specified dollar amount or percentage fee amount.

(d) Filings by existing solid waste companies for the implementation of new solid waste collection programs.

(4) **Commission discretion.** The commission may require that any filing or proposal by a regulated company to increase rates for any customer class, or to restructure rates, is subject to the procedures and protections of subpart B of these rules.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-505, filed 11/24/03, effective 1/1/04.]

WAC 480-07-510 General rate proceedings—Electric, natural gas, pipeline, and telecommunications companies. General rate proceeding filings for electric, natural gas, pipeline, and telecommunications companies must include the information described in this section. The commission may reject a filing that fails to meet these minimum requirements, without prejudice to the company's right to refile its request in conformance with this section. The company must provide:

(1) **Testimony and exhibits.** Twelve paper copies of all testimony and exhibits that the company intends to present as its direct case if the filing is suspended and a hearing held. In addition, the company must provide one electronic copy of the testimony and exhibits in a format or formats authorized in these rules or by the commission secretary. Material that has not been produced under the company's direction and control and is not reasonably available to it in electronic format, such as generally available copyrighted published material, need not be provided in electronic format. A copy of the testimony and exhibits filed under this section must be served on public counsel at the time of filing with the commission.

(2) **Tariff sheets.** Three copies of the proposed new or revised tariff sheets in legislative format, with strike-through to indicate any material to be deleted or replaced and underlining to indicate any material to be inserted.

(3) **Work papers and accounting adjustments.** Three copies of all supporting work papers as described in this subsection. If the testimony, exhibits, or work papers refer to a document, including, but not limited to, a report, study, analysis, survey, article or decision, that document must be provided as a work paper unless it is a reported court or agency decision, in which case the reporter citation must be provided in the testimony. If a referenced document is voluminous, it need not be provided with the filing but must be made available if requested. The following information must be included in the company's work papers, if it is not included in the testimony or exhibits:

(a) A detailed portrayal of the development of the company's requested rate of return.

(b) A detailed portrayal of restating actual and pro forma adjustments that the company uses to support the filing, specifying all relevant assumptions, and including specific references to charts of accounts, financial reports, studies, and all similar records relied on by the company in preparing its filing, supporting testimony, and exhibits. If the company proposes to calculate an adjustment in a manner different from the method that the commission most recently accepted or authorized for the company, it must also present a work paper demonstrating how the adjustment would be calculated under the methodology previously accepted by the commission, and a brief narrative describing the change. Commission approval of a settlement does not constitute commission acceptance of any underlying methodology unless so specified in the order approving the settlement.

(i) "Restating actual adjustments" adjust the booked operating results for any defects or infirmities in actual recorded results that can distort test period earnings. Restat-

ing actual adjustments are also used to adjust from an as-recorded basis to a basis that is acceptable for rate making. Examples of restating actual adjustments are adjustments to remove prior period amounts, to eliminate below-the-line items that were recorded as operating expenses in error, to adjust from book estimates to actual amounts, and to eliminate or to normalize extraordinary items recorded during the test period.

(ii) "Pro forma adjustments" give effect for the test period to all known and measurable changes that are not offset by other factors. The filing must identify dollar values and underlying reasons for each proposed pro forma adjustment.

(c) A detailed portrayal of revenue sources during the test year and a parallel portrayal, by source, of changes in revenue produced by the filing, including an explanation of how the changes were derived.

(d) If the public service company has not achieved its authorized rate of return, an explanation of why it has not and what the company is doing to improve its earnings in addition to its request for increased rates.

(e) A representation of the actual rate base and results of operation of the company during the test period, calculated in the manner used by the commission to calculate the company's revenue requirement in the commission's most recent order granting the company a general rate increase.

(f) Supplementation of the annual affiliate and subsidiary transaction reports as provided in rules governing reporting requirements for each industry, as necessary, to include all transactions during the test period. The company is required to identify all transactions that materially affect the proposed rates.

(4) **Summary document.** A summary document that briefly states the following information on an annualized basis, if applicable. In presenting the following information, the company must itemize revenues from any temporary, interim, periodic, or other noncontinuing tariffs. The company must include in its rate change percentage and revenue change calculations any revenues from proposed general rate change tariffs that would supersede revenue from noncontinuing tariffs.

(a) The date and amount of the latest prior general rate increase authorized by the commission, and the revenue realized from that authorized increase in the test period, based on the company's test period units of revenue.

(b) Total revenues at present rates and at requested rates.

(c) Requested revenue change in percentage, in total, and by major customer class.

(d) Requested revenue change in dollars, in total, and by major customer class.

(e) Requested rate change in dollars, per average customer, by customer class, or other representation, if necessary to depict representative effect of the request. Filings must also state the effect of the proposed rate increase in dollars per month on typical residential customers by usage categories.

(f) Most current customer count, by major customer class.

(g) Current authorized overall rate of return and authorized rate of return on common equity.

(h) Requested overall rate of return and requested rate of return on common equity, and the method or methods used to calculate rate of return on common equity.

(i) Requested capital structure.

(j) Requested net operating income.

(k) Requested rate base and method of calculation, or equivalent.

(l) Requested revenue effect of attrition allowance, if any is requested.

(5) Required service of summary document. The company must mail the summary document required in subsection (4) of this section to the persons designated below on the same date it files the summary document with the commission:

(a) Public counsel;

(b) All intervenors on the commission's master service list for the company's most recent general rate proceeding;

(c) All intervenors on the master service list for any other rate proceeding involving the company during the five years prior to the filing, if the rates established or considered in that proceeding may be affected in the company's proposed general rate filing;

(d) All persons who have informed the company in writing that they wish to be provided with the summary document required under this section. The company must enclose a cover letter stating that the prefiled testimony and exhibits and the accompanying work papers, diskettes, and publications specified in this rule are available from the company on request or stating that they have been provided. This provision does not create a right to notice in persons named to receive the summary.

(6) **Cost studies.** The company must include any cost studies it performed or relied on to prepare its filing, identify all cost studies conducted in the last five years for any of the company's services, and describe the methodology used in such studies.

(7) **Other.** The company must include its most recent annual report to shareholders, if any, and any subsequent quarterly reports to shareholders; the most recent FERC Form 1 and FERC Form 2, if applicable; and the company's Form 10K's, Form 10Q's, any prospectuses for any issuances of securities, and quarterly reports to stockholders, if any, for the most recent two years prior to the filing date.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-510, filed 11/24/03, effective 1/1/04.]

WAC 480-07-520 General rate proceedings—Solid waste collection companies. General rate increase filings by class A and B haulers as defined in WAC 480-70-041 must include the information described in this rule. The commission may reject a filing that fails to meet these minimum requirements, without prejudice to the company's right to refile its request in conformance with this section.

(1) **Proposed tariff.** Two copies of the proposed tariff, in legislative format, with strike-through to indicate any material to be deleted or replaced and underlining to indicate any material to be inserted.

(2) **Local government ordinances and notices.** A copy of every local government ordinance related to the request,

and a copy of the customer notices issued in compliance with the provisions of WAC 480-149-120.

(3) **Transmittal letter.** A transmittal letter prepared in compliance with the provisions of WAC 480-149-120 and 480-70-326.

(4) **Work papers.** All supporting work papers for the test period, which is the most recent or most appropriate consecutive twelve-month period for which financial data are available. Work papers must include:

(a) A detailed pro forma income statement separated among solid waste, single family residential recycling, multi-family recycling, and yard waste, with restating actual and pro forma adjustments, including all supporting calculations and documentation for all adjustments.

(i) "Restating actual adjustments" adjust the booked operating results for any defects or infirmities in actual recorded results that can distort test period earnings. Restating actual adjustments are also used to adjust from an as-recorded basis to a basis that is acceptable for rate making. Examples of restating actual adjustments are adjustments to remove prior period amounts, to eliminate below-the-line items that were recorded as operating expenses in error, to adjust from book estimates to actual amounts, and to eliminate or to normalize extraordinary items recorded during the test period.

(ii) "Pro forma adjustments" give effect for the test period to all known and measurable changes that are not offset by other factors. The filing must identify dollar values and underlying reasons for each proposed pro forma adjustment.

(b) A calculation of the revenue impact of proposed tariff revisions.

(c) An income statement listing all revenue and expense accounts by month.

(d) If nonregulated revenue represents more than ten percent of total company test period revenue, a detailed separation of all revenue and expenses between regulated and non-regulated operations.

(e) A detailed list of all nonregulated operations, including the rates charged for the services rendered. Copies of all contracts must be provided on request.

(f) Detailed price-out information that reconciles within five percent, without adjustment, to the test period booked revenue, including the test period customer count by tariff item.

(g) A consolidated balance sheet, including the percentage of equity and the percentage of debt, and the cost of that debt by component.

(h) A detailed depreciation schedule listing all used and useful assets held by the company during the test period, including the date of purchase, the cost at purchase, the depreciable life, the salvage value, depreciation expense, and accumulated depreciation expense at the end of the test period.

(i) Computed average investment. Average investment is the net book value of allowable assets at the beginning of the test period plus the net book value of allowable assets at the end of the test period, divided by two. Investor supplied working capital may be included, provided a work sheet is submitted detailing the calculations.

(j) Information about every transaction with an affiliated interest or subsidiary that directly or indirectly affects the

proposed rates. This must include: A full description of the relationship, terms and amount of the transaction, the length of time the relationship has been ongoing, and an income statement and balance sheet for every affiliated entity.

(5) **Annual report.** The most recent consolidated annual report to shareholders, if any.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-520, filed 11/24/03, effective 1/1/04.]

WAC 480-07-530 General rate proceedings—Water companies. General rate increase filings by water companies must include the information described in this section. The commission may summarily reject a filing that fails to meet these minimum requirements, without prejudice to the company's right to refile its request in conformance with this section.

(1) **Cover letter.** The cover letter must:

(a) Provide a description of the filing, and the requested action, in understandable terms;

(i) Technical terms are acceptable, but descriptions must use common terms so the public can easily understand the impact of the filing;

(ii) Acronyms, if used, must be defined before they are used in the text of the letter;

(b) State why the filing is being made (e.g., increased costs for water testing);

(c) Describe each service that is impacted and the dollar and percentage change for each service as well as the net impact of all changes on the company's total regulated revenue.

(2) **Tariff.** The proposed tariff must include explanatory markings.

(3) **Customer notice.** A copy of the notice mailed to customers.

(4) **Work papers.** The supporting work papers for the test period including:

(a) A calculation of the revenue impact of proposed rates by each class affected;

(b) Balance sheet and statement of revenues and expenses;

(c) Depreciation schedule;

(d) Adjustments proposed including a schedule showing adjustments to the statement of revenues and expenses, including any restating adjustments and/or pro forma adjustments including the effect of proposed rates;

(e) Work papers that explain both restating and pro forma adjustments that the company proposes, specifying all relevant assumptions, and including specific references to charts of accounts, financial reports, studies, and all similar records relied on by the company in preparing its filing, and its supporting testimony and exhibits.

(i) "Restating actual adjustments" adjust the booked operating results for any defects or infirmities in actual recorded results, which can distort test period earnings. Restating actual adjustments are also used to adjust from an as-recorded basis to a basis that is acceptable for rate making. Examples of restating actual adjustments are adjustments to remove prior period amounts, to eliminate below-the-line items that were recorded as operating expenses in error, to adjust from book estimates to actual amounts, and to elimi-

nate or to normalize extraordinary items recorded during the test period.

(ii) "Pro forma adjustments" give effect for the test period to all known and measurable changes that are not offset by other factors. The filing must identify dollar values and underlying reasons for each proposed pro forma adjustment.

(f) Usage statistics verifying test year revenues and proposed revenues.

(g) Public water system identification number assigned by the Washington department of health for each system that the new rates will affect.

(h) Schedule showing separation of revenues and expenses between regulated and nonregulated operations.

(i) Information about every transaction with an affiliated interest or subsidiary that directly or indirectly affects the proposed rates. This must include: A full description of the relationship, terms and amount of the transaction, the length of time the relationship has been ongoing, and an income statement and balance sheet for every affiliated entity.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-530, filed 11/24/03, effective 1/1/04.]

WAC 480-07-540 General rate proceedings—Burden of proof. Public service companies bear the burden of proof in general rate proceedings that propose changes that would increase any rate, charge, rental, or toll, as provided in RCW 80.04.130 or 81.04.130. The burden of proof includes the burden of going forward with evidence and the burden of persuasion. The commission will consider the company's pre-filed evidence to be its full direct case in support of its rate filing for purposes of deciding any prehearing motion to dismiss under WAC 480-07-380.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-540, filed 11/24/03, effective 1/1/04.]

WAC 480-07-550 General rate proceedings—Compliance filings and other resulting filings. WAC 480-07-880 and 480-07-883 govern compliance filings and other filings that the commission authorizes or requires in a general rate proceeding.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-550, filed 11/24/03, effective 1/1/04.]

WAC 480-07-600 Scope. Subpart C of this chapter establishes rules for abbreviated and specialized adjudicative proceedings, including brief adjudicative proceedings, emergency adjudicative proceedings, proceedings under the Telecommunications Act of 1996, and proceedings concerning the closure of highway-railroad grade crossings.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-600, filed 11/24/03, effective 1/1/04.]

WAC 480-07-610 Brief adjudicative proceedings. (1) When permitted. The commission may use brief adjudicative proceedings under RCW 34.05.482 when doing so is consistent with other provisions of law, when protection of the public interest does not require the commission to give

notice and an opportunity to participate to persons other than the parties, and when the commission believes that the brief adjudication is consistent with the public interest. In exercising its discretion to conduct a brief adjudication, the commission will consider the preferences of the parties, the possible benefits to be gained from a brief adjudication, and the nature of issues involved.

(2) **Matters suitable for brief adjudication.** Categories of proceedings suitable for brief adjudication include, but are not necessarily limited to:

(a) Review of denials or partial denials of applications that are not protested.

(b) Contested applications for temporary authority.

(c) Proceedings that could lead to suspension, cancellation, or revision of authority for failure to maintain tariffs, pay fees, or file required documents.

(d) Formal complaints in which notice and an opportunity to participate in the proceeding need not be given to persons other than the parties.

(e) Petitions for mitigation of penalty assessments under RCW 80.04.405 and 81.04.405, including any challenge to the validity of a penalty assessment or the existence of an underlying violation.

(3) **How to request brief adjudication.** Any person may apply for a brief adjudicative proceeding by filing with the secretary of the commission a letter stating reasons why a brief adjudication should be used and a certificate of service upon all other identified or necessary parties. The commission may set a matter for brief adjudication on its own motion when doing so will not prejudice the rights of any person. Each applicant for a brief adjudicative proceeding must submit a written explanation of its view of the issues along with its application. Parties may file written submissions as provided in the commission's notice that it will conduct the brief adjudicative proceeding.

(4) **Assignment of presiding officer.** If the commission grants the request for a brief adjudication, it will designate a person to serve as a presiding officer consistent with the requirements of RCW 34.05.485.

(5) **Requesting and presenting oral comments.**

(a) **Request.** A party to a brief adjudicative proceeding may request to make an oral statement in the application or in a response to the application. The presiding officer may grant a request to make an oral statement or may ask the parties to make oral statements if the presiding officer believes an oral statement will help in reaching a decision.

(b) **Notice.** The commission will serve upon the parties a notice of the time and place for the brief adjudicative proceeding and the name and telephone number of the designated presiding officer at least seven days before the proceeding.

(6) **Initial order.** The presiding officer may make an oral statement of the reasons for the decision during the brief adjudication if the party affected is present at the proceeding. The presiding officer will enter an initial order that addresses the issues raised by the application within ten days after the date of the brief adjudication. The initial order will be served on the parties pursuant to WAC 480-07-150 (3) and (7).

(7) **Review of initial orders.**

(a) **Timing.** Any party may file a written petition for review of an initial order in a brief adjudication within

twenty-one days after service of the initial order and the commission will review the initial order. The commission may review an initial order on its own motion.

(b) **Format for petition for review.** The commission encourages written petitions for review so parties will have the greatest opportunity to state reasons for their views. A written request for review of an initial order must contain an explanation of the party's view of the matter, with a statement of reasons why the initial order is incorrect, and a certificate of service. Oral petitions for review are permitted under RCW 34.05.488.

(c) **Response.** The commission encourages written responses. Any written response to a petition for review must be filed with the commission and served to the other parties within seven days after service of the petition for review, or on a schedule set by the presiding officer. The commission may hear orally any response to an oral petition for review.

(8) **Final order on review.** The commission may adopt, modify, reject, or remand the initial order for further proceedings consistent with the terms of its final order. The final order on review will be in writing, will include a brief statement of the reasons for the decision, and will be entered within twenty days after the deadline for requesting review or of the request for review, whichever is later. The order must include a notice of any further available administrative review or, if none is available, a notice that judicial review may be available.

(9) **Final order without review.** If no party seeks review of the initial order, the commission may enter an order adopting the initial order as its final order.

(10) **Record.** The record in a brief adjudicative proceeding consists of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer for any review. The agency's record need not constitute the exclusive basis for action, unless otherwise required by law.

[Statutory Authority: RCW 80.01.040 and 80.04.160, 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-610, filed 11/24/03, effective 1/1/04.]

WAC 480-07-620 Emergency adjudicative proceed-

ings. (1) **When permitted.** The commission may conduct an emergency adjudicative proceeding pursuant to RCW 34.05.479 to suspend or cancel authority, to require that a dangerous condition be terminated or corrected, or to require immediate action in any situation involving an immediate danger to the public health, safety, or welfare requiring immediate action by the commission. Such situations include, but are not limited to:

(a) Inadequate service by a public service company when the inadequacy involves an immediate danger to the public health, safety, or welfare; and

(b) Violations of law, rule, or order related to public safety, when the violation involves an immediate danger to the public health, safety, or welfare.

(2) **Who presides.** The commissioners will sit as presiding officers, hear the matter, and enter an order, if a majority of the commissioners are available. Any available commissioner will sit as presiding officer, hear the matter, and enter an order, if a majority of the commissioners is not available. The supervisor of the commission's administrative law judge

function will assign an administrative law judge to sit as presiding officer, hear the matter, and enter an order, if no commissioner is available.

(3) **Record and decision.** The official record will include any written submissions of the parties; oral comments by the parties, if the presiding officer has allowed oral comments; and any documents regarding the matter that were considered or prepared by the commission. The agency's record need not constitute the exclusive basis for action, unless otherwise required by law.

(4) **Emergency order.** The presiding officer will enter an emergency order as soon as practicable under the circumstances. The order will include a brief statement of findings of fact, conclusions of law, and justification for the determination of an immediate danger to the public health, safety, or welfare. The order is effective when entered. The commission will serve the order pursuant to WAC 480-07-150 (3) and (7).

(5) **Post-order process.** After entering an emergency order under this section, the commission will proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger to the public health, safety, or welfare, and will enter a final order.

(6) **Review or reconsideration of emergency order.** Any party to an emergency adjudicative proceeding may seek immediate review by the full commission in the case of any order entered by a single commissioner or by an administrative law judge. In the case of any order entered by a majority of the commissioners, any party may seek immediate reconsideration. If either review or reconsideration is requested, the commission will establish appropriate process to complete its review or reconsideration within ten days of the date of any petition for review or reconsideration. A party seeking immediate review or reconsideration is not automatically entitled to a stay of the emergency order.

[Statutory Authority: RCW 80.01.040 and 80.04.160, 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-620, filed 11/24/03, effective 1/1/04.]

WAC 480-07-630 Telecommunications companies—Arbitration under the Telecommunications Act of 1996.

(1) **Scope.** This rule implements the arbitration provisions of sections 251 and 252 of the Telecommunications Act of 1996, 47 U.S.C. §§ 251 and 252.

(2) **Nature of the proceeding.** Arbitrations that the commission conducts pursuant to 47 U.S.C. § 252 are subject to judicial review. Arbitration under this section, however, is not an adjudicative proceeding under the Washington Administrative Procedure Act, chapter 34.05 RCW. Arbitration decisions are binding only upon the parties to the arbitration. Arbitration under this section should be characterized by fairness, cooperation and openness between or among the parties, and is designed to resolve disputes efficiently and economically.

(3) **Intervention; public counsel.** Arbitrations typically involve only the parties to the negotiation. Others may ask to participate but will be allowed to do so only upon a showing of compelling public interest. The public counsel section of the office of attorney general may elect to participate pursuant to RCW 80.04.510.

(4) Filing and service of a petition for arbitration.

(a) **When allowed.** During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under 47 U.S.C. § 252 (b)(1), any party to the negotiation may petition the commission to arbitrate all issues that remain unresolved. Parties may continue to negotiate in good faith and may continue to participate in mediation to resolve the disputed issues after arbitration is requested.

(b) **Filing.** Parties must file petitions for arbitration under section 252 (b)(2) as provided for other petitions under WAC 480-07-145, and must follow the format requirements for pleadings in WAC 480-07-395.

(c) **Service.** A party that files a petition for arbitration must deliver a complete copy of the petition and all accompanying documentation to the other party or parties to the negotiation on the same day that the petition is filed with the commission.

(5) **Contents of petition and documentation.** A petition for arbitration filed under this section must:

(a) State the date on which the original request for negotiation was received, and the dates one hundred thirty-five days and one hundred sixty days after the request was received;

(b) Include a brief statement of each unresolved issue and a summary of each party's position with respect to each issue;

(c) State all proposed rates or charges, if prices are in dispute, and all relevant cost studies and related supporting materials that are available to the petitioner;

(d) State any conditions that the petitioning party requests be imposed;

(e) Recommend any information that the arbitrator should request from the parties pursuant to 47 U.S.C. § 252 (b)(4)(B), including an explanation of why the information is necessary for the arbitrator to reach a decision on the unresolved issues; and

(f) Be accompanied by all relevant documentation including:

(i) A current draft of the interconnection agreement, if available, with all agreed provisions in standard typeface and all unresolved issues in bold typeface;

(ii) A legal brief that addresses the disputed issues, including discussion of how the parties' positions, and any conditions requested, meet or fail to meet the requirements of 47 U.S.C. §§ 251 and 252, any applicable FCC regulations, and any applicable regulation, order, or policy of this commission; and

(iii) Any other documents relevant to the dispute, including copies of all documents the petitioner relies on to support its positions or that it intends to introduce as exhibits at the hearing.

(6) Filing and service of an answer to a petition for arbitration.

(a) **When allowed.** Any party to the negotiation may respond to a petition for arbitration and may file with the commission such additional information as it wishes within twenty-five days after the petition is filed.

(b) **Filing.** Answers to petitions for arbitration under section 252 (b)(2) must be filed with the commission in the manner provided for answers to other petitions under WAC

480-07-145, and must follow the format requirements for pleadings under WAC 480-07-395.

(c) **Service.** A party responding to a petition for arbitration must deliver to the petitioner and any other party or parties to the negotiation a complete copy of the answer and all accompanying documentation on the same day that the response is filed with the commission.

(7) **Contents of answer and required documentation.** An answer to a petition for arbitration filed under this section must:

(a) State whether the respondent disputes the date the petitioner asserts was the date on which the respondent received the original request for negotiation, or disputes any subsequent dates stated in the petition in conformance with subsection (5)(a) of this section;

(b) Include a brief statement of each unresolved issue and a summary of each party's position with respect to each issue;

(c) State all proposed rates or charges, if prices are in dispute, and all relevant cost studies and related supporting materials that are available to the respondent;

(d) State any conditions that the responding party requests be imposed;

(e) Recommend any information that the arbitrator should request from the parties pursuant to 47 U.S.C. § 252 (b)(4)(B), including an explanation of why the information is necessary for the arbitrator to reach a decision on the unresolved issues; and

(f) Be accompanied by all relevant documentation including:

(i) A current draft of the interconnection agreement, if available and different from any draft agreement submitted with the petition, with all agreed provisions in standard typeface and all unresolved issues in bold typeface;

(ii) A legal brief that addresses the disputed issues, including discussion of how the parties' positions, and any conditions requested, meet or fail to meet the requirements of 47 U.S.C. §§ 251 and 252, any applicable FCC regulations, and any applicable regulation, order, or policy of this commission; and

(iii) Any other documents relevant to the dispute, including copies of all documents the respondent relies on to support its positions or that it intends to introduce as exhibits at the hearing.

(8) **Verification.** The petition, answer, and all documentation filed must be verified as provided by WAC 480-07-395, or submitted by affidavit or declaration.

(9) **Confidentiality; protective order.** Petitions, answers, and any documents a party provides to the commission pursuant to a request under section 252 (b)(4)(B) are subject to Washington's public disclosure laws, including chapter 42.17 RCW and RCW 80.04.095. Confidential information submitted with a petition for arbitration or answer is subject to the protections and procedures set out in WAC 480-07-160. A party may include in its petition or response a request that the commission enter a protective order.

(10) **Discovery.** Parties must cooperate in good faith in the voluntary, prompt and informal exchange of all documents and other information relevant to the disputed issues, subject to claims of privilege or confidentiality. A party's failure to cooperate in discovery may be treated as a failure to

negotiate in good faith. The arbitrator will schedule a discovery conference for a date ten days after the deadline for responses to the petition for arbitration, subject to rescheduling or cancellation if all parties agree. During the conference, the arbitrator will review the asserted need for any additional discovery, including requests for information by the arbitrator pursuant to 47 U.S.C. § 252 (b)(4)(B). Parties may submit to the arbitrator any discovery requests not responded to by the time of the conference and request that the arbitrator order the discovery. The arbitrator or the commission may request information from the parties pursuant to 47 U.S.C. § 252 (b)(4)(B) at any time.

(11) **Appointment and authority of arbitrator.**

(a) **Appointment.** One or more commissioners, one or more commission employees appointed by the commission, or one or more persons under contract with the commission may be designated as arbitrator(s) when a petition for arbitration is filed. The commission will not appoint an arbitrator who previously mediated a dispute between the same parties concerning the same interconnection agreement, unless the parties consent in writing or no other arbitrator is available to the commission. The commission will advise the parties of the appointment by entry of an order on arbitration procedure. The commission, in its discretion, may permit parties to comment on the selection of the arbitrator.

(b) **Authority.** Arbitrators will exercise all authority reasonable and necessary to conduct arbitration under the provisions of this rule, the commission's orders on arbitration procedure, and other provisions of law. Other members of the commission's staff may assist an arbitrator, but a staff member who has acted as a mediator with respect to the same interconnection agreement between the same parties may not be consulted. The arbitrator will issue the arbitrator's report within one hundred ten days after the date on which the petition for arbitration was filed. The arbitrator's report satisfies the commission's responsibility to resolve the disputed issues under 47 U.S.C. § 252 (b)(4)(C).

(12) **Consolidation.** The commission or an arbitrator may consolidate arbitration proceedings to reduce burdens on telecommunications carriers, parties to arbitration proceedings, and the commission.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-630, filed 11/24/03, effective 1/1/04.]

WAC 480-07-640 Telecommunications companies—Review and approval of interconnection agreements under the Telecommunications Act of 1996. (1) Scope. This rule implements the commission review and approval process provisions of section 252 of the Telecommunications Act of 1996, 47 U.S.C. § 252.

(2) **Review and approval of agreements by the commission.**

(a) **Filing and service of agreements for approval.**

(i) **Negotiated agreements.** Parties to a negotiated interconnection agreement must submit a complete, signed copy of their agreement to the commission for approval under 47 U.S.C. § 252(e) within thirty days after the agreement is signed. Any appendices or attachments to the agreement must be included. The request for approval must summarize the agreement's main provisions. The request for approval must

affirm that the agreement does not discriminate against non-party carriers, is consistent with state and federal law, and is in the public interest. The commission will reject a request for approval that does not include all of the information required in this section but will allow it to be refiled when complete. The timelines established for commission review of requests for approval under 47 U.S.C. § 252 do not begin until a complete request is properly filed.

(ii) *Arbitrated agreements—Petition for review; answer.* Any party may petition for commission review of an arbitrator's report and decision within thirty days after the arbitrator's report is issued, or at such other time as is established by notice or order. Other parties to the arbitration proceeding must file an answer within ten days after the petition is served, or at such other time as is established by notice or order. Both petition and answer must be in the form of a brief of the issues, and must address all legal and factual bases in support of the parties' respective arguments that the arbitrator's report and decision should, or should not, be modified.

(iii) *Arbitrated agreements—Request for approval.* The parties must also file, on the date established for answering any petition for review, their request for approval of an arbitrated interconnection agreement and a complete, signed copy of their interconnection agreement including all negotiated terms, all terms requested under section 252(i) of the Telecommunications Act of 1996, and all terms drafted to implement the arbitrator's report and decision. Arbitrated terms must be in bold font style and identify by footnote the arbitrated issue that relates to the text. Any appendices or attachments to the agreement must be included. The request for approval must summarize the agreement's main provisions. The request for approval must affirm that the agreement does not discriminate against nonparty carriers, is consistent with state and federal law, and is in the public interest. The commission will reject a request for approval that does not include all of the information required in this section but will allow it to be refiled when complete. The timelines established for commission review of requests for approval do not begin until a complete request is properly filed.

(iv) *Filing and service.* Parties must file requests for approval with the commission secretary, as provided in WAC 480-07-145. Parties must serve the request for approval on all other parties not filing jointly, as provided in WAC 480-07-150.

(b) *Commission consideration of requests for approval and petitions for review.* The commission will consider a request for approval of a fully negotiated interconnection agreement at a regularly or specially scheduled open public meeting. The commission will consider any petition for review of an arbitrator's report and decision at hearing, which may, in the commission's discretion, be scheduled coincident with a regularly or specially scheduled open public meeting. The commission may hear oral argument by the parties, oral comment from members of the public, or both. The commission will enter an order approving or rejecting a fully negotiated agreement within ninety days after the date on which the request for approval and interconnection agreement are filed. The commission will enter an order resolving a partially or fully arbitrated agreement within thirty days after the request for approval and interconnection agreement are filed.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-640, filed 11/24/03, effective 1/1/04.]

WAC 480-07-650 Petitions for enforcement of telecommunications company interconnection agreements.

The purpose of this rule is to provide a speedy and enforceable means to resolve disputes when one party to an interconnection agreement contends that the other party is violating the terms of the agreement.

(1) **Petitions for enforcement.** A telecommunications company that is party to an interconnection agreement with another telecommunications company may petition under this rule for enforcement of the agreement.

(a) **What the petition must contain.** Each petition for enforcement must contain the following elements:

(i) A statement, including specific facts, demonstrating that the petitioner engaged in good faith negotiations to resolve the disagreement, and that despite those negotiations the parties failed to resolve the issue.

(ii) A copy of the provision of the interconnection agreement that the petitioner contends is not being complied with.

(iii) A description of facts demonstrating failure to comply with the agreement. One or more affidavits, declarations, or other sworn statements, made by persons having personal knowledge of the relevant facts must support the description.

(b) **How to serve the petition.** The petitioner must serve the petition for enforcement on the responding party on the same day the petition is filed with the commission. If the petitioner chooses to serve the respondent by mail or parcel delivery service, it must deliver a copy of the petition and all supporting documents by hand delivery, telefacsimile, or electronic mail (to the e-mail address specified by the recipient for the purpose of receiving a copy of the petition) on the same day as filed with the commission. For purposes of this section, service must be effected on:

(i) The responding party's authorized representative, attorney of record, or designated agent for service of process;

(ii) The responding party's representatives with whom the petitioner conducted the negotiations addressed in (a)(i) of this subsection; and

(iii) All parties designated in the interconnection agreement to receive notices.

(c) **Prefiling notice of petition.** The petitioner must give at least ten days' written notice to the respondent that the petitioner intends to file a petition for enforcement. The notice must identify the contract provision the petitioner alleges was violated, and the exact behavior or failure to act that petitioner alleges violates the agreement. The written notice must be served as provided in (b) of this subsection. The petitioner must include a copy of this notice with its petition for enforcement.

(2) **Answering a petition.** The respondent may answer the petition. The respondent waives the opportunity to present any matter that is not raised in the answer, except that the answer may be amended under subsection (3) of this section.

(a) **Contents of the answer.** The answer to a petition for enforcement must respond to each allegation of failure to comply with the terms of the interconnection agreement, stating relevant facts. Any facts relied upon must be supported

by affidavits, declarations, or other sworn statements by persons having personal knowledge of the facts.

(b) **Filing and service of the answer.** The respondent must file the answer with the commission and serve it on the petitioner within five business days after service of the petition for enforcement. Service must be accomplished so that a copy of the response to the petition for enforcement and all supporting documents reach the petitioner's attorney, or the person who signed the petition if petitioner has no attorney, on the same day the answer is filed with the commission. If the respondent chooses to serve the petitioner by mail, a copy of the petition for enforcement and all supporting documents must be delivered to the person identified above on the same day as filed with the commission.

(3) **Amendment of petition and answer.** The presiding officer may permit the responding party to amend its answer for good cause shown, and to avoid substantial prejudice to the responding party that is not caused by the fault of the responding party. The presiding officer may permit either party to amend its petition or answer to conform to the evidence presented during the proceeding. The presiding officer may refer to, but is not bound by, CR 15(b) of the Washington superior court civil rules, when determining whether to permit amendment of the petition or answer to conform to the evidence.

(4) **Prehearing conference.** The commission will conduct a prehearing conference regarding each petition for enforcement of an interconnection agreement.

(a) **Schedule; mandatory attendance.** The presiding officer will issue notice of a prehearing conference within five business days after the petition is filed. Both the petitioner and the respondent must attend the prehearing conference. The prehearing conference may be conducted by telephone.

(b) **Procedural determination.** The presiding officer will determine at the prehearing conference whether the issues raised in the petition can be determined on the pleadings, submissions, and any oral statements without further proceedings. When determining whether to schedule an oral enforcement hearing session, the presiding officer will consider the parties' preferences and the reasons they advance, the need to clarify statements by asking questions, whether the issues are largely factual, largely legal, or involve questions of fact and law, the apparent complexity of facts and issues, the need for speedy resolution, and the completeness of information presented. The presiding officer may require the parties to submit written briefs on the issues.

(c) **Means of obtaining additional information.** If the presiding officer determines that further proceedings are necessary, the presiding officer will establish a schedule for receiving additional facts or evidence and may schedule an enforcement hearing session to explore the facts and issues raised in the petition and the answer. The party filing the complaint or answer may file with the complaint or answer a request for discovery, stating the matters to be inquired into and their relationship to matters directly at issue. The presiding officer may allow limited discovery requiring only the disclosure of facts relating directly to matters at issue, and only if discovery is shown to be essential to the requesting party. The presiding officer will establish a shortened discovery schedule to comply with the timelines of this rule.

(5) **Powers of the presiding officer; conversion of proceeding; recommended or final decision.**

(a) **Conduct of proceeding.** The presiding officer has broad discretion to conduct the proceeding in a manner that best suits the nature of the petition, including, but not limited to, converting the proceeding into a complaint proceeding under RCW 80.04.110. Matters may be appropriate for conversion when their complexity requires that they cannot be completed on the schedule provided in this rule; when the petitioner requires discovery beyond a disclosure of facts directly related to the matters at issue; when extensive policy argument or legal briefing is required; or when participation by parties other than the petitioner and the respondent is necessary. The presiding officer may limit the record to written submissions or may schedule an enforcement hearing session. The presiding officer may limit the number of exhibits and witnesses and the time for their presentation.

(b) **Recommended decision.** The presiding officer, if other than the commissioners, will serve a recommended decision on the parties within seventy-five days of the date the petition for enforcement was filed, or twenty-one days after the last hearing session or submission, whichever is later. The recommended decision is subject to approval by the commission. If the commissioners preside over the enforcement proceeding, they may enter a final decision within the time requirements applicable to recommended decisions.

(c) **Review of the recommended decision.** The commission may hear the parties' arguments or comments regarding any recommended decision during a hearing, which may, in the commission's discretion, be scheduled coincident with a regular or special open public meeting. The parties may file written comments prior to the meeting on a schedule established in the recommended decision. The commission may request commission staff to make a presentation at the meeting. The commission will conduct this session within ten days after the date of the recommended decision, or as soon thereafter as the commissioners' schedules permit.

(6) **Commission decision on petition for enforcement.**

(a) **Extent of commission discretion.** The commission will serve a final decision on the parties in the form of a commission order resolving the issues. The commission may adopt, modify, or reject all or part of any recommended decision.

(b) **Time of service.** The commission will enter its order on the petition for enforcement no later than ninety days after the date the petition is filed or fifteen days after the meeting at which it reviews the recommended decision, whichever is later. The commission may extend this time for lack of resources or for other good cause.

(c) **Petition for reconsideration.** The parties may petition for reconsideration within ten days after the commission serves its order on the petition for enforcement. If a party petitions for reconsideration, the commission may request that an answer be filed. The commission may request additional comments, briefing, evidence, or argument from the parties. Filing a petition for reconsideration of the order does not stay the effect of the order. A petition for reconsideration is deemed denied unless the commission grants or denies it by written order within ten days after the date on which petition for reconsideration is filed or the date established for filing

ing an answer or additional comments, briefing, evidence, or argument, whichever is later. The commission may alter the time for entering its order on a petition for reconsideration by notice or letter.

(d) **Failure to comply with the order.** Any party who fails to comply with the terms of the commission's final order on a petition for enforcement is subject to penalties under RCW 80.04.380 and any other penalties or sanctions as provided by law. A company against whom a penalty is assessed may challenge the penalty or the facts on which it is based, or seek mitigation of the penalty, pursuant to pertinent law and commission rules.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-650, filed 11/24/03, effective 1/1/04.]

WAC 480-07-660 Railroad grade-crossing closures—Objections. (1) **Filing.** Anyone who objects to a highway-railroad grade crossing closure under RCW 81.53.060 must file an objection in writing within twenty days after publication of notice of the proposed closure. The objection must:

- (a) Identify the person or persons who object by full name and mailing address;
- (b) Identify the particular crossing that is the subject of the objection;
- (c) State the commission docket number, if known; and
- (d) Explain the basis for the objection.

If a communication does not meet these requirements, the commission will not treat the communication as an objection when determining whether a hearing is required under RCW 81.53.060.

(2) **Party status; appearances; service of final order.** Filing an objection does not make a person a party to a proceeding under RCW 81.53.060. A person who wishes to participate as a party must enter an appearance at the first hearing session, as prescribed by WAC 480-07-340. A person who fails to establish party status by appearance may file a "late-filed petition to intervene" as provided in WAC 480-07-355. A person must establish party status to be entitled to service of any initial order or the commission's final order in the matter. Persons who are not parties may receive a courtesy copy of any initial or final order on request.

(3) **Other interested persons.** Interested persons who are not parties will be provided an opportunity to be heard and offer evidence, as required by RCW 81.53.060. Interested persons who are not parties may not call witnesses, cross-examine witnesses, or otherwise participate as a party. Interested persons who are not parties do not have standing to file petitions for administrative review of initial orders or to file petitions for reconsideration of final orders.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-660, filed 11/24/03, effective 1/1/04.]

WAC 480-07-700 Alternative dispute resolution. The commission supports parties' informal efforts to resolve disputes without the need for contested hearings when doing so is lawful and consistent with the public interest, and subject to approval by commission order. Alternative dispute resolu-

tion (ADR) includes any mechanism to resolve disagreements, in whole or in part, without contested hearings.

(1) **No delegation of commission authority.** The commission cannot delegate to parties the power to make final decisions in any adjudicative proceeding. The commission retains and will exercise its authority in every adjudicative proceeding to consider any proposed settlement or agreement for approval.

(2) **Forms of ADR.** Parties to a dispute that is within the commission's jurisdiction may agree to negotiate with any other parties at any time without commission oversight. The commission may direct parties to meet or consult as provided in subsection (3) of this section, or may establish or approve a collaborative process as provided in WAC 480-07-720. The commission may assign commission staff trained in ADR principles and techniques to serve as neutral third parties (e.g., mediator or facilitator) to assist the parties. The commission may assign a settlement judge to assist the parties in appropriate circumstances. The commission may provide an arbitrator whose decision is subject to commission review in matters for which arbitration is authorized.

(3) **Settlement conference.** The commission may invite or direct the parties to confer among themselves, or with a designated person. Settlement conferences must be informal and without prejudice to the rights of the parties. Any resulting settlement or stipulation must be submitted to the commission in writing and is subject to commission approval.

(4) **ADR guidelines.** In any negotiation, the following apply unless all participants agree otherwise:

(a) The parties, as their first joint act, will consider the commission's guidelines for negotiations, set out in a policy statement adopted pursuant to RCW 34.05.230, and determine the ground rules governing the negotiation;

(b) No statement, admission, or offer of settlement made during negotiations is admissible in evidence in any formal hearing before the commission without the consent of the participants or unless necessary to address the process of the negotiations;

(c) Parties may agree that information exchanged exclusively within the context of settlement negotiations will be treated as confidential, subject to the requirements of RCW 5.60.070; and

(d) Participants in a commission-sanctioned ADR process must periodically advise any nonparticipating parties and the commission of any substantial progress made toward settlement. Participants must immediately advise the commission if a commission-sanctioned ADR process is without substantial prospects of resolving the issue or issues under discussion (i.e., if the participants agree that an impasse has been reached or an impasse is declared by any neutral third party who is assisting the participants in the ADR process).

(e) Any mediator, facilitator, or settlement judge who assists the participants in an ADR process will not participate in any adjudication, arbitration, or approval process for the same proceeding, unless all parties consent in writing.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-700, filed 11/24/03, effective 1/1/04.]

