

**WSR 13-24-045**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Developmental Disabilities Administration)

[Filed November 26, 2013, 9:05 a.m., effective January 1, 2014]

Effective Date of Rule: January 1, 2014.

Purpose: To permanently adopt amendments to sections of chapter 388-845 WAC, DDD home and community based services waivers, to remain in compliance with the requirements of chapter 49, Laws of 2012 (related to community access services). In addition these amendments remove basic waiver, add dental services as a waiver service option until January 1, 2014; align this chapter with amendments to chapter 388-828 WAC for community access services; and provides updates to WAC and RCW references, titles and links, names of state agencies and updates to language structure so that readers will have an easier and better overall understanding of the rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-845-0205; and amending WAC 388-845-0001 Definitions, 388-845-0015 What HCBS waivers are provided by the developmental disabilities administration (DDA)?, 388-845-0020 When were the HCBS waivers effective?, 388-845-0030 Do I meet criteria for HCBS waiver-funded services?, 388-845-0035 Am I guaranteed placement on a waiver if I meet waiver criteria?, 388-845-0040 Is there a limit to the number of people who can be enrolled in each HCBS waiver?, 388-845-0041 What is DDD responsibility to provide my services under the DDD HCBS waivers administered by DDD?, 388-845-0045 When there is capacity to add people to a waiver, how does DDD determine who will be enrolled?, 388-845-0050 How do I request to be enrolled in a waiver?, 388-845-0051 How will I be notified of the decision by DDD to enroll me in a waiver?, 388-845-0052 What is the process if I am already on a DDD HCBS waiver and request enrollment onto a different waiver DDD HCBS?, 388-845-0055 How do I remain eligible for the waiver?, 388-845-0060 Can my waiver enrollment be terminated?, 388-845-0065 What happens if I am terminated or choose to disenroll from a waiver?, 388-845-0070 What determines if I need ICF/ID level of care?, 388-845-0100 What determines which waiver I am assigned to?, 388-845-0105 What criteria determine assignment to the community protection waiver?, 388-845-0110 Are there limitations to the waiver services I can receive?, 388-845-0115 Does my waiver eligibility limit my access to DDD nonwaiver services?, 388-845-0120 Will I continue to receive state supplementary payments (SSP) if I am on the waiver?, 388-845-0200 What waiver services are available to me?, 388-845-0210 Basic Plus waiver services., 388-845-0215 CORE waiver services, 388-845-0220 Community protection waiver services, 388-845-0225 Children's intensive in-home behavioral support (CIIBS) waiver services, 388-845-0305 Who is a qualified provider of AFH services?, 388-845-0405 Who is a qualified provider of ARC services?, 388-845-0420 Who is a qualified provider of assistive technology?, 388-845-0425 Are there limits to the assistive technology I can receive?, 388-845-0500 What is behavior support and consultation?, 388-845-0501 What is included in behavior support and consultation for the chil-

dren's intensive in-home behavioral support (CIIBS) waiver?, 388-845-0505 Who is a qualified provider of behavior management and consultation?, 388-845-0506 Who is a qualified provider of behavior ((management)) support and consultation for the children's intensive in-home behavioral supports (CIIBS) waiver?, 388-845-0510 Are there limits to the behavior support and consultation I can receive?, 388-845-0603 Who is eligible to receive community access services?, 388-845-0605 Who are qualified providers of community access services?, 388-845-0610 Are there limits to community access services I can receive?, 388-845-0700 What is a community guide service?, 388-845-0705 Who is a qualified community guide?, 388-845-0710 Are there limitations to the community guide services I can receive?, 388-845-0750 What are community transition services?, 388-845-0800 What is emergency assistance?, 388-845-0810 How do I qualify for emergency assistance?, 388-845-0820 Are there limits to my use of emergency assistance?, 388-845-0900 What are environmental accessibility adaptations?, 388-845-0905 Who is a qualified provider for building these environmental accessibility adaptations?, 388-845-0910 What limitations apply to environmental accessibility adaptations?, 388-845-1000 What are extended state plan services?, 388-845-1010 Who is a qualified provider of extended state plan services?, 388-845-1015 Are there limits to the extended state plan services I can receive?, 388-845-1030 What are individual technical assistance services?, 388-845-1035 Who are qualified providers of individualized technical assistance services?, 388-845-1040 Are there limits to the individualized technical assistance services I can receive?, 388-845-1100 What are behavioral health crisis diversion bed services?, 388-845-1105 Who is a qualified provider of mental health crisis diversion bed services?, 388-845-1110 What are the limits of mental health crisis diversion bed services?, 388-845-1150 What are mental health stabilization services?, 388-845-1160 Are there limitations to the behavioral health stabilization services that I can receive?, 388-845-1175 Who is a qualified provider of nurse delegation?, 388-845-1300 What are personal care services?, 388-845-1305 Who are the qualified providers of personal care services?, 388-845-1310 Are there limits to the personal care services I can receive?, 388-845-1400 What are prevocational services?, 388-845-1405 Who are the qualified providers of prevocational services?, 388-845-1410 Are there limits to the prevocational services I can receive?, 388-845-1505 Who are qualified providers of residential habilitation services for the Core waiver?, 388-845-1510 Who are qualified providers of residential habilitation services for the community protection waiver?, 388-845-1515 Are there limits to the residential habilitation services I can receive?, 388-845-1600 What is respite care?, 388-845-1605 Who is eligible to receive respite care?, 388-845-1607 Can someone who lives with me be my respite provider?, 388-845-1610 Where can respite care be provided?, 388-845-1615 Who are qualified providers of respite care?, 388-845-1620 Are there limits to the respite care I can receive?, 388-845-1650 What are sexual deviancy evaluations?, 388-845-1655 Who is a qualified provider of sexual deviancy evaluations?, 388-845-1660 Are there limitations to the sexual deviancy evaluations I can receive?, 388-845-1705 Who is a qualified provider of skilled nursing