WAC 480-07-710 Mediation. (1) **Scope.** This rule applies generally to settlement negotiations in which the

commission agrees to assign a qualified mediator to assist the parties. This rule applies specifically to implement the mediation provisions of sections 251 and 252 of the Telecommunications Act of 1996, 47 U.S.C. §§ 251 and 252.

(2) **Commission participation.** The parties to a negotiation, including a negotiation under 47 U.S.C. §§ 251 and 252, may ask the commission to mediate any differences that arise during the negotiation. A request for mediation must include a brief statement of the nature of the dispute and the names, postal and electronic mail addresses, telephone and fax numbers of the parties and their representatives. Copies of the request must be served on all parties to the negotiation. All parties are required to participate in good faith if the commission agrees to mediate.

(3) **Mediators.** The commission may assign one or more qualified employees to serve as mediator(s). The commission may require the parties to retain the services of a professional mediator acceptable to all parties.

(4) **Process.** Mediators have discretion to regulate the course of the mediation, including scheduling mediation sessions, in consultation with the parties. The following general procedures apply:

(a) The mediator may not impose a settlement but may offer proposals for settlement;

(b) The mediator may meet individually with the parties or attorneys during mediation;

(c) Only the parties to the negotiation and the mediator may attend the mediation session(s), unless all parties consent to the presence of others;

(d) Parties must provide the mediator with a brief statement of position and relevant background information prior to the first mediation session;

(e) The mediator may ask for supplemental information;

(f) The mediator should not provide legal advice to the parties, nor are any mediator's statements as to law or policy binding on the commission, unless later adopted by the commission;

(g) The mediation process is confidential to the extent permitted by law, subject to the requirement for a written agreement as required under RCW 5.60.70 [5.60.070]; and

(h) No stenographic record will be kept.

(5) **Fees and costs.** Each party must bear its own fees and costs. Each party must pay any fees imposed by commission rule or statute.

(6) **Notice to commission.** Parties must advise the commission if they reach a full, partial, or multiparty settlement and may suggest preferred procedural alternatives for review of the settlement, subject to the requirements of WAC 480-07-640 (commission approval of interconnection agreements) or WAC 480-07-740, as appropriate. The commission will determine the appropriate procedure in each proceeding consistent with the requirements of WAC 480-07-640 or 480-07-740.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-710, filed 11/24/03, effective 1/1/04.]

WAC 480-07-720 Collaboratives. (1) **Defined; membership.** A collaborative is a commission-sanctioned negotiation in which interested persons work with each other and representatives of commission staff to achieve consensus on

one or more issues, within the commission's jurisdiction, assigned to or identified by the collaborative participants. Any person whose interests may be substantially affected by the result of the collaborative must be given an opportunity to participate. Collaborative participants must inform the commission and seek approval if a collaborative seeks to change its membership or redefine the issues it will address.

(2) **Procedure.** Participants must develop procedural guidelines for their negotiations when beginning a collaborative and should refer to any commission policy statement(s) that relate to ADR for guidance.

(3) **Communication with commission.** Communication between the commission and collaborative participants may be through commission staff assigned to serve as a neutral third party in the collaborative, or through the commission secretary, subject to agreement among the participants to the form and substance of any such communication.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-720, filed 11/24/03, effective 1/1/04.]

WAC 480-07-730 Settlement. A settlement is an agreement among two or more parties to a proceeding that is filed with the commission as a proposed resolution of one or more issues. Parties must supplement the filing of a written settlement agreement by submitting the document in electronic form as specified in WAC 480-07-140(5).

(1) **Full settlement.** An agreement of all parties that would resolve all issues in a proceeding may be presented as a full settlement for commission review. Parties that file a full settlement should file supporting evidence at the same time as the settlement agreement, or within a reasonable time following filing of the settlement agreement.

(2) **Partial settlement.** An agreement of all parties on some issues may be presented as a partial settlement for commission review, and remaining matters may be litigated. Parties that file a partial settlement should file supporting evidence at the same time as the settlement agreement, or within a reasonable time following filing of the settlement agreement.

(3) **Multiparty settlement.** An agreement of some, but not all, parties on one or more issues may be offered as their position in the proceeding along with the evidence that they believe supports it. Nonsettling parties may offer evidence and argument in opposition.

(4) **Notice to commission.** Parties must advise the commission if they reach a full, partial, or multiparty settlement and may suggest preferred procedural alternatives for review of the settlement, subject to the requirements of WAC 480-07-740. The commission will determine the appropriate procedure in each proceeding consistent with the requirements of WAC 480-07-740.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-730, filed 11/24/03, effective 1/1/04.]

WAC 480-07-740 Settlement consideration procedure. The commission must determine whether a proposed settlement meets all pertinent legal and policy standards. The commission must have a reasonable opportunity to hear parties' views on why the settlement should be approved and

adopted, to ask questions of the parties, and to conduct its processes in an orderly fashion. Parties must, therefore, consider the timing and the content of the settlement presentation to the commission.

(1) **Settlement presentation timing.** Parties must file a proposed settlement with a recommended effective date that allows the commission sufficient time to schedule a formal settlement hearing and provide an opportunity for public comment when the commission, after consulting the parties, determines that such comment is needed. The commission must have sufficient time to deliberate and to prepare an order responding to the proposal. The parties must allow sufficient time for the filing, review, and approval of any required compliance filing.

(a) **General rate proceedings.** In general rate proceedings or matters of comparable complexity, parties must allow at least thirty days between filing a proposed settlement agreement and the requested effective date of any tariff changes or other terms and conditions of the settlement.

(b) **Less complex matters.** In matters that are less complex, parties must allow at least twenty-one days between filing a proposed settlement agreement and the requested effective date for any tariff changes or other terms and conditions of the settlement.

(c) **Notice to commission; inquiries regarding arrangements for review.** Parties should inform the commission at the earliest opportunity when it appears that they may reach a settlement and ask the commission to make tentative arrangements for review. Parties may direct informal inquiries to the supervisor of the commission's administrative law function or the supervisor's designee.

(d) **Hearing.** The commission will schedule a hearing to consider a proposed settlement if the commission believes that a hearing will assist it to decide whether to adopt the proposal.

(e) **Timing; requested effective date.** The commission will endeavor to meet the parties' requested effective date, but cannot guarantee that it will be able to do so.

(2) **Settlement presentation contents.** When filing a proposed settlement agreement, parties must also file supporting documentation sufficient to demonstrate to the commission that the proposal is consistent with law and the public interest and that it is appropriate for adoption.

(a) **Narrative.** Supporting documentation should include a narrative outlining the scope of the underlying dispute; the scope of the settlement and its principal aspects; a statement of parties' views about why the proposal satisfies both their interests and the public interest; and a summary of legal points that bear on the proposed settlement. The documentation may be in the form of a memorandum, supporting pre-filed testimony, brief, or other form that serves the same functions.

(b) **Testimony.** Each party to a settlement agreement must offer to present one or more witnesses to testify in support of the proposal and answer questions concerning the settlement agreement's details, and its costs and benefits. Proponents of a proposed settlement must present sufficient evidence to support its adoption under the standards that apply to its acceptance. Counsel must make a brief presentation of the settlement, and address any legal matters associated with it.

Counsel must be available to respond to questions from the bench regarding those subjects.

(c) **Rights of opponents of a proposed settlement.** Parties opposed to the commission's adoption of a proposed settlement retain the following rights: The right to cross-examine witnesses supporting the proposal; the right to present evidence opposing the proposal; the right to present argument in opposition to the proposal; and the right to present evidence or, in the commission's discretion, an offer of proof, in support of the opposing party's preferred result. The presiding officer may allow discovery on the proposed settlement in the presiding officer's discretion.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-740, filed 11/24/03, effective 1/1/04.]

WAC 480-07-750 Commission discretion to accept settlement, impose conditions, or reject a proposed settlement. (1) The commission may decide whether or not to consider a proposed settlement. The commission will approve settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission.

(2) If the commission considers a proposed settlement, it may accept the proposed settlement, with or without conditions, or may reject it.

(a) If the commission rejects a proposed settlement, the litigation returns to its status at the time the settlement was offered and the time for completion of the hearing will be extended by the elapsed time for consideration of the settlement.

(b) If the commission accepts a proposed settlement upon conditions not proposed in the settlement, the parties may seek reconsideration of the decision and the settling parties must within the time for reconsideration state their rejection of the conditions. If a party rejects a proposed condition, the settlement is deemed rejected and (a) of this subsection applies.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-750, filed 11/24/03, effective 1/1/04.]

WAC 480-07-800 General; definitions. (1) "Entry" of an order means the signing of the order by all persons who are to sign the order, as an official act indicating that the order is to be effective. Each order will state the date on which it is entered.

(2) An order is effective when entered, unless an effective date other than the date the order is entered is specified in the order.

(3) "Service" of an order means placing copies of the order in the U.S. mail, postage prepaid, addressed to all parties and any other persons required by law to be served. Each order will state the date on which it is served. The service date of an order governs the determination of time limits for further administrative procedure or for judicial review.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-800, filed 11/24/03, effective 1/1/04.]

WAC 480-07-810 Interlocutory orders. (1) Defined. Orders entered during the course of an adjudicative proceeding are "interlocutory orders," as distinguished from initial orders that may be entered by an administrative law judge at the conclusion of a proceeding and final orders entered by the commission at the conclusion of a proceeding. Examples of interlocutory orders are orders concerning a party's participation in a proceeding, orders concerning discovery, and orders that relate to proposed evidence.

(2) **When review is available.** Interlocutory review is discretionary with the commission. The commission may accept review of interim or interlocutory orders in adjudicative proceedings if it finds that:

(a) The ruling terminates a party's participation in the proceeding and the party's inability to participate thereafter could cause it substantial and irreparable harm;

(b) A review is necessary to prevent substantial prejudice to a party that would not be remediable by post-hearing review; or

(c) A review could save the commission and the parties substantial effort or expense, or some other factor is present that outweighs the costs in time and delay of exercising review.

(3) **Process for seeking review.** Any party may petition for review of an interlocutory order. Petitions for interlocutory review must be filed and served on other parties within ten days after service of the order or issuance of the ruling for which review is requested. The petition must state why the ruling is in error or should be changed and why interlocutory review is necessary, and must cite reasons that support the petition. Answers must be filed within ten days after the petition is filed. The commission may alter these filing deadlines when doing so is consistent with the public interest.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-810, filed 11/24/03, effective 1/1/04.]

WAC 480-07-820 Initial and final orders. (1) Defined.

(a) **Initial orders.** "Initial orders" dispose of the merits in a proceeding that is conducted before an administrative law judge and are entered over the signature of the administrative law judge. Initial orders include those that grant dispositive motions (e.g., motions to dismiss and motions for summary determination) and orders that resolve contested issues on the basis of the official record in a proceeding. All initial orders are subject to further action by the commission as provided in WAC 480-07-825.

(b) **Final orders.** "Final orders" dispose of the merits of a proceeding following consideration by the commissioners and are entered over the signatures of a majority of the commissioners. Final orders include those that grant dispositive motions (e.g., motions to dismiss and motions for summary determination) and orders that resolve contested issues on the basis of the official record in a proceeding. Final orders may be entered whenever:

(i) The commissioners personally preside over a proceeding;

(ii) The commissioners enter an order following administrative review of an initial order in response to a timely petition for administrative review;

(iii) The commissioners enter an order after the period available for petitions for administrative review and no such petition has been filed;

(iv) All of the parties to a proceeding waive their right to an initial order; or

(v) The commissioners enter an order following the timely filing of a petition for reconsideration of a final order or a petition for rehearing of a final order.

(2) **Service.** The commission will serve a copy of any initial order and the commission's final order to each party of record and to the party's attorney or other authorized representative pursuant to RCW 34.05.461(9) and WAC 480-07-150(3).

(3) **Timing.** The presiding officer will enter an initial order within sixty days after the commission receives transcripts following the close of the record, hears oral argument (if allowed or required), initial briefs are filed, or reply briefs are filed, whichever occurs last. The commission will enter its final order within ninety days after the commission receives transcripts following the close of the record, hears oral argument (if allowed or required), initial briefs are filed, or reply briefs are filed, or the commission receives a petition for administrative review or an answer to a petition for review, whichever occurs last. The presiding officer or the commission may alter the time for entry of an initial or final order by notice to the parties.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-820, filed 11/24/03, effective 1/1/04.]

WAC 480-07-825 Initial orders—Petitions for administrative review. (1) When a petition for administrative review is appropriate. A party who wishes to challenge any finding of fact, conclusion of law, remedy, or result proposed by an initial order may file a petition for administrative review. A party also may file a petition for administrative review to challenge the reasons stated in support of any result reached in an initial order. The commission will accept only one petition for administrative review from any party.

(2) **Timing of petition.** Any party to an adjudicative proceeding may file and serve a petition for administrative review within twenty days after the initial order is served. The commission may extend the time on a showing of good cause.

(3) **Contents; length.** Petitions for administrative review must clearly identify the nature of each challenge to the initial order, the evidence, law, rule or other authority that the petitioner relies upon to support the challenge, and state the remedy that the petitioner seeks. Petitions for review of initial orders must be specific. The petitioner must separately state and number every contention. A petition that challenges a finding of fact must cite the pertinent page or part of the record or must otherwise state the evidence it relies on to support its petition, and should include a recommended finding of fact. A petition that challenges a conclusion of law must cite the appropriate statute, rule, or case involved and should include a recommended conclusion of law. A petition that challenges the summary or discussion portion of an initial order must include a statement showing the legal or factual justification for the challenge, and a statement of how the asserted defect affects the findings of fact, the conclusions of

law, and the ultimate decision. Petitions for administrative review must not exceed sixty pages, without prior permission from the commission.

(4) **Answers.**

(a) **Who may answer.** Any party to the adjudication may answer another party's petition for administrative review.

(b) **Filing and service.** An answer to a petition for administrative review must be filed and served within ten days after the petition is filed. The commission may designate a different time for filing answers to petitions.

(c) **Challenge to order in answer.** A party who did not file a petition for administrative review of an initial order may challenge the order or portions of the order in its answer to the petition of another party.

(5) **Reply.**

(a) **By right.** A party has the right to reply to new challenges to the order that are raised under subsection (c) of this section.

(b) **By leave of commission.** A party otherwise has no right to reply to an answer, but may petition for leave to reply, citing new matters raised in the answer and stating why those matters were not reasonably anticipated and why a reply is necessary. The petitioner may attach a reply to the petition for leave to accept the reply.

(c) **Timing.** A reply under (a) of this subsection, or a petition for leave to reply under (b) of this subsection, must be filed no later than five days after service of the answer. The commission may extend the time upon a showing of good cause.

(6) **Oral argument.** The commission may hear oral argument on a petition for administrative review at a time and place the commission designates by notice to all parties to the proceeding. A party who desires to present oral argument may request argument, stating why oral argument is necessary to assist the commission in making its decision and why written presentations will be insufficient.

(7) **Final order.** The commission may by final order adopt, modify, or reject an initial order after reviewing the initial order and any petitions for review, answers, replies, briefs, and oral arguments, and the record. Alternatively, the commission may remand the matter for further proceedings with instructions to the presiding officer. The statutory time for filing a petition for judicial review commences when the commission serves its final order. However, if a party timely files a petition for reconsideration of the final order, and complies with the commission's procedural rules governing reconsideration, the time for filing a petition for judicial review does not commence until the date on which the agency serves an order disposing of the petition for reconsideration, or the date on which the petition is deemed denied as a matter of law, as provided in RCW 34.05.470.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-825, filed 11/24/03, effective 1/1/04.]

WAC 480-07-830 Motion to reopen the record prior to entry of a final order. Any party may file a motion to reopen the record at any time after the close of the record and before entry of the final order. The commission may reopen the record in a proceeding on its own motion. In uncontested proceedings, the commission may exercise its discretion to

reopen the record to allow receipt of written evidence when otherwise lawful. In contested proceedings, the commission may reopen the record to allow receipt of evidence that is essential to a decision and that was unavailable and not reasonably discoverable with due diligence at the time of the hearing or for any other good and sufficient cause. The commission will give all parties an opportunity to respond to any evidence received after the record is closed. The commission may enter a final order or may return the matter to the presiding officer for further consideration, including further hearing or other process when appropriate.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-830, filed 11/24/03, effective 1/1/04.]

WAC 480-07-835 Clarification of final order by motion. (1) **Motion - when appropriate.** Any party who does not seek to change the outcome with respect to an issue may file a motion for clarification of a final order within ten days after the order is served. The purpose of a motion for clarification is to ask for clarification of the meaning of an order so that compliance may be enhanced, so that any compliance filing may be accurately prepared and presented, to suggest technical changes that may be required to correct the application of principle to data, or to correct patent error without the need for parties to request reconsideration and without delaying post-order compliance. A motion for clarification may also request that obvious or ministerial errors in orders be corrected by letter from the secretary or by subsequent order, consistent with WAC 480-07-875.

(2) **Motion - when not appropriate.** If a party seeks to change an outcome with respect to one or more issues resolved by a final order, or challenge a finding of fact or conclusion of law stated in the order, it may not do so by motion for clarification, but must file a petition for reconsideration pursuant to WAC 480-07-850.

(3) **Response.** No party may file a response to a motion for clarification unless requested by the commission.

(4) **Tolling.** Filing a petition for clarification tolls the time for judicial review but does not toll the time for compliance with the final order of which clarification is sought.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-835, filed 11/24/03, effective 1/1/04.]

WAC 480-07-840 Clarification of a final order by conference. The commission may schedule an order conference on its own motion or at a party's request. The commissioners may personally attend the conference or may designate one or more persons to attend on their behalf. The commission will determine whether an order conference will be recorded.

(1) **Purpose.** The purpose of an order conference is to clarify the meaning of a final order when parties disagree about the order's meaning or requirements. Parties to an order conference may ask for clarification of the meaning of an order to:

- (a) Explore and resolve any barriers to compliance;
- (b) Ensure that any compliance filing can be accurately prepared and presented;

(c) Propose technical changes that may be required to correct the application of principle to data; or

(d) Correct patent error.

The conference is not a forum for discussing or challenging the evidentiary, legal, or policy decisions expressed in the order. Parties may pursue those remedies through a petition for reconsideration or other means.

(2) **Effect.** An order conference will not stay the effect of an order, the time for compliance, the time for securing post-order review, or the time for petitioning for judicial review, unless the conference results in a supplemental commission order, which then becomes a final order subject to review. An order conference does not constitute a formal interpretation of an order. The final order that is the subject of an order conference will remain the sole expression of the commission's decision unless supplemented through an additional order.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-840, filed 11/24/03, effective 1/1/04.]

WAC 480-07-850 Reconsideration of a final order by petition. (1) **Petition - timing.** Any party may petition for reconsideration of a final order within ten days after the order is served. The purpose of a petition for reconsideration is to request that the commission change the outcome with respect to one or more issues determined by the commission's final order.

(2) **Petition - contents.** The petitioner must clearly identify each portion of the challenged order that it contends is erroneous or incomplete, must cite those portions of the record and each law or commission rule that the petitioner relies on to support its petition, and must present brief argument in support of its petition.

(3) **Answer.** No party may file an answer to a petition for reconsideration unless requested by the commission. If the commission requests answers to a petition for reconsideration, it will issue a notice stating the date by which answers must be filed and the date by which the commission intends to enter an order resolving the petition.

(4) **Oral argument.** The commission will not hear oral argument on a petition for reconsideration unless the commission determines on its own motion that oral argument is required.

(5) **Disposition.** A petition for reconsideration is deemed denied twenty days after the date the petition is filed, unless the commission either:

(a) Enters an order resolving the petition; or

(b) Serves the parties with a written notice specifying the date by which it will act on the petition.

(6) **Action.** If the commission grants a petition, the commission may modify its prior order or take other appropriate action. If the commission denies the petition, no further action will be taken in the matter with respect to the final order. No party may petition for reconsideration of an order on reconsideration.

(7) **Stay.** Filing a petition for reconsideration does not automatically stay the effect of an order or serve as a request for a stay. A party may request that the commission stay the effectiveness of an order pending reconsideration by filing a petition for stay pursuant to WAC 480-07-860.

(8) **Judicial review.** Filing a petition for reconsideration is not a prerequisite for seeking judicial review of a commission final order. If a proper petition for reconsideration is timely filed, the time for filing a petition for judicial review does not commence until the agency serves an order disposing of the petition for reconsideration, or the date on which the petition is deemed denied as a matter of law, as provided in RCW 34.05.470. An order denying reconsideration, or a notice of the time for disposition under subsection (5)(b) of this section is not subject to judicial review.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-850, filed 11/24/03, effective 1/1/04.]

WAC 480-07-860 Stay. Any party may petition to stay of the effectiveness of a final order within ten days after its service, unless otherwise provided by statute or stated in the final order. The commission may stay the effect of a final order on its own initiative. The effect of a final order is not automatically stayed when a party files a motion for clarification, a petition for reconsideration, or a petition for rehearing.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-860, filed 11/24/03, effective 1/1/04.]

WAC 480-07-870 Rehearing. Any person affected by a final order may file a petition for rehearing. Public service companies may seek rehearing under RCW 80.04.200 or 81.04.200.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-870, filed 11/24/03, effective 1/1/04.]

WAC 480-07-875 Amendment, rescission, or correction of order. (1) **Amendment or rescission.** The commission may alter, amend, or rescind any order that it has entered, after notice to the public service company or companies affected and to all parties in the underlying proceeding, and after allowing an opportunity for hearing as in the case of complaints. Any order altering, amending, or rescinding a prior order will have the same effect as any other final order when served upon the public service company or companies affected.

(2) **Correction.** The commission may act on its own initiative or on the motion of any party to correct obvious or ministerial errors in orders. The commission may enter a corrected order or effect any corrections by notice or letter. The commission may direct the secretary to effect any corrections by notice or letter. The time for any available post-hearing review begins with the service of the correction, as to the matter corrected.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-875, filed 11/24/03, effective 1/1/04.]

WAC 480-07-880 Compliance filing; subsequent filing; reporting requirement. (1) **Compliance filing; compliance order.** When the commission enters a final order that authorizes or requires a party to make a filing to implement specific terms of the order with respect to the issues resolved in an adjudicative proceeding by implementing a

precisely defined result, the filing is a "compliance filing." For example, a commission final order in a general rate proceeding may authorize or require a party to file original or substitute tariff sheets to implement the terms of the final order. A compliance filing is made under the docket number of the final order to which it relates. A compliance order is an order approving or rejecting a compliance filing.

(2) **Subsequent filing.** When the commission enters a final order that authorizes or requires a party to make a filing to implement general instructions (e.g., the formulation of policy, or filing of tariffs other than to implement a precisely defined result), the filing initiates a new proceeding that will be assigned a new docket number, and the filing is deemed a "subsequent filing." For example, a commission final order in a complaint proceeding may authorize or require a party to make a tariff filing by a date certain.

(3) **Reporting requirement.** The commission may enter a final order that requires a party to report periodically to the commission with respect to designated subject matter. The reports must be filed under the docket number of the proceeding in which the final order is entered, unless otherwise specified in the order establishing the requirement or by later letter from the secretary of the commission.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-880, filed 11/24/03, effective 1/1/04.]

WAC 480-07-883 Compliance filing—Filing requirements; timing; commission action. A party must strictly limit the scope of its compliance filing to the requirements of the final order to which it relates. If the commission finds that a compliance filing varies from the requirements or conditions of the order authorizing or requiring it, either by falling short of or by exceeding the authorization, conditions, or requirements of the order, the commission may reject the filing unless it has preapproved the variance.

(1) **Filing requirements.** A compliance filing must include the following:

- (a) A cover letter that identifies the order to which the filing relates;
- (b) All required tariff sheets; and
- (c) Work papers that clearly demonstrate the derivation of the proposed tariffs.

(2) **Service requirement.** A party who makes a compliance filing must serve it on each party to the proceeding in which the compliance filing is authorized or required. Service must be initiated on the same day as the filing.

(3) **Timing; effective date.**

(a) The commission will state in its final order authorizing or requiring a compliance filing the date by which the compliance filing must be made and the effective date that should appear on any tariff sheets that are required as part of a compliance filing. The commission may state the amount of time it will require to examine any proposed compliance tariff sheets between their filing and their proposed effective date.

(b) A compliance filing does not become effective automatically on its stated effective date. Commission action is required before any compliance filing can be effective. The commission may enter an order approving a compliance filing or taking other appropriate action. The commission may

delegate to the secretary, by written authorization in individual proceedings, the authority to approve or take other appropriate action with respect to a compliance filing.

(4) **Commission action on compliance filing.**

(a) The commission may enter an order in any proceeding in which a compliance filing is authorized or required that:

- (i) Approves the compliance filing; or
- (ii) Rejects a compliance filing or any portion of the filing that apparently fails to comply.

(b) If the commission rejects all or part of a compliance filing, the party may refile. The commission may impose conditions on refiling.

(c) If the commission approves a compliance filing, but later discovers that it failed to recognize that the compliance filing was, in fact, incomplete or did not fully comply with the order authorizing or requiring the filing, the commission may take any necessary and lawful steps to secure full compliance.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-883, filed 11/24/03, effective 1/1/04.]

WAC 480-07-885 Subsequent filing—Filing requirements; timing; commission action. (1) Filing and service requirements.

(a) A person who makes a subsequent filing must provide a cover letter that identifies the order and the docket in which the commission required the subsequent filing. The commission will assign a new docket number to a subsequent filing.

(b) A person who makes a subsequent filing that includes tariff sheets must comply with all pertinent requirements for tariff filings of the industry, including the required statutory notice period, unless the commission authorizes the subsequent filing to become effective on less than statutory notice.

(c) A person who makes a subsequent filing must serve a copy of the filing on all parties to the proceeding in which the filing was authorized or required.

(2) **Timing.** A final order that authorizes or requires a subsequent filing may state the date by which the subsequent filing must be made. If no date for the subsequent filing is specified in the final order, the commission may establish the date by order or by letter from the commission secretary.

(3) **Commission action on subsequent filing.** The commission will act on a subsequent filing that includes tariff sheets in the same manner that it would act on an original tariff filing of the industry.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-885, filed 11/24/03, effective 1/1/04.]

WAC 480-07-900 Open public meetings. (1) Regular meetings. The commission will hold regular meetings to conduct business under chapter 42.30 RCW, the Open Public Meetings Act. The meetings will begin at 9:30 a.m., on the second, fourth, and fifth Wednesday of each month in the commission's office in Olympia, Washington. If the regular meeting day is a legal holiday, the regular meeting will be held on the next business day or on an alternate schedule published in the *Washington State Register*.

(2) **Changes to regular meetings.** Regular meetings may be canceled. The commission may change the time and place of regular meetings from the information set out in this section. The current times and places are published, as required, in the *Washington State Register*, on the commission's internet website, and are available through telephone inquiry.

(3) **Special meetings.** The commission may convene special meetings under RCW 42.30.080.

(4) **Agenda.** The commission secretary will distribute an agenda for each open public meeting. The commission will make its best effort to compile and publish a complete agenda, but may amend its agenda after it is published, and may take up matters that do not appear on its published agenda. The agenda is posted to the commission's internet site at www.wutc.wa.gov. Persons without internet access capability may request the commission records center to provide a copy of the agenda via U.S. mail.

(a) **"Discussion" agenda.** In general, the agenda will identify each item scheduled for discussion and action, as relating to utility regulation under Title 80 RCW; as relating to transportation regulation under Title 81 RCW; or "other." The secretary will group similarly identified items together on the agenda.

(b) **"No action" agenda.** Any request, proposal, or other filing that can take effect without commission action may be placed on a "no action required" portion of the agenda. Any item on this portion of the agenda will be discussed at any commissioner's request, and the commission may take such action on the item as it deems appropriate.

(c) **"Consent" agenda.** The secretary may place any item that the secretary believes to be noncontroversial on a "consent agenda" portion of the open meeting agenda. The commission will ask at the meeting if any person wants to address any consent agenda item, and an item will be removed from the consent agenda for individual discussion and action at the request of any commissioner. Items on the consent agenda may be collectively moved for approval by a single motion and may be collectively approved by a single vote of the commission.

(5) **Staff contact.** A commission staff member is ordinarily assigned to analyze and, if appropriate, present each open meeting item to the commission at the open meeting. The staff person and a contact number are identified in the draft agenda. Persons interested in open meeting agenda items may discuss them with staff, subject to time availability. Any person interested in an item on the open meeting agenda may address the item during the meeting.

(6) **Orders.** The commission may direct the secretary to enter any order or sign any document necessary to implement an open meeting decision by the commissioners.

(7) **Modifications.** The commission may exercise its discretion to modify the procedures in this section when appropriate to the conduct of its business.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-900, filed 11/24/03, effective 1/1/04.]

WAC 480-07-910 Informal complaints. (1) **How to make an informal complaint.** Any person may make an informal complaint to the commission about any business

that the commission regulates. A person may make an informal complaint by telephone, correspondence, facsimile transmission, or electronic mail.

(2) **Contents.** An informal complaint must identify the business or person to whom the complaint pertains. An informal complaint should:

(a) Present all facts that are needed for the commission to understand the nature of, and reason(s) for, the complaint;

(b) Describe the acts or omissions that led to the complaint, with all relevant dates;

(c) Cite all relevant statutes or rules, if the person who files the complaint knows them.

(3) **Commission response; result.** Commission employees assigned to assist consumers may discuss an informal complaint with the affected persons, by correspondence or otherwise. The commission will try to assist the parties to resolve the informal complaint by agreement without the need for a formal complaint, hearing, and order. The commission encourages the informal resolution of disputes whenever possible. An informal complaint will not result in a hearing or in an order that compels a person to do something or forbids a person from doing something.

(4) **Conversion of informal complaint to formal complaint.** Making an informal complaint does not prevent any party from filing a formal complaint, which may constitute an application for an adjudicative proceeding. The commission may initiate a formal complaint proceeding on its own initiative.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-910, filed 11/24/03, effective 1/1/04.]

WAC 480-07-920 Interpretive and policy statements.

(1) **General.** Upon the petition of any person, or upon its own motion, the commission may make and issue interpretive and policy statements to advise the public of its current opinions, approaches, and likely courses of action.

(2) **Roster of interested persons.** The commission will maintain a roster of interested persons, consisting of persons who have requested in writing to be notified of all interpretive and policy statements issued by the commission. The commission will periodically update the roster. When the commission issues an interpretive or policy statement, it will send a copy of the statement to each person on the roster.

(3) **Index of current statements.** The commission maintains a file and an index of all currently effective interpretive and policy statements. The statements are available for inspection and copying at the records center in the commission's Olympia headquarters office and are posted on the commission's Internet website.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-920, filed 11/24/03, effective 1/1/04.]

WAC 480-07-930 Declaratory orders under RCW

34.05.240. (1) Petition. Any interested person may petition the commission for a declaratory order with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the commission, as provided by RCW 34.05.240. Petitions for declaratory orders under RCW 34.05.240 must conform in style and substance to the require-

ments for other forms of pleading as specified in Part III, subpart A of this chapter.

(2) **Notice.** The commission will give notice of any petition for declaratory order within fifteen days after the commission receives the petition. The notice will be served on all persons who are required by law to be given notice and on any other person to whom the commission deems notice to be desirable.

(3) **Response.** Any person may respond to a petition for declaratory order by filing an answer within twenty days after the petition is filed or at such other time as the commission may establish by notice. The commission will not enter a declaratory order under RCW 34.05.240 if any person asserts in response to a petition for declaratory order filed pursuant to RCW 34.05.240 that their rights might be substantially prejudiced by entry of a declaratory order, supports such assertion by sworn affidavit demonstrating the potential for substantial prejudice, and does not consent in writing to the determination of the matter by a declaratory order proceeding under RCW 34.05.240.

(4) **Conversion of proceeding.** The commission may convert the form of a declaratory order proceeding as provided under RCW 34.05.070 and conduct the matter as an adjudicative proceeding under Part III, subpart A of this chapter.

(5) **Commission action on petition.** Within thirty days after it receives a petition for declaratory order, the commission will:

(a) Enter a declaratory order;

(b) Notify the petitioner that the commission will not enter a declaratory order under RCW 34.05.240, and state reasons for its action;

(c) Set a specified time, no later than ninety days after the day the petition was filed, by which the commission will enter a declaratory order; or

(d) Set a reasonable time and place for a hearing. If a hearing is held on a petition for declaratory order under RCW 34.05.240, it must be held no more than ninety days after receipt of the petition. If a hearing is held, the commission will give at least seven days' notice to the petitioner, to all persons to whom notice is required by law, and to any other person it deems desirable. The notice will include the time, place, and a statement of the issues involved.

(6) **Extension of time.** The commission may extend the times specified in subsection (5)(c) and (d) of this section.

(7) **Commission action after hearing.** If a hearing is held as provided in subsection (5)(d) of this section, the commission will within a reasonable time:

(a) Enter a declaratory order; or

(b) Notify the petitioner that the commission will not enter a declaratory order and state the reasons for its action.

(8) **Service.** The commission will serve its order or notice upon all persons who are required to receive notice under subsection (2) of this section.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-930, filed 11/24/03, effective 1/1/04.]

WAC 480-07-940 Conversion of proceedings. The commission will consider whether to convert a proceeding

pursuant to RCW 34.05.070 upon application by any person or upon its own motion.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-940, filed 11/24/03, effective 1/1/04.]

WAC 480-07-950 Joint hearings with other administrative bodies. (1) **Federal.** The rules of practice and procedure of the federal agency govern in any proceeding in which the commission participates jointly with a federal agency.

(2) **State.** The rules of the state in which the hearing is held govern in any proceeding in which the commission participates jointly with the administrative body of another state or states, unless otherwise agreed by the participating agencies.

(3) **Who may appear.** Any person entitled to appear in a representative capacity before any of the agencies involved in a joint hearing may appear in the joint hearing.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-950, filed 11/24/03, effective 1/1/04.]

Chapter 480-09 WAC PROCEDURE

WAC

480-09-005 through 480-09-820 Repealed.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

480-09-005 Scope of this chapter—How to communicate with the commission. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-005, filed 2/10/99, effective 3/13/99.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.

480-09-010 When this chapter applies—Exceptions. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-010, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-010, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.

480-09-012 Incorporated and referenced materials. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-012, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 93-24-103 (Order R-400, Docket No. A-930517), § 480-09-012, filed 12/1/93, effective 1/1/94.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.

480-09-015 Submission of "confidential" information. [Statutory Authority: RCW 80.01.040 and 34.05.220. 91-06-010 (Order R-336, Docket No. A-900700), § 480-09-015, filed 2/22/91, effective 3/25/91. Statutory Authority: RCW 80.01.040. 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-015, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.

480-09-100 Sending communications to the commission. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-100, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 92-07-006 (Order R-368, Docket No. A-910530), § 480-09-100, filed 3/5/92, effective 4/5/92. Statutory Authority: RCW 80.01.040 and 34.05.220.

480-09-101	91-06-010 (Order R-336, Docket No. A-900700), § 480-09-100, filed 2/22/91, effective 3/25/91. Statutory Authority: RCW 80.01.040. 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-100, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.	480-09-140	Ex parte communications. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-140, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 92-18-081 (Order R-376, Docket No. 920379), § 480-09-140, filed 9/1/92, effective 10/2/92; 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-140, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
480-09-110	When communications are received; required identification of sender; communications from the commission. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-101, filed 2/10/99, effective 3/13/99.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.	480-09-150	Informal complaints. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-150, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-150, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
480-09-115	Office hours. [Statutory Authority: RCW 80.01.040. 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-110, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.	480-09-200	Interpretive and policy statements. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-200, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-200, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
480-09-120	Procedure at open public meetings. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-115, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 93-23-050 (Order R-402, Docket No. A-931053), § 480-09-115, filed 11/12/93, effective 1/1/94. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and chapter 34.05 RCW. 91-22-034 (Order R-351, Docket No. A-910835), § 480-09-115, filed 10/30/91, effective 11/30/91.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.	480-09-210	Rule-making procedures—Rules coordinator. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-210, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 93-24-103 (Order R-400, Docket No. A-930517), § 480-09-210, filed 12/1/93, effective 1/1/94; 92-18-081 (Order R-376, Docket No. 920379), § 480-09-210, filed 9/1/92, effective 10/2/92; 92-07-006 (Order R-368, Docket No. A-910530), § 480-09-210, filed 3/5/92, effective 4/5/92; 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-210, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
480-09-125	Filing and service filing by telefacsimile; number of copies. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-120, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 93-24-103 (Order R-400, Docket No. A-930517), § 480-09-120, filed 12/1/93, effective 1/1/94. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and chapter 34.05 RCW. 91-22-034 (Order R-351, Docket No. A-910835), § 480-09-120, filed 10/30/91, effective 11/30/91. Statutory Authority: RCW 80.01.040 and 34.05.220. 91-06-010 (Order R-336, Docket No. A-900700), § 480-09-120, filed 2/22/91, effective 3/25/91. Statutory Authority: RCW 80.01.040. 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-120, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.	480-09-220	Petitions for rule making, amendment, or repeal. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-220, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 93-24-103 (Order R-400, Docket No. A-930517), § 480-09-220, filed 12/1/93, effective 1/1/94; 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-220, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
480-09-130	Failure to file sufficient copies—Costs of copying. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-125, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 91-07-026 (Order R-339, Docket No. A-900425), § 480-09-125, filed 3/14/91, effective 4/14/91.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.	480-09-230	Declaratory orders. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-230, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and chapter 34.05 RCW. 91-22-034 (Order R-351, Docket No. A-910835), § 480-09-230, filed 10/30/91, effective 11/30/91. Statutory Authority: RCW 80.01.040. 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-230, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
480-09-135	Computation of time. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-130, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-130, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.	480-09-300	Filing requirements—Statement of policy. [Statutory Authority: RCW 80.01.040. 96-02-083 (Order R-436, Docket No. A-950243), § 480-09-300, filed 1/3/96, effective 2/3/96; 92-24-058 (Order R-380, Docket No. TG-920486), § 480-09-300, filed 11/30/92, effective 12/31/92; 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-300, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
	Variation from time limits. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-135, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-135, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.	480-09-310	Filing requirements—Definition. [Statutory Authority: RCW 80.01.040. 96-02-083 (Order R-436, Docket No.