services?, 388-845-1710 Are there limitations to the skilled nursing services I can receive?, 388-845-1800 What are specialized medical equipment and supplies?, 388-845-1805 Who are the qualified providers of specialized medical equipment and supplies?, 388-845-1810 Are there limitations to my receipt of specialized medical equipment and supplies?, 388-845-1845 Who are qualified providers of specialized nutrition and specialized clothing?, 388-845-1850 Are there limitations to my receipt of specialized nutrition and specialized clothing?, 388-845-1900 What are specialized psychiatric services?, 388-845-1910 Are there limitations to the specialized psychiatric services I can receive?, 388-845-2000 What is staff/family consultation and training?, 388-845-2005 Who is a qualified provider of staff/family consultation and training?, 388-845-2010 Are there limitations to the staff/family consultation and training I can receive?, 388-845-2100 What are supported employment services?, 388-845-2105 Who are qualified providers of supported employment services?, 388-845-2110 Are there limits to the supported employment services I can receive?, 388-845-2160 What is therapeutic equipment and supplies?, 388-845-2165 Who are qualified providers of therapeutic equipment and supplies?, 388-845-2200 What are transportation services?, 388-845-2205 Who is qualified to provide transportation services?, 388-845-2210 Are there limitations to the transportation services I can receive?, 388-845-2265 Who are providers of vehicle modifications?, 388-845-2270 Are there limitations to my receipt of vehicle modification services?, 388-845-3000 What is the process for determining the services I need?, 388-845-3055 What is a waiver individual support plan (ISP)?, 388-845-3056 What if I need assistance to understand my individual support plan?, 388-845-3060 When is my individual support plan effective?, 388-845-3061 Can a change in my individual support plan be effective before I sign it?, 388-845-3062 Who is required to sign or give verbal consent to the individual support plan?, 388-845-3063 Can my individual support plan be effective before the end of the month?, 388-845-3070 What happens if I do not sign or verbally consent to my individual support plan (ISP)?, 388-845-3075 What if my needs change?, 388-845-3080 What if my needs exceed the maximum yearly funding limit or the scope of services under the ((Basic or)) Basic Plus waiver?, 388-845-3085 What if my needs exceed what can be provided under the CIIBS, Core or Community Protection waiver?, 388-845-3090 What if my identified health and welfare needs are less than what is provided in my current waiver?, 388-845-3095 Will I have to pay toward the cost of waiver services?, 388-845-4005 Can I appeal a denial of my request to be enrolled in a waiver?, 388-845-4010 How do I appeal a department action?, and 388-845-4015 Will my services continue during an appeal?

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: Chapter 49, Laws of 2012.

Adopted under notice filed as WSR 13-17-112 on August 21, 2013.

Changes Other than Editing from Proposed to Adopted Version: The definition "ADS" was removed and all references to ADS in the rule was changed to either DSHS or developmental disabilities administration (DDA).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 17, Repealed 1; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 98, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 115, Repealed 1.

Date Adopted: November 19, 2013.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-16-095, filed 8/1/12, effective 9/1/12)

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

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

"CARE" means ~~((the))~~ comprehensive assessment and reporting evaluation.

"Client or person" means a person who has a developmental disability as defined in RCW 71A.10.020(3) and has been determined eligible to receive services by the ~~((division))~~ administration under chapter 71A.16 RCW.

"Community crisis stabilization services" or "CCSS" means a state operated program that provides short term supports to participants who meet specific criteria and who are in crisis and/or who are at risk of hospitalization or institutional placement.

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

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

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

"EPSDT" means early and periodic screening, diagnosis, and treatment, medicaid's child health component providing a mandatory and comprehensive set of benefits and services for children up to age twenty one as defined in WAC ~~((388-534-0100))~~ 182-534-0100.

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

"Enhanced respite services" means respite care for DDA enrolled children and youth, who meet specific criteria, in a DDA contracted and licensed staffed residential setting.

"Evidence based treatment" means the use of physical, mental and behavioral health interventions for which systematic, empirical research has provided evidence of statistically significant effectiveness as treatments for specific conditions. Alternate terms with the same meaning are evidence-based practice (EBP) and empirically supported treatment (EST).

"Family" means relatives who live in the same home with the eligible client. Relatives include spouse or registered domestic partner; natural, adoptive or step parent; grandparent; child; stepchild; sibling; stepsibling; uncle; aunt; first cousin; niece; or nephew.

"Family home" means the residence where you and your relatives live.

"Gainful employment" means employment that reflects achievement of or progress towards a living wage.

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

"Home" means present or intended place of residence.

"~~(ICF/MR)~~ ICF/ID" means an intermediate care facility for ~~(the mentally retarded)~~ individuals with intellectual disabilities.

"Individual support plan (ISP)" is a document that authorizes and identifies the ~~(DDD)~~ DDA paid services and unpaid supports to meet a client's assessed needs.

"Integrated settings" mean typical community settings not designed specifically for individuals with disabilities in which the majority of persons employed and participating are individuals without disabilities.

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

"Living wage" means the amount of earned wages needed to enable an individual to meet or exceed his/her living expenses.

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

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

"Respite assessment" means an algorithm within the ~~(DDD)~~ DDA assessment that determines the number of hours of respite care you may receive per year if you are enrolled in the ~~(Basic)~~ Basic Plus, Children's Intensive In-Home Behavioral Support, or Core waiver.

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

"SSP" means a state-paid cash assistance program for certain clients of the ~~(division of)~~ developmental disabilities administration.

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

"You/your" means the client.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

**WAC 388-845-0015 What HCBS waivers are provided by the ~~(division of)~~ developmental disabilities administration ~~(DDD)~~ DDA?** ~~(DDD)~~ DDA provides services through ~~(five)~~ four HCBS waivers:

- (1) ~~(Basic waiver;~~
- ~~(2))~~ Basic Plus waiver;
- ~~(3))~~ (2) Core waiver;
- ~~(4))~~ (3) Community Protection waiver; and
- ~~(5))~~ (4) Children's Intensive In-Home Behavioral Support waiver (CIIBS).

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

**WAC 388-845-0020 When were the HCBS waivers effective?** ~~(Basic)~~ Basic Plus, Children's Intensive In-Home Behavioral Support, Core and Community Protection waivers were effective ~~(April 1, 2004)~~ September 1, 2012. ~~(Children's Intensive In-Home Behavioral Support waiver was effective May 1, 2009.)~~

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

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

- (1) You have been determined eligible for ~~(DDD)~~ DDA services per RCW 71A.10.020~~(3)~~.
- (2) You have been determined to meet ICF/ID level of care per WAC 388-845-0070, 388-828-3060 and 388-828-3080.
- (3) You meet disability criteria established in the Social Security Act.
- (4) You meet financial eligibility requirements as defined in WAC 388-515-1510.
- (5) You choose to receive services in the community rather than in an ICF/ID facility.
- (6) You have a need for monthly waiver services or monthly monitoring as identified in your individual support plan.
- (7) You are not residing in hospital, jail, prison, nursing facility, ICF/ID, or other institution.
- (8) Additionally, for the Children's Intensive In-Home Behavioral Support (CIIBS) waiver-funded services:
  - (a) You are age eight or older and under the age of eighteen for initial enrollment and under age twenty-one for continued enrollment;

(b) You have been determined to meet CIIBS program eligibility per chapter 388-828 WAC prior to initial enrollment only;

(c) You live with your family; and

(d) Your parent/guardian(s) and primary caregiver(s), if other than parent/guardian(s), have signed the participation agreement.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

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

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

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

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

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

AMENDATORY SECTION (Amending WSR 12-16-095, filed 8/1/12, effective 9/1/12)

**WAC 388-845-0041 What is ((~~DDD~~'s)) DDA's responsibility to provide my services under the ((~~DDD~~)) DDA HCBS waivers administered by ((~~DDD~~)) DDA?** If you are enrolled in an HCBS waiver administered by DDD.

(1) ((~~DDD~~)) DDA will provide an annual comprehensive assessment to evaluate your health and welfare need. Your individual support plan, as specified in WAC 388-845-3055, will document:

(a) Your identified health and welfare needs; and

(b) Your HCBS waiver services and nonwaiver services authorized to meet your assessed need.

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

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

(4) ((~~DDD~~)) DDA will not deny or limit, based on lack of funding, the number of waiver services for which you are eligible.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

**WAC 388-845-0045 When there is capacity to add people to a waiver, how does ((~~DDD~~)) DDA determine**

**who will be enrolled?** When there is capacity on a waiver and available funding for new waiver participants, ((~~DDD~~)) DDA may enroll people from the statewide data base in a waiver based on the following priority considerations:

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

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

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

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

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

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

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

(f) Persons who were previously on an HCBS waiver since April 2004 and lost waiver eligibility per WAC 388-845-0060 (1)(i).

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

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

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

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

(3) For the Children's Intensive In-Home Behavioral Support (CIIBS) waiver only, if you are assessed as meeting both ICF/ID level of care and CIIBS eligibility as defined in WAC 388-845-0030 and chapter 388-828 WAC, your request for waiver enrollment will be documented by ((~~DDD~~)) DDA in a statewide data base.

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

**WAC 388-845-0051 How will I be notified of the decision by ((~~DDD~~)) DDA to enroll me in a waiver?** ((~~DDD~~)) DDA will notify you in writing of its decision to enroll you in a waiver or its decision to deny your request to be enrolled in a waiver.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

**WAC 388-845-0055 How do I remain eligible for the waiver?** Once you are enrolled in a ~~((DDD))~~ DDA HCBS waiver, you can remain eligible if you continue to meet eligibility criteria in WAC 388-845-0030, and:

(1) You complete a reassessment with ~~((DDD))~~ DDA at least once every twelve months to determine if you continue to meet all of these eligibility requirements; and

(2) You must either receive a waiver service at least once in every thirty consecutive days, as specified in WAC ~~((388-513-1320))~~ 182-513-1320 (3)(b), or your health and welfare needs require monthly monitoring, which will be documented in your client record; and

(3) You complete an in-person ~~((DDD))~~ DDA assessment/reassessment interview administered in your home per WAC 388-828-1520.

(4) In addition, for the Children's Intensive In-Home Behavioral Supports waiver, you must:

(a) Be under age twenty-one;

(b) Live with your family; and

(c) Have an annual participation agreement signed by your parent/guardian(s) and primary caregiver(s), if other than parent/guardian(s).

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

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

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

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

(b) You do not have an identified need for a waiver service at the time of your annual individual support plan;

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

(d) You are on the community protection waiver and:

(i) You choose not to be served by a certified residential community protection provider-intensive supported living services (CP-ISLS);

(ii) You engage in any behaviors identified in WAC 388-831-0240 (1) through (4); and

(iii) ~~((DDD))~~ DDA determines that your health and safety needs or the health and safety needs of the community cannot be met in the community protection program.

(e) You choose to disenroll from the waiver;

(f) You reside out-of-state;

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

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

(i) Service planning;

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

(iii) Accepting services agreed to in your individual support plan as necessary to meet your health and welfare needs.

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

(i) At the end of that full calendar month, there is no immediate plan for you to return to the community; or

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

~~((+))~~ (iii) The end of the waiver fiscal year, whichever date occurs first.

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

(k) Your needs exceed what can be provided under WAC 388-845-3085; or

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

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

**WAC 388-845-0065 What happens if I am terminated or choose to disenroll from a waiver?** If you are terminated from a waiver or choose to disenroll from a waiver, ~~((DDD))~~ DDA will notify you.

(1) ~~((DD))~~ DDA cannot guarantee continuation of your current services, including medicaid eligibility.

(2) Your eligibility for nonwaiver state-only funded ~~((DD))~~ DDA services is based upon availability of funding and program eligibility for a particular service.