- A-950243), § 480-09-310, filed 1/3/96, effective 2/3/96; 92-24-058 (Order R-380, Docket No. TG-920486), § 480-09-310, filed 11/30/92, effective 12/31/92; 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-310, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
- 480-09-320 Filing requirements—Master service. [Statutory Authority: RCW 80.01.040. 93-24-103 (Order R-400, Docket No. A-930517), § 480-09-320, filed 12/1/93, effective 1/1/94; 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-320, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
- 480-09-330 Filing requirements—General rate increases. [Statutory Authority: RCW 80.01.040. 96-02-083 (Order R-436, Docket No. A-950243), § 480-09-330, filed 1/3/96, effective 2/3/96; 93-24-103 (Order R-400, Docket No. A-930517), § 480-09-330, filed 12/1/93, effective 1/1/94; 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-330, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
- 480-09-335 Filing requirements—General rate increases solid waste collection companies. [Statutory Authority: RCW 80.01.040. 92-24-058 (Order R-380, Docket No. TG-920486), § 480-09-335, filed 11/30/92, effective 12/31/92.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
- 480-09-337 Filing requirements—General rate increases water companies. [Statutory Authority: RCW 80.01.040. 99-24-100 (Order R-467, Docket No. UW-980082), § 480-09-337, filed 11/30/99, effective 12/31/99.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
- 480-09-340 Compliance filings. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-340, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 96-02-083 (Order R-436, Docket No. A-950243), § 480-09-340, filed 1/3/96, effective 2/3/96; 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-340, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
- 480-09-390 Objections to closures of highway-railroad grade crossings. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-390, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 96-02-083 (Order R-436, Docket No. A-950243), § 480-09-390, filed 1/3/96, effective 2/3/96.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
- 480-09-400 Applications for adjudicative proceedings. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-400, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 92-18-081 (Order R-376, Docket No. 920379), § 480-09-400, filed 9/1/92, effective 10/2/92; 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-400, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
- 480-09-410 Parties. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-410, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-410, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
- 480-09-420 Pleadings and briefs—Applications for authority—Protests. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-420, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 93-24-103 (Order R-400, Docket No. A-930517), § 480-09-420, filed 12/1/93, effective 1/1/94; 92-18-081 (Order R-376, Docket No. 920379), § 480-09-420, filed 9/1/92, effective 10/2/92; 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-420, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
- 480-09-425 Pleadings—Verification, time for filing, responsive pleadings, liberal construction, amendments. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-425, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 93-24-103 (Order R-400, Docket No. A-930517), § 480-09-425, filed 12/1/93, effective 1/1/94; 92-18-081 (Order R-376, Docket No. 920379), § 480-09-425, filed 9/1/92, effective 10/2/92. Statutory Authority: RCW 80.01.040. 80.04.160, 81.04.160 and chapter 34.05 RCW. 91-22-034 (Order R-351, Docket No. A-910835), § 480-09-425, filed 10/30/91, effective 11/30/91. Statutory Authority: RCW 80.01.040. 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-425, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
- 480-09-426 Motion for summary disposition. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-426, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 96-02-083 (Order R-436, Docket No. A-950243), § 480-09-426, filed 1/3/96, effective 2/3/96.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
- 480-09-430 Intervention. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-430, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-430, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
- 480-09-440 Continuances—Extensions of time. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-440, filed 2/10/99, effective 3/13/99; 91-06-010 (Order R-336, Docket No. A-900700), § 480-09-440, filed 2/22/91, effective 3/25/91. Statutory Authority: RCW 80.01.040. 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-440, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
- 480-09-450 Interpreters. [Statutory Authority: RCW 80.01.040. 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-450, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
- 480-09-460 Prehearing and other conferences. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-460, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 96-02-083 (Order R-436, Docket No. A-950243), § 480-09-460, filed 1/3/96, effective 2/3/96; 92-18-081 (Order R-376, Docket No. 920379), § 480-09-460, filed 9/1/92, effective 10/2/92; 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-460, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
- 480-09-465 Alternate dispute resolution. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-465, filed

	2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 96-02-083 (Order R-436, Docket No. A-950243), § 480-09-465, filed 1/3/96, effective 2/3/96; 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-465, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.	2/22/91, effective 3/25/91. Statutory Authority: RCW 80.01.040. 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-510, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.	
480-09-466	Settlement conference; settlements. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-466, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 96-02-083 (Order R-436, Docket No. A-950243), § 480-09-466, filed 1/3/96, effective 2/3/96.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.	480-09-520	Formal investigation and fact-finding. [Statutory Authority: RCW 80.01.040. 91-07-024 (Order R-338, Docket No. UT-901533), § 480-09-520, filed 3/14/91, effective 4/14/91.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
480-09-467	Collaboratives. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-467, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 96-02-083 (Order R-436, Docket No. A-950243), § 480-09-467, filed 1/3/96, effective 2/3/96.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.	480-09-530	Petitions for enforcement of interconnection agreements. [Statutory Authority: RCW 80.01.040. 98-21-042 (Order R-451, Docket No. A-970591), § 480-09-530, filed 10/14/98, effective 11/14/98.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
480-09-470	Stipulation as to facts. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-470, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 96-02-083 (Order R-436, Docket No. A-950243), § 480-09-470, filed 1/3/96, effective 2/3/96; 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-470, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.	480-09-600	Conversion of proceedings. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-600, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-600, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
480-09-475	Subpoenas. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-475, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-475, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.	480-09-610	Consolidation of proceedings. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-610, filed 2/10/99, effective 3/13/99; 91-06-010 (Order R-336, Docket No. A-900700), § 480-09-610, filed 2/22/91, effective 3/25/91. Statutory Authority: RCW 80.01.040. 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-610, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
480-09-480	Methods for obtaining data in adjudicative proceedings. [Statutory Authority: RCW 80.01.040. 96-02-083 (Order R-436, Docket No. A-950243), § 480-09-480, filed 1/3/96, effective 2/3/96; 93-24-103 (Order R-400, Docket No. A-930517), § 480-09-480, filed 12/1/93, effective 1/1/94; 92-18-081 (Order R-376, Docket No. 920379), § 480-09-480, filed 9/1/92, effective 10/2/92. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and chapter 34.05 RCW. 91-22-034 (Order R-351, Docket No. A-910835), § 480-09-480, filed 10/30/91, effective 11/30/91. Statutory Authority: RCW 80.01.040. 89-18-009 (Order R-308, Docket No. U-89-2748-R), § 480-09-480, filed 8/25/89, effective 9/25/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.	480-09-620	Joint hearings. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-620, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-620, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
480-09-500	Brief adjudicative proceedings. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-500, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 93-24-103 (Order R-400, Docket No. A-930517), § 480-09-500, filed 12/1/93, effective 1/1/94; 92-18-081 (Order R-376, Docket No. 920379), § 480-09-500, filed 9/1/92, effective 10/2/92. Statutory Authority: RCW 80.01.040 and 34.05.220. 91-06-010 (Order R-336, Docket No. A-900700), § 480-09-500, filed 2/22/91, effective 3/25/91. Statutory Authority: RCW 80.01.040. 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-500, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.	480-09-700	Hearings—Notice and failure to appear. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-700, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 92-18-081 (Order R-376, Docket No. 920379), § 480-09-700, filed 9/1/92, effective 10/2/92; 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-700, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
480-09-510	Emergency adjudicative proceedings. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-510, filed 2/10/99, effective 3/13/99; 91-06-010 (Order R-336, Docket No. A-900700), § 480-09-510, filed	480-09-705	Notice to limited-English-speaking parties. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-705, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-705, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
		480-09-710	Appearance and practice before commission. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-710, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-710, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.

- 480-09-720 Appearances—Party status. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-720, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 93-24-103 (Order R-400, Docket No. A-930517), § 480-09-720, filed 12/1/93, effective 1/1/94; 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-720, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
- 480-09-730 Conduct at hearings. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-730, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-730, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
- 480-09-735 Order of procedure. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-735, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 92-18-081 (Order R-376, Docket No. 920379), § 480-09-735, filed 9/1/92, effective 10/2/92; 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-735, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
- 480-09-736 Hearing guidelines. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-736, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 93-24-103 (Order R-400, Docket No. A-930517), § 480-09-736, filed 12/1/93, effective 1/1/94. Statutory Authority: RCW 80.01.040 and chapter 80.36 RCW. 92-01-135 (Order R-362, Docket No. A-911231), § 480-09-736, filed 12/19/91, effective 1/19/92. Statutory Authority: RCW 80.01.040 and 34.05.220. 91-06-010 (Order R-336, Docket No. A-900700), § 480-09-736, filed 2/22/91, effective 3/25/91. Statutory Authority: RCW 80.01.040. 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-736, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
- 480-09-740 Evidence. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-740, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-740, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
- 480-09-745 Exhibits and documentary evidence. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-745, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-745, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
- 480-09-750 Rules of evidence; official notice; resolutions. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-750, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 96-02-083 (Order R-436, Docket No. A-950243), § 480-09-750, filed 1/3/96, effective 2/3/96; 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-750, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
- 480-09-751 Witness panels. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-751, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 96-02-083 (Order R-436, Docket No. A-950243), § 480-09-751, filed 1/3/96, effective 2/3/96; 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-751, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
- 480-09-760 Interlocutory orders. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-760, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 93-24-101 (Order R-399, Docket No. A-930792), § 480-09-760, filed 12/1/93, effective 1/1/94; 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-760, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
- 480-09-770 Briefs. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-770, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 93-24-103 (Order R-400, Docket No. A-930517), § 480-09-770, filed 12/1/93, effective 1/1/94; 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-770, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
- 480-09-780 Entry of initial and final orders—Administrative review. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-780, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 93-24-103 (Order R-400, Docket No. A-930517), § 480-09-780, filed 12/1/93, effective 1/1/94; 92-18-081 (Order R-376, Docket No. 920379), § 480-09-780, filed 9/1/92, effective 10/2/92; 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-780, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
- 480-09-800 Stay. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-800, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 92-18-081 (Order R-376, Docket No. 920379), § 480-09-800, filed 9/1/92, effective 10/2/92; 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-800, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
- 480-09-810 Reconsideration. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-810, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 93-24-103 (Order R-400, Docket No. A-930517), § 480-09-810, filed 12/1/93, effective 1/1/94; 92-18-081 (Order R-376, Docket No. 920379), § 480-09-810, filed 9/1/92, effective 10/2/92; 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-810, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
- 480-09-815 Amendment, rescission or correction of order. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-815, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-815, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.
- 480-09-820 Rehearing or reopening. [Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-820, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and chapter 34.05 RCW. 91-22-034 (Order R-351, Docket No. A-910835), § 480-09-820, filed 10/30/91, effective 11/30/91. Statutory Authority: RCW 80.01.040. 89-21-036 (Order R-

310, Docket No. U-89-2966-R), § 480-09-820, filed 10/12/89, effective 11/12/89.] Repealed by 03-24-028 (General Order R-510, Docket No. A-010648), filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.160.

WAC 480-09-005 through 480-09-820 Repealed. See Disposition Table at beginning of this chapter.

Chapter 480-14 WAC

MOTOR CARRIERS, EXCLUDING HOUSEHOLD GOODS CARRIERS AND COMMON CARRIER BROKERS

WAC

480-14-050	Reference to other chapters.
480-14-190	Permanent common carrier permits.
480-14-999	Adoption of reference.

WAC 480-14-050 Reference to other chapters. (1) **Procedure.** Except as otherwise provided in this chapter, the commission's rules relating to procedure, chapter 480-07 WAC, shall govern the administrative practice and procedure in and before the commission in proceedings involving motor freight carriers.

(2) **Communications.** Except as provided in chapter 480-04 WAC, all written communications and documents should be addressed to the secretary, Washington utilities and transportation commission, at the headquarters office of the commission at Olympia, Washington, and not to individual members of the commission staff.

(a) Except as provided in chapter 480-04 WAC, all communications and documents are deemed to be officially received only when delivered at the office of the secretary.

(b) In addressing communications to the commission each permit holder must use the name shown upon its permit and indicate permit number.

(c) Except as provided in WAC 480-07-143, 480-07-145, and 480-14-420, receipt in the commission's telefacsimile machine does not constitute filing with the commission.

(3) **Documents—When filed.** Except as provided in chapter 480-04 WAC, all petitions, complaints, applications for common carrier permits or extensions, or any other matter required to be served upon or filed with the Washington utilities and transportation commission shall be served or filed upon the commission at its headquarters office as shown in WAC 480-04-030, upon the secretary of the commission. Except as provided in chapter 480-04 WAC, any petition, complaint, application, or other matter required to be served upon or filed with the commission shall not be considered served or filed until it is received at the headquarters office of the commission at Olympia, Washington.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-14-050, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 34.05.350. 95-24-001 (Order R-435, Docket No. TV-941290), § 480-14-050, filed 11/22/95, effective 12/23/95.]

WAC 480-14-190 Permanent common carrier permits. (1) For the purposes of this rule, applications for authority shall include applications for original or extended common carrier authority for general commodities (exclud-

ing household goods), materials transported by armored car, and/or hazardous materials.

(2) A common carrier permit shall be issued to any applicant satisfying the following requirements:

(a) Filing an application satisfying the requirements of WAC 480-14-180.

(b) Filing, or causing to be filed, insurance in accordance with the requirements of WAC 480-14-250.

(c) Passing a safety fitness review of the applicant's knowledge and ability to conform with the motor carrier safety and/or hazardous materials regulations. The safety fitness review may be waived if the applicant can furnish a copy of a U.S. Department of Transportation "satisfactory" safety rating issued within twenty-four months before the date of the application. The commission may require an on-site safety compliance review to satisfy the safety fitness review requirements prior to issuing any permit.

(3) An application may be dismissed for failure to complete needed steps and it may be dismissed, denied, or granted in part based upon the satisfactory compliance with this chapter. The applicant may request a review of dismissal or full or partial denial through a brief adjudicative proceeding, pursuant to WAC 480-07-610.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-14-190, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 34.05.350. 95-24-001 (Order R-435, Docket No. TV-941290), § 480-14-190, filed 11/22/95, effective 12/23/95.]

WAC 480-14-999 Adoption of reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **North American Uniform Out-of-Service Criteria (OOSC)** is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, 2003.

(b) This publication is referenced in WAC 480-14-360 (Equipment—Inspection—Ordered out-of-service for repairs), WAC 480-14-370 (Equipment—Drivers—Safety), and WAC 480-14-390 (Hazardous materials regulations).

(c) The North American Out-of-Service Criteria is a copyrighted document. Copies are available from CVSA in Bethesda, Maryland.

(2) **Title 49 Code of Federal Regulations**, cited as 49 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, 2002.

(b) This publication is referenced in WAC 480-14-040 (Definitions), WAC 480-14-070 (Federal regulations, 49 CFR, Part 390—General applicability and definitions), WAC 480-14-250 (Insurance requirements; cause for suspension or cancellation), WAC 480-14-360 (Equipment—Inspection—Ordered out-of-service for repairs), WAC 480-14-370 (Equipment—Drivers—Safety), WAC 480-14-380 (Hours of service—On duty—Federal safety regulations), WAC 480-

14-390 (Hazardous materials regulations), and WAC 480-14-400 (Transportation of radioactive materials—Driving and parking rules).

(c) Copies of Title 49 Code of Federal Regulations are available from the Seattle office of the Government Printing Office and from various third-party vendors.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 04-01-152 (General Order No. R-511, Docket No. A-030852), § 480-14-999, filed 12/22/03, effective 1/22/04; 02-18-033 (Docket No. A-020379, General Order No. R-501), § 480-14-999, filed 8/26/02, effective 9/26/02. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.310. 01-20-061 (Docket No. A-010827, General Order No. R-491), § 480-14-999, filed 9/28/01, effective 10/29/01.]

Chapter 480-15 WAC HOUSEHOLD GOODS CARRIERS

WAC

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480-15-510	Changing commission-published tariffs.
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480-15-999	Adoption by reference.

WAC 480-15-035 Exemptions from rules. (1) The commission may grant an exemption of any rule in this chapter when doing so is consistent with the public interest, the purposes underlying regulation, and applicable statutes.

(2) To request a rule exemption, a company must file with the commission a written request identifying the rule for which an exemption is sought and giving a full explanation of the reason the exemption is requested.

(3) The commission will assign the request a docket number, if needed, and schedule the request for consideration at one of its regularly scheduled open meetings or, if appropriate under chapter 34.05 RCW, in an adjudication. The commission will notify the company requesting the exemption, and other interested persons, of the date the commission will consider the request.

(4) The commission will issue an order granting or denying the request or setting it for hearing, pursuant to chapter 480-07 WAC.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-15-035, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 81.04.160, 81.04.250, 81.28.040, 81.80.090, 81.80.120, 81.80.130, 81.80.290, 81.80.211, and 80.01.040. 00-14-010 (General Order No. R-471, Docket No. TV-991559), § 480-15-035, filed 6/27/00, effective 7/28/00.]

WAC 480-15-080 How do I file documents with the commission? You may file documents by mailing them to the address listed in WAC 480-15-060, or by hand delivering them to the commission's records management section. Your documents are officially received when date stamped by the commission's records management section. You may file certain documents electronically, as provided in WAC 480-07-143 and 480-07-145.

[2004 WAC Supp—page 2120]

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-15-080, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 81.04.160 and 80.01.040. 99-01-077 (Order R-454, Docket No. TV-971477), § 480-15-080, filed 12/15/98, effective 1/15/99.]

WAC 480-15-090 May I submit information to the commission confidentially? Yes, you may submit information confidentially under the following conditions:

(1) **Information other than complaints.** The commission will limit access to information that is identified as confidential and is submitted under the provisions of WAC 480-07-160. Copies of this rule are available upon request.

(2) **Complaints and rule violations.** If you fear for your safety when reporting a complaint for rule violation then, at your request, we will keep your name and address confidential. We require that you sign and submit a form specifying that you fear for your safety if your name and address are made public. Please note, however, that it is difficult to investigate complaints regarding a specific shipment if we are unable to release the name of the shipper, as carrier records are often kept by shipper name and address.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-15-090, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 81.04.160 and 80.01.040. 99-01-077 (Order R-454, Docket No. TV-971477), § 480-15-090, filed 12/15/98, effective 1/15/99.]

WAC 480-15-120 What rules apply to commission proceedings? The commission's rules governing administrative practices and procedures are in chapter 480-07 WAC. When a rule in this chapter is different than a rule in chapter 480-07 WAC, the rule in this chapter applies to household goods carriers.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-15-120, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 81.04.160 and 80.01.040. 99-01-077 (Order R-454, Docket No. TV-971477), § 480-15-120, filed 12/15/98, effective 1/15/99.]

WAC 480-15-310 May I comment on a decision to grant or deny temporary authority? (1) We publish an application docket listing temporary authority we have granted or denied. We mail the docket to each applicant and, upon written request, to any other person interested in application proceedings.

(2) Anyone having an interest in an application appearing on the docket may file written comments within ten days following publication. Comments may be in the form of statements supporting or protesting the grant of authority or application. Comments must include your full name, address, telephone number, fax number, and permit number, if applicable. Comments must state the nature of your support or protest and address the following issues: Fitness, public interest, levels of service, business practices, safety, and/or operation of equipment.

(3) We may grant or deny a protest without a hearing. We may, at our own discretion, hold a brief adjudicative proceeding on a protest. Rules governing applications and proceedings for brief adjudicative proceedings are in chapter 480-07 WAC.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-15-310, filed 11/24/03, effective

1/1/04. Statutory Authority: RCW 81.04.160 and 80.01.040. 99-01-077 (Order R-454, Docket No. TV-971477), § 480-15-310, filed 12/15/98, effective 1/15/99.]

WAC 480-15-350 Will my application be set for a hearing? We may hold a hearing or brief adjudicative proceeding on any application for permanent authority if it is necessary to resolve outstanding issues or concerns related to fitness, public interest, public convenience and necessity, or any other issue resulting from a compliance review, audit, inspection report, complaint, or public comment. Rules governing hearings and brief adjudicative proceedings are contained in chapter 480-07 WAC.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-15-350, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 81.04.160 and 80.01.040. 99-01-077 (Order R-454, Docket No. TV-971477), § 480-15-350, filed 12/15/98, effective 1/15/99.]

WAC 480-15-440 What happens if my permit is suspended for cause? (1) **Notification.** The commission will send you notice of its action to suspend your permit. The suspension is effective upon the service date of the notice.

(2) **Contest of suspension.** You may contest the suspension of your permit by requesting a hearing or brief adjudicative proceeding. The procedures for such hearings are contained in chapter 480-07 WAC.

(3) **Reinstatement of permit.** We will lift the suspension of your permit after you correct all conditions leading to the suspension.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-15-440, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 81.04.160 and 80.01.040. 99-01-077 (Order R-454, Docket No. TV-971477), § 480-15-440, filed 12/15/98, effective 1/15/99.]

WAC 480-15-460 What happens if my permit is canceled for cause? (1) **Notification.** The commission will send you notice of its action to cancel your permit. The cancellation is effective upon the service date of the notice.

(2) **Contest of cancellation.** You may contest the cancellation of your permit by requesting a hearing or brief adjudicative proceeding. The procedures for such hearings are contained in chapter 480-07 WAC.

(3) **Reinstatement of permit.** If you correct all conditions that led to the cancellation of your permit, you may apply for reinstatement of your permit.

(a) To reinstate your permit within thirty days of cancellation, you must file an application for reinstatement and pay the applicable reinstatement fees.

(b) If you file an application for reinstatement after thirty days of cancellation, your application will be considered in all aspects to be an application for new authority, and will be subject to all terms and conditions specified in WAC 480-15-240 for new entrants.

(4) **Small business, reinstatement of permit.** If you are a small business as defined in WAC 480-15-020, and you correct all conditions that led to the cancellation of your permit, you may apply for reinstatement of your permit.

(a) To reinstate your permit within sixty days of cancellation, you must file an application for reinstatement and pay the applicable reinstatement fees.

(b) If you file an application for reinstatement after sixty days of cancellation, your application will be considered in all aspects to be an application for new authority, and will be subject to all terms and conditions specified in WAC 480-15-240 for new entrants.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-15-460, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 81.04.160 and 80.01.040. 99-01-077 (Order R-454, Docket No. TV-971477), § 480-15-460, filed 12/15/98, effective 1/15/99.]

WAC 480-15-510 Changing commission-published tariffs. (1) **Who may propose changes to the tariff?** Companies holding temporary or permanent household goods authority may propose changes to the tariff. We may, on our own motion, propose tariff changes.

(2) **How do I propose changes to the tariff?** All proposed changes must be sent to the commission's mailing address and must:

- (a) Be in writing;
- (b) Identify the rates, rules, or classifications to be changed;
- (c) Fully describe the proposed change;
- (d) State clearly the reason(s) for the proposed change;
- (e) Include any information or documents that justify the proposed change (the person proposing the change must prove the change is just and reasonable); and
- (f) Identify the name, address, title, telephone number, permit number and fax number (if any) of the person we should contact regarding the proposal.

(3) **How does the commission consider proposals for tariff changes?** When we receive a proposed tariff change we:

- (a) Assign a docket number;
- (b) Schedule each docketed proposal for tariff change for consideration at one of our regularly scheduled open public meetings. The commission may approve the proposed changes, or suspend them and set them for hearing;
- (c) Notify you and other interested persons of the date when we will consider the tariff change; and
- (d) Process each application for tariff change under the procedures set forth in chapter 480-07 WAC.

(4) **When do approved changes become effective?** Changes we approve are not effective until we publish and distribute a revised tariff page. We will identify the effective date of the change on the revised page.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-15-510, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 81.04.160 and 80.01.040. 99-01-077 (Order R-454, Docket No. TV-971477), § 480-15-510, filed 12/15/98, effective 1/15/99.]

WAC 480-15-520 Procedure for filing individual carrier tariffs. (1) **What must be filed?** You must submit to us:

(a) A cover letter requesting permission from us to publish and file an individual tariff. The letter must describe the reasons you believe permission should be granted. Your letter should state the reasons you believe it is impractical for us to publish a tariff for the commodities or services contained in your proposed tariff.

(b) Two copies of your proposed tariff. Your proposed tariff must comply with the tariff drafting standards in chap-

ter 480-149 WAC (Tariff Circular No. 6). You may request a copy of chapter 480-149 WAC from our records management section. The proposed tariff must contain all rates, charges, and rules you will be using if we grant you permission to publish and file an individual tariff.

(c) Data showing that the rates and charges contained in the proposed tariff are fair, just, reasonable, and sufficient.

(2) How are individual carrier filed tariffs processed?

(a) We review individual carrier filed tariffs:

(i) For compliance with laws and rules relating to content and format;

(ii) To ensure rates are fair, just, reasonable, and sufficient; and

(iii) For reasonableness and accuracy.

(b) If tariffs are incomplete or do not comply with laws and rules, staff will discuss the issues with the carrier and require that corrected tariffs be filed.

(c) When an individual carrier filed tariff is approved, the commission will issue an order stating the date on which the rates become effective. One copy of the tariff marked "approved" will be returned with the order.

(3) How does the commission consider proposals to amend individual carrier filed tariffs? When we receive your proposed tariff amendment we will:

(a) Assign a docket number;

(b) Schedule each proposed tariff amendment for consideration at one of our regularly scheduled open public meetings. The commission may approve the proposed amendment, or suspend them and set them for hearing;

(c) Notify you and other interested persons of the date when we will consider the tariff proposed amendment;

(d) Process your proposed tariff amendment under the procedures established in chapter 480-07 WAC; and

(e) Notify you of the disposition of your proposed tariff amendment. If the filing is approved, we will notify you of the date upon which the tariff amendment becomes effective.

(4) What happens if I don't charge the rates and charges in my tariff? You are subject to administrative action (see WAC 480-15-130(3)) if you charge rates or charges different from those contained in your tariff.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-15-520, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 81.04.160 and 80.01.040. 99-01-077 (Order R-454, Docket No. TV-971477), § 480-15-520, filed 12/15/98, effective 1/15/99.]

WAC 480-15-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **North American Uniform Out-of-Service Criteria (OOSC)** is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, 2003.

(b) This publication is referenced in WAC 480-15-560 (Equipment safety requirements).

(c) The North American Out-of-Service Criteria is a copyrighted document. Copies are available from CVSA in Bethesda, Maryland.

(2) **Title 49 Code of Federal Regulations**, cited as 49 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, 2002.

(b) This publication is referenced in WAC 480-15-560 (Equipment safety requirements) and WAC 480-15-570 (Driver safety requirements).

(c) Copies of Title 49 Code of Federal Regulations are available from the Seattle office of the Government Printing Office and from various third-party vendors.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 04-01-152 (General Order No. R-511, Docket No. A-030852), § 480-15-999, filed 12/22/03, effective 1/22/04; 02-18-033 (Docket No. A-020379, General Order No. R-501), § 480-15-999, filed 8/26/02, effective 9/26/02. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.310. 01-20-061 (Docket No. A-010827, General Order No. R-491), § 480-15-999, filed 9/28/01, effective 10/29/01.]

Chapter 480-30 WAC

AUTO TRANSPORTATION COMPANIES

WAC

480-30-032	Notice of application; protests; contemporaneous applications.
480-30-999	Adoption by reference.

WAC 480-30-032 Notice of application; protests; contemporaneous applications. (1) Notice shall be made of the filing of applications for authority to provide auto transportation service in identified territory by sending notice of the application, with a description of its terms, to all persons presently authorized to provide auto transportation service under this chapter in the territory of the application, all present applicants for such service, and any other person who has requested, in writing, to receive such notices. Interested persons shall have twenty days from the date of mailing of the notice in which to file a protest with the commission stating opposition to the application. Protests should set forth specifically the grounds on which they are made and contain a concise statement of the interest of the protestant in the proceeding. Any person who is eligible to file a protest to an application but fails to do so, absent a showing of good cause, is precluded from participating in any hearing upon the application or in any further stage of the proceeding.

(2) If any person wishes to seek authority which overlaps, in whole or in part, that sought in any pending application, it must apply for that authority within thirty days after the mailing of the notice of filing of the initial application in order for the applications to be considered jointly by the commission. During the thirty-day period, pending applications will be on file and available for inspection in the commission headquarters office in Olympia.

(3) The commission may consolidate overlapping pending applications, pursuant to WAC 480-07-320, for joint consideration.

(4) Overlapping applications which are not filed within thirty days after mailing of the notice of filing of the initial application will not be jointly considered with the initial

application and will not be decided until after the conclusion of proceedings resolving the pending application and any other application which qualifies for joint consideration.

(5) The commission may consider and decide, on any schedule, portions of an overlapping application when:

(a) The portions to be heard do not overlap a prior pending application; and

(b) The overlapping portions may appropriately be severed from the portions to be heard.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-30-032, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040. 94-11-021 (Order R-415, Docket No. TC-940123), § 480-30-032, filed 5/5/94, effective 6/5/94. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and chapter 34.05 RCW. 91-22-034 (Order R-351, Docket No. A-910835), § 480-30-032, filed 10/30/91, effective 11/30/91.]

WAC 480-30-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **North American Uniform Out-of-Service Criteria (OOSC)** is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, 2003.

(b) This publication is referenced in WAC 480-30-097 (Equipment—Inspection—Ordered for repairs) and WAC 480-30-100 (Operation of motor vehicles).

(c) The North American Out-of-Service Criteria is a copyrighted document. Copies are available from CVSA in Bethesda, Maryland.

(2) **Title 49 Code of Federal Regulations**, cited as 49 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, 2002.

(b) This publication is referenced in WAC 480-30-095 (Equipment—Safety) and WAC 480-30-100 (Operation of motor vehicles).

(c) Copies of Title 49 Code of Federal Regulations are available from the Seattle office of the Government Printing Office and from various third-party vendors.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 04-01-152 (General Order No. R-511, Docket No. A-030852), § 480-30-999, filed 12/22/03, effective 1/22/04; 02-18-033 (Docket No. A-020379, General Order No. R-501), § 480-30-999, filed 8/26/02, effective 9/26/02. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.310. 01-20-061 (Docket No. A-010827, General Order No. R-491), § 480-30-999, filed 9/28/01, effective 10/29/01.]

Chapter 480-31 WAC

PRIVATE, NONPROFIT TRANSPORTATION PROVIDERS

WAC

480-31-090 Passenger complaints and disputes.
480-31-999 Adoption by reference.

WAC 480-31-090 Passenger complaints and disputes. Any complaint or dispute involving a passenger and a provider for which the commission has jurisdiction must be treated in the following manner:

(1) Each complaint or dispute received by a provider from a passenger must be investigated promptly as required by the particular case, and the results reported to the passenger. When the circumstances indicate the need for corrective action, such action must be taken as soon as possible.

(2) Each provider must ensure that personnel engaged in initial contact with a dissatisfied or complaining passenger will inform the passenger that if dissatisfied with the decision or explanation provided, the passenger has the right to have the problem considered and acted upon by supervisory personnel. The passenger must be provided with the name or department of such supervisory personnel and a telephone number by which they can be reached.

(3) Each provider must ensure that supervisory personnel contacted by a dissatisfied passenger will inform a still-dissatisfied passenger of the availability of the commission for further review of any complaint or dispute. The telephone number and address of the commission must also be provided.

(4) All parties to a dispute between a passenger and the provider have the right to bring before the commission an informal complaint pursuant to the provisions of WAC 480-07-910 and/or a formal complaint pursuant to the provisions of WAC 480-07-370.

(5) When a complaint is referred to a provider by the commission, the provider must, within two business days, report the results of any investigation made regarding the complaint to the commission and must keep the commission currently informed as to progress made with respect to the solution of, and final disposition of, the complaint. If warranted in a particular case, the provider may request an extension of time.

(6) Records - each provider must keep a record of all complaints concerning its service or rates. The record must show at least the name and address of the complainant, the nature and date of the complaint, action taken, and the final disposition of the complaint. Such records must be maintained in a suitable place readily available for commission review and will be provided to the commission upon request.

All written complaints made to a provider must be acknowledged within five business days. Correspondence and records of complaints must be retained by the provider for a minimum period of one year.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-31-090, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and chapter 80.01 RCW. 97-08-037 (Order R-440, Docket No. TC 961102), § 480-31-090, filed 3/27/97, effective 4/27/97.]

WAC 480-31-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **North American Uniform Out-of-Service Criteria (OOSC)** is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, 2003.

(b) This publication is referenced in WAC 480-31-120 (Equipment—Inspection—Ordered for repairs).

(c) The North American Out-of-Service Criteria is a copyrighted document. Copies are available from CVSA in Bethesda, Maryland.

(2) **Title 49 Code of Federal Regulations**, cited as 49 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, 2002.

(b) This publication is referenced in WAC 480-31-100 (Equipment—Safety), WAC 480-31-120 (Equipment—Inspection—Ordered for repairs), WAC 480-31-130 (Operation of motor vehicles) and WAC 480-31-140 (Safety inspections).

(c) Copies of Title 49 Code of Federal Regulations are available from the Seattle office of the Government Printing Office and from various third-party vendors.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 04-01-152 (General Order No. R-511, Docket No. A-030852), § 480-31-999, filed 12/22/03, effective 1/22/04; 02-18-033 (Docket No. A-020379, General Order No. R-501), § 480-31-999, filed 8/26/02, effective 9/26/02. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.310. 01-20-061 (Docket No. A-010827, General Order No. R-491), § 480-31-999, filed 9/28/01, effective 10/29/01.]

Chapter 480-40 WAC

PASSENGER CHARTER CARRIERS

WAC

480-40-999 Adoption by reference.

WAC 480-40-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **North American Uniform Out-of-Service Criteria (OOSC)** is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, 2003.

(b) This publication is referenced in WAC 480-40-065 (Equipment—Inspection—Ordered for repairs) and WAC 480-40-100 (Out-of-service criteria).

(c) The North American Out-of-Service Criteria is a copyrighted document. Copies are available from CVSA in Bethesda, Maryland.

(2) **Title 49 Code of Federal Regulations**, cited as 49 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, 2002.

(b) This publication is referenced in WAC 480-40-070 (Operation of motor vehicles) and WAC 480-40-075 (Equipment—Safety) and WAC 480-40-110 (Registered carriers).

(c) Copies of Title 49 Code of Federal Regulations are available from the Seattle office of the Government Printing Office and from various third-party vendors.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 04-01-152 (General Order No. R-511, Docket No. A-030852), § 480-40-999, filed 12/22/03, effective 1/22/04; 02-18-033 (Docket No. A-020379, General Order No. R-501), § 480-40-999, filed 8/26/02, effective 9/26/02. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.310. 01-20-061 (Docket No. A-010827, General Order No. R-491), § 480-40-999, filed 9/28/01, effective 10/29/01.]

Chapter 480-51 WAC

COMMERCIAL FERRIES

WAC

480-51-040	Notice of application—Protests—Contemporaneous applications.
480-51-050	Waiver of ten-mile restriction.
480-51-060	Temporary certificates.
480-51-120	Failure to initiate service—Extensions of time to initiate service—Progress reports.

WAC 480-51-040 Notice of application—Protests—Contemporaneous applications. (1) The commission shall send a notice of each application for certificated commercial ferry service and each application to operate vessels providing excursion service, with a description of the terms of that application, to all persons presently certificated to provide service; all present applicants for certificates to provide service; the department of transportation; affected cities and counties; and any other person who has requested, in writing, to receive such notices. Interested persons may file a protest with the commission within thirty days after service of the notice. The protest shall state the specific grounds for opposing the application and contain a concise statement of the interest of the protestant in the proceeding. A person who is eligible to file a protest and fails to do so may not participate further in the proceeding in any way, unless it can be demonstrated that failure to file a protest was due to an omission by the commission in providing proper notification of the pending application.

(2) If any person wishes to seek authority which overlaps, in whole or in part, with that sought in any pending application, it must apply for that authority within thirty days following mailing of the notice of filing of the initial application in order for the applications to be considered jointly. During the thirty-day period, pending applications will be on file and available for inspection in the commission's headquarters office in Olympia.

(3) The commission may consolidate overlapping pending applications, pursuant to WAC 480-07-320, for joint consideration.

(4) Overlapping applications which are not filed within thirty days of the initial application will not be jointly considered with the initial application and will not be decided until after the conclusion of proceedings resolving the initial application and any other application qualifying for joint consideration.

(5) The commission may consider and decide, on any schedule, portions of an overlapping application when:

(a) The portions to be heard do not overlap a prior pending application; and

(b) The overlapping portions may appropriately be severed from the portions to be heard.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-51-040, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 81.84.070, 1993 c 427, 1995 c 361 and RCW 80.01.040(4). 95-22-001 (Order R-435, Docket No. TS-941485), § 480-51-040, filed 10/18/95, effective 11/18/95.]

WAC 480-51-050 Waiver of ten-mile restriction. (1)

Application. An application to provide service otherwise forbidden by the ten-mile restriction in RCW 47.60.120 shall include a request for waiver of that restriction.

(2) **Notice—Protests.** The commission shall send a notice of each application for waiver of the ten-mile restriction pursuant to WAC 480-51-030. Interested persons shall have twenty days from the date of mailing of the notice in which to file a protest with the commission stating opposition to the waiver petition and application. Protests should set forth specifically the grounds upon which they are made and contain a concise statement of the interest of the protestant in the proceeding.

(3) **Standards.** In determining whether to grant or deny a waiver, the commission shall consider, but is not limited to, the impact of the waiver on:

- (a) Transportation congestion mitigation;
- (b) Air quality improvement; and
- (c) The Washington state ferry system.

(4) **Resolution—Hearing.** The commission shall act upon a request for a waiver of the ten-mile restriction within ninety days after the conclusion of the hearing. The commission may in its discretion separate the request for a waiver of the ten-mile restriction from other issues in the application when necessary to comply with the statutory ninety-day deadline.

(5) Effective period of waiver.

(a) A waiver granted to an applicant or certificate holder under RCW 47.60.010(3) shall be effective for a period of five years from the date of grant of the waiver.

(b) Pursuant to RCW 47.60.010(3), the waiver shall automatically become permanent unless appealed to the commission, or unless reviewed by the commission upon its own motion, no later than thirty days after the fifth anniversary of the effective date of the waiver as set forth in (a) of this subsection. The commission will issue no notice of the expiration date of the five-year period. The burden of proof to show that the waiver should not become permanent shall be upon the party who files the appeal or upon the commission, if the review is on the commission's own motion. Persons who may appeal include the department of transportation, affected cities and counties, and any interested party. An interested party, for the purposes of this rule, means any party to the proceeding in which the application was granted, any person certificated to provide service possessing overlapping authority, and any applicant for overlapping authority.

(c) Upon receipt of an appeal of a waiver and the holder's answer, if any, the commission shall set the matter for adjudication. The commission may, in its discretion, on the request of a party, or on its own motion, order a brief adjudicative

proceeding on the appeal. WAC 480-07-610 governs applications for and procedures in brief adjudicative proceedings.

(6) **Certificates containing waiver.** Certificates granted in conjunction with the grant of a waiver shall include the following proviso:

"Pursuant to RCW 47.60.010(3), the waiver of the ten-mile restriction granted in this certificate is effective until (DATE). This waiver shall become permanent if not appealed within thirty days after this date."

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-51-050, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 81.84.070, 1993 c 427, 1995 c 361 and RCW 80.01.040(4). 95-22-001 (Order R-435, Docket No. TS-941485), § 480-51-050, filed 10/18/95, effective 11/18/95.]

WAC 480-51-060 Temporary certificates. (1) The commission may issue temporary certificates for authority to provide service for a period not to exceed one hundred eighty days.

(2) The commission shall not issue a temporary certificate to operate on a route for which a certificate has been issued or for which an application is pending.

(3) The commission shall only issue temporary certificates upon finding that the issuance is due to an urgent and immediate need and is otherwise consistent with the public interest. In determining whether to grant the requested temporary certificate, the commission will consider evidence of the following factors:

(a) An immediate and urgent need for the requested service;

(b) Any available service capable of meeting the need;

(c) The fitness of the applicant; and

(d) Any other circumstance indicating that a grant of temporary authority is consistent with the public interest.

(4) An application for a temporary certificate shall be completed legibly on a form furnished by the commission, giving all information requested and accompanied by:

(a) The application fee;

(b) A copy of a certificate or letter from the United States Coast Guard certifying that any vessel to be used under that temporary certificate has been inspected by the United States Coast Guard and is safe and seaworthy for the intended operation;

(c) Evidence of proper insurance as required by WAC 480-51-070;

(d) Statements from potential customers, riders, shippers or interested parties demonstrating that there is an immediate and urgent need for the requested service.

(5) The commission shall send a notice of each temporary certificate granted, with a description of the temporary certificate's terms, to all persons presently certificated to provide service; all present applicants for certificates to provide service; the department of transportation; affected cities and counties; and any other person who has requested, in writing, to receive such notices. Interested persons may file a protest with the commission within twenty days after service of the notice. The protest shall state the specific grounds for opposing the application and contain a statement of the interest of the protestant in the proceeding.

(6) The commission may grant or deny the protest without hearing. The commission may, in its discretion, on the application of a party, or on its own motion, order a brief adjudicative proceeding on the protest. WAC 480-07-610 governs applications for and procedures in brief adjudicative proceedings.

(7) The commission may impose special terms and conditions in connection with the grant of any temporary certificate.

(8) If the holder of temporary authority files a valid application for parallel permanent certificated authority within thirty days after the grant of temporary authority, that temporary authority shall continue in force until the commission grants or denies the application for the permanent certificate authority, or until the temporary certificate is otherwise cancelled pursuant to law, whichever occurs first.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-51-060, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 81.84.070, 1993 c 427, 1995 c 361 and RCW 80.01.040(4), 95-22-001 (Order R-435, Docket No. TS-941485), § 480-51-060, filed 10/18/95, effective 11/18/95.]

WAC 480-51-120 Failure to initiate service—Extensions of time to initiate service—Progress reports. (1) Progress reports.

(a) If a certificate holder has not initiated service to all or any portion of the route or routes granted in its certificate, the certificate holder must, during the first five years after obtaining the certificate, and during each twelve-month extension period granted by the commission, file written progress reports with the commission every six months after the certificate is granted.

(b) For purposes of these rules the following definitions shall apply:

(i) The term "portion of a route or routes" means service to any named point or points along a route, and service between two or more points named in a certificated commercial ferry certificate; and

(ii) The term "initiating service" means providing regular, ongoing service to all points and between all points granted in a certificated commercial ferry certificate.

(c) Progress reports must include a statement of progress toward overcoming impediments to initiating service, including, but not limited to, the following information: The progress of environmental impact, parking, local government land use, docking, and financial considerations, the purchase or lease of a vessel or vessels, hiring of employees, advertising, and the ability to handle proposed traffic.

(2) Extensions of time to initiate service.

(a) If a certificate holder has not initiated all or any portion of the route or routes granted in its certificate during the first five years after obtaining the certificate, the certificate holder may petition the commission to extend the certificate on a twelve-month basis for up to three years.

(b) If a certificate holder obtained its certificate prior to July 25, 1993, and is not providing service on all or any portion of the route or routes granted in its certificate during the first five years after obtaining its certificate, and has not initiated service during the three-year extension period discussed above in (a) of this subsection, the certificate holder may

petition the commission to extend its certificate on a twelve-month basis for up to an additional two years.

(c) The term "providing service" means operating to all points and between all points granted in a certificate by the commission. In determining whether a certificated commercial ferry which operates in on-call service, such as launch service or service to flag stops, is providing service, the commission shall consider whether the certificated commercial ferry is ready, willing, and able to provide the service when requested, and makes a reasonable effort to obtain traffic.

(d) For purposes of these rules, the term "not providing service on all or any portion of the route or routes" does not include:

(i) Service discontinued by grant of the commission under WAC 480-51-130; or

(ii) Temporary interruptions of regular service reported promptly to the commission in accordance with WAC 480-51-140.

(e) In determining whether to grant an extension of time in which to initiate service, the commission will consider whether:

(i) The certificate holder has submitted timely progress reports during the first five years after obtaining the certificate and during any extension period; and

(ii) The progress reports indicate significant advancement toward initiating service.

(3) **Failure to initiate service.** Certificates, or portions thereof, are subject to cancellation, alteration or amendment by the commission under the provisions of RCW 81.84.060 (1) if:

(a) A certificate holder has not initiated all or a portion of the route or routes granted in its certificate during the first five years after obtaining its certificate, and has not submitted timely progress reports to the commission as required in RCW 81.84.010(2);

(b) The commission has denied a certificate holder's request for an extension of time to initiate service and the certificate holder has not initiated service within thirty days of the denial; or

(c) A certificate holder has not initiated all or a portion of the route or routes granted before the expiration of any extensions of time to initiate service, and the certificate holder has not timely filed for an additional extension.