(3) If you are terminated from the CIIBS waiver due to turning age twenty-one, ~~((DD))~~ DDA will assist with transition planning at least twelve months prior to your twenty-first birthday.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

**WAC 388-845-0070 What determines if I need ICF/ID level of care?** ~~((DD))~~ DDA determines if you need ICF/ID level of care based on your need for waiver services. To reach this decision, ~~((DD))~~ DDA uses the ~~((DD))~~ DDA assessment as specified in chapter 388-828 WAC.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

**WAC 388-845-0100 What determines which waiver I am assigned to?** ~~((If there is capacity, DD))~~ DDA will assign you to the waiver with the minimum service package necessary to meet your health and welfare needs, based on its evaluation of your ~~((DD))~~ DDA assessment as described in chapter 388-828 WAC and the following criteria:

- (1) ~~((For the Basic waiver:
 
  - (a) You must live with your family or in your own home;
  - (b) Your family/caregiver's ability to continue caring for you can be maintained with the addition of services provided in the Basic waiver; and
  - (c) You do not need out-of-home residential services.
 ))~~ For the Basic Plus waiver ~~((;))~~ your health and welfare needs ~~((exceed the amount allowed in the Basic waiver or))~~ require a waiver service ~~((that is not contained in the Basic waiver; and
 
  - (a) You are at high risk of out-of-home placement or loss of your current living situation; or
  - (b) You require out-of-home placement and your health and welfare needs can be met in an adult family home or adult residential care facility))~~ to remain in the community.

- ~~((3))~~ (2) For the Core waiver:
  - (a) You are at immediate risk of out-of-home placement; and/or
  - (b) You have an identified health and welfare need for residential services that cannot be met by the Basic Plus waiver.

~~((4))~~ (3) For the Community Protection waiver, refer to WAC 388-845-0105 and chapter 388-831 WAC.

~~((5))~~ (4) For the Children's Intensive In-Home Behavioral Support waiver, you:

- (a) Are age eight or older and under age eighteen;
- (b) Live with your family;
- (c) Are assessed at high or severe risk of out of home placement due to challenging behavior per chapter 388-828 WAC; and
- (d) You have a signed participation agreement from your parent/guardian(s) and primary caregiver(s), if other than parent/guardian(s).

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

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

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

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

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

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

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

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

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

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

(a) Individual support plan;

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

(c) Treatment plan provided by ~~((DD))~~ DDA approved certified individuals and agencies.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

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

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

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

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

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

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

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

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

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

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

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

(b) The only recognized bordering cities per WAC 182-501-0175 are:

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

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

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

(11) Waiver services do not cover co-pays, deductibles, dues, membership fees or subscriptions.

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

**WAC 388-845-0115 Does my waiver eligibility limit my access to ~~((DDD))~~ DDA nonwaiver services?** If you are enrolled in a ~~((DDD))~~ DDA HCBS waiver:

(1) You are not eligible for state-only funding for ~~((DDD))~~ DDA services; and

(2) You are not eligible for medicaid personal care.

AMENDATORY SECTION (Amending WSR 12-16-095, filed 8/1/12, effective 9/1/12)

**WAC 388-845-0120 Will I continue to receive state supplementary payments (SSP) if I am on the waiver?** Your participation in one of the ~~((DDD))~~ DDA HCBS waivers may affect your continued receipt of state supplemental payment from ~~((DDD))~~ DDA. To continue to receive SSP, you must meet ~~((DDD/SSP))~~ DDA/SSP programmatic eligibility requirements as identified in WAC 388-827-0115.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

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

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

**WAC 388-845-0210 Basic Plus waiver services.**

BASIC PLUS WAIVER	SERVICES	YEARLY LIMIT
	AGGREGATE SERVICES: Behavior <del>((management))</del> support and consultation Community guide Environmental accessibility adaptations Occupational therapy Physical therapy Skilled nursing Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	May not exceed \$6192 per year on any combination of these services
	EMPLOYMENT <del>((DAY-PROGRAM))</del> SERVICES: <del>((Community access Person to person))</del> Prevocational services Supported employment <u>Individual technical assistance</u>	<del>((May not exceed \$9944 per year))</del> <del>((This amount may be increased to a maximum of \$19,888 per year by exception to rule based on client need))</del> Limits are determined by <u>DDA assessment and employment status</u>
	<u>Community Access</u> Adult foster care (adult family home) Adult residential care <del>((boarding home))</del> <u>assisted living facility</u>	<u>Limits are determined by DDA assessment</u> Determined per department rate structure

BASIC PLUS WAIVER	SERVICES	YEARLY LIMIT
	<del>((MENTAL)) BEHAVIORAL HEALTH STABILIZATION SERVICES:</del> Behavior <del>((management)) support</del> and consultation <del>((Mental)) Behavioral health crisis diversion bed services</del> <del>((Skilled nursing))</del> Specialized psychiatric services	Limits determined by a <del>((mental)) behavioral health professional or</del> <del>((DDD)) DDA</del>
	Personal care	Limits determined by the CARE tool used as part of the <del>((DDD)) DDA</del> assessment
	Respite care	Limits are determined by the <del>((DDD)) DDA</del> assessment
	Sexual deviancy evaluation	Limits are determined by <del>((DDD)) DDA</del>
	Emergency assistance is only for <u>Basic Plus waiver</u> aggregate services <del>((and/or employment/day program services contained in the Basic Plus waiver))</del>	\$6000 per year; Preauthorization required

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

**WAC 388-845-0215 CORE waiver services.**

CORE WAIVER	SERVICES	YEARLY LIMIT
	Behavior <del>((management)) support</del> and consultation Community guide Community transition Environmental accessibility adaptations  Occupational therapy <u>Physical therapy</u>	Determined by the <del>((plan of care or))</del> individual support plan, not to exceed the average cost of an <del>((ICF/MR)) ICF/ID</del> for any combination of services

CORE WAIVER	SERVICES	YEARLY LIMIT
	Sexual deviancy evaluation Skilled nursing Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation Residential habilitation Community access <del>((Person-to-person))</del> <u>Employment services</u>  Prevocational services Supported employment <u>Individualized technical assistance</u>	Limits are determined by <u>DDA assessment</u>  Limits are determined by <u>DDA assessment and employment status</u>
	<del>((MENTAL)) BEHAVIORAL HEALTH STABILIZATION SERVICES:</del> Behavior <del>((management)) support</del> and consultation <del>((Mental)) Behavioral health crisis diversion bed services</del> <del>((Skilled nursing))</del> Specialized psychiatric services	
	Personal care  Respite care	Limits determined by the CARE tool used as part of the <del>((DDD)) DDA</del> assessment  Limits are determined by the <del>((DDD)) DDA</del> assessment