(4) Petitions for extension of time to initiate service.

(a) A certificate holder must file a petition with the commission seeking an extension of time to initiate service no later than ninety days prior to:

(i) The date upon which the five-year period following the grant of the certificate expires; or

(ii) The date upon which the current twelve-month extension period expires.

(b) Petitions for extension of time to initiate service shall be legibly prepared on forms to be furnished by the commission, giving all information requested.

(c) The commission may grant or deny petitions for extension without hearing. The grant or denial of extensions will be issued by letter of the secretary of the commission. A certificate holder aggrieved by the denial of an extension petition may seek review of the denial by filing a request for review of the decision within twenty days after service of the letter notifying the certificate holder of the denial. Within

thirty days after receipt of the request for review, the commission shall schedule an adjudicative proceeding, and provide at least twenty days notice of the proceeding to the certificate holder requesting review. The commission may, in its own discretion, on the request of the aggrieved certificate holder, or on its own motion, order a brief adjudicative proceeding on the petition. WAC 480-07-610 governs applications for and procedures in brief adjudicative proceedings.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-51-120, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 81.84.070, 1993 c 427, 1995 c 361 and RCW 80.01.040(4), 95-22-001 (Order R-435, Docket No. TS-941485), § 480-51-120, filed 10/18/95, effective 11/18/95.]

Chapter 480-60 WAC

RAILROAD COMPANIES—CLEARANCES

WAC

480-60-012	Contacting the commission.
480-60-014	Rules of practice and procedure.
480-60-020	Exemptions.

WAC 480-60-012 Contacting the commission. You may contact the commission in writing, in person, by telephone, by e-mail, or by facsimile. The commission's location, mailing address, e-mail address and telefax number are found in WAC 480-07-125. The commission's internet home page address is found in WAC 480-04-035.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-60-012, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 81.04.160 and 80.01.040. 00-04-011 (Order No. R-469, Docket No. TR-981101), § 480-60-012, filed 1/21/00, effective 2/21/00.]

WAC 480-60-014 Rules of practice and procedure. The commission's rules governing administrative practices and procedures are in chapter 480-07 WAC. When a rule in this chapter conflicts with a rule in chapter 480-07 WAC, the rule in this chapter applies to railroad companies.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-60-014, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 81.04.160 and 80.01.040. 00-04-011 (Order No. R-469, Docket No. TR-981101), § 480-60-014, filed 1/21/00, effective 2/21/00.]

WAC 480-60-020 Exemptions. (1) When the overhead or side clearances between a track and any building, structure, or facility are less than the minimum required by these rules, but were lawfully created prior to October 9, 1969, the minimum clearances required by these rules must be provided whenever the building, structure, or facility is relocated or reconstructed. However, the commission will consider specific requests for the future continuance of these previously lawful clearances when the railroad or owner or manager of the building, structure, or facility applies for an exemption under the provision set forth below.

(2) Where restricted clearances are unavoidable, the following moves are allowed without requesting an exemption from the commission:

(a) The movement of material over tracks when the material is needed for the construction or maintenance of the tracks;

(b) The movement of special work equipment used in the construction, maintenance or operation of the railroad;

(c) Movements during periods of actual emergency due to wrecks, derailments, washouts and like conditions;

(d) All movements authorized in this subsection may be made only after all reasonable steps are taken to provide for the safety of all who could be harmed by the move.

(3) The commission may grant an exemption of any rule in this chapter, if consistent with the public interest, the purposes underlying regulation, and applicable statutes.

(4) To request a rule exemption, a person must file with the commission a written request identifying the rule for which an exemption is sought, and giving a full explanation of the reason the exemption is requested.

(5) The commission will assign the request a docket number, if needed, and schedule the request for consideration at one of its regularly scheduled open meetings or, if appropriate under chapter 34.05 RCW, in an adjudication. The commission will notify the person requesting the exemption, and other interested persons, of the date the commission will consider the request.

(6) The commission will enter an order granting or denying the request, or setting it for hearing pursuant to chapter 480-07 WAC.

(7) Logging railroads, or any operation directly incident to logging, now subject to the provisions of the safety standards for logging operations in chapter 296-54 WAC, published by the division of safety of the department of labor and industries of the state of Washington, are exempted from these rules.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-60-020, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 81.04.160 and 80.01.040. 00-04-011 (Order No. R-469, Docket No. TR-981101), § 480-60-020, filed 1/21/00, effective 2/21/00; Order R-5, § 480-60-020, filed 6/6/69, effective 10/9/69.]

Chapter 480-62 WAC

RAILROAD COMPANIES—OPERATIONS

WAC

480-62-140	Exemptions from rules.
480-62-145	Commission proceedings.
480-62-999	Adoption by reference.

WAC 480-62-140 Exemptions from rules. (1) The commission may grant an exemption from the provision of any rule in this chapter, when doing so in chapter 480-62 WAC is consistent with the public interest, the purposes underlying regulation, and applicable statutes.

(2) To request a rule exemption, a person must file with the commission a written request identifying the rule for which an exemption is sought, giving a full explanation of the reason the exemption is requested.

(3) The commission will assign the request a docket number, if it does not arise in an existing docket, and will schedule the request for consideration at one of its regularly scheduled open meetings or, if appropriate under chapter 34.05 RCW, in an adjudication. The commission will notify the person requesting the exemption, and other affected persons, of the date of the hearing or open meeting when the commission will consider the request.

(4) In determining whether to grant the request, the commission may consider whether application of the rule would impose undue hardship on the petitioner, of a degree or a kind different from hardships imposed on other similarly situated persons, and whether the effect of applying the rule would be contrary to the purposes of the rule.

(5) The commission will enter an order granting or denying the request or setting it for hearing, pursuant to chapter 480-07 WAC.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-62-140, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040, 81.04.160, 81.24.010, 81.28.010, 81.28.290, 81.40.110, 81.44.010, 81.44.020, 81.44.101-81.44.105, and chapters 81.48, 81.53, 81.54, 81.60, and 81.61 RCW. 01-04-026 (Docket No. TR-981102, General Order No. R-477), § 480-62-140, filed 1/30/01, effective 3/2/01.]

WAC 480-62-145 Commission proceedings. The commission's rules governing administrative practices and procedures are in chapter 480-07 WAC. When a rule in this chapter conflicts with a rule in chapter 480-07 WAC, the rule in this chapter applies.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-62-145, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040, 81.04.160, 81.24.010, 81.28.010, 81.28.290, 81.40.110, 81.44.010, 81.44.020, 81.44.101-81.44.105, and chapters 81.48, 81.53, 81.54, 81.60, and 81.61 RCW. 01-04-026 (Docket No. TR-981102, General Order No. R-477), § 480-62-145, filed 1/30/01, effective 3/2/01.]

WAC 480-62-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) Title 49 Code of Federal Regulations, cited as 49 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, 2002.

(b) This publication is referenced in WAC 480-62-160 (Compliance policy), WAC 480-62-200 (Roadway worker safety and operating rules and statutes), WAC 480-62-205 (Track safety standards), WAC 480-62-210 (Crossing signal circuitry), WAC 480-62-215 (Hazardous materials regulations), WAC 480-62-235 (Flaggers), and WAC 480-62-240 (Passenger carrying vehicles—Equipment).

(c) Copies of Title 49 Code of Federal Regulations are available from the Seattle Office of the Government Printing Office and from various third-party vendors.

(2) **Manual on Uniform Traffic Control Devices**, cited as Manual on Uniform Traffic Control Devices, or MUTCD, is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on January 29, 2003.

(b) This publication is referenced in WAC 480-62-230 (Traffic control devices), WAC 480-62-235 (Flaggers), and WAC 480-62-245 (Passenger carrying vehicles—Operation).

(c) Copies of the MUTCD are available from the Seattle Office of the Government Printing Office and from various third-party vendors.

(3) **Washington state department of transportation rules**, cited as chapter 468-95 WAC, are published by the state law committee.

(a) The commission adopts the version in effect on February 28, 2003.

(b) This publication is referenced in WAC 480-62-230 (Traffic control devices).

(c) Copies of the Washington state department of transportation rules are available from the department of transportation or on the internet website for the office of the code reviser (slc.leg.wa.gov).

(4) **ANSI Z308.1 - 2003 American National Standard for Minimum Requirements for Workplace First Aid Kits** is published by the American National Standards Institute.

(a) The commission adopts the version in effect on April 29, 2003.

(b) This publication is referenced in WAC 480-62-240 (Passenger carrying vehicles—Equipment).

(c) Copies of ANSI Z308.1 - 2003 American National Standard for Minimum Requirements for Workplace First Aid Kits are available from the American National Standards Institute, 11 West 42nd Street, New York, New York, 10036.

(5) **ANSI/ISEA 107-1999 - American National Standard for High-Visibility Safety Apparel** is published by the American National Standards Institute.

(a) The commission adopts the version in effect on January 29, 2001.

(b) This publication is referenced in WAC 480-62-235 (Flaggers).

(c) Copies of ANSI/ISEA 107-1999 - American National Standard for High-Visibility Safety Apparel are available from the American National Standards Institute, 11 West 42nd Street, New York, New York, 10036.

(6) Title 49 United States Code, cited as 49 U.S.C., is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on January 2, 2002.

(b) This publication is referenced in WAC 480-62-200 (Roadway worker safety and operating rules and statutes).

(c) Copies of Title 49 United States Code are available from the Seattle office of the Government Printing Office and from various third-party vendors.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 04-01-152 (General Order No. R-511, Docket No. A-030852), § 480-62-999, filed 12/22/03, effective 1/22/04; 02-18-033 (Docket No. A-020379, General Order No. R-501), § 480-62-999, filed 8/26/02, effective 9/26/02. Statutory Authority: RCW 80.01.040, 81.04.160, 81.24.010, 81.28.010, 81.28.290, 81.40.110, 81.44.010, 81.44.020, 81.44.101-81.44.105, and chapters 81.48, 81.53, 81.54, 81.60, and 81.61 RCW. 01-04-026 (Docket No. TR-981102, General Order No. R-477), § 480-62-999, filed 1/30/01, effective 3/2/01.]

Chapter 480-66 WAC

RAILROAD COMPANIES—SANITATION

WAC

480-66-120	Contacting the commission.
480-66-140	Rules of practice and procedure.
480-66-150	Exemptions from rules.
480-66-160	Filing a complaint.

WAC 480-66-120 Contacting the commission. You may contact the commission in writing, in person, by telephone, by e-mail, or by facsimile.

The commission's location, mailing address, e-mail address, and telefax numbers are found in WAC 480-07-125. The commission's internet home page address is found in WAC 480-040-035 [480-04-035].

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-66-120, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 81.04.160 and 80.01.040. 00-04-011 (Order No. R-469, Docket No. TR-981101), § 480-66-120, filed 1/21/00, effective 2/21/00.]

WAC 480-66-140 Rules of practice and procedure. The commission's rules governing administrative practices and procedures are in chapter 480-07 WAC. When a rule in this chapter conflicts with a rule in chapter 480-07 WAC, the rule in this chapter applies to railroad companies.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-66-140, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 81.04.160 and 80.01.040. 00-04-011 (Order No. R-469, Docket No. TR-981101), § 480-66-140, filed 1/21/00, effective 2/21/00.]

WAC 480-66-150 Exemptions from rules. (1) The commission may grant an exemption of any rule in this chapter, if consistent with the public interest, the purposes underlying regulation, and applicable statutes.

(2) To request a rule exemption, a person must file with the commission a written request identifying the rule for which an exemption is sought, and giving a full explanation of the reason the exemption is requested.

(3) The commission will assign the request a docket number, if needed, and schedule the request for consideration at one of its regularly scheduled open meetings or, if appropriate under chapter 34.05 RCW, in an adjudication. The commission will notify the person requesting the exemption, and other interested persons, of the date the commission will consider the request.

(4) The commission will enter an order granting or denying the request, or setting it for hearing pursuant to chapter 480-07 WAC.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-66-150, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 81.04.160 and 80.01.040. 00-04-011 (Order No. R-469, Docket No. TR-981101), § 480-66-150, filed 1/21/00, effective 2/21/00.]

WAC 480-66-160 Filing a complaint. Any interested person who believes that available sanitary or shelter facilities are inadequate or unsatisfactory under the rules in this chapter may file an informal or formal complaint with the commission pursuant to WAC 480-07-910 and 480-07-370 requesting the responsible party or parties to correct the condition. Upon investigating the complaint, the commission may issue an order, with or without hearing, directing that the conditions complained of be corrected.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-66-160, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 81.04.160 and 80.01.040. 00-04-011 (Order No. R-469, Docket No. TR-981101), § 480-66-160, filed 1/21/00, effective 2/21/00.]

Chapter 480-70 WAC

SOLID WASTE AND/OR REFUSE COLLECTION COMPANIES

WAC

480-70-036	Rules of practice and procedure.
480-70-051	Exemptions from rules.
480-70-106	Certificates, application docket, protests, and intervention.
480-70-131	Certificates, temporary.
480-70-231	Tariffs, general.
480-70-256	Tariffs, rejection.
480-70-339	Tariffs, suspension by the commission.
480-70-386	Complaints.
480-70-999	Adoption by reference.

WAC 480-70-036 Rules of practice and procedure. Commission rules governing administrative practices and procedures are in chapter 480-07 WAC. If a rule in this chapter conflicts with a rule in chapter 480-07 WAC, the rule in this chapter applies. Copies of chapter 480-07 WAC are available on request to the commission records center.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-70-036, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 81.04.160, 81.77.030 and 80.01.040. 01-08-012 (Docket No. TG-990161, General Order No. R-479), § 480-70-036, filed 3/23/01, effective 4/23/01.]

WAC 480-70-051 Exemptions from rules. (1) The commission may grant an exemption of any rule in this chapter, when doing so is consistent with the public interest, the purposes underlying regulation, and applicable statutes.

(2) To request a rule exemption, a person must file with the commission a written request identifying the rule for which an exemption is sought, giving a full explanation of the reason for requesting the exemption.

(3) The commission will assign the request a docket number, if it does not arise in an existing docket, and will schedule the request for consideration at one of its regularly scheduled open meetings or, if appropriate under chapter 34.05 RCW, in an adjudication. The commission will notify the person requesting the exemption, and other interested persons, of the date of the hearing or open meeting when the commission will consider the request.

(4) In determining whether to grant the request, the commission may consider whether application of the rule would impose undue hardship on the petitioner, of a degree or a kind different from hardships imposed on other similarly situated persons, and whether the effect of applying the rule would be contrary to the purpose of the rule.

(5) The commission will issue an order granting or denying the request or setting it for hearing pursuant to chapter 480-07 WAC.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-70-051, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 81.04.160, 81.77.030 and 80.01.040. 01-08-012 (Docket No. TG-990161, General Order No. R-479), § 480-70-051, filed 3/23/01, effective 4/23/01.]

WAC 480-70-106 Certificates, application docket, protests, and intervention. (1) **Application docket.** The application docket is a notice of pending certificate applications published by the commission. The application docket is mailed to each existing certificate holder and to any other

interested person. It includes notice of certificate applications for:

- (a) New authority;
- (b) Extension of existing authority;
- (c) Transfer of authority;
- (d) Lease of authority; and
- (e) Reinstatement of authority when a city discontinues self-hauling or contracting for solid waste collection.

(2) **Protests.** A certificate holder may file a protest to an application on the docket. A solid waste collection organization, association, or conference may file a protest on behalf of existing certificate holders, specifying the names of the persons or companies in whose interest the protest is filed.

(a) **Form of protests.** Protests must:

- (i) Be filed within thirty days of the date the commission mailed the application docket notice;
- (ii) Be filed according to the provisions of WAC 480-07-370;
- (iii) Specify the reasons for protest; and
- (iv) Specify the protestant's interest in the proceeding.

(b) **Failure to file protest on time.** A person who is eligible to file a protest but fails to do so within the thirty-day protest period may not in any way participate further in the proceeding, unless that person can show that the commission did not provide proper notice of the pending application.

(3) **Intervention.** Any person, other than the applicant and protestants to an application, who desires to appear and participate, and who does not desire to broaden the issues of the proceeding, may petition in writing to be an intervenor. Refer to chapter 480-07 WAC for information on intervention.

(4) **Applications not subject to the docket and protest provisions of this rule.** This rule does not apply to:

- (a) Applications to reinstate a certificate canceled for cause under the provisions of WAC 480-70-166, when those applications are filed within thirty days of the cancellation date;
- (b) Applications for expedited temporary authority;
- (c) Applications for temporary certificated authority;
- (d) Applications for name change; or
- (e) Applications to mortgage a certificate.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-70-106, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 81.04.160, 81.77.030 and 80.01.040. 01-08-012 (Docket No. TG-990161, General Order No. R-479), § 480-70-106, filed 3/23/01, effective 4/23/01.]

WAC 480-70-131 Certificates, temporary. (1) **Requirements.** Temporary certificate applications must meet the requirements of WAC 480-70-091.

(2) **Public interest.** The commission may grant a temporary certificate after determining that granting the requested authority is consistent with the public interest. In determining if the requested temporary authority is consistent with the public interest, the commission will consider factors including, but not limited to:

- (a) The fitness of the applicant.
- (b) The immediate or urgent need for the requested service due to circumstances such as, but not limited to:
 - (i) An emergency rendering it impossible for the existing company to provide service;

- (ii) Commission action suspending or canceling the authority of the existing company; or

- (iii) Lack of service.

- (c) Whether the requested service is currently available from an existing company serving the territory; and

- (d) Any other circumstances indicating that a grant of temporary authority is consistent with the public interest.

(3) **Shipper support statements required.** Applicants for temporary certificates must include signed and sworn support statements from one or more potential customers identifying all pertinent facts relating to need for the proposed service.

(4) **Commission investigation of applications.** Before granting or denying an application for temporary authority, the commission will conduct an investigation to examine the facts relating to the need for the proposed service.

(5) **Special terms, conditions, and limitations.** The commission may impose special terms, conditions, and limitations in connection with the grant of any temporary certificate. For example, the commission may limit temporary authority to provide service to only those commercial customers whose support statements are submitted with an application.

(6) **Length of service allowed under temporary certificate.** The commission may issue a temporary certificate effective for a period:

- (a) Of up to one hundred eighty days when the area or service territory is not contained in another company's certificate;

- (b) Of up to one hundred twenty days when the area or service territory is contained in another company's certificate; or

- (c) That continues until the commission grants, denies, or dismisses a parallel certificate application for permanent authority, or until the temporary certificate is otherwise canceled, whichever happens first. The permanent certificate application must be filed within thirty days of the temporary certificate application or within thirty days of the order granting the temporary certificate.

(7) **Docketing.** The commission will publish the following on its application docket:

- (a) Temporary certificates granted, including any terms and conditions attached to the grant of such authorities; and

- (b) A list of all applications for temporary certificated authority that the commission considered and denied.

(8) **Protests.** An existing company may file a protest opposing a temporary certificate, if the area or service territory granted is contained in the existing company's certificate. A solid waste collection organization, association, or conference may file a protest on behalf of existing companies, specifying the names of the individuals or companies in whose interests the protest is filed. Protests must:

- (a) Be filed with the commission in writing within twenty days after the date the commission mails the application docket;

- (b) Contain a statement of the specific grounds on which the protest is made;

- (c) Contain a statement of the protestant's interest in the proceeding;

- (d) Be served on the applicant; and

(e) Be served on the applicant's representative, if one is stated in the notice.

(9) **Disposition of protests.** The commission may grant or deny a protest without hearing.

(10) **Brief adjudicative proceedings.** The commission may order a brief adjudicative proceeding on its own motion or at the request of a party.

(11) **Intervention.** Any person, other than the applicant and protestants to an application, who desires to appear and participate, and who does not desire to broaden the issues of the proceeding, may petition in writing to be an intervenor. Refer to chapter 480-07 WAC for information on intervention.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-70-131, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 81.04.160, 81.77.030 and 80.01.040. 01-08-012 (Docket No. TG-990161, General Order No. R-479), § 480-70-131, filed 3/23/01, effective 4/23/01.]

WAC 480-70-231 Tariffs, general. (1) **Solid waste tariffs no longer subject to chapter 480-149 WAC.** As of the effective date of these rules, solid waste collection companies are not subject to the provisions of the commission's Tariff Circular No. 6 (chapter 480-149 WAC). They are instead subject to the requirements of this chapter.

(2) **Additional regulatory requirements.** Companies are also subject to additional rules regarding rate filings contained in chapter 480-07 WAC.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-70-231, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 81.04.160, 81.77.030 and 80.01.040. 01-08-012 (Docket No. TG-990161, General Order No. R-479), § 480-70-231, filed 3/23/01, effective 4/23/01.]

WAC 480-70-256 Tariffs, rejection. The commission will reject tariffs that:

- (1) Do not contain all required information, including, but not limited to, that required by WAC 480-07-520;
- (2) Do not comply with format rules;
- (3) Are not accompanied by required maps;
- (4) Reflect retroactive rate treatment;
- (5) Are not filed in accordance with the notice requirements shown in WAC 480-70-261 through 480-70-276; or
- (6) Contain provisions that conflict with state statutes or commission rules.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-70-256, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 81.04.160, 81.77.030 and 80.01.040. 01-08-012 (Docket No. TG-990161, General Order No. R-479), § 480-70-256, filed 3/23/01, effective 4/23/01.]

WAC 480-70-339 Tariffs, suspension by the commission. (1) The commission may, on receiving a complaint or protest, or on its own motion, suspend tariff rates, tariff charges, or tariff rules as provided in RCW 81.04.130.

(2) The commission will not take action to suspend a tariff, or any part of a tariff, based on a complaint or protest unless the complaint or protest is filed in compliance with the commission's rules of practice and procedure as set out in chapter 480-07 WAC.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-70-339, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 81.04.160, 81.77.030 and 80.01.040. 01-

08-012 (Docket No. TG-990161, General Order No. R-479), § 480-70-339, filed 3/23/01, effective 4/23/01.]

WAC 480-70-386 Complaints. (1) **Company responsibility.**

(a) **Complaints from customer.** When a company receives a complaint from a customer or an applicant for service, it must:

- (i) Acknowledge the complaint;
- (ii) Investigate promptly;
- (iii) Report the results of the investigation to the complainant;
- (iv) Take corrective action, if warranted, as soon as appropriate under the circumstances;
- (v) Inform the complainant that the decision may be appealed to a higher level representative of the company, if any;

(vi) Inform the complainant, if still dissatisfied after speaking with the higher level representative, of the commission's availability for review of the complaint; and

(vii) Provide the complainant with the commission's address and toll-free telephone number.

(b) **Complaint referred by commission.** When commission consumer affairs staff refer an informal complaint to the company, the company must:

- (i) Investigate and report the results to the commission consumer affairs staff within two business days (the commission consumer affairs staff may grant an extension of time for responding to the complaint if requested and warranted);
- (ii) Keep the commission consumer affairs staff informed of progress toward the solution; and
- (iii) Inform the commission consumer affairs staff of the final result.

(c) **Complaint record.** A company must keep a record of all complaints concerning service or rates for at least one year. The record of complaints and rates must be made readily available for commission review. The record must contain:

- (i) The complainant's name and address;
- (ii) Date and nature of the complaint;
- (iii) Action taken; and
- (iv) Final result.

(2) **Complaints to commission.** Applicants, customers, or their representatives may file with the commission either:

(a) An informal complaint against the company under the provisions of WAC 480-07-910; or

(b) A formal complaint against the company under the provisions of WAC 480-07-370.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-70-386, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 81.04.160, 81.77.030 and 80.01.040. 01-08-012 (Docket No. TG-990161, General Order No. R-479), § 480-70-386, filed 3/23/01, effective 4/23/01.]

WAC 480-70-999 Adoption by reference. In this chapter, the commission adopts by reference all, or portions of, regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **The North American Uniform Out-of-Service Criteria** is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, 2003.

(b) This publication is referenced in WAC 480-70-201 (Vehicle and driver safety requirements).

(c) The North American Out-of-Service Criteria is a copyrighted document. Copies are available from CVSA in Bethesda, Maryland.

(2) **Title 40 Code of Federal Regulations**, cited as 40 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on July 1, 2003.

(b) This publication is referenced in WAC 480-70-041 (Definitions, general).

(c) Copies of Title 40 Code of Federal Regulations are available from the Government Printing Office and from various third-party vendors.

(3) **Title 49 Code of Federal Regulations**, cited as 49 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, 2002.

(b) This publication is referenced in WAC 480-70-201 (Vehicle and driver safety requirements), WAC 480-70-431 (Biomedical waste, adoption of federal regulations), and WAC 480-70-486 (Hazardous waste, adoption of federal regulations).

(c) Copies of Title 49 Code of Federal Regulations are available from the Government Printing Office and from various third-party vendors.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 04-01-152 (General Order No. R-511, Docket No. A-030852), § 480-70-999, filed 12/22/03, effective 1/22/04; 02-18-033 (Docket No. A-020379, General Order No. R-501), § 480-70-999, filed 8/26/02, effective 9/26/02. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.310. 01-20-061 (Docket No. A-010827, General Order No. R-491), § 480-70-999, filed 9/28/01, effective 10/29/01. Statutory Authority: RCW 81.04.160, 81.77.030 and 80.01.040. 01-08-012 (Docket No. TG-990161, General Order No. R-479), § 480-70-999, filed 3/23/01, effective 4/23/01.]

Chapter 480-75 WAC

HAZARDOUS LIQUID, GAS, OIL AND PETROLEUM PIPELINE COMPANIES—SAFETY

WAC

480-75-260	Exemption for rules in chapter 480-75 WAC.
480-75-999	Adoption by reference.

WAC 480-75-260 Exemption for rules in chapter 480-75 WAC. (1) The commission may grant an exemption from the provisions of any rule in this chapter if consistent with the public interest, with the purposes underlying regulation, and with applicable statutes.

(2) To request a rule exemption, a person must file with the commission a written request identifying the rule for which an exemption is sought, giving a full explanation of the reason for the exemption.

(3) The commission will assign the request a docket number, if it does not arise in an existing docket, and will

schedule the request for consideration at one of its regularly scheduled open meetings or, if appropriate under chapter 34.05 RCW, in an adjudication. The commission will notify the person requesting the exemption, and other interested persons, of the date of the hearing or open meeting when the commission will consider the request.

(4) In determining whether to grant the request, the commission may consider whether application of the rule would impose undue hardship on the petitioner, of a degree or a kind different from hardship imposed on other similarly situated persons, and whether the effect of applying the rule would be contrary to the purpose of the rule.

(5) The commission will enter an order granting or denying the request, or setting it for hearing pursuant to chapter 480-07 WAC.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-75-260, filed 11/24/03, effective 1/1/04; 02-18-032 (Docket No. TO-000712, General Order No. R-500), § 480-75-260, filed 8/26/02, effective 9/26/02.]

WAC 480-75-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) Title 49 Code of Federal Regulations, cited as 49 CFR, Parts 195 and 199 including all appendices and amendments except for 195.0, 195.1, 199.1 and 199.2 published by the United States Government Printing Office.

(a) The commission adopts the version in effect on June 1, 2002.

(b) This publication is referenced in WAC 480-75-370 (Design factor (*F*) for steel pipe), WAC 480-75-630 (Incident reporting), and WAC 480-75-660 (Operations safety plan requirements).

(c) Copies of Title 49 Code of Federal Regulations are available from the Seattle office of the Government Printing Office and from various third-party vendors.

(2) *The American Society of Mechanical Engineers (ASME) B31.4*, 1998 edition.

(a) This publication is referenced in WAC 480-75-350 (Design specifications for new pipeline projects), WAC 480-75-440 (Pipeline repairs), and WAC 480-75-450 (Construction specifications).

(b) Copies of ASME B31.4 are available from The American Society of Mechanical Engineers, Park Avenue New York, New York.

(3) The 2001 edition of *Section IX of the ASME Boiler and Pressure Vessel Code*.

(a) This publication is referenced in WAC 480-75-430 (Welding procedures).

(b) Copies of *Section IX of the ASME Boiler and Pressure Vessel Code* are available from The American Society of Mechanical Engineers, Park Avenue, New York, New York.

(4) The commission adopts *American Petroleum Institute (API) standard 1104* 18th edition.

(a) This publication is referenced in WAC 480-75-430 (Welding procedures) and WAC 480-75-460 (Welding inspection requirements).

(b) Copies of API standard 1104 18th edition are available from the Office of API Publishing Services in Washington DC.

(5) The commission adopts *API RP standard 1117* Second Edition, August 1996.

(a) This publication is referenced in WAC 480-75-500 (Moving and lowering hazardous liquid pipelines).

(b) Copies of API standard 1117 Second Edition are available from the Office of API Publishing Services in Washington DC.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 04-01-152 (General Order No. R-511, Docket No. A-030852), § 480-75-999, filed 12/22/03, effective 1/22/04. Statutory Authority: RCW 80.01.040 and 80.04.160. 02-18-032 (Docket No. TO-000712, General Order No. R-500), § 480-75-999, filed 8/26/02, 9/26/02. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.310. 01-20-061 (Docket No. A-010827, General Order No. R-491), § 480-75-999, filed 9/28/01, effective 10/29/01.]

Chapter 480-80 WAC

UTILITIES GENERAL—TARIFFS, PRICE LISTS, AND CONTRACTS

WAC

480-80-010	Application of rules.
480-80-015	Exemptions from rules in chapter 480-80 WAC.
480-80-105	Tariff filing instructions.
480-80-121	Tariff changes with statutory notice.
480-80-122	Tariff changes with less than statutory notice.
480-80-126	Telecommunications promotional offering.
480-80-142	Special contracts for telecommunications companies not classified as competitive.
480-80-143	Special contracts for gas, electric, and water companies.
480-80-205	Effective date of price list filings.
480-80-241	Filing contracts for services classified as competitive.

WAC 480-80-010 Application of rules. (1) The rules in this chapter apply to any public service company that is subject to the jurisdiction of the commission as to rates and services under the provisions of Title 80 RCW.

(2) The tariffs, price lists, and contracts filed by public service companies must conform with these rules. If the commission accepts a tariff, price list, or contract that conflicts with these rules, the acceptance does not constitute a waiver of these rules unless the commission specifically approves the variation consistent with WAC 480-80-015 (Exemptions from rules in chapter 480-80 WAC). Tariffs, price lists, or contracts that conflict with these rules without approval are superseded by these rules.

(3) Any affected person may ask the commission to review the interpretation of these rules by a public service company or customer by posing an informal complaint under WAC 480-07-910 (Informal complaints), or by filing a formal complaint under WAC 480-07-370 (Pleadings—General).

(4) No deviation from these rules is permitted without written authorization by the commission. Violations will be subject to penalties as provided by law.

(5) Any tariff, price list, or contract on file and in effect or pending on the effective date of these rules is not required to be refiled to comply with these rules.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-80-010, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.180. 02-11-081 (Docket No. U-991301, General Order No. R-498), § 480-80-010, filed 5/14/02, effective 6/17/02. Statutory Authority: RCW 80.04.160 and

80.01.040. 01-09-002 (Docket No. U-991301, General Order No. R-481), § 480-80-010, filed 4/4/01, effective 5/5/01. Statutory Authority: RCW 80.01.040. 85-20-003 (Order R-238, Cause No. U-85-44), § 480-80-010, filed 9/19/85; Order R-5, § 480-80-010, filed 6/6/69, effective 10/9/69.]

WAC 480-80-015 Exemptions from rules in chapter 480-80 WAC. (1) The commission may grant an exemption from the provisions of any rule in this chapter, if consistent with the public interest, the purposes underlying regulation, and applicable statutes.

(2) To request a rule exemption, a person must file with the commission a written request identifying the rule for which an exemption is sought, giving a full explanation of the reason for requesting the exemption.

(3) The commission will assign the request a docket number, if it does not arise in an existing docket, and will schedule the request for consideration at one of its regularly scheduled open meetings or, if appropriate under chapter 34.05 RCW, in an adjudication. The commission will notify the person requesting the exemption, and other affected persons, of the date of the hearing or open meeting when the commission will consider the request.

(4) In determining whether to grant the request, the commission may consider whether application of the rule would impose undue hardship on the petitioner, of a degree or a kind different from hardship imposed on other similarly situated persons, and whether the effect of applying the rule would be contrary to the purposes of the rule.

(5) The commission will enter an order granting or denying the request or setting it for hearing, pursuant to chapter 480-07 WAC.

(6) Competitive telecommunications companies previously granted exemptions from chapter 480-80 WAC Utilities general—Tariffs, price lists, and contracts, are not exempt from Part I and Part III of this chapter. Exemptions from the provisions of chapter 480-80 WAC include only the provisions in effect at the time the exemption was granted. This subsection confirms that there is no change in exemptions previously granted to telecommunications companies that have been classified as competitive as a result of:

(a) Moving rules between chapters 480-80 and 480-120 WAC; and

(b) Renumbering sections within chapters 480-80 and 480-120 WAC.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-80-015, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.180. 02-11-081 (Docket No. U-991301, General Order No. R-498), § 480-80-015, filed 5/14/02, effective 6/17/02.]

WAC 480-80-105 Tariff filing instructions. (1) A tariff filing must:

(a) Comply with statutory notice requirements;

(b) Specify the requested effective date of the tariff sheet;

(c) Include an original and two copies of each tariff sheet unless it is filed electronically; and

(d) Be accompanied by a transmittal letter as set forth in WAC 480-80-104.

(2) Tariff filings must comply with the requirements set forth in chapter 480-07 WAC, where applicable.

(3) The tariff filing must include information sufficient to determine that the proposed tariff is fair, just, and reasonable.

(4) **Tariff symbols.** Each time a tariff sheet(s) is revised, a utility must code all changes with the tariff symbol that best reflects the purpose and effect of the change. A utility:

(a) Must locate the symbols on the right hand side of the changed text directly across from the change;

(b) Must use the following list of symbols to signify:

D - discontinued rate, service, regulation, or condition;

N - new rate, service, regulation, condition, or sheet;

I - a rate increase;

R - a rate reduction;

C - changed condition or regulation;

K - that material has been transferred **to** another sheet in the tariff. (A footnote is required on the tariff sheet to identify the material's new sheet number);

M - that material has been transferred **from** another sheet in the tariff. (A footnote is required on the tariff sheet to identify the material's former sheet number);

T - a change in text for clarification;

O - no change. (This symbol is discretionary unless specifically requested by the commission); and

(c) May use additional symbols for other purposes when it has identified the symbols in its tariff as provided for in WAC 480-80-102(3).

(5) A utility must not give effect to revised tariff sheets until the commission approves the tariff filing by issuing an order or the new or changed provisions become effective by operation of law.

(6) When a tariff sheet(s) becomes effective, the commission will return one copy of the transmittal letter and one copy of each tariff sheet to the utility marked with the receipt date.

(7) The commission may require a utility to refile the tariff in its entirety should circumstances warrant it.

(8) If the commission issues an order directing a utility to refile all or a portion of its tariff, the utility must refile, marking each affected sheet with the docket number.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-80-105, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.180. 02-11-081 (Docket No. U-991301, General Order No. R-498), § 480-80-105, filed 5/14/02, effective 6/17/02.]

WAC 480-80-121 Tariff changes with statutory notice. (1) The statutory notice periods for tariff changes are:

(a) The commission must receive tariff changes not less than thirty days in advance of the requested effective date as required by RCW 80.28.060 and 80.36.110 (1)(a);

(b) The commission must receive telecommunications tariff changes that reduce rates with no offsetting rate increases not less than ten days in advance of the requested effective date, as required by RCW 80.36.110 (2)(a). If a company makes a filing pursuant to this subsection, it may not file for an increase to any rate, charge, rental, or toll to recover the revenue deficit that results from the decrease for a period of one year.

(2) The statutory notice period begins on the date the commission receives the tariff filing, in accordance with WAC 480-80-031.

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[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.353. 03-22-046 (Docket No. A-030832, General Order No. R-509), § 480-80-121, filed 10/29/03, effective 11/29/03. Statutory Authority: RCW 80.01.040 and 80.04.180. 02-11-081 (Docket No. U-991301, General Order No. R-498), § 480-80-121, filed 5/14/02, effective 6/17/02.]

WAC 480-80-122 Tariff changes with less than statutory notice. (1) The commission may allow tariff changes to become effective with less than the statutory notice (LSN) period specified in WAC 480-80-121(1) when the utility provides good cause. A utility filing for LSN treatment may use an LSN form provided by the commission, or may submit a letter that includes the following:

(a) Utility information:

(i) Name and address of utility;

(ii) Telephone number, e-mail address, and fax number; and

(iii) Name of contact person for the filing.

(b) Tariff identification information:

(i) Number of the tariff being amended;

(ii) Title of the tariff item(s) being amended, if applicable; and

(iii) Number of the tariff sheet being amended.

(c) Concise description of the changes being proposed;

(d) Reason(s) for requesting LSN handling;

(e) Effective date requested; and

(f) If the utility does not include an authorizing signature on the tariff sheets, a statement certifying that the submitting person has authority to issue tariff changes on behalf of the utility.

(2) A utility requesting LSN must file tariff sheets with an effective date that reflects the required statutory notice period.

(3) If the LSN request is granted, the commission will issue an order directing that the tariff sheets be revised to reflect the authorized LSN effective date.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.353. 03-22-046 (Docket No. A-030832, General Order No. R-509), § 480-80-122, filed 10/29/03, effective 11/29/03. Statutory Authority: RCW 80.01.040 and 80.04.180. 02-11-081 (Docket No. U-991301, General Order No. R-498), § 480-80-122, filed 5/14/02, effective 6/17/02.]

WAC 480-80-126 Telecommunications promotional offering. (1) Any telecommunications tariff filing that makes a promotional offering becomes effective on the later of the effective date stated in the tariff or the date it is filed with the commission.

(2) For purposes of this section, a promotional offering is a telecommunications tariff that, for a period of up to ninety days, waives or reduces charges or conditions of service for existing or new subscribers for the purpose of retaining or increasing the number of customers who subscribe to or use a service.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.353. 03-22-046 (Docket No. A-030832, General Order No. R-509), § 480-80-126, filed 10/29/03, effective 11/29/03.]

WAC 480-80-142 Special contracts for telecommunications companies not classified as competitive. (1) Contracts to be filed. Telecommunications companies not classified as competitive must file with the commission:

(a) All contracts for retail sale to end-use customers of intrastate telecommunications services not classified as competitive that:

(i) State rates, charges, prices, terms, or conditions that are not consistent with any existing tariff; or

(ii) Provide for telecommunications services not specifically addressed in the existing tariffs.

(b) Any significant modification of a previously executed contract will be treated as a new contract.

(c) A service order made pursuant to a filed contract is not itself a contract or contract amendment and need not be filed with the commission.

(2) Duration. All contracts must be for a stated time period.

(3) Ratemaking disclaimer. Unless otherwise provided by the commission, approval of contracts will not be determinative with respect to the expenses and revenues of the company for subsequent ratemaking considerations.

(4) Types of telecommunications contracts. The following types of telecommunications contracts have special or unique features, effective dates, and requirements:

(a) Federal, state, and local government "firm bid" contracts are governed under subsection (5) of this section.

(b) School, library, and rural health care (RHC) provider contracts entered into pursuant to 47 CFR, Part 54, are governed under subsection (6) of this section.

(c) All other retail contracts are governed under subsection (7) of this section.

SUMMARY COMPARISON OF THE DIFFERENT TYPES OF RETAIL CONTRACTS			
Subsection	Contract Type	When to File	Effective Date
(5)	Federal, State, and Local Firm Bid	no later than fifteen days after acceptance	when filed or later as specified
(6)	47 CFR Part 54; Schools, Libraries, and RHCs	no later than fifteen days after acceptance	when filed or later as specified
(7)	All other retail contracts	no later than thirty days prior to the proposed effective date	at least thirty days after filing

(5) Federal, state, and local government "firm bid" contracts - filing requirements and effective dates. Where a government agency asserts its authority to solicit a firm offer of services, and a contract subject to this section is submitted in response to that solicitation, the noncompetitive telecommunications company must file the contract with the commission no later than fifteen days after acceptance. The filing must include the same documentation as required for approval by subsection (7)(b) of this section and, if applicable, subsection (8) of this section. The contract will become effective at the time specified in the contract, but not earlier than when filed with the commission.

(6) School, library, and RHC provider contracts - filing requirements and effective dates. A telecommunications company that enters into a contract to provide service to a school, library, or RHC provider, as part of the federal universal service program, must file the contract with the commission no later than fifteen days after acceptance by the administrator of the federal universal service program. The filing must include the same documentation as required for approval by subsection (7)(b) of this section and, if applica-

ble, subsection (8) of this section. The contract will become effective at the time specified in the contract, but not earlier than when filed with the commission.

(7) All other retail contracts - standard filing requirements and effective dates.

(a) Contracts must be filed with the commission not less than thirty days before the proposed effective date of the contract.

(b) Each application filed for commission approval of a contract must:

(i) Include a complete copy of the proposed contract;

(ii) Show that the contract meets the requirements of RCW 80.36.170 (Prohibiting unreasonable preference) and RCW 80.36.180 (Prohibiting rate discrimination);

(iii) Demonstrate, at a minimum, that the contract charges cover the company's cost of providing the service. Costs will be determined under a long-run incremental cost analysis, including as part of the incremental cost, the price charged by the offering company to other telecommunications companies for any essential function used to provide the service, or any other commission-approved cost method.

(iv) Summarize the basis of the charge(s) proposed in the contract and explain the derivation of the proposed charge(s) including all cost computations involved; and

(v) Indicate the basis for using a contract rather than a filed tariff for the specific service involved.

(c) Contracts will become effective on the effective date stated on the contract or thirty days after the filing date, whichever occurs later, unless suspended or rejected by the commission. The commission may approve an earlier effective date if requested by the company, in which event the contract shall not become effective on a date that precedes commission approval. A request for an earlier effective date must include a complete explanation of why an earlier effective date is appropriate.

(8) Confidentiality. Filings under this section may be submitted with portions designated "confidential" pursuant to WAC 480-07-160. However, any filing that designates as "confidential" the essential terms and conditions will be rejected by the commission as not in compliance with the public inspection requirement of RCW 80.36.150(1). Essential terms and conditions are:

(a) Nature, characteristics, and quantity of the service provided;

(b) Duration of the contract, including the stated effective date, ending date, and any options to renew;

(c) Charge(s) for service, including minimum charge provisions; and

(d) Geographic location(s), such as exchange or city, where service will be provided.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-80-142, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.180. 02-11-081 (Docket No. U-991301, General Order No. R-498), § 480-80-142, filed 5/14/02, effective 6/17/02.]

WAC 480-80-143 Special contracts for gas, electric, and water companies. (1) Contracts to be filed. Gas, electric, and water companies must file with the commission all contracts for the retail sale of regulated utility services to end-use customers that:

(a) State charges or conditions that do not conform to the company's existing tariff; or

(b) Provide for utility services not specifically addressed in the gas, electric, or water company's existing tariffs.

(2) Any significant modification of a previously executed contract will be treated as a new contract for purposes of this section.

(3) Essential terms and conditions of all contracts filed pursuant to this section are considered a part of the gas, electric, or water company's filed tariffs and are subject to enforcement, supervision, regulation, control, and public inspection as such.

(4) Filing and effective dates. The contract will become effective on the effective date stated in the contract or thirty days after the filing date, whichever occurs later, unless suspended or rejected by the commission. The commission may approve an earlier effective date if requested by the company, in which event the contract shall not become effective on a date that precedes commission approval. A request for an earlier effective date must include a complete explanation of why an earlier effective date is appropriate.

(5) Each application filed for commission approval of a contract must:

(a) Include a complete copy of the proposed contract;

(b) Show that the contract meets the requirements of RCW 80.28.090 (Prohibiting unreasonable preference) and RCW 80.28.100 (Prohibiting rate discrimination);

(c) Demonstrate, at a minimum, that the contract charges recover all costs resulting from providing the service during its term, and, in addition, provide a contribution to the gas, electric, or water company's fixed costs;

(d) Summarize the basis of the charge(s) proposed in the contract and explain the derivation of the proposed charge(s) including all cost computations involved; and

(e) Indicate the basis for using a contract rather than a filed tariff for the specific service involved. If the basis for using a contract is the availability of an alternative service provider, identify that provider.

(6) All contracts must be for a stated time period, except for contracts for water line extensions. The commission may approve terms and conditions that prescribe the charge(s) to be applied during the time period, if such charge(s) are found to be appropriate. Unless otherwise provided by the commission, such approval will not be determinative with respect to the expenses and revenues of the utility for subsequent rate-making considerations.

(7) Filings under this section may be submitted with portions designated "confidential" pursuant to WAC 480-07-160. However, any filing that designates the essential terms and conditions of the contract as "confidential" shall be rejected by the commission as not in compliance with the public inspection requirement of RCW 80.28.050. Essential terms and conditions are:

(a) Identity of the customer;

(b) Nature and characteristics of the service provided, including interruptible, firm, or peak delivery;

(c) Duration of the contract, including any options to renew;

(d) Charge(s) for service, including minimum charge provisions;

(e) Geographic location where service will be provided; and

(f) Additional obligations specified in the contract, if any.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-80-143, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.180. 02-11-081 (Docket No. U-991301, General Order No. R-498), § 480-80-143, filed 5/14/02, effective 6/17/02.]

WAC 480-80-205 Effective date of price list filings.

(1) Any price list filing that has the effect of changing the rates or charges paid by customers becomes effective on the later of:

(a) The effective date stated in the price list;

(b) Ten days after it is filed with the commission, as required by RCW 80.36.110 (1)(b); or

(c) Ten days after any existing customers are provided actual notice of the change in accordance with WAC 480-120-196.

(2)(a) Any price list filing that introduces a service not previously in the company's price list, or that makes changes not affecting the rates or charges paid by customers, or that makes a promotional offering, becomes effective on the later of the effective date stated in the price list or the date it is filed with the commission.

(b) For purposes of this section, a promotional offering is a telecommunications price list that, for a period of up to ninety days, waives or reduces charges or conditions of service for existing or new subscribers for the purpose of retaining or increasing the number of customers who subscribe to or use a service.

(3) This section does not apply to the filing of initial price lists as a part of an application for registration and competitive classification under chapter 480-121 WAC.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.353. 03-22-046 (Docket No. A-030832, General Order No. R-509), § 480-80-205, filed 10/29/03, effective 11/29/03. Statutory Authority: RCW 80.01.040 and 80.04.180. 02-11-081 (Docket No. U-991301, General Order No. R-498), § 480-80-205, filed 5/14/02, effective 6/17/02.]

WAC 480-80-241 Filing contracts for services classified as competitive.

(1) This section applies to services offered by competitive telecommunications companies and to any service classified as competitive under RCW 80.36.-330. However, if a telecommunications company has elected, pursuant to WAC 480-80-201(2), to offer a competitive service by tariff, the contract rules in WAC 480-80-142 applicable to tariffed services apply instead.

(2) A telecommunications company must file with the commission any contract with an end-user for retail intrastate telecommunications service if the service is not included in its price list or the contract contains prices, terms, or conditions other than those in its price list. A telecommunications company is not required to file a contract with prices below the maximum prices in the price list, as provided for in WAC 480-80-204(3), or within the maximum and minimum prices in the price list, as provided for in WAC 480-80-204(4), if the contract is otherwise consistent with the price list.

(3) Any significant modification to a previously executed contract is a new contract and must be filed as required by this section.

(4) Unless the contract includes a provision allowing the commission to reject it during the first fifteen days after it is filed, any contract required by subsection (2) of this section to be filed with the commission will become effective on the later of (a) its stated effective date or (b) ten days after it is filed with the commission. The deadline for filing a contract that provides for commission rejection within fifteen days of filing is fifteen days after its stated effective date.

(5) A telecommunications company may submit filings under this section with portions designated "confidential" pursuant to WAC 480-07-160. However, the commission will reject any filing that designates as "confidential" the essential terms and conditions of a contract as defined in WAC 480-80-142(8).

(6) A telecommunications company filing a contract for a service classified as competitive under RCW 80.36.330 must provide information demonstrating that the contract prices comply with the cost requirement in WAC 480-80-204(6).

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-80-241, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040 and 80.04.180. 02-11-081 (Docket No. U-991301, General Order No. R-498), § 480-80-241, filed 5/14/02, effective 6/17/02.]

Chapter 480-90 WAC

GAS COMPANIES—OPERATIONS

WAC

480-90-003	Application of rules.
480-90-008	Exemptions from rules in chapter 480-90 WAC.
480-90-123	Refusal of service.
480-90-153	Disclosure of private information.
480-90-173	Gas utility's responsibility for complaints and disputes.
480-90-999	Adoption by reference.

WAC 480-90-003 Application of rules. (1) The rules in this chapter apply to any gas utility that is subject to the jurisdiction of the commission under RCW 80.04.010 and chapter 80.28 RCW. These rules also include various requirements of the utility's customers and applicants.

(2) The tariff provisions filed by utilities must conform with these rules. If the commission accepts a tariff that conflicts with these rules, the acceptance does not constitute a waiver of these rules unless the commission specifically approves the variation consistent with WAC 480-90-008, Exemption from rules in chapter 480-90 WAC. Tariffs that conflict with these rules without approval are superseded by these rules.

(3) Any affected person may ask the commission to review the interpretation of these rules by a utility or customer by posing an informal complaint under WAC 480-07-910, Informal complaints, or by filing a formal complaint under WAC 480-07-370, Pleadings and briefs—Application for authority—Protests.

(4) No deviation from these rules is permitted without written authorization by the commission. Violations will be subject to penalties as provided by law.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-90-003, filed 11/24/03, effective 1/1/04; 01-11-003 (Docket No. UG-990294, General Order No. R-484), § 480-90-003, filed 5/3/01, effective 6/3/01.]

WAC 480-90-008 Exemptions from rules in chapter 480-90 WAC. (1) The commission may grant an exemption from the provisions of any rule in this chapter if consistent with the public interest, the purposes underlying regulation, and applicable statutes.

(2) To request a rule exemption, a person must file with the commission a written request identifying the rule for which an exemption is sought, giving a full explanation of the reason for requesting the exemption.

(3) The commission will assign the request a docket number, if it does not arise in an existing docket, and will schedule the request for consideration at one of its regularly scheduled open meetings or, if appropriate under chapter 34.05 RCW, in an adjudication. The commission will notify the person requesting the exemption, and other interested persons, of the date of the hearing or open meeting when the commission will consider the request.

(4) In determining whether to grant the request, the commission may consider whether application of the rule would impose undue hardship on the petitioner, of a degree or a kind different from hardship imposed on other similarly situated persons, and whether the effect of applying the rule would be contrary to the purposes of the rule.

(5) The commission will enter an order granting or denying the request or setting it for hearing, pursuant to chapter 480-07 WAC.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-90-008, filed 11/24/03, effective 1/1/04; 01-11-003 (Docket No. UG-990294, General Order No. R-484), § 480-90-008, filed 5/3/01, effective 6/3/01.]

WAC 480-90-123 Refusal of service. (1) A gas utility may refuse to provide new or additional service if:

(a) Providing service does not comply with government regulations or accepted natural gas industry standards;

(b) In the utility's reasonable judgment, the applicant's or customer's installation of piping or gas burning equipment is considered hazardous or of such a nature that safe and satisfactory service cannot be provided;

(c) The applicant or customer does not comply with the utility's request that the applicant or customer provide and install protective devices, when the utility, in its reasonable judgment deems such protective devices are necessary to protect the utility's or other customers' properties from theft or damage;

(d) After reasonable efforts by the responsible party, all necessary rights of way, easements, approvals, and permits have not been secured; or

(e) The customer is known by the utility to have tampered with or stolen the utility's property, used service through an illegal connection, or fraudulently obtained service and the utility has complied with WAC 480-90-128(2), disconnection of service.

(2) A gas utility may not refuse to provide new or additional service to a residential applicant or residential customer who has a prior obligation. A prior obligation is the dollar amount, excluding deposit amounts owed, the utility has billed to the customer and for which the utility has not received payment at the time the service has been disconnected for nonpayment. The utility must provide service once the customer or applicant has paid all appropriate deposit and

reconnection fees. This subsection does not apply to customers that have been disconnected for failure to honor the terms of a winter low-income payment program.

(3) The utility may not refuse to provide service to an applicant or customer because there are outstanding amounts due from a prior customer at the same premises, unless the utility can determine, based on objective evidence, that a fraudulent act is being committed, such that the applicant or customer is acting in cooperation with the prior customer with the intent to avoid payment.

(4) The utility may refuse to provide new or additional service for reasons not expressed in subsection (1) of this section, upon prior approval of the commission. The commission may grant the request upon determining that the utility has no obligation to provide the requested service under RCW 80.28.110. Prior to seeking commission approval, the utility must work with the applicant or customer requesting service to seek resolution of the issues involved.

(5) Any applicant or customer who has been refused new or additional service may file with the commission an informal complaint under WAC 480-07-910, Informal complaints; or a formal complaint under WAC 480-07-370, Pleadings—General.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-90-123, filed 11/24/03, effective 1/1/04; 01-24-077 (General Order No. R-496, Docket No. UG-990294), § 480-90-123, filed 12/3/01, effective 1/3/02.]

WAC 480-90-153 Disclosure of private information.

(1) A gas utility may not disclose or sell private consumer information with or to its affiliates, subsidiaries, or any other third party for the purposes of marketing services or product offerings to a customer who does not already subscribe to that service or product, unless the utility has first obtained the customer's written permission to do so.

(2) Private consumer information includes the customer's name, address, telephone number, and any other personally identifying information, as well as information related to the quantity, technical configuration, type, destination, and amount of use of service or products subscribed to by a customer of a regulated utility that is available to the utility solely by virtue of the customer-utility relationship.

(3) This section does not prevent disclosure of the essential terms and conditions of special contracts as provided for in WAC 480-80-143 (Special contracts for gas, electric, and water companies).

(4) This section does not prevent the utility from inserting any marketing information into the customer's billing package.

(5) The utility may collect and release customer information in aggregate form if the aggregated information does not allow any specific customer to be identified.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.353. 03-22-046 (Docket No. A-030832, General Order No. R-509), § 480-90-153, filed 10/29/03, effective 11/29/03. Statutory Authority: RCW 80.01.040 and 80.04.160. 01-20-059 (Docket No. UG-990294, General Order No. R-488), § 480-90-153, filed 9/28/01, effective 10/29/01.]

WAC 480-90-173 Gas utility's responsibility for complaints and disputes. (1) When a gas utility receives a complaint from a customer or an applicant for service, the utility must acknowledge receipt of the complaint and:

(a) Upon request, identify the utility's contact to the complainant;

(b) Investigate the complaint promptly as required by the particular case;

(c) Report the results of the investigation to the complainant;

(d) Take corrective action, if warranted, as soon as possible under the circumstances;

(e) If the complainant is dissatisfied with the results or decision, inform the complainant that the decision may be appealed to a supervisor at the utility; and

(f) If the complainant is dissatisfied after speaking with the utility's supervisor, the supervisor must inform the complainant of the complainant's right to file a complaint with the commission and provide the commission's address and toll-free telephone number.

(2) Applicants, customers, or their representatives may file with the commission:

(a) An informal complaint as described in WAC 480-07-910, Informal complaints; or

(b) A formal complaint against the utility as described in WAC 480-07-370, Pleadings—General.

(3) When the commission refers an informal complaint to the utility, the utility must:

(a) Investigate and report the results to the commission within two business days. The commission may grant an extension of time for responding to the complaint, if requested and warranted;

(b) Keep the commission informed of progress toward the solution and the final result; and

(c) Respond to the commission's request for additional informal complaint information within three business days of the request or at a date specified by the commission. The commission may grant an extension of time for responding to the complaint, if requested and warranted.

(4) Each gas utility must keep a record of all complaints for at least three years and, upon request, make them readily available for commission review. The record must contain:

(a) The complainant's name and address;

(b) The date and nature of the complaint;

(c) The action taken;

(d) The final result; and

(e) All official documents regarding the complaint.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-90-173, filed 11/24/03, effective 1/1/04; 01-11-003 (Docket No. UG-990294, General Order No. R-484), § 480-90-173, filed 5/3/01, effective 6/3/01.]

WAC 480-90-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective date, references within this chapter, and availability of the resources are as follows:

(1) Title 18 Code of Federal Regulations, cited as 18 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on April 1, 2003.

(b) This publication is referenced in WAC 480-90-203 (Accounting system requirements) and WAC 480-90-208 (Financial reporting requirements).

(c) Copies of 18 CFR are available from the U.S. Government Printing Office in Pittsburgh, Pennsylvania.

(2) The *Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies* is published by the National Association of Regulatory Utility Commissioners (NARUC).

(a) The commission adopts the version in effect in 1985.

(b) This publication is referenced in WAC 480-90-228 (Retention and preservation of records and reports).

(c) The *Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies* is a copyrighted document. Copies are available from NARUC, in Washington, D.C.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 04-01-152 (General Order No. R-511, Docket No. A-030852), § 480-90-999, filed 12/22/03, effective 1/22/04; 02-18-033 (Docket No. A-020379, General Order No. R-501), § 480-90-999, filed 8/26/02, effective 9/26/02. Statutory Authority: RCW 80.01.040 and 80.04.160. 01-11-003 (Docket No. UG-990294, General Order No. R-484), § 480-90-999, filed 5/3/01, effective 6/3/01.]

Chapter 480-92 WAC

LOW-LEVEL RADIOACTIVE WASTE

WAC

480-92-060 Minimum filing requirements.
480-92-090 Site operator responsibility for complaints and disputes.

WAC 480-92-060 Minimum filing requirements. (1)

When a site operator files for a general rate increase, it must follow the minimum filing requirements set forth in WAC 480-07-520.

(2) A site operator filing a request with the commission for a general rate increase must concurrently notify all generators who have disposed of low-level radioactive waste in the three years prior to the request for the proposed rate increases or service changes. The notice must include at minimum; a clear, brief explanation the generators can easily understand of the proposed rates, conditions and changes; the requested effective date; the commission's address, with a statement that generators may obtain more detailed information by writing to the commission; and a phone number for generators to call a company representative if they have questions.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-92-060, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040. 99-05-016 (Order R-458, Docket No. UR-980080), § 480-92-060, filed 2/5/99, effective 3/8/99. Statutory Authority: RCW 80.01.040 and 1991 c 272. 92-03-050 (Order R-366, Docket No. T-910676), § 480-92-060, filed 1/10/92, effective 2/10/92.]

WAC 480-92-090 Site operator responsibility for complaints and disputes. (1) If a site operator receives complaints or disputes regarding its operations, it must:

- (a) Acknowledge the complaint;
- (b) Investigate promptly;
- (c) Report the results of the investigation to the complainant;
- (d) Take corrective action, if warranted, as soon as appropriate under the circumstances;

(e) Tell the complainant the decision may be appealed to a higher level representative of the company, if any;

(f) Tell the complainant, if still dissatisfied after speaking with the higher level representative, of the commission's availability to review the complaint; and

(g) Provide the complainant with the commission's address and toll-free telephone number.

(2) Complainants may file with the commission:

(a) An informal complaint against a site operator as set forth in WAC 480-07-910; and/or

(b) A formal complaint against a site operator as set forth in RCW 81.108.080 and chapter 480-07 WAC.

(3) When commission staff refers an informal complaint to a site operator, the operator must:

(a) Investigate and respond to commission staff within two working days. Commission staff may grant an extension of time for responding to the complaint, if requested, and warranted; and

(b) Report regularly to commission staff about progress toward the solution and the final result.

(4) A site operator must keep a record of all complaints concerning service or rates for at least one year and, on request, make them readily available for commission review. The record must contain:

- (a) The complainant's name and address;
- (b) The date and nature of the complaint;
- (c) The action taken; and
- (d) The final result.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-92-090, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040. 99-05-016 (Order R-458, Docket No. UR-980080), § 480-92-090, filed 2/5/99, effective 3/8/99. Statutory Authority: RCW 80.01.040 and 1991 c 272. 92-03-050 (Order R-366, Docket No. T-910676), § 480-92-090, filed 1/10/92, effective 2/10/92.]

Chapter 480-100 WAC

ELECTRIC COMPANIES

WAC

480-100-003 Application of rules.
480-100-008 Exemptions from rules in chapter 480-100 WAC.
480-100-123 Refusal of service.
480-100-153 Disclosure of private information.
480-100-173 Electric utility responsibility for complaints and disputes.
480-100-999 Adoption by reference.

WAC 480-100-003 Application of rules. (1) The rules in this chapter apply to any electric utility that is subject to the jurisdiction of the commission under RCW 80.04.010 and chapter 80.28 RCW. These rules also include various requirements of the utility's customers and applicants.

(2) The tariff provisions filed by utilities must conform with these rules. If the commission accepts a tariff that conflicts with these rules, the acceptance does not constitute a waiver of these rules unless the commission specifically approves the variation consistent with WAC 480-100-008, Exemptions from rules in chapter 480-100 WAC. Tariffs that conflict with these rules without approval are superseded by these rules.

(3) Any affected person may ask the commission to review the interpretation of these rules by a utility or customer by posing an informal complaint under WAC 480-07-

910, Informal complaints, or by filing a formal complaint under WAC 480-07-370, Pleading and briefs—Application for authority—Protests.

(4) No deviation from these rules is permitted without written authorization by the commission. Violation will be subject to penalties as provided by law.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-100-003, filed 11/24/03, effective 1/1/04; 01-11-004 (Docket No. UE-990473, General Order No. R-482), § 480-100-003, filed 5/3/01, effective 6/3/01.]

WAC 480-100-008 Exemptions from rules in chapter 480-100 WAC. (1) The commission may grant an exemption from the provisions of any rule in this chapter, if consistent with the public interest, the purposes underlying regulation, and applicable statutes.

(2) To request a rule exemption, a person must file with the commission a written request identifying the rule for which an exemption is sought, giving a full explanation of the reason for requesting the exemption.

(3) The commission will assign the request a docket number, if it does not arise in an existing docket, and will schedule the request for consideration at one of its regularly scheduled open meetings or, if appropriate under chapter 34.05 RCW, in an adjudication. The commission will notify the person requesting the exemption, and other interested persons, of the date of the hearing or open meeting when the commission will consider the request.

(4) In determining whether to grant the request, the commission may consider whether application of the rule would impose undue hardship on the petitioner, of a degree or a kind different from hardships imposed on other similarly situated persons, and whether the effect of applying the rule would be contrary to the purposes of the rule.

(5) The commission will enter an order granting or denying the request, or setting it for hearing, pursuant to chapter 480-07 WAC.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-100-008, filed 11/24/03, effective 1/1/04; 01-11-004 (Docket No. UE-990473, General Order No. R-482), § 480-100-008, filed 5/3/01, effective 6/3/01.]

WAC 480-100-123 Refusal of service. (1) An electric utility may refuse requests to provide service to a master meter in a building with permanent occupants when all of the following conditions exist:

(a) The building or property has more than one dwelling unit;

(b) The occupants control a significant part of the electricity used in the individual units; and

(c) It is cost-effective for the occupants to have the utility purchase and install individual meters considering the long-run benefits of measuring and billing each occupant's electric use separately.

(2) The utility may refuse to provide new or additional service if:

(a) Providing service does not comply with government regulations or the electric industry accepted standards concerning the provision of service;

(b) In the utility's reasonable judgment, the applicant's or customer's installation of wiring or electrical equipment is

considered hazardous or of such a nature that safe and satisfactory service cannot be provided;

(c) The applicant or customer does not comply with the utility's request that the applicant or customer provide and install protective devices, when the utility, in its reasonable judgment deems such protective devices are necessary to protect the utility's or other customers' properties from theft or damage;

(d) After reasonable efforts by the responsible party, all necessary rights of way, easements, approvals, and permits have not been secured; or

(e) The customer is known by the utility to have tampered with or stolen the utility's property, used service through an illegal connection, or fraudulently obtained service and the utility has complied with WAC 480-100-128(2), disconnection of service.

(3) An electric utility may not refuse to provide new or additional service to a residential applicant or residential customer who has a prior obligation. A prior obligation is the dollar amount, excluding deposit amounts owed, the utility has billed to the customer and for which the utility has not received payment at the time the service has been disconnected for nonpayment. The utility must provide service once the customer or applicant has paid all appropriate deposit and reconnection fees. This subsection does not apply to customers that have been disconnected for failure to honor the terms of a winter low-income payment program.

(4) The utility may not refuse to provide service to an applicant or customer because there are outstanding amounts due from a prior customer at the same premises, unless the utility can determine, based on objective evidence, that a fraudulent act is being committed, such that the applicant or customer is acting in cooperation with the prior customer with the intent to avoid payment.

(5) The utility may refuse to provide new or additional service for reasons not expressed in subsections (1) and (2) of this section, upon prior approval of the commission. The commission may grant the request upon determining that the utility has no obligation to provide the requested service under RCW 80.28.110. Prior to seeking commission approval, the utility must work with the applicant or customer requesting service to seek resolution of the issues involved.

(6) Any applicant or customer who has been refused new or additional service may file with the commission an informal complaint under WAC 480-07-910, Informal complaints; or a formal complaint under WAC 480-07-370, Pleadings—General.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-100-123, filed 11/24/03, effective 1/1/04; 01-24-076 (General Order No. R-495, Docket No. UE-990473), § 480-100-123, filed 12/3/01, effective 1/3/02.]

WAC 480-100-153 Disclosure of private information.

(1) An electric utility may not disclose or sell private consumer information with or to its affiliates, subsidiaries, or any other third party for the purposes of marketing services or product offerings to a customer who does not already subscribe to that service or product, unless the utility has first obtained the customer's written permission to do so.

(2) Private consumer information includes the customer's name, address, telephone number, and any other per-

sonally identifying information, as well as information related to the quantity, technical configuration, type, destination, and amount of use of service or products subscribed to by a customer of a regulated utility that is available to the utility solely by virtue of the customer-utility relationship.

(3) This section does not prevent disclosure of the essential terms and conditions of special contracts as provided for in WAC 480-80-143 (Special contracts for gas, electric, and water companies).

(4) This section does not prevent the utility from inserting any marketing information into the customer's billing package.

(5) The utility may collect and release customer information in aggregate form if the aggregated information does not allow any specific customer to be identified.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.353. 03-22-046 (Docket No. A-030832, General Order No. R-509), § 480-100-153, filed 10/29/03, effective 11/29/03. Statutory Authority: RCW 80.01.040 and 80.04.160. 01-20-060 (Docket No. UE-990473, General Order No. R-489), § 480-100-153, filed 9/28/01, effective 10/29/01.]

WAC 480-100-173 Electric utility responsibility for complaints and disputes. (1) When an electric utility receives a complaint from a customer or an applicant for service, the utility must acknowledge receipt of the complaint and:

- (a) Upon request, identify the utility's contact to the complainant;
- (b) Investigate the complaint promptly as required by the particular case;
- (c) Report the results of the investigation to the complainant;
- (d) Take corrective action, if warranted, as soon as possible under the circumstances;
- (e) If the complainant is dissatisfied with the results or decision, inform the complainant that the decision may be appealed to a supervisor at the utility; and
- (f) If the complainant is dissatisfied after speaking with the utility's supervisor, the supervisor must inform the complainant of the complainant's right to file a complaint with the commission and provide the commission's address and toll-free telephone number.

(2) Applicants, customers, or their representatives may file with the commission:

- (a) An informal complaint as described in WAC 480-07-910, Informal complaints; or
- (b) A formal complaint against the utility as described in WAC 480-07-370, Pleadings—General.

(3) When the commission refers an informal complaint to the utility, the utility must:

- (a) Investigate and report the results to the commission within two business days. The commission may grant an extension of time for responding to the complaint, if requested and warranted;
- (b) Keep the commission informed of progress toward the solution and the final result; and
- (c) Respond to the commission's request for additional informal complaint information within three business days of the request or at a date specified by the commission. The commission may grant an extension of time for responding to the complaint, if requested and warranted.

(4) Each electric utility must keep a record of all complaints for at least three years and, upon request, make them readily available for commission review. The record must contain:

- (a) The complainant's name and address;
- (b) The date and nature of the complaint;
- (c) The action taken;
- (d) The final result; and
- (e) All official documents regarding the complaint.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-100-173, filed 11/24/03, effective 1/1/04; 01-11-004 (Docket No. UE-990473, General Order No. R-482), § 480-100-173, filed 5/3/01, effective 6/3/01.]

WAC 480-100-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective date, references within this chapter, and availability of the resources are as follows:

(1) Title 18 Code of Federal Regulations, cited as 18 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on April 1, 2003.

(b) This publication is referenced in WAC 480-100-203 (Accounting system requirements) and WAC 480-100-208 (Financial reporting requirements).

(c) Copies of 18 CFR are available from the U.S. Government Printing Office in Pittsburgh, Pennsylvania.

(2) The *Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies* is published by the National Association of Regulatory Utility Commissioners (NARUC).

(a) The commission adopts the version in effect in 1985.

(b) This publication is referenced in WAC 480-100-228 (Retention and preservation of records and reports).

(c) The *Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies* is a copyrighted document. Copies are available from NARUC in Washington, D.C.

(3) The National Electrical Code is published by the National Fire Protection Association (NFPA).

(a) The commission adopts the version published in 2002.

(b) This publication is referenced in WAC 480-100-163 (Service entrance facilities).

(c) The National Electrical Code is a copyrighted document. Copies are available from the NFPA in Quincy, Massachusetts.

(4) The American National Standard for Electric Meters: Code for Electricity Metering, ANSI C12.1 is published by the American National Standards Institute.

(a) The commission adopts the version published in 2001.

(b) This publication is referenced in WAC 480-100-318 (Meter readings, multipliers, and test constants), WAC 480-100-338 (Accuracy requirements for electric meters), and WAC 480-100-343 (Statement of meter test procedures).

(c) The ANSI C12.1 is a copyrighted document. Copies are available from Global Engineering Documents in Englewood, Colorado.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 04-01-152 (General Order No. R-511, Docket No. A-030852), § 480-100-999, filed 12/22/03, effective 1/22/04; 02-18-033 (Docket No. A-020379, General Order No. R-501), § 480-100-999, filed 8/26/02, effective 9/26/02. Statutory Authority: RCW 80.01.040 and 80.04.160. 01-11-004 (Docket No. UE-990473, General Order No. R-482), § 480-100-999, filed 5/3/01, effective 6/3/01.]

Chapter 480-107 WAC

ELECTRIC COMPANIES—PURCHASES OF ELECTRICITY FROM QUALIFYING FACILITIES AND INDEPENDENT POWER PRODUCERS AND PURCHASES OF ELECTRICAL SAVINGS FROM CONSERVATION SUPPLIERS

WAC

480-107-001	Purpose and scope.
480-107-005	Definitions.

WAC 480-107-001 Purpose and scope. (1) The purpose of this chapter is to establish rules for determining rates, terms, and conditions governing the following purchases by electric utilities: Electricity from qualifying facilities; the electrical savings associated with eligible conservation measures pursuant to these rules; electricity from independent power producers; and, at the utility's election, utility subsidiaries, and other electric utilities. These rules are intended to provide an opportunity for conservation and generating resources to compete on a fair and reasonable basis to fulfill a utility's new resource needs. It is the commission's intent that bids under these rules shall include the costs of compliance by the project with environmental laws, rules, and regulations in effect at the time of the bid and those reasonably anticipated to be in effect during the term of the project.

These rules are consistent with the provisions of the Public Utility Regulatory Policies Act of 1978 (PURPA), Title II, sections 201 and 210, and regulations promulgated by the Federal Energy Regulatory Commission (FERC) in 18 C.F.R. Part 292. Purchase of electric power under these rules shall satisfy an electric utility's obligation to purchase power from qualifying facilities under section 210 of PURPA.

These rules do not preclude electric utilities from constructing electric resources, operating conservation programs, purchasing power through negotiated purchase contracts, or otherwise taking action to satisfy their public service obligations. Information about the price and availability of electric power obtained through the bidding procedures described in these rules may be used, in conjunction with other evidence, in general rate cases and other cost recovery proceedings pertaining to resources not acquired through these bidding procedures.

(2) The provisions of this chapter shall apply to any electric utility which has submitted to the commission a least-cost plan as provided in WAC 480-100-238 (Least cost planning).

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.353. 03-22-046 (Docket No. A-030832, General Order No. R-509), § 480-107-001, filed 10/29/03, effective 11/29/03. Statutory Authority: RCW 80.01.040 and 80.04.160. 89-15-043 (Order R-304, Docket No. U-89-2814-R), § 480-107-001, filed 7/18/89.]

WAC 480-107-005 Definitions. "Avoided costs" means the incremental costs to an electric utility of electric energy or capacity or both which, but for purchases to be made pursuant to these rules, the utility would generate itself or purchase from another source.

"Back-up power" means electric energy or capacity supplied by an electric utility to replace energy ordinarily generated by a generating facility's own generation equipment during an unscheduled outage of the facility.

"Commission" means the Washington utilities and transportation commission.

"Conservation measures" means electric energy efficiency improvements to buildings or energy using equipment and processes.

"Economic dispatch" means, within contractually specified limits, modifying the timing of power purchases from a generating facility so as to minimize the costs of delivering electricity.

"Electric utility" means any public service company as defined by RCW 80.04.010 engaged in the generation, distribution, sale, or furnishing of electricity and which is subject to the jurisdiction of the commission.

"Eligible conservation suppliers" means electric utility customers, or third party conservation contractors installing energy efficiency measures as described in these rules.

"Generating facilities" means plant and other equipment employed for the purposes of generating electricity purchased through contracts entered into under these rules.

"Independent power producers" means generating facilities or portions thereof that are not recognized in the retail rates of any electric utility and that are not qualifying facilities as defined below.

"Interruptible power" means electric energy or capacity supplied by an electric utility to a generating facility subject to interruption by the electric utility under certain specified conditions.

"Least cost plan" means the filing made every two years by an electric utility in accordance with WAC 480-100-238 (Least cost planning).

"Maintenance power" means electric energy or capacity supplied by an electric utility during scheduled outages of a generating facility.

"Project developer" means an individual, association, corporation, or other legal entity potentially entering into a power or conservation savings contract with the utility.

"Project proposal" means a project developer's document containing a description of the project and other information responsive to the requirements set forth in the RFP.

"Prototype contract" means standardized terms and conditions that govern specific electric power or electrical savings purchases by electric utilities. Prototype contracts may be structured to accommodate terms and conditions specific to individual projects, subject to the conditions set forth in these rules.

"Qualifying facilities" are generating facilities that meet the criteria specified by the FERC in 18 C.F.R. Part 292 Subpart B.

"Request for proposals" (RFP) means the document describing an electric utility's solicitation of bids for the delivery of power or electrical savings.

"Supplementary power" means electric energy or capacity supplied by an electric utility, regularly used by a generating facility in addition to that which the facility generates itself.

"Utility subsidiary" means a legal entity, other than a qualifying facility, which is owned, in whole or in part, by an electric utility, and which may enter a power or conservation savings contract with that electric utility.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.353. 03-22-046 (Docket No. A-030832, General Order No. R-509), § 480-107-005, filed 10/29/03, effective 11/29/03. Statutory Authority: RCW 80.01.040 and 80.04.160. 89-15-043 (Order R-304, Docket No. U-89-2814-R), § 480-107-005, filed 7/18/89.]

Chapter 480-110 WAC WATER COMPANIES

WAC

480-110-215	Exemptions from rules.
480-110-295	Adopted and initial tariffs.
480-110-385	Water company responsibility for complaints and disputes.
480-110-435	Extension contracts.

WAC 480-110-215 Exemptions from rules. (1) The commission may grant an exemption of any rule in this chapter, if consistent with the public interest, the purposes underlying regulation, and applicable statutes.

(2) To request a rule exemption, a person must file with the commission a written request identifying the rule for which an exemption is sought and giving a full explanation of the reason the exemption is requested.

(3) The commission will assign the request a docket number, if needed, and schedule the request for consideration at one of its regularly scheduled open meetings or, if appropriate under chapter 34.05 RCW, in an adjudication. The commission will notify the person requesting the exemption, and other interested persons, of the date the commission will consider the request.

(4) The commission will enter an order granting or denying the request or setting it for hearing, pursuant to chapter 480-07 WAC.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-110-215, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040. 99-24-100 (Order R-467, Docket No. UW-980082), § 480-110-215, filed 11/30/99, effective 12/31/99.]

WAC 480-110-295 Adopted and initial tariffs. A water company must file revisions to its filed tariff within thirty days of its acquisition of new service area, whether by acquisition of another regulated water company or by acquiring one or more previously unregulated water systems.

(1) **Adopted tariffs - when a regulated company acquires another regulated company.** Any regulated water company acquiring a regulated water company must adopt the latter's tariff. An adoption form must be completed and filed with the commission by the acquiring water company within thirty days of the acquisition. The commission will supply an adoption form upon request.

(2) **Incorporate into existing tariff - when a regulated water company acquires a nonregulated company.**

(a) When a regulated water company acquires a nonregulated water company or water system, the acquiring water company must file a separate tariff page indicating the name of the newly acquired company or system with the rates and charges that were in existence before the acquisition.

(b) If the acquired nonregulated company or water system was previously subject to commission jurisdiction, the acquiring water company must file a separate tariff page indicating the name of the newly acquired company or system with the rates and charges in effect for the acquired company at the time the acquired company was removed from regulation.

(c) No other rates and charges may apply to the customers on the newly acquired system except those specifically shown on the new tariff page unless the company obtains the commission's approval to charge a different rate.

(3) **Initial tariffs - when a company becomes jurisdictional.**

(a) An initial tariff must be filed in a standard tariff format. The commission will provide illustrations of the standard format upon request.

(b) The tariff must be accompanied by a cover letter describing the filing as an initial tariff.

(c) Customers must be notified before the commission receives the filing.

(d) The filing must be accompanied by supporting financial data justifying the proposed rates. See WAC 480-07-530, General rate proceedings—Water companies.

(4) **Initial tariffs - a company that was previously subject to commission jurisdiction.** If a company or water system was previously subject to commission jurisdiction and once again becomes jurisdictional, the company must file a tariff with the rates and charges in effect at the time the company was last removed from regulation.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-110-295, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040. 99-24-100 (Order R-467, Docket No. UW-980082), § 480-110-295, filed 11/30/99, effective 12/31/99.]

WAC 480-110-385 Water company responsibility for complaints and disputes. (1) If a water company receives a complaint or dispute from a customer or an applicant for service it must:

- Acknowledge the complaint;
- Investigate promptly;
- Report the results of the investigation to the complainant;
- Take corrective action, if warranted, as soon as appropriate under the circumstances;
- Inform the complainant that the decision may be appealed to a higher level representative at the company, if any;
- Inform the complainant, if still dissatisfied after speaking with the higher level representative, of the commission's availability for review of the complaint; and
- Provide the complainant with the commission's address and toll-free telephone number.

(2) Applicants, customers, or their representatives, may file with the commission:

(a) An informal complaint against the company as set forth in WAC 480-07-910; and/or

(b) A formal complaint against the company as set forth in WAC 480-07-370.

(3) When commission consumer affairs staff refers an informal complaint to the company, the company must:

(a) Investigate and report the results to the commission consumer affairs staff within two business days. The commission consumer affairs staff may grant an extension of time for responding to the complaint, if requested and warranted;

(b) Keep the commission consumer affairs staff informed of progress toward the solution and the final result.

(4) Each water company must keep a record of all complaints concerning service or rates for at least one year and, on request, make them readily available for commission review. The record must contain:

- (a) Complainant's name and address;
- (b) Date and nature of the complaint;
- (c) Action taken; and
- (d) Final result.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-110-385, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.01.040. 99-24-100 (Order R-467, Docket No. UW-980082), § 480-110-385, filed 11/30/99, effective 12/31/99.]

WAC 480-110-435 Extension contracts. (1) Each water company must file, as a part of its tariff, an extension rule that states the conditions required by the company before it will extend its transmission and distribution infrastructure to provide water service to an applicant.

(2) Companies entering into any extension contract must:

(a) File the contract with the commission not less than thirty days before the proposed effective date of the contract.

(b) Conform the proposed contract to the applicable provisions of WAC 480-80-143 (Special contracts for gas, electric, and water companies).

(3) Extension contracts must include the documentation necessary to show that the proposed charges are fair, just, reasonable, and sufficient.

(4) An extension may also be referred to as a distribution extension, a main extension, or a line extension.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.353. 03-22-046 (Docket No. A-030832, General Order No. R-509), § 480-110-435, filed 10/29/03, effective 11/29/03. Statutory Authority: RCW 80.01.040. 99-24-100 (Order R-467, Docket No. UW-980082), § 480-110-435, filed 11/30/99, effective 12/31/99.]

Chapter 480-120 WAC TELEPHONE COMPANIES

WAC

480-120-011	Application of rules.
480-120-015	Exemptions from rules in chapter 480-120 WAC.
480-120-017	Severability.
480-120-019	Telecommunications performance requirements— Enforcement.
480-120-083	Cessation of telecommunications services.
480-120-147	Changes in local exchange and intrastate toll services.
480-120-166	Commission-referred complaints.
480-120-173	Restoring service after discontinuation.
480-120-264	Prepaid calling services.
480-120-305	Streamlined filing requirements for Class B telecommunications company rate increases.

480-120-439	Service quality performance reports.
480-120-560	Collocation.

WAC 480-120-011 Application of rules. (1) The rules in this chapter apply to any company that is subject to the jurisdiction of the commission as to rates and services under the provisions of RCW 80.01.040 and chapters 80.04 and 80.36 RCW.

(2) The tariffs and price lists filed by companies must conform to these rules. If the commission accepts a tariff or price list that conflicts with these rules, the acceptance does not constitute a waiver of these rules unless the commission specifically approves the variation consistent with WAC 480-120-015 (Exemptions from rules in chapter 480-120 WAC). Tariffs or price lists that conflict with these rules without approval are superseded by these rules.

(3) Any affected person may ask the commission to review the interpretation of these rules by a company or customer by posing an informal complaint under WAC 480-07-910 (Informal complaints), or by filing a formal complaint under WAC 480-07-370 (Pleading—General).