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

**WAC 388-845-0220 Community protection waiver services.**

COMMUNITY PROTECTION WAIVER	SERVICES	YEARLY LIMIT
	Behavior ( <del>((management))</del> ) <u>support</u> and consultation Community transition Environmental accessibility adaptations Occupational therapy Physical therapy Sexual deviancy evaluation Skilled nursing Specialized medical equipment and supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	Determined by the ( <del>((plan-of-care-or))</del> ) individual support plan, not to exceed the average cost of an ( <del>((ICF/MR))</del> ) <u>ICF/ID</u> for any combination of services
	Residential habilitation	
	<del>((Person-to-person))</del> <u>Employment Services:</u> Prevocational services Supported employment <u>Individual technical assistance</u>	Limits determined by <u>DDA assessment and employment status</u>
	<del>((MENTAL))</del> <u>BEHAVIORAL HEALTH STABILIZATION SERVICES:</u> Behavioral ( <del>((management))</del> ) <u>support</u> and consultation <del>((Mental))</del> <u>Behavioral health crisis diversion bed services</u> <del>((Skilled nursing))</del> Specialized psychiatric services	Limits determined by a <del>((mental))</del> <u>behavioral health professional or</u> ( <del>((DDD))</del> ) <u>DDA</u>

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

**WAC 388-845-0225 Children's intensive in-home behavioral support (CIIBS) waiver services.**

CIIBS Waiver	Services	Yearly Limit
	<ul style="list-style-type: none"> <li>• Behavior (<del>((management))</del>) <u>support</u> and consultation</li> <li>• Staff/family consultation and training</li> <li>• Environmental accessibility adaptations</li> <li>• Occupational therapy</li> <li>• Physical therapy</li> <li>• Sexual deviancy evaluation</li> <li>• Nurse delegation</li> <li>• Specialized medical equipment/supplies</li> <li>• Specialized psychiatric services</li> <li>• Speech, hearing and language services</li> <li>• Transportation</li> <li>• Assistive technology</li> <li>• Therapeutic equipment and supplies</li> <li>• Specialized nutrition and clothing</li> <li>• Vehicle modifications</li> </ul>	Determined by the individual support plan. Total cost of waiver services cannot exceed the average cost of \$4,000 per month per participant.
	Personal care	Limits determined by the ( <del>((DDD))</del> ) <u>DDA</u> assessment. Costs are included in the total average cost of \$4000 per month per participant for all waiver services.
	Respite care	Limits determined by the ( <del>((DDD))</del> ) <u>DDA</u> assessment. Costs are included in the total average cost of \$4000 per month per participant for all waiver services.

CIIBS Waiver	Services	Yearly Limit
	<u>Behavioral health</u> <u>Stabilization services:</u> <u>Behavioral support and consultation</u> <u>Crisis diversion bed services</u> <u>Specialized psychiatric services</u>	<u>Limits determined by behavioral health specialist</u>

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

**WAC 388-845-0305 Who is a qualified provider of AFH services?** The provider of AFH services must be licensed and contracted with ~~((ADSA))~~ DSHS as an AFH who has successfully completed the ~~((DDD))~~ DDA specialty training provided by the department.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

**WAC 388-845-0405 Who is a qualified provider of ARC services?** The provider of ARC services must:

- (1) Be a licensed assisted living facility;
- (2) Be contracted with ~~((ADSA))~~ DSHS to provide ARC services; and
- (3) Have completed the required and approved ~~((DDD))~~ DDA specialty training.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

**WAC 388-845-0420 Who is a qualified provider of assistive technology?** The provider of assistive technology must be an assistive technology vendor contracted with ~~((DDD))~~ DDA or one of the following professionals contracted with ~~((DDD))~~ DDA and duly licensed, registered or certified to provide this service:

- (1) Occupational therapist;
- (2) Physical therapist;
- (3) Speech and language pathologist;
- (4) Certified music therapist;
- (5) Certified recreation therapist; ~~((or))~~
- (6) Audiologist; or
- (7) Behavior specialist.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

**WAC 388-845-0425 Are there limits to the assistive technology I can receive?** (1) Providers of assistive technology services must be certified, registered or licensed therapists as required by law and contracted with ~~((DDD))~~ DDA for the therapy they are providing.

(2) Vendors of assistive technology must maintain a business license required by law and be contracted with ~~((DDD))~~ DDA to provide this service.

(3) Assistive technology may be authorized as a waiver service by obtaining an initial denial of funding or information showing that the technology is not covered by medicaid or private insurance.

(4) The department does not pay for experimental technology.

(5) The department requires your treating professional's written recommendation regarding your need for the technology. This recommendation must take into account that:

(a) The treating professional has personal knowledge of and experience with the requested and alternative technology; and

(b) The treating professional has recently examined you, reviewed your medical records, and conducted a functional evaluation.

(6) The department may require a written second opinion from a department selected professional that meets the same criteria in subsection (5) above.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

**WAC 388-845-0500 What is behavior support and consultation?** (1) Behavior support and consultation may be provided to persons on any of the ~~((DDD))~~ DDA HCBS waivers and includes the development and implementation of programs designed to support waiver participants using:

(a) Individualized strategies for effectively relating to caregivers and other people in the waiver participant's life; and

(b) Direct interventions with the person to decrease aggressive, destructive, and sexually inappropriate or other behaviors that compromise their ability to remain in the community (i.e., training, specialized cognitive counseling, conducting a functional assessment, development and implementation of a positive behavior support plan).

(2) Behavior support and consultation may also be provided as a behavioral health stabilization service in accordance with WAC 388-845-1150 through 388-845-1160.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

**WAC 388-845-0501 What is included in behavior support and consultation for the children's intensive in-home behavioral support (CIIBS) waiver?** (1) In addition to the definition in WAC 388-845-0500, behavior support and consultation in the CIIBS waiver must include the following characteristics:

(a) Treatment must be evidence based, driven by individual outcome data, and consistent with ~~((DDD's))~~ DDA's positive behavior support guidelines as outlined in contract;

(b) The following written components will be developed in partnership with the child and family by a behavior specialist as defined in WAC 388-845-0506:

(i) Functional behavioral assessment; and

(ii) Positive behavior support plan based on functional behavioral assessment.