(4) No deviation from these rules is permitted without written authorization by the commission. Violations will be subject to penalties as provided by law.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-120-011, filed 11/24/03, effective 1/1/04; 03-01-065 (Docket No. UT-990146, General Order No. R-507), § 480-120-011, filed 12/12/02, effective 7/01/03; 01-15-022 (Docket No. UT-990146, General Order No. R-480), § 480-120-011, filed 7/11/01, effective 8/11/01. Statutory Authority: RCW 80.01.040 and 1985 c 450. 85-23-001 (Order R-242, Cause No. U-85-56), § 480-120-011, filed 11/7/85; Order R-25, § 480-120-011, filed 5/5/71. Formerly WAC 480-120-010.]

WAC 480-120-015 Exemptions from rules in chapter 480-120 WAC. (1) The commission may grant an exemption from the provisions of any rule in this chapter, if consistent with the public interest, the purposes underlying regulation, and applicable statutes.

(2) To request a rule exemption, a person must file with the commission a written request identifying the rule for which an exemption is sought, and provide a full explanation of the reason for requesting the exemption. In addition to any other reason, parties may allege force majeure was the factor leading to the request for waiver.

(3) The commission will assign the request a docket number, if it does not arise in an existing docket, and will schedule the request for consideration at one of its regularly scheduled open meetings or, if appropriate under chapter 34.05 RCW, in an adjudication. The commission will notify the person requesting the exemption, and other interested persons, of the date of the hearing or open meeting when the commission will consider the request.

(4) In determining whether to grant the request, the commission may consider whether application of the rule would impose undue hardship on the requesting person, of a degree or a kind different from hardships imposed on other similarly situated persons, and whether the effect of applying the rule would be contrary to the purposes of the rule.

(5) The commission will enter an order granting or denying the request, or setting it for hearing, pursuant to chapter 480-07 WAC.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-120-015, filed 11/24/03, effective 1/1/04; 03-01-065 (Docket No. UT-990146, General Order No. R-507), § 480-120-015, filed 12/12/02, effective 7/1/03; 01-15-022 (Docket No. UT-990146, General Order No. R-480), § 480-120-015, filed 7/11/01, effective 8/11/01.]

WAC 480-120-017 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-01-065 and 03-03-090 (Docket No. UT-990146, General Order No. R-507 and R-507A), § 480-120-017, filed 12/12/02 and 1/16/03, effective 7/1/03.]

WAC 480-120-019 Telecommunications performance requirements—Enforcement. The commission may enforce the performance requirements set forth in this chapter by imposing administrative penalties under RCW 80.04.405, 80.04.380, or other appropriate penalty statutes. These performance requirements are not intended to establish civil duties owed to any individual or class for any other purpose.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-01-065 and 03-03-090 (Docket No. UT-990146, General Order No. R-507 and R-507A), § 480-120-019, filed 12/12/02 and 1/16/03, effective 7/1/03.]

WAC 480-120-083 Cessation of telecommunications services. (1) This rule applies to any telecommunications company that ceases the provision of any telecommunications service in all or any portion of the state (exiting telecommunications company). This rule does not apply to:

(a) Services offered by tariff that are subject to the statutory notice requirements of RCW 80.36.110 (Tariff Changes – Statutory Notice – Exception);

(b) Discontinuance of service to an individual customer in compliance with WAC 480-120-172 (Discontinuing service—Company initiated);

(c) Cessation of a service when the provider replaces the terminated service with comparable service without interruption. For example, the notice requirements of this rule do not apply when a local exchange carrier (LEC) providing Centrex-type service with one group of features replaces that service, without interruption, with a version of Centrex-type service that has a different group of features; and

(d) A service being discontinued that has no subscribers. Changes in customers' service providers for local exchange and intrastate toll services when there is a cessation of service are also subject to WAC 480-120-147 (Changes in local exchange and intrastate toll services).

(2) No telecommunications company may cease the provision of any telecommunications service in all or any portion of the state unless it first provides written notice to the following persons at least 30 days in advance of cessation of service:

(a) The commission;

(b) The state 911 program, in the instance of local exchange service, private branch exchange service (PBX), Centrex-type service, or private line service used in the provision of emergency services related to the state 911 program;

(c) Each of its customers, including customers that are telecommunications companies;

(d) Incumbent local exchange carriers (ILECs) providing the exiting telecommunications company with unbundled network elements (UNEs) pursuant to the Telecommunications Act of 1996, 47 U.S.C. Section 151 *et seq.*, if UNEs or combinations of UNEs are part of a telecommunications service provided to some or all of the exiting telecommunications company's customers;

(e) Each telecommunications company providing the exiting telecommunications company with resold telecommunications service, if resold service is part of a telecommunications service provided to some or all of the exiting telecommunications company's customers;

(f) The national number administrator authorizing the release of all assigned telephone numbers to other telecommunications companies and releasing all unassigned telephone numbers to the number administrator.

(3) The notice to the commission and the state 911 program required in subsections (2)(a) and (b) must include:

(a) The name of the exiting telecommunications company;

(b) For each category of service, the date each telecommunications service will cease; and

(c) The number of customers for each telecommunications service and their location, described by exchange or by city and county for each telecommunications service being ceased.

(4) The notice to customers required in subsection (2)(c) must include:

(a) The date telecommunications service will cease;

(b) Information on how to contact the exiting telecommunications company by telephone in order to obtain information needed to establish service with another provider;

(c) An explanation of how customers may receive a refund on any unused service. The exiting telecommunications company must provide information to consumers via its customer service number outlining the procedure for obtaining refunds and continue to provide this information for sixty days after the date of cessation of service.

(d) A second notice provided by one of the two options listed below:

(i) Between ten and thirty days before cessation of service, the exiting telecommunications company must complete one direct call advising every customer of the cessation of service, including the date of cessation of service and a number to call for more information, if necessary. A direct call means a call in which the company leaves a recorded voice message for or speaks directly to the responsible party or its agent on the billing account; or

(ii) At least ten days before cessation of service, the exiting telecommunications company must provide a second written notice of cessation of service including the date of cessation of service and a number to call for more information, if necessary;

(e) A company may seek the commission's assistance in drafting the customer notices.

(5) The notice to ILECs required in subsection (2)(d) must include:

(a) The date telecommunications service will cease;

(b) Identification of the UNE components in relationship to the service information provided to the customer when such information differs from the ILEC's identification information as billed to the exiting telecommunications company. For example, if the ILEC identifies a UNE loop with a circuit identification number, the exiting telecommunications company must provide the ILEC with the customer telephone number assigned to the ILEC's UNE loop circuit identification number; and

(c) The telephone contact information to enable the ILEC or new provider to obtain UNE service and circuit identification information needed to establish service for a customer who will no longer receive service from the exiting telecommunications company.

(6) The notice to suppliers required in subsection (2)(e) must include:

(a) The date telecommunications service will cease;

(b) Identification of the resold service element components in relationship to the service information provided to the customer, when such information differs from the supplier's identification information as billed to the exiting telecommunications company; and

(c) Telephone contact information to enable the regulated supplier or new provider to obtain underlying service and circuit identification information needed to establish comparable replacement service for a customer who will no longer receive service from the exiting telecommunications company.

(7) The notice to the national number administrator required in subsection (2)(f) must include:

(a) Identification of all working telephone numbers assigned to customers;

(b) Identification of all unassigned or administrative numbers available for reassignment to other providers and the date such unassigned telephone numbers will be available for reassignment; and

(c) Authorization of the release of each individual assigned customer's telephone number(s) to subsequent providers selected by the customer.

(8) ILECs and telecommunications companies that are suppliers under subsection (6) must provide the information in the required notice(s) (if received) to the subsequent provider upon a request authorized by the customer.

(9) A telecommunications company ceasing a local exchange service, a PBX service, a Centrex-type service, or a private line service used in the provision of emergency services related to the state 911 program must inform the commission and the state 911 program within twenty-four hours of the cessation of telecommunications service of the number of customers and their location, listed by exchange or by city and county, that remained as customers for the telecommunications service when service ceased.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.353. 03-22-046 (Docket No. A-030832, General Order No. R-509), § 480-120-083, filed 10/29/03, effective 11/29/03. Statutory Authority: RCW 80.04.160 and 80.01.040. 01-24-114 (General Order No. R-494, Docket No. UT-010558), § 480-120-083, filed 12/5/01, effective 1/5/02.]

WAC 480-120-147 Changes in local exchange and intrastate toll services. (1) Verification of orders. A local exchange or intrastate toll carrier that requests on behalf of a

customer that the customer's carrier be changed, and that seeks to provide retail services to the customer (submitting carrier), may not submit a change-order for local exchange or intrastate toll service until the order is confirmed in accordance with one of the procedures in (a) through (c) of this subsection:

(a) The company has obtained the customer's written or electronic authorization to submit the order (letter of agency). The letter of agency must be a separate electronic form, located on a separate screen or web page, or a separate written document (or easily separable document) containing only the authorizing language described in (a)(i) through (vi) of this subsection, having the sole purpose of authorizing a telecommunications carrier to initiate a preferred carrier change. The letter of agency, whether written or electronic, must be signed and dated by the customer of the telephone line(s) requesting the preferred carrier change. The letter of agency shall not be combined on the same document or on the same screen or web page with inducements of any kind; however, it may be combined with checks that contain only the required letter of agency language as prescribed in (a)(i) through (vi) of this subsection, and the necessary information to make the check a negotiable instrument. The check may not contain any promotional language or material. It must contain, in easily readable, boldface type on the front of the check, a notice that the customer is authorizing a preferred carrier change by signing the check. Letter-of-agency language must be placed near the signature line on the back of the check. Any carrier designated in a letter of agency as a preferred carrier must be the carrier directly setting the rates for the customer. If any portion of a letter of agency is translated into another language, then all portions must be translated into that language, as well as any promotional materials, oral descriptions or instructions provided with the letter of agency. The letter of agency must confirm the following information from the customer:

(i) The customer billing name, billing telephone number and billing address and each telephone number to be covered by the change order;

(ii) The decision to change;

(iii) The customer's understanding of the change fee;

(iv) That the customer designates (name of carrier) to act as the customer's agent for the preferred carrier change;

(v) That the customer understands that only one telecommunications carrier may be designated as the customer's intraLATA preferred carrier; that only one telecommunications carrier may be designated as the customer's interLATA preferred carrier; and that only one telecommunications carrier may be designated as the customer's local exchange provider, for any one telephone number. The letter of agency must contain a separate statement regarding the customer's choice for each preferred carrier, although a separate letter of agency for each choice is not necessary; and

(vi) Letters of agency may not suggest or require that a customer take some action in order to retain the current preferred carrier.

(b) The submitting carrier has obtained the customer's authorization, as described in (a) of this subsection, electronically, by use of an automated, electronic telephone menu system. This authorization must be placed from the telephone number(s) for which the preferred carrier is to be changed

and must confirm the information required in (a)(i) through (vi) of this subsection.

Telecommunications companies electing to confirm the preferred carrier change electronically must establish one or more toll free telephone numbers exclusively for that purpose.

Calls to the number(s) must connect a customer to a voice response unit, or similar device, that records the required information regarding the change, including recording the originating automatic number identification (ANI).

(c) An appropriately qualified and independent third party operating in a location physically separate from the telemarketing representative has obtained the customer's oral authorization to submit the change order that confirms and includes appropriate verification data (e.g., the customer's date of birth). The independent third party must not be owned, managed, controlled or directed by the carrier or the carrier's marketing agent; and must not have any financial incentive to confirm preferred carrier change orders for the carrier or the carrier's marketing agent. The content of the verification must include clear and unambiguous confirmation that the customer has authorized a preferred carrier change.

(2) Where a telecommunications carrier is selling more than one type of telecommunications service (e.g., local exchange, intraLATA toll, and interLATA toll) that carrier must obtain separate authorization, and separate verification, from the customer for each service sold, although the authorizations may be made within the same solicitation.

(3) The documentation regarding a customer's authorization for a preferred carrier change must be retained by the submitting carrier, at a minimum, for two years to serve as verification of the customer's authorization to change his or her telecommunications company. The documentation must be made available to the customer and to the commission upon request and at no charge. Documentation includes, but is not limited to, entire third-party-verification conversations and, for written verifications, the entire verification document.

(4) **Implementing order changes.** An executing carrier may not verify directly with the customer the submission of a change in a customer's selection of a provider received from a submitting carrier. The executing carrier must comply promptly, without any unreasonable delay, with a requested change that is complete and received from a submitting carrier. An executing carrier is any telecommunications carrier that affects a request that a customer's carrier be changed.

This section does not prohibit any company from investigating and responding to any customer-initiated inquiry or complaint.

(5) **Preferred carrier freezes.** A preferred carrier freeze prevents a change in a customer's preferred carrier selection unless the customer gives the carrier from whom the freeze was requested express consent. Express consent means direct, written, electronic, or oral direction by the customer. All local exchange companies (LECs) must offer preferred carrier freezes. Such freezes must be offered on a non-discriminatory basis to all customers. Offers or solicitations for such freezes must clearly distinguish among telecommunications services subject to a freeze (e.g., local exchange, intraLATA toll, and interLATA toll). The carrier offering the

freeze must obtain separate authorization for each service for which a preferred carrier freeze is requested. Separate authorizations may be contained within a single document.

(a) All LECs must notify all customers of the availability of a preferred carrier freeze, no later than the customer's first telephone bill, and once per year must notify all local exchange service customers of such availability on an individual customer basis (e.g., bill insert, bill message, or direct mailing).

(b) All carrier-provided solicitation and other materials regarding freezes must include an explanation, in clear and neutral language, of what a preferred carrier freeze is, and what services may be subject to a freeze; a description of the specific procedures to lift a preferred carrier freeze; an explanation that the customer will be unable to make a change in carrier selection unless he or she lifts the freeze; and an explanation of any charges incurred for implementing or lifting a preferred carrier freeze.

(c) No local exchange carrier may implement a preferred carrier freeze unless the customer's request to impose a freeze has first been confirmed in accordance with the procedures outlined for confirming a change in preferred carrier, as described in subsections (1) and (2) of this section.

(d) All LECs must offer customers, at a minimum, the following procedures for lifting a preferred carrier freeze:

(i) A customer's written or electronic authorization stating the customer's intent to lift the freeze;

(ii) A customer's oral authorization to lift the freeze. This option must include a mechanism that allows a submitting carrier to conduct a three-way conference call with the executing carrier and the customer in order to lift the freeze. When engaged in oral authorization to lift a freeze, the executing carrier must confirm appropriate verification data (e.g., the customer's date of birth), and the customer's intent to lift the freeze.

(e) A LEC may not change a customer's preferred carrier if the customer has a freeze in place, unless the customer has lifted the freeze in accordance with this subsection.

(6) **Remedies.** In addition to any other penalties provided by law, a submitting carrier that requests a change in a customer's carrier without proper verification as described in this rule shall receive no payment for service provided as a result of the unauthorized change and shall promptly refund any amounts collected as a result of the unauthorized change. The customer may be charged, after receipt of the refund, for such service at a rate no greater than what would have been charged by its authorized telecommunications company, and any such payment shall be remitted to the customer's authorized telecommunications company.

(7) **Exceptions.** Companies transferring customers as a result of a merger, purchase of the company, or purchase of a specific customer base are exempt from subsections (1) through (6) of this section if the companies comply with the following conditions and procedures:

(a) The acquiring company must provide a notice to each affected customer at least thirty days before the date of transfer. Such notice must include the following information:

(i) The date on which the acquiring company will become the customer's new provider;

(ii) The rates, terms, and conditions of the service(s) to be provided upon transfer, and the means by which the

acquiring company will notify the customer of any change(s) to those rates, terms, and conditions;

(iii) That the acquiring company will be responsible for any carrier change charges associated with the transfer;

(iv) The customer's right to select a different company to provide the service(s);

(v) That the customer will be transferred even if the customer has selected a "freeze" on his/her carrier choices, unless the customer chooses another carrier before the transfer date;

(vi) That, if the customer has a "freeze" on carrier choices, the freeze will be lifted at the time of transfer and the customer must "refreeze" carrier choices;

(vii) How the customer may make a complaint prior to or during the transfer; and

(viii) The toll-free customer service telephone number of the acquiring carrier.

(b) The acquiring company must provide a notice to the commission at least thirty days before the date of the transfer. Such notice must include the following information:

(i) The names of the parties to the transaction;

(ii) The types of services affected;

(iii) The date of the transfer; and

(iv) That the company has provided advance notice to affected customers, including a copy of such notice.

(c) If after filing notice with the commission any material changes develop, the acquiring company must file written notice of those changes with the commission no more than ten days after the transfer date announced in the prior notice. The commission may, at that time, require the company to provide additional notice to affected customers regarding such changes.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.353. 03-22-046 (Docket No. A-030832, General Order No. R-509), § 480-120-147, filed 10/29/03, effective 11/29/03. Statutory Authority: RCW 80.01.040 and 80.04.160. 03-01-065 (Docket No. UT-990146, General Order No. R-507), § 480-120-147, filed 12/12/02, effective 7/1/03.]

WAC 480-120-166 Commission-referred complaints.

(1) Each company must keep a record of all complaints concerning service or rates for at least three years and, on request, make them readily available for commission review. The records must contain complainant's name and address, date and the nature of the complaint, action taken, and final result.

(2) Each company must have personnel available during regular business days to respond to commission staff.

(3) Applicants, customers, or their authorized representatives, may file with the commission an informal complaint as described in WAC 480-07-910 or a formal complaint against a company when there are alleged violations of statutes, administrative rules, or tariffs as provided by WAC 480-07-370.

(4) When the commission staff refers an informal complaint to a company, the company must:

(a) Stop any pending action involving the issues raised in the complaint provided any amounts not in dispute are paid when due (e.g., if the complaint involves a disconnect threat or collection action, the disconnect or collection must be stopped);

(b) Thoroughly investigate all issues raised in the complaint and provide a complete report of the results of its investigation to the commission, including, if applicable, information that demonstrates that the company's action was in compliance with commission rules; and

(c) Take corrective action, if warranted, as soon as appropriate under the circumstances.

(5) Commission staff will ask the customer filing the informal complaint whether the customer wishes to speak directly to the company during the course of the complaint, and will relay the customer's preference to the company at the time staff opens the complaint.

(6) The company must report the results of its investigation of service-affecting informal complaints to commission staff within two business days from the date commission staff passes the complaint to the company. Service-affecting complaints include, but are not limited to, nonfunctioning or impaired services (i.e., disconnected services or those not functioning properly).

(7) The company must report the results of its investigation of nonservice-affecting informal complaints to commission staff within five business days from the date commission staff passes the complaint to the company. Nonservice-affecting complaints include, but are not limited to, billing disputes and rate quotes.

(8) Unless another time is specified in this rule or unless commission staff specifies a later date, the company must provide complete responses to requests from commission staff for additional information on pending informal complaints within three business days.

(9) The company must keep commission staff informed when relevant changes occur in what has been previously communicated to the commission and when there is final resolution of the informal complaint.

(10) An informal complaint opened with the company by commission staff may not be considered closed until commission staff informs the company that the complaint is closed.

(11) The company must provide information requested by staff regarding any informal complaint in accordance with subsections (6) and (7) of this section until such time as staff informs the company that the complaint is closed.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-120-166, filed 11/24/03, effective 1/1/04; 03-01-065 (Docket No. UT-990146, General Order No. R-507), § 480-120-166, filed 12/12/02, effective 7/1/03.]

WAC 480-120-173 Restoring service after discontinuation. (1) A company must restore a discontinued service when:

(a) The causes of discontinuation not related to a delinquent balance have been removed or corrected. In the case of deceptive practices as described in WAC 480-120-172 (1)(a), this means the customer has corrected the deceptive practice and has paid the estimated amount of service that was taken through deceptive means, all costs resulting from the deceptive use, any applicable deposit, and any delinquent balance owed to the company by that customer for the same class of service. A company may require a deposit from a customer that has obtained service in a deceptive manner as described in WAC 480-120-172 (1)(a). A company is not required to

allow six-month arrangements on a delinquent balance as provided for in WAC 480-120-173 (1)(b) when it can demonstrate that a customer obtained service through deceptive means in order to avoid payment of a delinquent amount owed to that company;

(b) Payment or satisfactory arrangements for payment of all proper charges due from the applicant, including any proper deposit and reconnection fee, have been made. Applicants or customers, excluding telecommunications companies as defined in RCW 80.04.010, are entitled to, and a company must allow, an initial use, and then, once every five years dating from the customer's most recent use of the option, an option to pay a prior obligation over not less than a six-month period. The company must restore service upon payment of the first installment if an applicant is entitled to the payment arrangement provided for in this section and, if applicable, the first half of a deposit is paid as provided for in WAC 480-120-122; or

(c) The commission staff directs restoration pending resolution of any dispute between the company and the applicant or customer over the propriety of discontinuation.

(2) After the customer notifies the company that the causes for discontinuation have been corrected, and the company has verified the correction, the company must restore service(s) within the following periods:

(a) Service(s) that do not require a premises visit for reconnection must be restored within one business day; and

(b) Service(s) that requires a premises visit for reconnection must be restored within two business days. Companies must offer customers a four-hour window during which the company will arrive to complete the restoration.

(c) For purposes of this section Saturdays are considered business days.

(3) A company may refuse to restore service to a customer who has been discontinued twice for deceptive practices as described in WAC 480-120-172 (1)(a) for a period of five years from the date of the second disconnection, subject to petition by the customer to the commission for an order requiring restoration of service based on good cause.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-01-065 and 03-03-090 (Docket No. UT-990146, General Order No. R-507 and 507A), § 480-120-173, filed 12/12/02 and 1/16/03, effective 7/1/03.]

WAC 480-120-264 Prepaid calling services. (1) For the purposes of this section, prepaid calling services (PPCS) means any transaction in which a customer pays for service prior to use and applies only to those services where the number of available minutes decreases as the customer uses the service. Prepaid calling services do not include flat-rated basic local service that is billed in advance of use.

(a) PPCS may require the use of an access number or authorization code.

(b) This section excludes credit cards and cash equivalent cards. Services provided at pay telephones using these cards are regulated under the provisions of WAC 480-120-263 (Pay phone service providers (PSPs)).

(2) PPCS providers must provide customers a without-charge telephone number staffed by personnel capable of:

(a) Responding to technical problems or questions related to their service twenty-four hours a day, seven days a week;

(b) Responding to general account-related questions during regular business hours; and

(c) Providing the commission's toll-free number and address to dissatisfied customers as required by WAC 480-120-165 (Customer complaints).

(3) Billing requirements for PPCS.

(a) A PPCS provider may charge only for the actual time a circuit is open for conversation. The price list or tariff and presale document must define billing increments. The provider must not round up the length of conversation time for less than a full billing increment beyond that full increment.

(i) If a PPCS provider uses an increment based on a time measurement, the increment must not exceed one minute.

(ii) If a PPCS provider bills usage in "unit" measurements, it must clearly define units using both equivalent dollar amounts and time measurement. Unit billing increments cannot exceed the equivalent one minute rate.

(b) At the customer's request, a PPCS provider may add additional time to an existing account in exchange for an additional payment at a rate not to exceed those on file with the commission. The PPCS provider must inform the customer of the new rates at the time of the recharge request.

(4) PPCS providers must maintain the following call-data for a minimum of twenty-four months:

(a) Dialing and signaling information that identifies the inbound access number called or the access identifier;

(b) The number of the originating phone when the information is passed to the PPCS provider;

(c) The date and time the call was originated;

(d) The duration or termination time of the call;

(e) The called number; and

(f) The personal identification number (PIN), or account number.

(5) Disclosure requirements - Prepaid calling services.

(a) A PPCS provider must disclose, prior to the sale, the following information:

(i) The PPCS provider's name as registered with the commission;

(ii) The "doing business as" name as registered with the commission, if applicable;

(iii) The maximum charge per billing increment. A PPCS provider charging varying rates for intrastate and interstate calls must provide all applicable rates. The rates disclosed must be no more than those in its price list or tariff on file with the commission at the time of purchase;

(iv) Charges for all services, including any applicable surcharges, fees, or taxes, and the method of application;

(v) Expiration date, if applicable. If a card expires after a set period of time from activation, the PPCS provider must specify the expiration date on the card. If an expiration date is not disclosed on the card it will be considered unexpired indefinitely; and

(vi) Recharge policy, if applicable. If a PPCS provider does not disclose the expiration date at the time service is recharged, the service will be considered unexpired indefinitely.

(b) A PPCS provider must disclose, at the time of purchase, the following information:

(i) The without-charge telephone number(s) a customer may use to resolve technical problems, service-related questions, and general account-related questions; and

(ii) Authorization code, if required, to access the service or, if applicable, the without-charge telephone number used to establish access capability.

(c) If the PPCS provider is not the entity that packages the services for sale to the public, it must require the company that does so, through a written agreement, to comply with the disclosure requirements of this section.

(6) Time of use disclosure requirements. The PPCS provider must:

(a) Announce at the beginning of each call the time remaining on the prepaid account or prepaid calling card; and

(b) Announce the time remaining at least one minute before the prepaid account balance is depleted.

(7) When a PPCS provider has failed to provide service at rates disclosed prior to the sale or quoted at the time an account is recharged, or the PPCS provider has failed to meet performance standards, it must provide refunds for any unused service or provide equivalent service credit when requested by a customer. Refunds or credits must equal the value remaining on the prepaid calling account. The customer may choose either the refund or equivalent service credit option.

(8) Performance standards for prepaid calling services. Each PPCS provider must ensure that:

(a) Customers can complete a minimum of ninety-eight percent of all call attempts to the called party's number. The PPCS provider will consider any busy signals or unanswered calls as completed calls.

(b) Customers can complete a minimum of ninety-eight percent of all call attempts to the PPCS provider. The PPCS provider will not consider any busy signals or unanswered calls as completed calls.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.353, 03-22-046 (Docket No. A-030832, General Order No. R-509), § 480-120-264, filed 10/29/03, effective 11/29/03. Statutory Authority: RCW 80.01.040 and 80.04.160, 02-11-080 (General Order No. R-499, Docket No. UT-991922), § 480-120-264, filed 5/14/02, effective 6/17/02.]

WAC 480-120-305 Streamlined filing requirements for Class B telecommunications company rate increases.

(1) A Class B company, as defined in WAC 480-120-302(1), may use the streamlined treatment described in this section for seeking a general rate increase, as an alternative to the requirements in WAC 480-07-510.

(2) **General information required.** A Class B company seeking streamlined treatment for a proposed general rate increase must submit the following information at the time of filing or prior to its first notice to customers, whichever occurs first:

(a) A copy of its customer notice as specified in subsection (6) of this section.

(b) A results-of-operations statement, on a commission basis, demonstrating that the company is not presently exceeding a reasonable level of earnings. If the company is exceeding a reasonable level of earnings, the proposed increase must be reduced accordingly.

(c) All supporting documentation used to develop the results-of-operations statement, including supporting documentation for all adjustments.

(d) The results-of-operations statement filed under this subsection must include Washington intrastate results of

operations. If a company cannot provide Washington intrastate results of operations with reasonable accuracy, the commission may consider the total Washington results of operations including the interstate jurisdiction.

(3) Adjustments provided for in the results of operations.

(a) The results-of-operations statement must provide restating actual adjustments and pro forma adjustments in accordance with (b) of this subsection.

(b) Before the achieved return is calculated a company must adjust the booked results of operations for restating actual and pro forma adjustments, including the following:

(i) Nonoperating items;

(ii) Extraordinary items;

(iii) Nonregulated operating items; and

(iv) All other items that materially distort the test period.

(4) **Rate of return.** The authorized overall rate-of-return (for purposes of this section only) is eleven and twenty-five one-hundredths percent.

(5) **Rate design.** A Class B company filing pursuant to this section must clearly describe the basis for allocating any revenue requirement change proposed by customer class (e.g., residential, business, and interexchange).

(6) **Customer notice.** The company must notify customers consistent with the manner outlined in WAC 480-120-194, and must include the following information:

(a) The proposed increase expressed in (i) total dollars and average percentage terms, and (ii) the average monthly increases the customers in each category or subcategory of service might reasonably expect;

(b) The name and mailing address of the commission and public counsel;

(c) A statement that customers may contact the commission or public counsel with respect to the proposed rate change; and

(d) The date, time, and place of the public meeting, if known.

(7) **Public meeting(s).** The commission will ordinarily hold at least one public meeting in the area affected by the rate increase within forty-five days after the date of filing.

(8) **Final action.** The commission will ordinarily take final action on a filing under this section within ninety days after the date of filing.

(9) The commission may decline to apply the procedures outlined in this section if it has reason to believe that:

(a) The quality of the company's service is not consistent with its public service obligations; or

(b) A more extensive review is required of the company's results of operations or proposed rate design.

(10) Nothing in this rule will be construed to prevent any company, the commission, any customer, or any other party from using any other procedures that are otherwise permitted by law.

[Statutory Authority: RCW 80.01.040 and 80.04.160, 03-24-028 (General Order R-510, Docket No. A-010648), § 480-120-305, filed 11/24/03, effective 1/1/04; 03-01-065 (Docket No. UT-990146, General Order No. R-507), § 480-120-305, filed 12/12/02, effective 7/1/03.]

WAC 480-120-439 Service quality performance reports. (1) **Class A companies.** Class A companies must report monthly the information required in subsections (3),

(4), and (6) through (10) of this section. Companies must report within thirty days after the end of the month in which the activity reported on takes place (e.g., a report concerning missed appointments in December must be reported by January 30).

(2) **Class B companies.** Class B companies need not report to the commission as required by subsection (1) of this section. However, these companies must retain, for at least three years from the date they are created, all records that would be relevant, in the event of a complaint or investigation, to a determination of the company's compliance with the service quality standards established by WAC 480-120-105 (Company performance standards for installation or activation of access lines), 480-120-112 (Company performance for orders for nonbasic services), 480-120-133 (Response time for calls to business office or repair center during regular business hours), 480-120-401 (Network performance standards), 480-120-411 (Network maintenance), and 480-120-440 (Repair standards for service interruptions and impairments, excluding major outages).

(3) **Missed appointment report.** The missed appointment report must state the number of appointments missed, the total number of appointments made, and the number of appointments excluded under (b), (c), or (d) of this subsection. The report must state installation and repair appointments separately.

(a) A LEC is deemed to have kept an appointment when the necessary work in advance of dispatch has been completed and the technician arrives within the appointment period, even if the technician then determines the order cannot be completed until a later date. If the inability to install or repair during a kept appointment leads to establishment of another appointment, it is a new appointment for purposes of determining under this subsection whether it is kept or not.

(b) When a LEC notifies the customer at least twenty-four hours prior to the scheduled appointment that a new appointment is necessary and a new appointment is made, then the appointment that was canceled is not a missed appointment for purposes of this subsection. A company-initiated changed appointment date is not a change to the order date for purposes of determining compliance with WAC 480-120-105 (Company performance standards for installation or activation of access lines) and 480-120-112 (Company performance for orders for nonbasic services).

(c) A LEC does not miss an appointment for purposes of this subsection when the customer initiates a request for a new appointment.

(d) A LEC does not miss an appointment for purposes of this subsection when it is unable to meet its obligations due to force majeure, work stoppages directly affecting provision of service in the state of Washington, or other events beyond the LEC's control.

(4) **Installation or activation of basic service report.** The report must state the total number of orders taken, by central office, in each month for all orders of up to the initial five access lines as required by WAC 480-120-105 (Company performance standards for installation or activation of access lines). The report must include orders with due dates later than five days as requested by a customer. The installation or activation of basic service report must state, by central office, of the total orders taken for the month, the number of

orders that the company was unable to complete within five business days after the order date or by a later date as requested by the customer.

(a) A separate report must be filed each calendar quarter that states the total number of orders taken, by central office, in that quarter for all orders of up to the initial five access lines as required by WAC 480-120-105 (Company performance standards for installation or activation of access lines). The installation or activation of basic service ninety-day report must state, of the total orders taken for the quarter, the number of orders that the company was unable to complete within ninety days after the order date.

(b) A separate report must be filed each six months that states the total number of orders taken, by central office, in the last six months for all orders of up to the initial five access lines as required by WAC 480-120-105 (Company performance standards for installation or activation of access lines). The installation or activation of basic service one hundred eighty day report must state, of the total orders taken for six months, the number of orders that the company was unable to complete within one hundred eighty days.

Orders for which customer-provided special equipment is necessary; when a later installation or activation is permitted under WAC 480-120-071 (Extension of service); when a technician arrives at the customer's premises at the appointed time prepared to install service and the customer is not available to provide access; or when the commission has granted an exemption under WAC 480-120-015 (Exemptions from rules in chapter 480-120 WAC), from the requirement for installation or activation of a particular order, may be excluded from the total number of orders taken and from the total number of uncompleted orders for the month.

For calculation of the report of orders installed or activated within five business days in a month, orders that could not be installed or activated within five days in that month due to force majeure may be excluded from the total number of orders taken and from the total number of uncompleted orders for the month if the company supplies documentation of the effect of force majeure upon the order.

(5) **Major outages report.** Notwithstanding subsections (1) and (2) of this section, any company experiencing a major outage that lasts more than forty-eight hours must provide a major outage report to the commission within ten business days of the major outage. The major outages report must include a description of each major outage and a statement that includes the time, the cause, the location and number of affected access lines, and the duration of the interruption or impairment. When applicable, the report must include a description of preventive actions to be taken to avoid future outages. This reporting requirement does not include company-initiated major outages that are in accordance with the contract provisions between the company and its customers or other planned interruptions that are part of the normal operational and maintenance requirements of the company.

The commission staff may request oral reports from companies concerning major outages at any time and companies must provide the requested information.

(6) **Summary trouble reports.** Each month companies must submit a report reflecting the standard established in WAC 480-120-438 (Trouble report standard). The report must include the number of reports by central office and the

number of lines served by the central office. In addition, the report must include an explanation of causes for each central office that exceeds the service quality standard established in WAC 480-120-438 (Trouble report standard). The reports, including repeated reports, must be presented as a ratio per one hundred lines in service. The reports caused by customer-provided equipment, inside wiring, force majeure, or outages of service caused by persons or entities other than the local exchange company should not be included in this report.

(7) **Switching report.** Any company experiencing switching problems in excess of the standard established in WAC 480-120-401 (2)(a) (Switches—Dial service), must report the problems to the commission. The report must identify the location of every switch that is performing below the standard.

(8) **Interoffice, intercompany and interexchange trunk blocking report.** Companies that experience trunk blocking in excess of the standard in WAC 480-120-401 (3) (Interoffice facilities) and (5) (Service to interexchange carriers) must report each trunk group that does not meet the performance standards. For each trunk group not meeting the performance standards, the report must include the peak percent blocking level experienced during the preceding month, the number of trunks in the trunk group, the busy hour when peak blockage occurs, and whether the problem concerns a standard in WAC 480-120-401 (3) or (5). The report must include an explanation of steps being taken to relieve blockage on any trunk groups that do not meet the standard for two consecutive months.

(9) **Repair report.**

(a) For service-interruption repairs subject to the requirements of WAC 480-120-440 (Repair standards for service interruptions and impairments, excluding major outages), companies must report the number of service interruptions reported each month, the number repaired within forty-eight hours, and the number repaired more than forty-eight hours after the initial report. In addition, a company must report the number of interruptions that are exempt from the repair interval standards as provided for in WAC 480-120-440.

(b) For service-impairment repairs subject to the requirements of WAC 480-120-440, companies must report the number of service impairments reported each month, the number repaired within seventy-two hours, and the number repaired more than seventy-two hours after the initial report. In addition, a company must report the number of impairments that are exempt from the repair interval standard as provided for in WAC 480-120-440.

(10) **Business office and repair answering system reports.** When requested, companies must report compliance with the standard required in WAC 480-120-133 (Response time for calls to business office or repair center during regular business hours). If requested, companies must provide the same reports to the commission that company managers receive concerning average speed of answer, transfers to live representatives, station busies, and unanswered calls.

(11) The commission may choose to investigate matters to protect the public interest, and may request further information from companies that details geographic area and type of service, and such other information as the commission requests.

(12) If consistent with the purposes of this section, the commission may, by order, approve for a company an alternative measurement or reporting format for any of the reports required by this section, based on evidence that:

(a) The company cannot reasonably provide the measurement or reports as required;

(b) The alternative measurement or reporting format will provide a reasonably accurate measurement of the company's performance relative to the substantive performance standard; and

(c) The ability of the commission and other parties to enforce compliance with substantive performance standard will not be significantly impaired by the use of the alternative measurement or reporting format.

(13) Subsection (12) of this section does not preclude application for an exemption under WAC 480-120-015.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.353. 03-22-046 (Docket No. A-030832, General Order No. R-509), § 480-120-439, filed 10/29/03, effective 11/29/03. Statutory Authority: RCW 80.01.040 and 80.04.160. 03-01-065 (Docket No. UT-990146, General Order No. R-507), § 480-120-439, filed 12/12/02, effective 7/1/03.]

WAC 480-120-560 Collocation. (1) Definitions.

"CLEC" means a competing local exchange carrier that orders collocation from an ILEC.

"Collocation" means the ability of a CLEC to place equipment, including microwave equipment, within or upon an ILEC's premises.

"Deliver" or "delivery date" means the point when the ILEC turns the collocation space and related facilities over to the CLEC and the space and facilities are ready for service. Deliver or delivery includes, but is not necessarily limited to, providing the CLEC with access to the collocation space for collocation other than virtual collocation, as well as providing power, telephone service, and other services and facilities ordered by the CLEC for provisioning by the delivery date.

"ILEC" means an incumbent local exchange carrier that is required to provide collocation.

"ILEC premises" means an ILEC wire center, central office, or any other location owned and/or controlled by the ILEC at which interconnection with the ILEC's network or access to ILEC unbundled network elements is technically feasible.

"Points of interface (POI)" means the demarcation between the networks of an ILEC and a CLEC. The POI is the point where the exchange of traffic takes place.

(2) ILEC response to CLEC order for collocation. Within ten calendar days of receipt of an order for collocation, an ILEC must notify the CLEC whether sufficient space exists in the ILEC premises to accommodate the CLEC's collocation requirements. As part of that notification, the ILEC must also notify the CLEC of any circumstance that may delay delivery of the ordered collocation space and related facilities.

(3) Provisioning collocation. If the ILEC notifies a CLEC that sufficient space exists to accommodate the CLEC's order for collocation, the following procedures apply:

(a) Within twenty-five calendar days of receipt of the order, the ILEC must provide the CLEC with a written quote detailing the nonrecurring and recurring charges applicable to

provisioning the ordered collocation. After providing the written quote and upon reasonable notice of a request by the CLEC, the ILEC must permit the CLEC at least one accompanied site visit to the designated collocation space without charge to the CLEC, to enable the CLEC to verify and inspect the space the ILEC offers for collocation. The CLEC's acceptance of the written quote and payment of one-half of the nonrecurring charges specified in the quote must be within seven calendar days and does not preclude the CLEC from later disputing the accuracy or reasonableness of those charges.

(b) If the ordered collocation space was included in a periodic forecast submitted by the CLEC to the ILEC at least three months in advance of the order, the ILEC must complete construction of, and deliver, the ordered collocation space and related facilities within forty-five calendar days after the CLEC's acceptance of the written quote and payment of one-half of the nonrecurring charges specified in the quote.

(c) If the ordered collocation space was not included in a periodic forecast submitted by the CLEC to the ILEC at least three months in advance of the order, the commission declines to apply the forty-five calendar day interval in (3)(b) and the national standards adopted by the FCC shall apply.

(d) Following any initial notification as required in section (2) above, the ILEC must notify the CLEC of any change in circumstances as soon as the ILEC is aware of those circumstances and must take all reasonable steps to avoid or minimize any delays caused by those circumstances, including but not limited to joint provisioning of collocation elements by the ILEC and CLEC, or sole construction by the CLEC, through a mutually acceptable third party contractor.

(e) If the ILEC fails to deliver the collocation space by the required delivery date, the ILEC must credit the CLEC in an amount equal to one-tenth of the total nonrecurring charge for the ordered collocation for each week beyond the required delivery date. Recurring charges will not begin to accrue for any element until the ILEC delivers that element to the CLEC. To the extent that a CLEC self-provisions any collocation element, the ILEC may not impose any charges for provisioning that element.

(f) The ILEC must provide periodic notices to the CLEC during construction of the CLEC's collocation space, including scheduled completion and delivery dates. At least thirty calendar days prior to the scheduled delivery date, the ILEC must provide the CLEC with sufficient information to enable the ILEC and the CLEC to establish firm Common Language Location Identifier (CLLI) codes and any other codes necessary to order interconnection and cross-connection circuits for the equipment the CLEC intends to collocate, and the ILEC must accept and process CLEC orders for such circuits. The ILEC must provision points of interface (POIs) and other circuits concurrent with delivery of the collocation space and related facilities, unless the CLEC agrees to a later date.

(g) The ILEC must conduct an inspection with the CLEC of the collocation space at least five business days prior to completion of construction of the collocation space. The ILEC must correct any deviations to the CLEC's original or jointly amended requirements after the inspection, at the ILEC's sole expense.

(h) Upon order of the CLEC and concurrent with delivery of the collocation space and related facilities, the ILEC must provide basic telephone service to the collocation space under the rates, terms, and conditions of the ILEC's current tariff or price list offering for the service ordered. The ILEC must also provide CLEC employees, contractors, and representatives with reasonable access to basic facilities, such as restroom facilities and parking, while at the ILEC premises.