(c) Treatment goals must be objective and measurable. The goals must relate to an increase in skill development and a resulting decrease in challenging behaviors that impede quality of life for the child and family; and

(d) Behavioral support strategies will be individualized and coordinated across all environments, such as home, school, and community, in order to promote a consistent approach among all involved persons.

(2) Behavior support and consultation in the CIIBS waiver may also include the following components:

(a) Behavioral technicians (as defined in WAC 388-845-0506) may implement positive behavior support plans (~~may be implemented by a behavioral technician as defined in WAC 388-845-0506 and~~) which may include 1:1 behavior interventions and skill development activity.

(b) Positive behavior support plans may include recommendations by a music and/or recreation therapist, as defined in WAC (~~388-845-0506~~) 388-845-2005.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

**WAC 388-845-0505 Who is a qualified provider of behavior ((management)) support and consultation?** Under the ((Basic,)) Basic Plus, Core, and Community Protection waivers, the provider of behavior ((management)) support and consultation must be one of the following professionals contracted with ((DDD)) DDA and duly licensed, registered or certified to provide this service:

- (1) Marriage and family therapist;
- (2) Mental health counselor;
- (3) Psychologist;
- (4) Sex offender treatment provider;
- (5) Social worker;
- (6) Registered nurse (RN) or licensed practical nurse (LPN);
- (7) Psychiatrist;
- (8) Psychiatric advanced registered nurse practitioner (ARNP);
- (9) Physician assistant working under the supervision of a psychiatrist;
- (10) Counselors registered or certified in accordance with the requirements of chapter 18.19 RCW; ((or))
- (11) Polygrapher; or
- (12) State operated behavior support agency limited to behavioral health stabilization services.

AMENDATORY SECTION (Amending WSR 12-16-095, filed 8/1/12, effective 9/1/12)

**WAC 388-845-0506 Who is a qualified provider of behavior ((management)) support and consultation for the children's intensive in-home behavioral supports (CIIBS) waiver?** (1) Under the CIIBS waiver, providers of behavior ((management)) support and consultation must be contracted with ((DDD)) DDA to provide CIIBS intensive services as one of the following two provider types:

(a) Master's or PhD level behavior specialist, licensed or certified/registered to provide behavioral assessment, intervention, and training;

(b) Behavior technician, licensed or certified/registered to provide behavioral intervention and training, following the lead of the behavior specialist.

(2) Providers of behavior ((management)) support and consultation per WAC 388-845-0505 may be utilized to provide counseling and/or therapy services to augment the work of the CIIBS intensive service provider types.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

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

(1) ((DDD)) DDA and the treating professional will determine the need and amount of service you will receive, subject to the limitations in subsection (2) below.

(2) The dollar limitations for aggregate services in your ((Basic and)) Basic Plus waiver limit the amount of service unless provided as a behavioral health stabilization service.

(3) ((DDD)) DDA reserves the right to require a second opinion from a department-selected provider.

(4) Behavior support and consultation not provided as a behavioral health stabilization service requires prior approval by the ((DDD)) DDA regional administrator or designee.

AMENDATORY SECTION (Amending WSR 12-16-095, filed 8/1/12, effective 9/1/12)

**WAC 388-845-0603 Who is eligible to receive community access services?** You are eligible to receive community access services when you are enrolled in the ((Basic,)) Basic Plus or Core waivers and you meet one of the following conditions below:

- (1) You are age sixty-two or older; or
- (2) You are twenty-one or older and you have participated in a ((DDD)) DDA employment program for nine months; or
- (3) You and/or your legal representative request that ((DDD)) DDA grant an exception, per chapter 71A.12 RCW, to the requirement that you participate in an employment program for nine months prior to transitioning to a community access service because:

(a) You have a medical condition that requires hospitalization or ongoing care by a medical professional and that affects your ability to participate in daily activities to the degree that employment would:

(i) Result in a significant decline in your ability to function; or

(ii) Seriously endanger your health.

(b) You have been available for employment planning activities and an employment provider has not provided services within ninety days of your request for employment services.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

**WAC 388-845-0605 Who are qualified providers of community access services?** Providers of community access services must be a county or an individual or agency con-

tracted with a county or (~~DDD~~) DDA to provide community access services.

AMENDATORY SECTION (Amending WSR 12-16-095, filed 8/1/12, effective 9/1/12)

**WAC 388-845-0610 Are there limits to community access services I can receive?** The following limits apply to your receipt of community access services:

(1) You cannot receive community access services if you are receiving prevocational or supported employment services.

~~((3))~~ (2) ~~The ((amount of community access services you may receive cannot exceed the employment/day program yearly limit that is established in your HCBS waiver))~~ maximum hours of community access services you may receive are determined by the DDA assessment per WAC 388-828-9310.

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

**WAC 388-845-0700 What is a community guide service?** Community guide service increases access to informal community supports. Services are short-term and designed to develop creative, flexible and supportive community resources for individuals with developmental disabilities. This service is available in (~~Basic~~) Basic Plus and CORE waivers.

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

**WAC 388-845-0705 Who is a qualified community guide?** Any individual or agency contracted with (~~DDD~~) DDA as a "community guide" is qualified to provide this service.

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

**WAC 388-845-0710 Are there limitations to the community guide services I can receive?** (1) You may not receive community guide services if you are receiving residential habilitation services as defined in WAC 388-845-1500 because your residential provider can meet this need.

(2) The dollar limitations for aggregate services in your (~~Basic or~~) Basic Plus waiver limit the amount of service you may receive.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

**WAC 388-845-0750 What are community transition services?** (1) Community transition services are reasonable costs (necessary expenses in the judgment of the state for you to establish your basic living arrangement) associated with moving from:

(a) An institutional setting to a community setting in which you are living in your own home or apartment, responsible for your own living expenses and receiving services

from a (~~DDD~~) DDA certified residential habilitation services provider as defined in WAC 388-845-1505 and 388-845-1510; or

(b) A provider operated setting, such as a group home, staffed residential, adult family home or companion home in the community to a community setting in which you are living in your own home or apartment, responsible for your own living expenses, and receiving services from a (~~DDD~~) DDA certified residential habilitation services provider as defined in WAC 388-845-1505 and 388-845-1510.