(4) Denial of order for collocation. If the ILEC notifies a CLEC that insufficient space exists to accommodate the CLEC's order for collocation, the following procedures apply:

(a) As part of its notification of lack of space, the ILEC must notify the CLEC if any space is available for collocation and, if so, how much space is available. The ILEC must also verify that the ILEC cannot reclaim space for collocation by consolidating or removing inactive or underutilized equipment.

(b) The ILEC must permit the CLEC to tour the ILEC premises within fourteen calendar days of the CLEC's written request.

(c) If the CLEC notifies the ILEC that it contests the denial of an order for collocation, the ILEC must, within twenty-five calendar days of the notification, file a petition asking the commission to determine that the space requested by the CLEC is not available. Upon request and execution of an appropriate confidentiality agreement, the ILEC must also provide a copy of the petition to the CLEC. The ILEC must prepare the petition at its sole expense, and the petition must include the following information:

(i) Central Office CLLI, where applicable;

(ii) Ordering CLEC, including the amount of space sought by the CLEC;

(iii) Written inventory of active, inactive, and underutilized equipment, including the signatures of ILEC personnel certifying the accuracy of the information provided;

(iv) Color-coded floor plans that identify office space work areas, provide spatial dimensions to calculate the square footage for each area, and locate inactive and underutilized equipment;

(v) Narrative of the central office floor space use;

(vi) Total amount of space occupied by interconnecting collocators for the sole purpose of interconnection;

(vii) Total amount of space occupied by third parties for purposes other than interconnection, and a narrative of the space use;

(viii) The number of central office employees employed and job titles;

(ix) Description of central office renovation/expansion plans and time frames for completion;

(x) Description of conversion of administrative, maintenance, equipment, and storage space plans and timeframes for completion; and

(xi) Description of any internal policies for conversion of administrative, maintenance, equipment, and storage space in central offices.

(d) The commission will decide any petition filed under subsection (4)(c) through an expedited proceeding conducted in accordance with the relevant procedural requirements and time lines established in WAC 480-07-650. The ILEC bears the burden to prove to the commission that the ordered collo-

cation is not practical for technical reasons or because of space limitations. The ILEC may be relieved of its obligation to provide collocation at a particular ILEC premises only to the extent expressly provided by commission order.

(e) Each ILEC must maintain a list of all of its central offices in Washington in which insufficient space exists to accommodate one or more types of collocation. The list must specify which types of collocation are unavailable in each office and whether the commission has approved the ILEC's denial of collocation in that office. The ILEC must post this list on its publicly accessible website and provide a copy of the list to any CLEC upon request. The ILEC must update this list within ten business days of (i) denying a CLEC's order for collocation; (ii) the service date of any order from the commission approving or disapproving such a denial; (iii) providing notice to CLECs previously denied collocation that space has become available in a central office; or (iv) obtaining knowledge through any other means that space for one or more types of collocation is no longer available or has become available in a particular central office.

(f) Each ILEC must maintain for each central office a waiting list of all unfilled orders for collocation space and the date of each order. After an ILEC has announced that one or more types of collocation space are not available in an office, any CLEC may submit a letter of intent to order collocation space in lieu of a collocation order, and this letter of intent must be included on the waiting list. If space for collocation becomes available in any central office, the ILEC must inform all CLECs, that ordered collocation or submitted a letter of intent to order collocation, of the availability of that space and must provide each such CLEC with fifteen calendar days to renew its original collocation order. The ILEC must provision collocation to these CLECs on a first-come, first-served basis according to the dates on which each ordered collocation or submitted a letter of intent to collocate in that central office.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-120-560, filed 11/24/03, effective 1/1/04; 00-24-047 (Order R-475, Docket No. UT-990582), § 480-120-560, filed 11/30/00, effective 12/31/00.]

Chapter 480-121 WAC

REGISTRATION, COMPETITIVE CLASSIFICATION AND PRICE LISTS OF TELECOMMUNICATIONS COMPANIES

WAC

480-121-011	Application of rules.
480-121-015	Exemptions from rules in chapter 480-121 WAC.
480-121-061	General requirements to classify a telecommunications company as competitive or to classify a service provided by a telecommunications company as competitive.
480-121-063	Regulatory requirements that may be waived for competitively classified telecommunications companies.

WAC 480-121-011 Application of rules. (1) The rules in this chapter apply to any telecommunications company that is subject to the jurisdiction of the commission as to rates and services under the provisions of RCW 80.01.040 and chapters 80.04 and 80.36 RCW.

(2) Price list provisions filed by telecommunications companies must conform with these rules. If the commission accepts a price list that conflicts with these rules, the acceptance does not constitute a waiver of these rules unless the commission specifically approves the variation consistent with WAC 480-121-015. Price lists that conflict with these rules without approval are superseded by these rules.

(3) Any affected person may ask the commission to review the interpretation of these rules by a telecommunications company or customer by posing an informal complaint under WAC 480-07-910 (Informal complaints) or by filing a formal complaint under WAC 480-07-370 (Pleadings—General).

(4) No deviation from these rules is permitted without written authorization by the commission. Violations will be subject to penalties as provided by law.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-121-011, filed 11/24/03, effective 1/1/04; 02-11-080 (General Order No. R-499, Docket No. UT-991922), § 480-121-011, filed 5/14/02, effective 6/17/02.]

WAC 480-121-015 Exemptions from rules in chapter 480-121 WAC. (1) The commission may grant an exemption from the provision of any rule in this chapter, if consistent with the public interest, with the purposes underlying regulation and with applicable statutes.

(2) To request a rule exemption, a person must file with the commission a written request identifying the rule for which an exemption is sought, giving a full explanation of the reason for requesting the exemption.

(3) The commission will assign the request a docket number, if it does not arise in an existing docket, and will schedule the request for consideration at one of its regularly scheduled open meetings or, if appropriate under chapter 34.05 RCW, in an adjudication. The commission will notify the person requesting the exemption, and other interested persons, of the date of the hearing or open meeting when the commission will consider the request.

(4) In determining whether to grant the request, the commission may consider whether application of the rule would impose undue hardship on the petitioner, of a degree or a kind different from hardship imposed on other similarly situated persons, and whether the effect of applying the rule would be contrary to the purposes of the rule.

(5) The commission will enter an order granting or denying the request or setting it for hearing, pursuant to chapter 480-07 WAC.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-121-015, filed 11/24/03, effective 1/1/04; 02-11-080 (General Order No. R-499, Docket No. UT-991922), § 480-121-015, filed 5/14/02, effective 6/17/02. Statutory Authority: RCW 80.01.040. 99-13-097 (Order R-464, Docket No. UT-980083), § 480-121-015, filed 6/15/99, effective 7/16/99.]

WAC 480-121-061 General requirements to classify a telecommunications company as competitive or to classify a service provided by a telecommunications company as competitive. (1) Initiation of classification proceedings. A telecommunications company requesting competitive classification must file a petition with the commission. The petition must state the effective date of the requested classification, which must be at least thirty days after the filing date. The

commission may initiate a competitive classification proceeding on its own motion by order instituting investigation.

(2) Intervention. Any person desiring to participate in a competitive classification proceeding may petition to intervene as provided in WAC 480-07-355.

(3) Additional parties. In any competitive classification proceeding the commission may require all regulated telecommunications companies potentially affected by the proceeding to appear as parties to determine the proper classification of the affected companies.

(4) Burden of proof. In any competitive classification proceeding, the telecommunications company has the burden of demonstrating that the company or specific service(s) is subject to effective competition.

(5) Effective competition. Effective competition means that customers of the service(s) have reasonably available alternatives and that the company does not have a significant captive customer base for the service(s). The commission will consider the factors outlined in RCW 80.36.320 (1)(a) through (d) when determining whether a company is competitive.

(6) The competitive classification becomes effective on the stated effective date unless the commission suspends the proposed classification. If the commission suspends a proposed classification, it will enter a final order within six months from the date the petition was filed.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-121-061, filed 11/24/03, effective 1/1/04; 02-11-080 (General Order No. R-499, Docket No. UT-991922), § 480-121-061, filed 5/14/02, effective 6/17/02; 01-09-002 (Docket No. U-991301, General Order No. R-481), § 480-121-061, filed 4/4/01, effective 5/5/01.]

WAC 480-121-063 Regulatory requirements that may be waived for competitively classified telecommunications companies. (1) The following regulatory requirements are waived for competitively classified companies:

(a) RCW 80.04.300 (Budgets to be filed by companies—Supplementary budgets);

(b) RCW 80.04.310 (Commission's control over expenditures);

(c) RCW 80.04.320 (Budget rules);

(d) RCW 80.04.330 (Effect of unauthorized expenditure—Emergencies);

(e) RCW 80.04.360 (Earnings in excess of reasonable rate—Consideration in fixing rates);

(f) RCW 80.04.460 (Investigation of accidents);

(g) RCW 80.04.520 (Approval of lease of utility facilities);

(h) RCW 80.36.100 (Tariff schedules to be filed and open to public);

(i) RCW 80.36.110 (Tariff changes—Statutory notice—Exception);

(j) Chapter 80.08 RCW (Securities) (except RCW 80.08.140, State not obligated);

(k) Chapter 80.12 RCW (Transfers of property);

(l) Chapter 80.16 RCW (Affiliated interests);

(m) WAC 480-80-101 Tariff requirements through WAC 480-80-143 Special contracts for gas, electric, and water companies;

(n) Chapter 480-140 WAC (Commission general—Budgets);

(o) Chapter 480-143 WAC (Commission general—Transfers of property);

(p) Chapter 480-146 WAC (Commission general—Securities, liens, affiliated interests, refunding of notes, lease of utility facilities);

(q) WAC 480-120-102 (Service offered);

(r) WAC 480-120-305 (Streamlined filing requirements for Class B telecommunications company rate increases);

(s) WAC 480-120-311 (Access charge and universal service reporting);

(t) WAC 480-120-321 (Expenditures for political or legislative activities); and

(u) WAC 480-120-323 (Washington Exchange Carrier Association (WECA)).

This rule supersedes all waivers of regulatory requirements for competitively classified companies granted by the commission at the time of a company's competitive classification. However, subsequent to the adoption of this rule, the commission may revoke the waiver of any regulatory requirement set forth in (a) through (u) of this subsection or may waive any regulatory requirement not included in (a) through (u) of this subsection.

(2) The commission may by order revoke waivers of regulatory requirements if it determines that revocation is necessary to protect the public interest.

(3) In addition, the commission may waive regulatory requirements for telecommunications companies that it has classified as competitive if it determines that competition with the regulatory waiver will serve the same purposes as public interest regulation.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.353. 03-22-046 (Docket No. A-030832, General Order No. R-509), § 480-121-063, filed 10/29/03, effective 11/29/03. Statutory Authority: RCW 80.01.040 and 80.04.160. 02-11-080 (General Order No. R-499, Docket No. UT-991922), § 480-121-063, filed 5/14/02, effective 6/17/02; 01-09-002 (Docket No. U-991301, General Order No. R-481), § 480-121-063, filed 4/4/01, effective 5/5/01.]

Chapter 480-140 WAC

COMMISSION GENERAL—BUDGETS

WAC

480-140-015	Exemptions from rules.
480-140-080	Confidentiality provision.

WAC 480-140-015 Exemptions from rules. (1) The commission may grant an exemption of any rule in this chapter, if consistent with the public interest, the purposes underlying regulation, and applicable statutes.

(2) To request a rule exemption, a person must file with the commission a written request identifying the rule for which an exemption is sought and giving a full explanation of the reason the exemption is requested.

(3) The commission will assign the request a docket number, if needed, and schedule the request for consideration at one of its regularly scheduled open meetings or, if appropriate under chapter 34.05 RCW, in an adjudication. The commission will notify the person requesting the exemption, and other interested persons, of the date the commission will consider the request.

(4) The commission will enter an order granting or denying the request or setting it for hearing, pursuant to chapter 480-07 WAC.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-140-015, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.04.160, 80.01.040 and 80.04.300 through 80.04.330. 99-23-065 (Order No. R-466, Docket No. A-990298), § 480-140-015, filed 11/15/99, effective 12/16/99.]

WAC 480-140-080 Confidentiality provision. The commission may, in its discretion, to the extent permitted by RCW 80.04.095 and chapter 42.17 RCW, upon the request of any public service company, withhold from publication, any portion of any budget designated as confidential pursuant to WAC 480-07-160.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-140-080, filed 11/24/03, effective 1/1/04. Statutory Authority: RCW 80.04.160, 80.01.040 and 80.04.300 through 80.04.330. 99-23-065 (Order No. R-466, Docket No. A-990298), § 480-140-080, filed 11/15/99, effective 12/16/99; Order R-43, § 480-140-080, filed 4/5/73 and 4/18/73; Order R-5, § 480-140-080, filed 6/6/69, effective 10/9/69.]

Title 490 WAC

WORKFORCE TRAINING AND EDUCATION COORDINATING BOARD, ALSO VOCATIONAL REHABILITATION

Chapters

490-500 Vocational rehabilitation and services for individuals with disabilities.

Chapter 490-500 WAC

**VOCATIONAL REHABILITATION AND SERVICES
FOR INDIVIDUALS WITH DISABILITIES**

WAC

490-500-520 Repealed.

**DISPOSITION OF SECTIONS FORMERLY
CODIFIED IN THIS CHAPTER**

490-500-520 Purchase of services—Selection criteria—Community rehabilitation programs. [Statutory Authority: RCW 74.29.025. 95-04-050 (Order 3830), § 490-500-520, filed 1/25/95, effective 2/25/95. Statutory Authority: RCW 28A.10.025. 82-04-075 (Order 1758), § 490-500-520, filed 2/3/82; 79-05-040 (Order 1391), § 490-500-520, filed 4/26/79; Order 1050, § 490-500-520, filed 8/29/75.] Repealed by 03-19-075, filed 9/12/03, effective 10/13/03. Statutory Authority: RCW 43.20A.310(2), 74.29.020(3) and 74.29.080(8). Later promulgation, see chapter 388-892 WAC.

WAC 490-500-520 Repealed. See Disposition Table at beginning of this chapter.

Title 491 WAC

VOLUNTEER FIRE FIGHTERS, BOARD FOR

Chapters

491-02 Actuarial tables.

**Chapter 491-02 WAC
ACTUARIAL TABLES**

WAC

491-02-095 Actuarial tables, schedules, and factors.

WAC 491-02-095 Actuarial tables, schedules, and factors. This chapter contains the tables, schedules, and factors adopted by the board for volunteer fire fighters and reserve officers pursuant to the authority granted by RCW 41.24.185 for calculating optional retirement allowances of members of retirement systems administered by the board. These tables, schedules, and factors were adopted by the board upon the recommendation of and in light of the findings of the state actuary in his regular actuarial investigation into the mortality, service, compensation, and other experience of the members and beneficiaries of such retirement systems. The tables, schedules, and factors contained in this chapter shall govern the retirement allowances only of members retiring during the period from January 1, 2004, until such time as these tables, schedules, and factors are amended by the board following the next actuarial investigation conducted by the state actuary. The retirement allowances of members retiring before January 1, 2004, shall continue to be governed by the tables, schedules, and factors in effect at the time of each member's retirement. Any new tables, schedules, and factors adopted by the board in the future shall govern retirement allowances only of members retiring after the adoption of such new tables, schedules, and factors.

**Board for Volunteer Fire Fighters and Reserve Officers
Table #1
Joint/Survivor Pension
Option 2 (Joint and 100% Survivor Pension with Pop-up)
(WAC 415-02-380)**

Member Younger		Member Older	
Age Differ- ence	Option 2 100%	Age Differ- ence	Option 2 100%
-20	0.958	0	0.870
-19	0.955	1	0.862
-18	0.952	2	0.857
-17	0.949	3	0.844
-16	0.947	4	0.840
-15	0.944	5	0.836
-14	0.940	6	0.831
-13	0.937	7	0.818
-12	0.934	8	0.814
-11	0.930	9	0.809
-10	0.927	10	0.805
-9	0.923	11	0.802

Member Younger		Member Older	
Age Difference	Option 2 100%	Age Difference	Option 2 100%
-8	0.920	12	0.787
-7	0.916	13	0.784
-6	0.912	14	0.780
-5	0.908	15	0.777
-4	0.901	16	0.773
-3	0.896	17	0.770
-2	0.889	18	0.767
-1	0.879	19	0.764
		20	0.762
		21	0.759
		22	0.756
		23	0.754
		24	0.752
		25	0.750
		26	0.748
		27	0.746
		28	0.744
		29	0.743
		30	0.741
		31	0.740
		32	0.738
		33	0.737
		34	0.736
		35	0.735
		36	0.734
		37	0.733
		38	0.732
		39	0.731
		40	0.730

Table #2
Survivor Pension
Early Retirement Factors
(WAC 415-02-320)

Years Early	Month 0	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Month 11
0	1.0000	0.9933	0.9866	0.9799	0.9732	0.9665	0.9598	0.9531	0.9464	0.9397	0.9330	0.9263
1	0.9200	0.9133	0.9066	0.8999	0.8932	0.8865	0.8798	0.8731	0.8664	0.8597	0.8530	0.8463
2	0.8400	0.8333	0.8266	0.8199	0.8132	0.8065	0.7998	0.7931	0.7864	0.7797	0.7730	0.7663
3	0.7600	0.7558	0.7516	0.7474	0.7432	0.7390	0.7348	0.7306	0.7264	0.7222	0.7180	0.7138
4	0.7100	0.7058	0.7016	0.6974	0.6932	0.6890	0.6848	0.6806	0.6764	0.6722	0.6680	0.6638
5	0.6600	0.6558	0.6516	0.6474	0.6432	0.6390	0.6348	0.6306	0.6264	0.6222	0.6180	0.6138
6	0.6100	0.6058	0.6016	0.5974	0.5932	0.5890	0.5848	0.5806	0.5764	0.5722	0.5680	0.5638
7	0.5600	0.5558	0.5516	0.5474	0.5432	0.5390	0.5348	0.5306	0.5264	0.5222	0.5180	0.5138
8	0.5100	0.5067	0.5034	0.5001	0.4968	0.4935	0.4902	0.4869	0.4836	0.4803	0.4770	0.4737
9	0.4700	0.4667	0.4634	0.4601	0.4568	0.4535	0.4502	0.4469	0.4436	0.4403	0.4370	0.4337
10	0.4300	0.4267	0.4234	0.4201	0.4168	0.4135	0.4102	0.4069	0.4036	0.4003	0.3970	0.3937
11	0.3900	0.3867	0.3834	0.3801	0.3768	0.3735	0.3702	0.3669	0.3636	0.3603	0.3570	0.3537
12	0.3500	0.3467	0.3434	0.3401	0.3368	0.3335	0.3302	0.3269	0.3236	0.3203	0.3170	0.3137
13	0.3100	0.3083	0.3066	0.3049	0.3032	0.3015	0.2998	0.2981	0.2964	0.2947	0.2930	0.2913
14	0.2900	0.2883	0.2866	0.2849	0.2832	0.2815	0.2798	0.2781	0.2764	0.2747	0.2730	0.2713
15	0.2700	0.2683	0.2666	0.2649	0.2632	0.2615	0.2598	0.2581	0.2564	0.2547	0.2530	0.2513
16	0.2500	0.2483	0.2466	0.2449	0.2432	0.2415	0.2398	0.2381	0.2364	0.2347	0.2330	0.2313
17	0.2300	0.2283	0.2266	0.2249	0.2232	0.2215	0.2198	0.2181	0.2164	0.2147	0.2130	0.2113
18	0.2100	0.2092	0.2084	0.2076	0.2068	0.2060	0.2052	0.2044	0.2036	0.2028	0.2020	0.2012
19	0.2000	0.1992	0.1984	0.1976	0.1968	0.1960	0.1952	0.1944	0.1936	0.1928	0.1920	0.1912
20	0.1900	0.1892	0.1884	0.1876	0.1868	0.1860	0.1852	0.1844	0.1836	0.1828	0.1820	0.1812
21	0.1800	0.1792	0.1784	0.1776	0.1768	0.1760	0.1752	0.1744	0.1736	0.1728	0.1720	0.1712
22	0.1700	0.1692	0.1684	0.1676	0.1668	0.1660	0.1652	0.1644	0.1636	0.1628	0.1620	0.1612
23	0.1600	0.1592	0.1584	0.1576	0.1568	0.1560	0.1552	0.1544	0.1536	0.1528	0.1520	0.1512

Years Early	Month 0	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Month 11
24	0.1500	0.1492	0.1484	0.1476	0.1468	0.1460	0.1452	0.1444	0.1436	0.1428	0.1420	0.1412
25	0.1400	0.1392	0.1384	0.1376	0.1368	0.1360	0.1352	0.1344	0.1336	0.1328	0.1320	0.1312
26	0.1300	0.1292	0.1284	0.1276	0.1268	0.1260	0.1252	0.1244	0.1236	0.1228	0.1220	0.1212
27	0.1200	0.1192	0.1184	0.1176	0.1168	0.1160	0.1152	0.1144	0.1136	0.1128	0.1120	0.1112
28	0.1100	0.1092	0.1084	0.1076	0.1068	0.1060	0.1052	0.1044	0.1036	0.1028	0.1020	0.1012
29+	0.1000	0.1000	0.1000	0.1000	0.1000	0.1000	0.1000	0.1000	0.1000	0.1000	0.1000	0.1000

**Table #3
Lump-Sum Settlements**

Age	Factor	Age	Factor
20	12.7335330	60	10.0726845
21	12.7191510	61	9.9030688
22	12.7036393	62	9.7274751
23	12.6870065	63	9.5462842
24	12.6688761	64	9.3601408
25	12.6496453	65	9.1682895
26	12.6287501	66	8.9710880
27	12.6062073	67	8.7693452
28	12.5820349	68	8.5617611
29	12.5558736	69	8.3481095
30	12.5281256	70	8.1282574
31	12.4982502	71	7.9049634
32	12.4666517	72	7.7673880
33	12.4331717	73	7.4434669
34	12.3976573	74	7.2070202
35	12.3601450	75	6.9674370
36	12.3203083	76	6.7250943
37	12.2778326	77	6.4800919
38	12.2327750	78	6.2326266
39	12.1844828	79	5.9832374
40	12.1332130	80	5.7325776
41	12.0783450	81	5.4813743
42	12.0199820	82	5.2319096
43	11.9577175	83	4.9851840
44	11.8915114	84	4.7422313
45	11.8211694	85	4.5041150
46	11.7461884	86	4.2722117
47	11.6665967	87	4.0482355
48	11.5816343	88	3.8341147
49	11.4912414	89	3.6319683
50	11.3949206	90	3.4438535
51	11.2923916	91	3.2716047
52	11.1841811	92	3.1136352
53	11.0693428	93	2.9700277
54	10.9474827	94	2.8403701
55	10.8184363	95	2.7238456
56	10.6826650	96	2.6193178
57	10.5407844	97	2.5253520
58	10.3917265	98	2.4401933
59	10.2356241	99	2.3616744

[Statutory Authority: RCW 41.24.290(2), 03-22-024, § 491-02-095, filed 10/27/03, effective 1/1/04; 99-21-052, § 491-02-095, filed 10/18/99, effective 1/1/00; 90-24-033, § 491-02-095, filed 11/30/90, effective 12/31/90.]

Title 495D WAC LAKE WASHINGTON TECHNICAL COLLEGE

**Chapters
495D-135 Refund of tuition and special course/program connected fees.**

Chapter 495D-135 WAC REFUND OF TUITION AND SPECIAL COURSE/PROGRAM CONNECTED FEES

**WAC
495D-135-040 Tuition and special course/program connected fees refund policy.**

WAC 495D-135-040 Tuition and special course/program connected fees refund policy. It shall be the policy of Lake Washington Technical College that students shall receive refunds of tuition and fees in a fair and equitable manner in accordance with policy expressed in state law. Further, all applicable federal laws and regulations will be observed and implemented when doing so is necessary to maintain eligibility for federal funding of programs, as allowed by state law.

[Statutory Authority: RCW 28B.15.605 and 28B.50.140. 03-13-080, § 495D-135-040, filed 6/16/03, effective 7/17/03. Statutory Authority: RCW 28B.50.140. 00-03-030, § 495D-135-040, filed 1/12/00, effective 2/12/00; 95-17-052, § 495D-135-040, filed 8/14/95, effective 9/14/95; 93-19-075, § 495D-135-040, filed 9/14/93, effective 10/15/93; 93-01-084, § 495D-135-040, filed 12/15/92, effective 1/15/93.]

Title 504 WAC WASHINGTON STATE UNIVERSITY

**Chapters
504-14 Campus traffic and parking regulations for Washington State University Spokane.**

504-18 Parking regulations—Intercollegiate college of nursing/Washington State University college of nursing.

504-19 Campus traffic and parking regulations for Washington State University Vancouver.

504-25 Standards of conduct for students.

Chapter 504-14 WAC

**CAMPUS TRAFFIC AND PARKING REGULATIONS
FOR WASHINGTON STATE UNIVERSITY
SPOKANE**

WAC

504-14-810 Violations, fines, and sanctions.
504-14-830 Other violations and sanctions.

WAC 504-14-810 Violations, fines, and sanctions. (1)

Violations and fines: Parking violations will be processed by the university. Fines must be paid at authorized locations[.] Schedules for parking violations, fines, and sanctions are posted in the public area of the parking services office and on the parking services web site.

(2) Reduction of fines: Fines for violations of overtime/nonpayment at meter and overtime in time zone paid within twenty-four hours will be reduced by one-half. Eligible violations received on Friday or Saturday can be paid on the following Monday to satisfy the twenty-four-hour requirement. Mailed fines must be postmarked within twenty-four hours to receive the one-half reduction. If a permit holder of record neglects to display his/her permit and receives a notice of violation for no parking permit, that fine will be reduced when possession of a valid parking permit for the location is verified by WSU Spokane public safety within twenty-four hours.

(3) Visitors: The first violation of notices for no parking permit and no parking permit for this area issued to visitors are considered warning notices upon presentation to WSU Spokane public safety.

(4) Inoperable vehicles: It is the owner's responsibility to immediately contact WSU Spokane public safety in the event that the owner's vehicle becomes inoperable.

[Statutory Authority: RCW 28B.30.125, 03-15-060, § 504-14-810, filed 7/14/03, effective 8/14/03. Statutory Authority: RCW 28B.30.125, 28B.30.150, 28B.10.560 and chapter 34.05 RCW. 01-18-015, § 504-14-810, filed 8/24/01, effective 9/24/01.]

WAC 504-14-830 Other violations and sanctions. (1)

Schedules for parking violations fines and sanctions are posted in the public area of the parking operations office and on the parking operations website.

(2) Late payment of fines: Failure to pay fines and charges will result in the total amount assessed being referred the WSU controller's office for collection. Forty-five days after issuance of a notice of violation a late fee shall be added to all unpaid parking violations.

(a) If a WSU student or staff member fails to pay the fine assessed for any violation, the fine will be referred to the WSU controller's office for collection. The controller may, if other collection efforts fail withhold the amount of the outstanding fines from damage deposits or other funds held for any student in order to secure payment. Where collection efforts are unsuccessful, the controller may notify the registrar to refrain from issuing student transcripts or to withhold permission to reenroll for a subsequent term until outstanding fines are paid.

(b) The procedures discussed above are not exclusive, however, and failure by anyone to pay fines may lead to towing or use of the wheel lock device described in these regula-

tions. The procedures discussed above are not a precondition to towing or use of the wheel lock.

(3) Impound by wheel lock or towing:

(a) Any vehicle with an accumulation of three or more unpaid parking violations or any vehicle displaying a lost or stolen permit may be temporarily immobilized by use of a wheel lock device placed on a wheel. A wheel lock fee will be assessed on vehicles which are immobilized with a wheel lock.

(b) Any vehicle may be towed away at owner's/operator's expense if the vehicle:

(i) Has been immobilized by wheel lock more than twenty-four hours; or

(ii) Is illegally parked in a marked tow-away zone; or

(iii) Is a hazard or obstruction to vehicular or pedestrian traffic (including, but not limited to, vehicles parked at curbs or rails painted yellow or red or in crosswalks); or

(iv) Cannot be impounded with a wheel lock device; or

(v) Is illegally parked in a disability space.

(c) The driver and/or owner of a towed vehicle shall pay towing and storage expenses.

(d) Any vehicle immobilized by use of the wheel lock device in excess of twenty-four hours will be assessed an additional storage fee for each calendar day or portion thereof, beyond the first twenty-four hours.

(e) The university assumes no responsibility in the event of damages resulting from towing, use of wheel lock devices, storage, or attempts to move a vehicle with a wheel lock device installed.

(f) No vehicle impounded by towing or wheel lock devices shall be released until the following fines are paid in cash:

(i) All unpaid parking violation penalties against said vehicle and any other vehicle registered to the violator;

(ii) A wheel lock fee;

(iii) All towing and storage fees.

(g) Any vehicle impounded pursuant to these regulations in excess of thirty calendar days shall be considered an abandoned vehicle and shall be disposed of in accordance with chapter 46.55 RCW.

(h) A person wishing to challenge the validity of any fines or fees imposed under this subsection may appeal such fines or fees as elsewhere provided in these regulations. However, in order to secure release of the vehicle, such person must pay the amount of such fines or fees as a bond which will be refunded to the extent the appeal is successful.

(i) An accumulation of six unpaid violations during any twelve-month period, exclusive of meter violations, and overtime in time zone violations, will subject the violator to revocation or denial of parking privileges. Vehicles without permits which accumulate the above number of violations may be prohibited from parking on university property.

(4) Failure to pay fines: Failure to pay a fine or comply with other penalties assessed pursuant to these regulations after exhausting or failing to exercise appeals provided for in these regulations constitutes a violation of RCW 28B.10.560. A citation or complaint for such violations may be issued and filed with the district court. Upon request of the university, the department of licensing may withhold vehicle registration pending the payment of outstanding parking fines.

[Statutory Authority: RCW 28B.30.125. 03-15-060, § 504-14-830, filed 7/14/03, effective 8/14/03. Statutory Authority: RCW 28B.30.125, 28B.30.150, 28B.10.560 and chapter 34.05 RCW. 01-18-015, § 504-14-830, filed 8/24/01, effective 9/24/01.]

Chapter 504-18 WAC

PARKING REGULATIONS—INTERCOLLEGIATE COLLEGE OF NURSING/WASHINGTON STATE UNIVERSITY COLLEGE OF NURSING

WAC

504-18-170 Administration and enforcement.

WAC 504-18-170 Administration and enforcement.

(1) The finance officer of the college of nursing in Spokane is responsible for the administration and enforcement of the college parking regulations.

(2) Anyone observed in violation of parking regulations may be given a notice of violation.

(3) The university reserves the right to impound any illegally parked vehicle at either or both the owner's or driver's expense.

(4) Parking violations will be processed by the office of finance and operations of the college in Spokane and will be paid in that office. Parking violations may be appealed in writing within 10 days of the violation. WAC 504-18-170(7) describes the appeals procedure.

(5) A schedule of parking fines and sanctions will be available at the college of nursing receptionist's desk, posted at the college's office of finance and operations, and filed with the university rules coordinator.

(6) Failure of a student or staff member to pay the fine assessed for any violation will result in the total amount of the fines being referred to Washington State University for collection. Washington State University, may, if other collection efforts fail, withhold outstanding fines from damage deposits or other funds held for students. Where collection efforts are unsuccessful, Washington State University may refrain from issuing copies of student transcripts or withhold permission to reenroll for an ensuing term until outstanding fines are paid.

(7) Appeal procedure

This procedure serves two primary purposes: To assure an impartial evaluation of certain circumstances and situations relating to an appeal and to aid in the appraisal of parking problems. The initial appeal must be in writing. The forms for this purpose may be obtained at the office of finance and operations of the college in Spokane. Appeals are reviewed and acted on by the college finance officer or designee.

[Statutory Authority: RCW 28B.30.125. 03-15-061, § 504-18-170, filed 7/14/03, effective 8/14/03. Statutory Authority: RCW 28B.30.125 and 28B.30.150. 01-18-019, § 504-18-170, filed 8/24/01, effective 9/24/01; 95-07-042, § 504-18-170, filed 3/8/95, effective 4/8/95; Order 73-8, § 504-18-170, filed 10/5/73.]

Chapter 504-19 WAC

CAMPUS TRAFFIC AND PARKING REGULATIONS FOR WASHINGTON STATE UNIVERSITY VANCOUVER

WAC

504-19-810 Violations, fines, and sanctions.
504-19-830 Other violations and sanctions.

WAC 504-19-810 Violations, fines, and sanctions. (1)

Violations and fines: Parking violations will be processed by the university. Fines must be paid at authorized locations. Schedules for parking violations, fines, and sanctions are posted in the public area of the parking services office and on the parking services website.

(2) Reduction of fines: Fines for violations of overtime/nonpayment at meter and overtime in time zone paid within twenty-four hours will be reduced by one-half. Eligible violations received on Friday or Saturday can be paid on the following Monday to satisfy the twenty-four-hour requirement. Mailed fines must be postmarked within twenty-four hours to receive the one-half reduction. If a permit holder of record neglects to display his/her permit and receives a notice of violation for no parking permit, that fine will be reduced when possession of a valid parking permit for the location is verified by WSUV public safety within twenty-four hours.

(3) Visitors: The first violation of notices for no parking permit and no parking permit for this area issued to visitors are considered warning notices upon presentation to WSUV public safety.

(4) Inoperable vehicles: It is the owner's responsibility to immediately contact WSUV public safety in the event that their vehicle becomes inoperable.

[Statutory Authority: RCW 28B.30.125. 03-15-062, § 504-19-810, filed 7/14/03, effective 8/14/03. Statutory Authority: RCW 28B.30.095, 28B.30.125, 28B.30.150, 28B.10.560 and chapter 34.05 RCW. 96-15-050, § 504-19-810, filed 7/15/96, effective 8/15/96.]

WAC 504-19-830 Other violations and sanctions. (1)

Schedules for parking violations, fines, and sanctions are posted in the public area of the parking services office and on the parking services website.

(2) Late payment of fines: Failure to pay fines and charges will result in the total amount assessed being referred for collection. Forty-five days after issuance of a notice of violation a late fee shall be added to all unpaid parking violations.

If a student or staff member fails to pay the fine assessed for any violation, the fine will be referred to the WSU controller's office for collection. The controller may, if other collection efforts fail, deduct outstanding fines from the salary warrants of employees or withhold the amount of the outstanding fines from damage deposits or other funds held for any student in order to secure payment. Where collection efforts are unsuccessful, the controller may notify the registrar to refrain from issuing student transcripts or to withhold permission to reenroll for a subsequent term until outstanding fines are paid. The procedures discussed above are not exclusive, however, and failure by anyone to pay fines may lead to towing or use of the wheel lock device described in these reg-

ulations. The procedures discussed above are not a precondition to towing or use of the wheel lock.

(3) Impound by wheel lock or towing:

(a) Any vehicle with an accumulation of three or more unpaid parking violations or any vehicle displaying a lost or stolen permit may be temporarily immobilized by use of a wheel lock device placed on a wheel. A wheel lock fee will be assessed on vehicles which are immobilized with a wheel lock.

(b) Any vehicle may be towed away at owner's/operator's expense if the vehicle:

(i) Has been immobilized by wheel lock more than twenty-four hours; or

(ii) Is illegally parked in a marked tow-away zone; or

(iii) Is a hazard or obstruction to vehicular or pedestrian traffic (including, but not limited to, vehicles parked at curbs or rails painted yellow or red or in crosswalks); or

(iv) Cannot be impounded with a wheel lock device; or

(v) Is illegally parked in a disability space.

(c) The driver and/or owner of a towed vehicle shall pay towing and storage expenses.

(d) Any vehicle immobilized by use of the wheel lock device in excess of twenty-four hours will be assessed a storage fee for each calendar day or portion thereof, beyond the first twenty-four hours.

(e) The university assumes no responsibility in the event of damages resulting from towing, use of wheel lock devices, storage, or attempts to move a vehicle with a wheel lock device installed.

(f) No vehicle impounded by towing or wheel lock devices shall be released until the following fines are paid in cash:

(i) All unpaid parking violation penalties against said vehicle and any other vehicle registered to the violator;

(ii) A wheel lock fee;

(iii) All towing and storage fees.

(g) Any vehicle impounded pursuant to these regulations in excess of thirty calendar days shall be considered an abandoned vehicle and shall be disposed of in accordance with chapter 46.55 RCW.

(h) A person wishing to challenge the validity of any fines or fees imposed under this subsection may appeal such fines or fees as elsewhere provided in these regulations. However, in order to secure release of the vehicle, such person must pay the amount of such fines or fees as a bond which will be refunded to the extent the appeal is successful.

(i) An accumulation of six unpaid violations during any twelve-month period, exclusive of meter violations, and overtime in time zone violations, will subject the violator to revocation or denial of parking privileges. Vehicles without permits which accumulate the above number of violations may be prohibited from parking on university property.

(4) Failure to pay fines: Failure to pay a fine or comply with other penalties assessed pursuant to these regulations after exhausting or failing to exercise appeals provided for in these regulations constitutes a violation of RCW 28B.10.560. A citation or complaint for such violations may be issued and filed with the district court. Upon request of the university, the department of licensing may withhold vehicle registration pending the payment of outstanding parking fines.

[Statutory Authority: RCW 28B.30.125. 03-15-062, § 504-19-830, filed 7/14/03, effective 8/14/03. Statutory Authority: RCW 28B.30.095, 28B.30.125, 28B.30.150, 28B.10.560, and chapter 34.05 RCW. 01-19-028, § 504-19-830, filed 9/13/01, effective 10/14/01; 96-15-050, § 504-19-830, filed 7/15/96, effective 8/15/96.]

Chapter 504-25 WAC

STANDARDS OF CONDUCT FOR STUDENTS

WAC

504-25-001	Terms of enrollment.
504-25-004	Repealed.
504-25-012	Repealed.
504-25-025	Sexual offenses.
504-25-030	Physical abuse or threatened physical abuse.
504-25-035	Hazing is prohibited.
504-25-040	Harassment.
504-25-043	Abuse of self or others.
504-25-050	Alcohol.
504-25-051	Effect of alcohol or drugs.
504-25-085	Computer abuses.
504-25-137	Misuse of keys or access cards.
504-25-138	Misuse of identification.
504-25-200	Disciplinary action.
504-25-201	Student rights.
504-25-205	Types of hearings.
504-25-215	University officer, conduct board, and appeal board.
504-25-222	Preliminary conference.
504-25-224	Service of notice.
504-25-226	Administrative hearing.
504-25-227	Administrative hearing appeal.
504-25-228	Conduct board hearing.
504-25-229	Conduct board appeal.
504-25-230	Sanctions.
504-25-231	Repealed.
504-25-245	Records.
504-25-310	Definitions.
504-25-315	Academic integrity processes.
504-25-320	Reports of academic dishonesty.
504-25-325	Conduct officer and hearing boards.
504-25-330	Acts of academic dishonesty that violate the conduct regulations and the academic integrity standards.
504-25-335	Academic integrity procedures.
504-25-340	Rights of students charged with violations of the academic integrity standards.
504-25-350	Hearing guidelines.
504-25-355	Sanctions.
504-25-360	Appeals.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

504-25-004	Scope of the standards of conduct. [Statutory Authority: RCW 28B.30.150. 02-15-075, § 504-25-004, filed 7/15/02, effective 8/15/02.] Repealed by 03-16-035, filed 7/30/03, effective 8/30/03. Statutory Authority: RCW 28B.30.150.
504-25-012	Effect of alcohol or drugs. [Statutory Authority: RCW 28B.30.150. 02-15-075, § 504-25-012, filed 7/15/02, effective 8/15/02.] Repealed by 03-16-035, filed 7/30/03, effective 8/30/03. Statutory Authority: RCW 28B.30.150.
504-25-231	Reconsideration of final orders. [Statutory Authority: RCW 28B.30.150. 02-15-075, § 504-25-231, filed 7/15/02, effective 8/15/02.] Repealed by 03-16-035, filed 7/30/03, effective 8/30/03. Statutory Authority: RCW 28B.30.150.

WAC 504-25-001 Terms of enrollment. Washington State University aims to create an environment that cultivates individual virtues and institutional integrity in the university community. The mission of the university is supported when students take responsibility for their conduct both in and out of the classroom. Under the terms of enrollment, students acknowledge the university's authority to take disciplinary action for conduct on or off university property. Off-campus

conduct may be addressed when it is detrimental to the university's mission.

[Statutory Authority: RCW 28B.30.150. 03-16-035, § 504-25-001, filed 7/30/03, effective 8/30/03; 02-15-075, § 504-25-001, filed 7/15/02, effective 8/15/02.]

WAC 504-25-004 Repealed. See Disposition Table at beginning of this chapter.

WAC 504-25-012 Repealed. See Disposition Table at beginning of this chapter.

WAC 504-25-025 Sexual offenses. (1) Sexual offenses of any kind, including, but not limited to acquaintance rape, indecent liberties, assault of a sexual nature, and/or other unwanted sexual contact are prohibited.

(a) Rape is defined under state law as sexual intercourse with a person who did not consent by his or her words or conduct. Consent to sexual activity means actual words or conduct indicating the person has freely and voluntarily agreed to have sexual intercourse.

(i) Silence or mere passivity from a state of intoxication or unconsciousness does not imply consent to sexual intercourse.

(ii) Lack of consent is implied if violence is threatened or used.

(b) Indecent liberties means knowingly causing sexual contact with a person by forcible compulsion or when the person is incapable of consent by reason of mental defect, mental incapacitation, or physical helplessness. Sexual contact is defined as any nonconsensual touching of the sexual or other intimate parts of a person done for the purpose of gratifying the sexual desire of either party.

(c) The university prohibits sexual contact when such contact amounts to assault under Washington law. Assault includes harmful and offensive contact with another person.

[Statutory Authority: RCW 28B.30.150. 03-16-035, § 504-25-025, filed 7/30/03, effective 8/30/03; 02-15-075, § 504-25-025, filed 7/15/02, effective 8/15/02. Statutory Authority: RCW 28B.30.095, 28B.30.125 and 28B.30.150. 95-07-045, § 504-25-025, filed 3/8/95, effective 4/8/95; 89-11-065 (Order 89-1, Resolution No. 3-31-89-16), § 504-25-025, filed 5/18/89, effective 7/1/89.]

WAC 504-25-030 Physical abuse or threatened physical abuse. Attempting or causing injury to an individual is prohibited. Causing or provoking physical contact with another is prohibited when the person knows or should reasonably believe that the other person will consider the contact offensive.

[Statutory Authority: RCW 28B.30.150. 03-16-035, § 504-25-030, filed 7/30/03, effective 8/30/03; 02-15-075, § 504-25-030, filed 7/15/02, effective 8/15/02. Statutory Authority: RCW 28B.30.095, 28B.30.125 and 28B.30.150. 89-11-065 (Order 89-1, Resolution No. 3-31-89-16), § 504-25-030, filed 5/18/89, effective 7/1/89.]

WAC 504-25-035 Hazing is prohibited. (1) No student or other person enrolled at Washington State University may conspire to engage in hazing or participate in hazing of another.

(a) Hazing includes any method of initiation into a student organization or living group, or any pastime or amusement engaged in with respect to such an organization or liv-

ing group that causes, or is likely to cause, bodily danger, physical harm, or serious mental or emotional harm to any student or other person attending a public or private institution of higher education or other postsecondary educational institution of higher education or other postsecondary educational institution in this state.

(b) Hazing does not include customary athletic events or other similar contests or competitions.

[Statutory Authority: RCW 28B.30.150. 03-16-035, § 504-25-035, filed 7/30/03, effective 8/30/03; 02-15-075, § 504-25-035, filed 7/15/02, effective 8/15/02. Statutory Authority: RCW 28B.30.095, 28B.30.125 and 28B.30.150. 95-07-045, § 504-25-035, filed 3/8/95, effective 4/8/95; 89-11-065 (Order 89-1, Resolution No. 3-31-89-16), § 504-25-035, filed 5/18/89, effective 7/1/89.]

WAC 504-25-040 Harassment. Conduct by physical, verbal, graphic, written, or electronic means that is sufficiently severe, pervasive or persistent so as to threaten an individual or limit the individual's ability to work, study or participate in the activities of the university is prohibited.

[Statutory Authority: RCW 28B.30.150. 03-16-035, § 504-25-040, filed 7/30/03, effective 8/30/03; 02-15-075, § 504-25-040, filed 7/15/02, effective 8/15/02. Statutory Authority: RCW 28B.30.095, 28B.30.125 and 28B.30.150. 89-11-065 (Order 89-1, Resolution No. 3-31-89-16), § 504-25-040, filed 5/18/89, effective 7/1/89.]

WAC 504-25-043 Abuse of self or others. Prohibited behavior includes but is not limited to:

(1) Inflicting mental or bodily harm upon any person (including one's self);

(2) Engaging in any intentional or reckless action that may result in mental or bodily harm (including to one's self);

(3) Causing a person to believe that the offender may cause mental or bodily harm.

[Statutory Authority: RCW 28B.30.150. 03-16-035, § 504-25-043, filed 7/30/03, effective 8/30/03.]

WAC 504-25-050 Alcohol. Illegal use, manufacture, possession, or sale of intoxicating beverages is prohibited by local, state, and federal law. Consumption, possession, sale, or distribution of alcohol by students in public areas of any university-owned or controlled property or at university functions must comply with all local, state and federal laws.

[Statutory Authority: RCW 28B.30.150. 03-16-035, § 504-25-050, filed 7/30/03, effective 8/30/03; 02-15-075, § 504-25-050, filed 7/15/02, effective 8/15/02. Statutory Authority: RCW 28B.30.095, 28B.30.125 and 28B.30.150. 95-07-045, § 504-25-050, filed 3/8/95, effective 4/8/95; 89-11-065 (Order 89-1, Resolution No. 3-31-89-16), § 504-25-050, filed 5/18/89, effective 7/1/89.]

WAC 504-25-051 Effect of alcohol or drugs. Any conduct that may have been influenced by alcohol or drugs will not limit or excuse the student's responsibility for his or her action.

[Statutory Authority: RCW 28B.30.150. 03-16-035, § 504-25-051, filed 7/30/03, effective 8/30/03.]

WAC 504-25-085 Computer abuses. Conduct that violates the university's electronic use policy is prohibited and includes:

(1) Copying university-owned or licensed software or data for personal or external use without prior approval;

(2) Copying another computer user's software or data without permission of its owner, even if it is readily accessible by electronic means;

(3) Knowingly accepting or using software or data which has been obtained by unauthorized means.

(4) Modifying or damaging, attempting to modify or damage, computer equipment, software, data bases, or communication lines without permission;

(5) Disrupting or attempting to disrupt computer operations;

(6) Invading the privacy of an individual by using electronic means to ascertain confidential information, even if an individual or department inadvertently allows access to such information;

(7) Abusing or harassing another computer user through electronic means;

(8) Using the university's computing facilities in the commission of a crime;

(9) Using computer services without authorization;

(10) Allowing another individual to use one's computer identity/account or using another individual's computer identity/account.

(a) This includes, but is not limited to, logging on to the account, accessing programs, and reading or altering computer records. The university, through information technology, must authorize and allocate time on the mainframe computers.

[Statutory Authority: RCW 28B.30.150. 03-16-035, § 504-25-085, filed 7/30/03, effective 8/30/03; 02-15-075, § 504-25-085, filed 7/15/02, effective 8/15/02. Statutory Authority: RCW 28B.30.095, 28B.30.125 and 28B.30.150. 89-11-065 (Order 89-1, Resolution No. 3-31-89-16), § 504-25-085, filed 5/18/89, effective 7/1/89.]

WAC 504-25-137 Misuse of keys or access cards.

Unauthorized possession, including but not limited to lending, selling, processing, duplicating, or using university issued key or access card is prohibited.

[Statutory Authority: RCW 28B.30.150. 03-16-035, § 504-25-137, filed 7/30/03, effective 8/30/03; 02-15-075, § 504-25-137, filed 7/15/02, effective 8/15/02.]

WAC 504-25-138 Misuse of identification. Unauthorized possession or use of university- or state-issued identification is prohibited, which includes but is not limited to: Lending, selling, processing, or duplicating the identification.

[Statutory Authority: RCW 28B.30.150. 03-16-035, § 504-25-138, filed 7/30/03, effective 8/30/03; 02-15-075, § 504-25-138, filed 7/15/02, effective 8/15/02. Statutory Authority: RCW 28B.30.095, 28B.30.125 and 28B.30.150. 95-07-045, § 504-25-138, filed 3/8/95, effective 4/8/95.]

WAC 504-25-200 Disciplinary action. The university's disciplinary process is educational, but students can be suspended or dismissed for serious violations of the standards of conduct. University disciplinary action is independent of any civil or criminal proceeding and is not influenced by the outcome of those proceedings. The university shall address allegations of student misconduct in a timely manner in its sole discretion.

[Statutory Authority: RCW 28B.30.150. 03-16-035, § 504-25-200, filed 7/30/03, effective 8/30/03; 02-15-075, § 504-25-200, filed 7/15/02, effective 8/15/02. Statutory Authority: RCW 28B.30.095, 28B.30.125 and

28B.30.150. 89-11-065 (Order 89-1, Resolution No. 3-31-89-16), § 504-25-200, filed 5/18/89, effective 7/1/89.]

WAC 504-25-201 Student rights. (1) A student or student organization that has allegedly violated the standards of conduct has the following rights:

(a) The right to notice and the basis for the allegation.

(b) The right to remain silent and not incriminate oneself if the allegation may lead to criminal liability.

(c) The right to a hearing.

(d) The right to seven calendar days' notice prior to a hearing (the student may waive this notice period).

(e) The right to present written information to the university officer or the conduct board prior to the hearing, including signed witness statements.

(f) The right to consult an adviser and have one adviser present at the hearing. The adviser may advise the student or student organization during the hearing, but is not permitted to directly address the university officer or the conduct board. The adviser is prohibited from examining witnesses.

(g) The right to one appeal. However, no appeal is available if the conduct board finds the student responsible for multiple violations of the university's drug/alcohol policy.

(2) A student or student organization has the following additional rights if the conduct board hears the matter:

(a) The right to request the removal of a conduct board member for prejudice. The request must be made in writing and support the basis for the alleged prejudice.

(b) The right to review any written material to be presented to the conduct board at least 48 hours prior to the hearing, including the names of witnesses expected to testify. Any new information or evidence shall be released to the accused student or student organization within 24 hours of receipt.

(c) The right to hear the testimony of all witnesses.

(d) The right to question witnesses subject to the chairperson's discretion.

(e) The right to have an audio recording made of the hearing.

[Statutory Authority: RCW 28B.30.150. 03-16-035, § 504-25-201, filed 7/30/03, effective 8/30/03; 02-15-075, § 504-25-201, filed 7/15/02, effective 8/15/02.]

WAC 504-25-205 Types of hearings. (1) An administrative hearing is an informal process conducted by a university officer.

(2) Conduct board hearings are more formal proceedings that may result in suspension, dismissal or loss of a student organization's recognition or charter.

(3) Student conduct hearings are conducted as brief adjudicative proceedings pursuant to RCW 34.05.482 through 34.05.494

(4) Two or more students or organizations may be required to participate in a joint hearing if they are alleged to have taken part in the same incident, act, event, or series of related acts.

[Statutory Authority: RCW 28B.30.150. 03-16-035, § 504-25-205, filed 7/30/03, effective 8/30/03; 02-15-075, § 504-25-205, filed 7/15/02, effective 8/15/02. Statutory Authority: RCW 28B.30.095, 28B.30.125 and 28B.30.150. 89-11-065 (Order 89-1, Resolution No. 3-31-89-16), § 504-25-205, filed 5/18/89, effective 7/1/89.]

WAC 504-25-215 University officer, conduct board, and appeal board. (1) The university officer is a student affairs staff member or a graduate assistant in the office of student affairs.

(2) The vice-president for student affairs appoints the university conduct board members. This board is generally composed of two faculty members, two students, and a faculty or staff chairperson. The chairperson is appointed by the vice-president for student affairs and conducts the proceedings.

(3) In matters involving an academic integrity violation, the faculty members shall be teaching faculty. If the accused student is a graduate student, at least one graduate student shall be on the conduct board.

(4) The appeal board is composed of three university administrators appointed by the vice-president for student affairs.

(5) All university officers and hearing board members shall be impartial.

(a) Impartial means the person is not personally involved in the alleged act or does not have a personal interest in the outcome of the disciplinary proceeding.

[Statutory Authority: RCW 28B.30.150. 03-16-035, § 504-25-215, filed 7/30/03, effective 8/30/03; 02-15-075, § 504-25-215, filed 7/15/02, effective 8/15/02. Statutory Authority: RCW 28B.30.095, 28B.30.125 and 28B.30.150. 95-07-045, § 504-25-215, filed 3/8/95, effective 4/8/95; 89-11-065 (Order 89-1, Resolution No. 3-31-89-16), § 504-25-215, filed 5/18/89, effective 7/1/89.]

WAC 504-25-222 Preliminary conference. (1) The preliminary conference is an opportunity to evaluate the student's or student organization's alleged involvement in the matter. The university officer shall:

- (a) Inform the student of the nature of the complaint;
- (b) Educate the student about the university's disciplinary process;
- (c) Notify the student of his or her rights and responsibilities; and
- (d) Encourage the student to submit a written explanation of the alleged incident.

(2) The student or student organization may waive the notice requirement and resolve the matter with a university officer.

[Statutory Authority: RCW 28B.30.150. 03-16-035, § 504-25-222, filed 7/30/03, effective 8/30/03; 02-15-075, § 504-25-222, filed 7/15/02, effective 8/15/02.]

WAC 504-25-224 Service of notice. (1) Notice of a hearing with a university officer or the conduct board is sent by regular mail and/or electronic mail to the student's or student organization's last known local address. If the student is no longer enrolled at the time notice is sent, the notice is sent to the student's permanent address.

(2) The student or student organization is responsible for keeping an updated address on file.

[Statutory Authority: RCW 28B.30.150. 03-16-035, § 504-25-224, filed 7/30/03, effective 8/30/03; 02-15-075, § 504-25-224, filed 7/15/02, effective 8/15/02.]

WAC 504-25-226 Administrative hearing. (1) Administrative hearings are informal hearings conducted by a university officer.

(a) The university officer has the sole discretion to send the matter to a conduct board at any time before a decision is issued. A student may request that a conduct board hear the case, but the final decision on the matter is made by the university officer and is not subject to appeal.

(2) If the student or student organization fails to appear at a hearing after proper notice, the university officer has the discretion to proceed in the student or organization's absence and determine responsibility and appropriate sanctions.

(3) The hearings are closed to the public in conformity with federal privacy law.

(4) The administrative hearing is not a legal proceeding.

(5) The university officer is not bound by the rules of evidence and may admit any relevant information, but shall exclude immaterial or unduly repetitious information. A student's adviser is not permitted to directly address the university officer.

(6) The university must prove the allegation by a preponderance of the evidence.

(a) Preponderance of the evidence means evidence that would lead a reasonable person to conclude that it is more likely than not that a violation occurred.

(7) A hearing may be continued to another time if any person disrupts the proceedings.

(8) At the conclusion of the hearing the student is informed in writing of the university officer's decision, the reasons for the decision, the sanction, and the right to appeal the decision.

(9) The written decision is the initial order.

(10) If the student does not appeal the university officer's decision within twenty-one calendar days from the date of the decision letter, it becomes the university's final order.

(11) Administrative hearing decisions involving individual students are confidential. However, the university may disclose the outcome of a disciplinary decision in compliance with the Family Educational Right to Privacy Act (FERPA) under the following exemptions:

(a) Disclosure to other university officials with a legitimate educational interest;

(b) Disclosure to an alleged victim of any crime of violence;

(c) Disclosure in connection with a health or safety emergency; and

(d) Future exemptions that may apply as amended by federal law. Students will be notified annually of any new exemptions that may apply.

(12) The university officer shall keep a written record of the hearing. This record shall include all documents relevant to the university officer's decision.

[Statutory Authority: RCW 28B.30.150. 03-16-035, § 504-25-226, filed 7/30/03, effective 8/30/03; 02-15-075, § 504-25-226, filed 7/15/02, effective 8/15/02.]

WAC 504-25-227 Administrative hearing appeal. (1) The appeal is a review of the record and the appeal letter; it is not a new hearing.

(2) The university officer's written decision is the university's initial order.

(3) The university officer's decision may be appealed to the vice-president for student affairs or designee.

(4) If the student does not appeal the university officer's decision within twenty-one calendar days from the date of the decision letter, it becomes the university's final order.

(5) An appeal letter shall be in writing and filed with the office of student affairs. The university officer may address the appeal letter by submitting a written response to the reviewing official. The university officer's response, if any, will be copied to the appellant.

(6) The appeal letter shall clearly state the basis for appeal. The following shall be the basis for an appeal:

(a) The university's disciplinary process was not properly followed and that procedural error would have substantially affected the decision;

(b) New information not available at the time of the hearing would have substantially affected the decision;

(c) There was not enough evidence to justify the decision.

(d) The sanction was too severe or inappropriate for the violation.

(7) The student bears the burden of proof on appeal.

(a) Burden of proof means the student or student organization must prove he, she, or it is not responsible for the violation of the standards of conduct.

(8) The vice-president for student affairs or designee shall review the record and make one of the following determinations within twenty calendar days from the date of the appeal letter:

(a) Affirm the university officer's decision;

(b) Reverse the university officer's decision;

(c) Affirm, reverse or modify the sanctions imposed by the university officer.

(9) The decision letter is the university's final order and shall advise the student or student organization that judicial review may be available.

[Statutory Authority: RCW 28B.30.150. 03-16-035, § 504-25-227, filed 7/30/03, effective 8/30/03; 02-15-075, § 504-25-227, filed 7/15/02, effective 8/15/02.]

WAC 504-25-228 Conduct board hearing. (1) Conduct board hearings are more formal proceedings that may result in suspension or dismissal. The student or student organization is responsible for presenting his, her, or its own case.

(a) A student may request an administrative hearing, but the final decision on the matter is made by the university officer and is not subject to appeal.

(2) If the student or student organization fails to appear at a hearing after proper notice, the university conduct board has the discretion to proceed in the student or student organization's absence and determine responsibility and appropriate sanctions.

(3) The hearings are closed to the public in conformity with federal privacy law.

(4) The conduct board hearing is not a legal proceeding.

(5) The conduct board is not bound by the rules of evidence and may admit any relevant information, but shall exclude immaterial or unduly repetitious questions or information.

(6) The university and the student or student organization have the right to verbally examine witnesses about the alleged incident, but the chairperson has the authority to limit a party to written questions. A student adviser may consult

with the student or student organization during the hearing, but is not permitted to directly address the conduct board. The adviser is prohibited from examining witnesses.

(7) The university must prove the allegation by a preponderance of the evidence.

(a) Preponderance of the evidence means evidence that would lead a reasonable person to conclude that it is more likely than not that a violation occurred.

(b) The conduct board's decision is made by a simple majority vote.

(8) Any person may be excluded from the proceeding for disruptive behavior.

(9) The decision process is closed to everyone except the members of the conduct board. In some cases, an assistant attorney general may advise the conduct board on procedural matters.

(10) Conduct board decisions involving individual students are confidential. However, the university may disclose the outcome of a disciplinary decision in compliance with the Family Educational Right to Privacy Act (FERPA) under the following exemptions:

(a) Disclosure to university officials with a legitimate educational interest;

(b) Disclosure to an alleged victim of any crime of violence;

(c) Disclosure is in connection with a health or safety emergency; and

(d) Future exemptions that may apply as amended by federal law. Students will be notified annually of any new exemptions that may apply.

(11) Decisions involving student groups or living groups may be disclosed to the public pursuant to a public records request without violating individual students' privacy rights.

(a) Personally identifiable student information shall be redacted.

(12) The student or student organization may be informed of the outcome of the hearing prior to receiving written notification.

(13) The student or student organization shall be notified of the conduct board's decision within ten calendar days from the date the matter is heard (if the university is not in session, this period may be reasonably extended). The student or student organization shall receive written notice of the decision, the reasons for the decision, the sanction, and the right to appeal.

(14) The conduct board's written decision is sent by regular and/or electronic mail to the student's or the president of the student organization's last known address.

(15) The written decision is the university's initial order.

(16) If the student or student organization does not appeal the conduct board's decision within twenty-one calendar days from the date of the decision letter, it becomes the university's final order.

(17) The conduct board hearing record shall include:

(a) All documents relevant to the conduct board's decision, and

(b) An audio recording of the proceedings.

[Statutory Authority: RCW 28B.30.150. 03-16-035, § 504-25-228, filed 7/30/03, effective 8/30/03; 02-15-075, § 504-25-228, filed 7/15/02, effective 8/15/02.]

WAC 504-25-229 Conduct board appeal. (1) The appeal is a review of the record and the appeal letter, it is not a new hearing. No appeal is available if the conduct board finds the student responsible for multiple violations of the university's drug/alcohol policy.

(2) The conduct board's written decision is the university's initial order.

(3) The university conduct board's decision may be appealed to the university appeal board.

(4) If the student does not appeal the conduct board's decision within twenty-one calendar days from the date of the decision letter, it becomes the university's final order.

(5) An appeal letter shall be in writing and filed with the office of student affairs. The university officer may address the appeal letter by submitting a written response to the board. The university officer's response, if any, will be sent to the appellant.

(6) The following shall be the basis for an appeal:

(a) The university's disciplinary process was not properly followed and that procedural error would have substantially affected the decision;

(b) New information not available at the time of the hearing would have substantially affected the decision.

(c) There was not enough evidence to justify the decision;

(d) The standards of conduct do not apply to the alleged conduct.

(e) The sanction was too severe or inappropriate for the violation.

(7) The student bears the burden of proof. Burden of proof means the student must prove they are not responsible for the violation of the standards of conduct.

(8) The university appeal board shall review the record and make one of the following determinations:

(a) Affirm the conduct board's decision;

(b) Reverse the conduct board's decision;

(c) Affirm, reverse or modify the sanctions imposed by the conduct board.

(9) The student or student organization shall be notified of the appeal board's decision within twenty calendar days from the date of the appeal letter. The university appeal board's decision letter is the final order and shall advise the student or student organization that judicial review may be available.

[Statutory Authority: RCW 28B.30.150, 03-16-035, § 504-25-229, filed 7/30/03, effective 8/30/03; 02-15-075, § 504-25-229, filed 7/15/02, effective 8/15/02.]

WAC 504-25-230 Sanctions. Any of the following sanctions or any combinations of sanctions may be imposed on a student or student organization for a violation of the standards of conduct.

(1) Warning. A letter notifying the student that the allegation is not a violation under the standards of conduct, but repeated behavior may result in a violation.

(2) Education. The university has the discretion to require the student to seek specific education or complete an educational project designed to create an awareness of the student's misconduct.

(3) Assessment. The student is required to have an alcohol and/or drug assessment by a certified professional and to comply with the professional's recommendations.

(4) Community service. Assignment of labor or responsibilities to any student or student organization within the university or local community may be imposed up to a maximum of eighty hours per student or per member of an organization.

(5) Disciplinary probation. Disciplinary probation means formal conditions are imposed on a student's continued attendance at the university for a specific period of time. Disciplinary probation serves as a warning that future misconduct may result in more severe sanctions. Students on disciplinary probation are not eligible to run for or hold office in any student groups or organizations (although they can be members of any group or organization); they are not eligible for certain jobs on campus (including but not limited to resident advisor or orientation counselor), and they are not eligible to serve on the University conduct board.

(6) Restitution. Restitution may include reimbursement for damaged or stolen property and any medical expenses incurred by a person injured as a result of the student's or student organization's misconduct.

(7) No contact order. This may include a prohibition of direct or indirect physical and/or verbal contact with another individual or group.

(8) Loss of privileges. Loss of the right to reside in a specific housing unit or in any university-owned or approved housing, or loss of the right to participate in extracurricular activities for a specific period of time.

(9) Loss of recognition or charter. A student organization's recognition or charter may be withheld permanently or for a specific period of time. A fraternity or sorority may be prohibited from housing freshmen.

(10) Hold on transcript and/or registration. This is a temporary measure restricting release of a student's transcript or access to registration. Upon satisfactory completion of the conditions of the sanction, the hold shall be released.

(11) Revocation of degree. A student's degree may be revoked if it was falsely or fraudulently obtained, or if the student was dismissed from the university based on his or her misconduct.

(12) Suspension. The student is suspended for a specific period of time. A student may be excluded from specific areas of campus for safety reasons. Upon satisfactory completion of stated conditions, the university may grant reinstatement at its discretion.

(a) The suspension is effective immediately if the conduct board determines that the student poses a safety risk to himself/herself or to the university community.

(b) Students shall be automatically suspended for a minimum of one semester for multiple violations of the university's alcohol/drug policy.

(13) Dismissal. The student's enrollment is immediately terminated. Dismissal means that a student's academic relationship with the university is permanently ended.

(14) Special sanctions for hazing. Pursuant to RCW 28B.10.902, additional sanctions will be imposed in cases where there is a finding of responsibility for hazing as provided in RCW 28B.10.900 and WAC 504-25-035 as amended:

[(i)][(a)] A person who participates in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships, or awards for a specific period of time.

[(ii)][(b)] Any organization, association, or student living group that knowingly permits hazing to be conducted by its members or by others subject to its direction or control shall be deprived of any official recognition or approval granted by Washington State University.

[Statutory Authority: RCW 28B.30.150. 03-16-035, § 504-25-230, filed 7/30/03, effective 8/30/03; 02-15-075, § 504-25-230, filed 7/15/02, effective 8/15/02. Statutory Authority: RCW 28B.30.095, 28B.30.125 and 28B.30.150. 95-07-045, § 504-25-230, filed 3/8/95, effective 4/8/95; 89-11-065 (Order 89-1, Resolution No. 3-31-89-16), § 504-25-230, filed 5/18/89, effective 7/1/89.]

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

WAC 504-25-231 Repealed. See Disposition Table at beginning of this chapter.

WAC 504-25-245 Records. (1) Disciplinary records will be maintained for a minimum of seven years in accordance with the university's retention schedule.

(2) The disciplinary record is confidential.

(3) A student may request a copy of his or her own disciplinary record at his or her own reasonable expense by making a written request to the office of student affairs.

(a) Personally identifiable student information shall be redacted to protect another student's privacy rights.

(4) A student may authorize the release of his/her own disciplinary record to a third party in compliance with the Federal Educational Rights and Privacy Act (FERPA) by making a written request to the office of student affairs.

(a) Identifying student information shall be redacted to protect another student's privacy rights.

(5) The university may inform an alleged victim of the outcome of any disciplinary proceeding involving a crime of violence as defined by Federal Educational Rights and Privacy Act (FERPA).

(6) The university may not communicate a student's disciplinary record to any person or agency outside the university without the prior written consent of the student, except as required or permitted by law.

(a) The student's parents or legal guardians may review these records if the student is a minor or a dependent for tax purposes as defined by the Federal Educational Rights and Privacy Act (FERPA).

(b) The university provides annual notification of a student's privacy rights in accordance with federal law.

[Statutory Authority: RCW 28B.30.150. 03-16-035, § 504-25-245, filed 7/30/03, effective 8/30/03; 02-15-075, § 504-25-245, filed 7/15/02, effective 8/15/02. Statutory Authority: RCW 28B.30.095, 28B.30.125 and 28B.30.150. 95-07-045, § 504-25-245, filed 3/8/95, effective 4/8/95; 89-11-065 (Order 89-1, Resolution No. 3-31-89-16), § 504-25-245, filed 5/18/89, effective 7/1/89.]

WAC 504-25-310 Definitions. (1) Academic dishonesty. Academic dishonesty includes cheating, falsification, fabrication, multiple submission, plagiarism, abuse of aca-

ademic materials, complicity, or misconduct in research, all of which are defined below.

(2) Cheating. Cheating is the intentional use of, or attempt to use, unauthorized material, information, or study aids in any academic activity to gain advantage. Cheating includes, but is not limited to, communicating improperly with others, especially other students, during tests or the preparation of assignments for classes; copying from books, notes or other sources during a test when this is not permitted; copying from another student's work (reports, laboratory work, computer programs, files, etc.); making improper use of calculators or other devices during a test; illegitimately procuring or using copies of current examinations; allowing a substitute to take an examination or write a paper for oneself.

(3) Falsification. Falsification is the intentional and unauthorized alteration of information in the course of an academic activity. Falsification includes, but is not limited to, altering the record of data, experimental procedures, or results; falsely describing the source of information (e.g., reproducing a quotation from a book review as if it had been obtained from the book itself); altering academic records; altering a returned examination paper and then seeking a higher grade based on the result.

(4) Fabrication. Fabrication is the intentional invention or counterfeiting of information in the course of an academic activity without proper authorization. Fabrication includes, but is not limited to, counterfeiting data, research results, information, or procedures with inadequate foundation in fact; counterfeiting a record of internship or practicum experiences; submitting a false excuse for absence or tardiness.

(5) Multiple submission. Multiple submission includes, but is not limited to, submitting the same paper or oral report for credit in two courses without the responsible instructor's permission; making minor revisions in a paper or report for which credit has already been received and submitting it again as a new piece of work.

(6) Plagiarism. Plagiarism is knowingly representing the work of another as one's own, without proper acknowledgment of the source. The only exceptions to the requirement that sources be acknowledged occur when the information, ideas, etc., are common knowledge. Plagiarism includes, but is not limited to, submitting as one's own work the work of a "ghost writer" or work obtained from a commercial writing service; quoting directly or paraphrasing closely from a source without giving proper credit; using figures, graphs, charts, or other such material without identifying the sources.

(7) Abuse of academic materials. Abuse of academic materials occurs when a student intentionally or knowingly destroys, steals, mutilates, or otherwise makes inaccessible library or other academic resource material that does not belong to him or her. Abuse of academic materials includes, but is not limited to, stealing, destroying, or mutilating library materials; stealing or intentionally destroying another student's notes or laboratory data; hiding resource materials so others may not use them; destroying computer programs or files needed in others' academic work; copying computer software in ways that violate the terms of the licensing agreement that comes with the software.

(8) Complicity in academic dishonesty. A student is guilty of complicity in academic dishonesty if he or she intentionally or knowingly helps or attempts to help another or

others to commit an act of academic dishonesty of any of the types defined above. Complicity in academic dishonesty includes, but is not limited to, knowingly allowing another to copy from one's paper during an examination or test; distributing test questions before the time scheduled for the test; collaborating on academic projects when students are expected to work independently; taking a test for another student; or signing a false name on a piece of academic work.

(9) Misconduct in research. Graduate and undergraduate students on research appointments for the university are responsible for compliance with the university's *Policy and Procedural Guidelines for Misconduct in Research and Scholarship* found in the faculty manual. Misconduct in research is treated as academic dishonesty.

(10) Responsible instructor. The responsible instructor in the academic integrity process is the person who assigns the grades, supervises students' work, or is responsible for teaching operations in the course of study in which the alleged violation occurred. The term "responsible instructor" can include, but is not limited to, instructors, graduate assistants, another instructor, and clinical supervisors. If the conduct does not relate to a particular course, the role of instructor for these procedures may be a department chair or academic advisor.

[Statutory Authority: RCW 28B.30.150. 03-16-035, § 504-25-310, filed 7/30/03, effective 8/30/03. Statutory Authority: RCW 28B.30.150, 28B.30.095 and 28B.30.125. 95-07-001, § 504-25-310, filed 3/2/95, effective 4/2/95.]

WAC 504-25-315 Academic integrity processes. (1) Every act of academic dishonesty affects academic evaluation of the student and also is a violation of the university's standards of conduct. Responsible instructors retain the authority and responsibility to assign grades to students, considering from an academic standpoint the nature of the student's action. This is the case even when the case is referred to the university academic integrity process. Students have recourse to appealing the responsible instructor's assignment of grades according to usual academic policy. See academic regulation 104.

(2) All clear instances of academic dishonesty shall be reported to the office of student conduct as outlined in WAC 504-25-335(2). The first reported instance at WSU of academic dishonesty by a student will be treated as purely an academic matter unless, in the judgment of the responsible instructor, more serious action should be taken through the disciplinary process. Any allegation of subsequent academic dishonesty will be treated as a matter to be referred to the office of student conduct.

[Statutory Authority: RCW 28B.30.150. 03-16-035, § 504-25-315, filed 7/30/03, effective 8/30/03. Statutory Authority: RCW 28B.30.150, 28B.30.095 and 28B.30.125. 95-07-001, § 504-25-315, filed 3/2/95, effective 4/2/95.]

WAC 504-25-320 Reports of academic dishonesty. Any member of the university community who witnesses an apparent act of academic dishonesty shall report the act either to the instructor responsible for the course or activity or to the office of student conduct.

[Statutory Authority: RCW 28B.30.150. 03-16-035, § 504-25-320, filed 7/30/03, effective 8/30/03. Statutory Authority: RCW 28B.30.150,

28B.30.095 and 28B.30.125. 95-07-001, § 504-25-320, filed 3/2/95, effective 4/2/95.]

WAC 504-25-325 Conduct officer and hearing boards. (1) Conduct officer. Conduct officers are assistants in the office of student conduct and serve as the investigators and prosecutors. Conduct officers are appointed for each Washington State University campus. The conduct officer for a particular case prepares the case and the materials after notification of a violation by an instructor. The conduct officer also serves as the secretary for conduct board hearings.

(2) Conduct board. The conduct board members are appointed by the vice-president for student affairs. A hearing panel comprised of three faculty and two student members of the conduct board will hear all cases regarding academic dishonesty in which a finding of responsibility could result in expulsion or suspension. In a case involving allegations of misconduct in research by a graduate student, at least one member shall be a member of the graduate faculty.

(3) Conduct board chair. One faculty member of the conduct board shall be appointed the chair by the vice-president for student affairs.

(4) Faculty hearing officers. Faculty hearing officers are faculty members of the conduct board. Faculty hearing officers are appointed for each Washington State University campus. A case may be heard by a faculty hearing officer when, in the judgment of the university conduct officer, the offense is such that the sanction to be imposed shall not include suspension or expulsion.

(5) University appeals board. The university appeals board hears appeals of action taken by the conduct board in accordance with WAC 504-25-360.

[Statutory Authority: RCW 28B.30.150. 03-16-035, § 504-25-325, filed 7/30/03, effective 8/30/03. Statutory Authority: RCW 28B.30.150, 28B.30.095 and 28B.30.125. 95-07-001, § 504-25-325, filed 3/2/95, effective 4/2/95.]

WAC 504-25-330 Acts of academic dishonesty that violate the conduct regulations and the academic integrity standards. Whenever the conduct officer determines that an alleged violation could constitute a violation of both the conduct regulations, chapter 504-25 WAC, Part I, and the academic integrity standards, chapter 504-25 WAC, Part III, the alleged violation will be handled under the procedures of chapter 504-25 WAC, Part II. The conduct officer shall assign such cases to either an administrative hearing officer or the university conduct board in the manner described in WAC 504-25-210.

[Statutory Authority: RCW 28B.30.150. 03-16-035, § 504-25-330, filed 7/30/03, effective 8/30/03. Statutory Authority: RCW 28B.30.150, 28B.30.095 and 28B.30.125. 95-07-001, § 504-25-330, filed 3/2/95, effective 4/2/95.]

WAC 504-25-335 Academic integrity procedures. (1) Initial evaluation of evidence.

(a) A responsible instructor assembles the available evidence when he or she acquires evidence of a student violation of the academic integrity standards. The instructor determines whether the case warrants further investigation or action.

(b) In cases of misconduct in research by students, the initial evaluation will be conducted in accordance with the

university's policy on misconduct in research. If it is determined that misconduct has occurred, the matter will be referred to the office of student conduct. Referral to student conduct does not affect the ability of the university independently to terminate employment if the misconduct relates to the student's appointment.

(2) Grading by instructor. If the responsible instructor finds that a violation of academic integrity has occurred, the instructor should proceed to assign a grade, or take other appropriate action, considering the academic nature of the violation.

The instructor shall notify the office of student conduct of any finding that a violation has occurred. The office of student conduct shall notify the instructor of whether or not the alleged violation is a first offense.

If the violation is a first offense, the office of student conduct will take no additional action, unless the instructor deems the violation serious enough as to warrant further action. In such serious first offense cases, the office of student conduct shall review the case and handle it according to the procedures set forth in this chapter.

If the offense is not a first violation, the office of student conduct shall review the case and handle it according to the procedures set forth in this chapter.

If the responsible instructor's grade is appealed and a department chair or dean subsequently finds that a violation did not occur, or that the academic sanction was too severe, a report shall be filed with the office of student conduct indicating the finding or the modified grade.

(3) University conduct process.

(a) The university conduct officer for the campus where the violation occurred shall prepare cases for a hearing when an alleged violation of academic integrity standards is referred to the university conduct process.

(b) The university conduct officer shall contact and interview the accused student.

(c) During the interview, the student is informed of the charge(s) and asked to make a written statement about the incident.

(d) The student is informed of the rights and responsibilities in the academic integrity process.

(e) The conduct officer may interview other people involved.

(f) Evaluation of the allegation.

(i) The conduct officer may discontinue any investigation when the allegation is deemed to be without basis. Before discontinuing the investigation, the conduct officer shall contact the responsible instructor.

(ii) In the event the conduct officer finds there is any basis to the allegation, the student may be officially charged with violation of the standards of conduct.

(g) Assignment of the type of hearing.

(i) The conduct officer will evaluate the seriousness of the charge and assign the case to either a faculty hearing officer or the conduct board.

(ii) Any alleged violation which could result in suspension or expulsion shall be referred to the conduct board, unless the student requests and is granted a hearing by a faculty hearing officer.

(iii) Every other violation shall be assigned to a faculty hearing officer at the campus where the student attends.

(h) Notice. When any student is charged by the conduct officer with a violation of the academic integrity standards, the accused party must be notified at least seven calendar days in advance of the hearing. The notice must be in writing and include the following:

(i) The specific charges, citing the appropriate university policy or regulation allegedly violated;

(ii) The time and place of the alleged act(s) insofar as may be reasonably known; and

(iii) The time and place of the hearing.

[Statutory Authority: RCW 28B.30.150. 03-16-035, § 504-25-335, filed 7/30/03, effective 8/30/03. Statutory Authority: RCW 28B.30.150, 28B.30.095 and 28B.30.125. 95-07-001, § 504-25-335, filed 3/2/95, effective 4/2/95.]

WAC 504-25-340 Rights of students charged with violations of the academic integrity standards. Students charged with violations of the academic integrity standards shall have the same rights afforded students in disciplinary procedures for violations of the standards of conduct. These rights are codified as WAC 504-25-201.

[Statutory Authority: RCW 28B.30.150. 03-16-035, § 504-25-340, filed 7/30/03, effective 8/30/03. Statutory Authority: RCW 28B.30.150, 28B.30.095 and 28B.30.125. 95-07-001, § 504-25-340, filed 3/2/95, effective 4/2/95.]

WAC 504-25-350 Hearing guidelines. The guidelines established for administrative hearings and hearings before the university conduct board for violations of standards of conduct shall apply for hearings of alleged violations of the academic integrity standards. These guidelines are codified in WAC 504-25-226 and 504-25-228.

[Statutory Authority: RCW 28B.30.150. 03-16-035, § 504-25-350, filed 7/30/03, effective 8/30/03. Statutory Authority: RCW 28B.30.150, 28B.30.095 and 28B.30.125. 95-07-001, § 504-25-350, filed 3/2/95, effective 4/2/95.]

WAC 504-25-355 Sanctions. (1) The hearing officer or conduct board may impose any of the following sanctions or any combination of the sanctions for violations of the academic integrity standards:

(a) A formal warning.

(b) Addition of a notation to the grade recommended by the instructor. The notation shall indicate that the student was found responsible for an act of academic dishonesty in the course for which the grade was given.

(c) Academic assignment or other creative interventions designed to promote the ethical development of the student. Such assignments or interventions shall not be devised to embarrass or unduly burden the student.

(2) The conduct board may impose the following additional sanctions for violations of the academic integrity standards:

(a) Suspension from the university for a specified interval of time.

(b) Dismissal from the university.

[Statutory Authority: RCW 28B.30.150. 03-16-035, § 504-25-355, filed 7/30/03, effective 8/30/03. Statutory Authority: RCW 28B.30.150, 28B.30.095 and 28B.30.125. 95-07-001, § 504-25-355, filed 3/2/95, effective 4/2/95.]

WAC 504-25-360 Appeals. (1) Who may appeal.

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(a) Any student charged with any violation(s) of the academic integrity standards and found responsible for any violation(s) by a hearing board or administrative hearing officer is entitled to one administrative appeal.

(b) The conduct officer, after consulting with the responsible instructor, is entitled to one administrative appeal when a student is found not responsible or the conduct officer deems the sanction inappropriate.

(2) Types of appeals.

(a) Appeals of findings by a faculty hearing officer go to the vice-provost for academic affairs.

(b) Appeals of findings by the conduct board go to the university appeals board. Membership of the university appeals board is defined by WAC 504-25-215.

(3) Procedure for filing an appeal.

(a) An appeal must be filed within twenty-one calendar days of the date the student received the decision.

(b) All requests to review decisions must be in writing and delivered to the office of student affairs.

(c) The request must state the grounds for appeal.

(d) Students may request an appeal based on the following:

(i) There was a procedural error which substantively affected the decision;

(ii) New evidence has been found which was not previously available and which would have substantively affected the decision;

(iii) The decision was not supported by substantial evidence; or

(iv) The sanction is too severe or not appropriate.

(e) The conduct officer may only request an appeal based on the following:

(i) The decision was not supported by substantial evidence; or

(ii) The sanction is too severe, not severe enough, or not appropriate.

(4) Appeal process.

(a) During the appeal process, the burden of proof shifts to the appealing party.

(b) The appeal is a review of the record of the hearing plus the letter of appeal, including any written argument(s) submitted by the appealing party and nonappealing party and a statement of the new evidence if that is the ground for the appeal.

(c) An appeal is not a new hearing.

(d) The vice-provost for academic affairs or the university appeals board may permit oral argument. The student and the conduct officer shall be notified at least three days in advance of the argument.

[Statutory Authority: RCW 28B.30.150. 03-16-035, § 504-25-360, filed 7/30/03, effective 8/30/03. Statutory Authority: RCW 28B.30.150, 28B.30.095 and 28B.30.125. 95-07-001, § 504-25-360, filed 3/2/95, effective 4/2/95.]