(2) Community transition services include:

(a) Security deposits (not to exceed the equivalent of two month's rent) that are required to obtain a lease on an apartment or home;

(b) Essential furnishings such as a bed, a table, chairs, window blinds, eating utensils and food preparation items;

(c) Moving expenses required to occupy your own home or apartment;

(d) Set-up fees or deposits for utility or service access (e.g., telephone, electricity, heating); and

(e) Health and safety assurances, such as pest eradication, allergen control or one-time cleaning prior to occupancy.

(3) Community transition services are available in the CORE and community protection waivers.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

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

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

**WAC 388-845-0810 How do I qualify for emergency assistance?** You qualify for emergency assistance only if you have used all of your waiver aggregate funding and your current situation meets one of the following criteria:

(1) You involuntarily lose your present residence for any reason either temporary or permanent;

(2) You lose your present caregiver for any reason, including death;

(3) There are changes in your caregiver's mental or physical status resulting in the caregiver's inability to perform effectively for the individual; or

(4) There are significant changes in your emotional or physical condition that requires a temporary increase in the amount of a waiver service.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

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

- (1) Prior approval by the (~~DDD~~) DDA regional administrator or designee is required based on a reassessment of your (~~plan of care or~~) individual support plan to determine the need for emergency services;
- (2) Payment authorizations are reviewed every thirty days and cannot exceed six thousand dollars per twelve months based on the effective date of your current plan of care or individual support plan;
- (3) Emergency assistance services are limited to the Basic Plus waiver aggregate services (~~and employment/day program services in the Basic and Basic Plus waivers~~);
- (4) Emergency assistance may be used for interim services until:
  - (a) The emergency situation has been resolved; or
  - (b) You are transferred to alternative supports that meet your assessed needs; or
  - (c) You are transferred to an alternate waiver that provides the service you need.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

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

- (a) Ensure the health, welfare and safety of the individual; or
  - (b) Enable the individual who would otherwise require institutionalization to function with greater independence in the home.
- (2) Environmental accessibility adaptations may include the installation of ramps and grab bars, widening of doorways, modification of bathroom facilities, or installing specialized electrical and/or plumbing systems necessary to accommodate the medical equipment and supplies that are necessary for the welfare of the individual.
- (3) For the CIIBS waiver only, adaptations include repairs to the home necessary due to property destruction caused by the participant's behavior.

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

**WAC 388-845-0905 Who is a qualified provider for building these environmental accessibility adaptations?** The provider making these environmental accessibility adaptations must be a registered contractor per chapter 18.27 RCW and contracted with (~~DDD~~) DDA.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

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

- (1) Environmental accessibility adaptations require prior approval by the (~~DDD~~) DDA regional administrator or designee.
- (2) With the exception of damage repairs under the CIIBS waiver, environmental accessibility adaptations or improvements to the home are excluded if they are of general utility without direct medical or remedial benefit to the individual, such as carpeting, roof repair, central air conditioning, etc.
- (3) Environmental accessibility adaptations cannot add to the total square footage of the home.
- (4) The dollar limitations for aggregate services in your (~~Basic or~~) Basic Plus waiver limit the amount of service you may receive.
- (5) Damage repairs under the CIIBS waiver are subject to the following restrictions:
  - (a) Limited to the cost of restoration to the original condition.
  - (b) Repairs to personal property and normal wear and tear are excluded.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

**WAC 388-845-1000 What are extended state plan services?** Extended state plan services refer to physical therapy; occupational therapy; and speech, hearing and language services available to you under medicaid without regard to your waiver status. They are "extended" services when the waiver pays for more services than is provided under the state medicaid plan. These services are available under all (~~DDD~~) DDA HCBS waivers.

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

**WAC 388-845-1010 Who is a qualified provider of extended state plan services?** Providers of extended state plan services must be certified, registered or licensed therapists as required by law and contracted with (~~DDD~~) DDA for the therapy they are providing.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

**WAC 388-845-1015 Are there limits to the extended state plan services I can receive?** (1) Additional therapy may be authorized as a waiver service only after you have accessed what is available to you under medicaid and any other private health insurance plan;

- (2) The department does not pay for treatment determined by DSHS to be experimental;
- (3) The department and the treating professional determine the need for and amount of service you can receive:

(a) The department may require a second opinion from a department selected provider.

(b) The department will require evidence that you have accessed your full benefits through medicaid before authorizing this waiver service.

(4) The dollar limitations for Basic Plus waiver aggregate services (~~(in your Basic or Basic Plus waiver)~~) limit the amount of service you may receive.

AMENDATORY SECTION (Amending WSR 12-16-095, filed 8/1/12, effective 9/1/12)

**WAC 388-845-1030 What are individual technical assistance services?** Individualized technical assistance service is assessment and consultation ~~((to))~~ with the employment provider and/or client to identify and address existing barriers to employment. This is in addition to supports received through supported employment services or pre-vocational services for individuals who have not yet achieved their employment goal.

AMENDATORY SECTION (Amending WSR 12-16-095, filed 8/1/12, effective 9/1/12)

**WAC 388-845-1035 Who are qualified providers of individualized technical assistance services?** Providers of individualized technical assistance service must be a county or an individual or agency contracted with a county or ~~((DDD))~~ DDA.

AMENDATORY SECTION (Amending WSR 12-16-095, filed 8/1/12, effective 9/1/12)

**WAC 388-845-1040 Are there limits to the individualized technical assistance services I can receive?** (1) Individualized technical assistance service cannot exceed ~~((six))~~ three months in an individual's plan year.

(2) These services are available on the ~~((Basic,))~~ Basic Plus, Core and Community Protection Waivers.

(3) Individual must be receiving supported employment or pre-vocational services.

(4) ~~((The dollar limitations for employment/day program services in your Basic or Basic Plus waiver limit the amount of supported employment service you may receive))~~ Services are limited to additional hours per WACs 388-828-9355 and 388-828-9360.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

**WAC 388-845-1100 What are behavioral health crisis diversion bed services?** Behavioral health crisis diversion bed services are temporary residential and behavioral services that may be provided in a client's home ~~((or))~~, licensed or certified setting or state operated setting. These services are available to eligible clients who are at risk of serious decline of mental functioning and who have been determined to be at risk of psychiatric hospitalization. These services are available in all four HCBS waivers administered by ~~((DDD))~~ DDA as behavioral health stabilization services

in accordance with WAC 388-845-1150 through 388-845-1160.

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

**WAC 388-845-1105 Who is a qualified provider of ~~((mental))~~ behavioral health crisis diversion bed services?** Providers of ~~((mental))~~ behavioral health crisis diversion bed services must be:

(1) ~~((DDD))~~ DDA certified residential agencies per chapter 388-101 WAC; ~~((or))~~

(2) Other department licensed or certified agencies; or

(3) State operated agency.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

**WAC 388-845-1110 What are the limits of ~~((mental))~~ behavioral health crisis diversion bed services?** (1) ~~((Mental))~~ Behavioral health crisis diversion bed services are intermittent and temporary. The duration and amount of services you need to stabilize your crisis is determined by a ~~((mental))~~ behavioral health professional and/or ~~((DDD))~~ DDA.

(2) These services are available in the ~~((Basic,))~~ CIIBS, Basic Plus, Core, and Community Protection waivers administered by ~~((DDD))~~ DDA as ~~((mental))~~ behavioral health stabilization services in accordance with WAC 388-845-1150 through 388-845-1160.

(3) The costs of ~~((mental))~~ behavioral health crisis diversion bed services do not count toward the dollar limits for aggregate services in the ~~((Basic and))~~ Basic Plus waiver(s).

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

**WAC 388-845-1150 What are ~~((mental))~~ behavioral health stabilization services?** ~~((Mental))~~ Behavioral health stabilization services assist persons who are experiencing a ~~((mental))~~ behavioral health crisis or meet criteria for enhanced respite or community crisis stabilization services. These services are available in the ~~((Basic,))~~ Basic Plus, Core, CIIBS and Community Protection waivers to ~~((adults))~~ individuals determined by ~~((mental))~~ behavioral health professionals or ~~((DDD))~~ DDA to be at risk of institutionalization ~~((in a psychiatric hospital without))~~ or hospitalization who need one ~~((or))~~ or more of the following services:

(1) Behavior ~~((management))~~ support and consultation;

(2) Specialized psychiatric services; or

(3) ~~((Mental))~~ Behavioral health crisis diversion bed services.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

**WAC 388-845-1160 Are there limitations to the behavioral health stabilization services that I can receive?** (1) Behavioral health stabilization services are intermittent and temporary. The duration and amount of services you need to stabilize your crisis is determined by a ~~((mental))~~ behavioral health professional and/or ~~((DDD))~~ DDA.

(2) The costs of behavioral health stabilization services do not count toward the dollar limitations for aggregate services in the ~~((Basic and))~~ Basic Plus waiver.

(3) Behavioral health stabilization services require prior approval by ~~((DDD))~~ DDA or its designee.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

**WAC 388-845-1175 Who is a qualified provider of nurse delegation?** Providers of nurse delegation are registered nurses contracted with ~~((DDD))~~ DDA to provide this service or employed by a nursing agency contracted with ~~((DDD))~~ DDA to provide this service.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

**WAC 388-845-1300 What are personal care services?** Personal care services as defined in WAC 388-106-0010 are the provision of assistance with personal care tasks. These services are available in the ~~((Basic;))~~ Basic Plus, CIIBS and Core waivers.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

**WAC 388-845-1305 Who are the qualified providers of personal care services?** (1) Qualified providers of personal care services may be individuals or licensed homecare agencies contracted with ~~((ADSA))~~ DSHS.

(2) All individual providers and homecare agency providers must meet provider qualifications for in-home caregivers in WAC 388-71-0500 through 388-71-0556.

(3) Providers of personal care services for adults must comply with the training requirements in these rules governing medicaid personal care providers in WAC ~~((388-71-05670 through 388-71-05799))~~ 388-71-0841 through 388-71-1006. Additionally, providers must meet the certification requirements in WAC 388-71-0975 through 388-71-0980 and WAC 246-980-010 through 246-980-990.

(4) Natural, step, or adoptive parents can be the personal care provider of their adult child age eighteen or older.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

**WAC 388-845-1310 Are there limits to the personal care services I can receive?** (1) You must meet the programmatic eligibility for medicaid personal care in chapter 388-106 WAC governing medicaid personal care (MPC) using the current department approved assessment form: Comprehensive assessment reporting evaluation (CARE).

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

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

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

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

**WAC 388-845-1400 What are prevocational services?** (1) Prevocational services typically occur in a specialized or segregated setting and include individualized monthly employment related activities in the community. Prevocational services are designed to prepare ~~((you for))~~ those interested in gainful employment in an integrated setting through training and skill development.

(2) Prevocational services are available in the ~~((Basic;))~~ Basic Plus, Core and Community Protection waivers.

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

**WAC 388-845-1405 Who are the qualified providers of prevocational services?** Providers of prevocational services must be a county or an individual or agency contracted with a county or ~~((DDD))~~ DDA to provide prevocational services.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

**WAC 388-845-1410 Are there limits to the prevocational services I can receive?** The following limitations apply to your receipt of prevocational services:

(1) You must be age twenty and graduating from high school prior to your July or August twenty-first birthday, age twenty-one and graduated from high school, or age twenty-two or older to receive prevocational services.

(2) New referrals for prevocational services require prior approval by the ~~((DDD))~~ DDA regional administrator and county coordinator or their designees.

(3) Prevocational services are a time limited step on the pathway toward individual employment and are dependent on your demonstrating steady progress toward gainful employment over time. Your annual ~~((vocational assessment))~~ employment plan will include exploration of integrated settings within your next service year. Criteria that would trigger a review of your need for these services include, but are not limited to:

(a) Compensation at more than fifty percent of the prevailing wage;

(b) Significant progress made toward your defined goals;

(c) ~~((Your expressed interest in competitive employment; and/or~~

~~((d)))~~ Recommendation by your individual support plan team.

(4) You will not be authorized to receive prevocational services in addition to community access services or supported employment services.

(5) ~~((The dollar limitations for employment/day program services in your Basic or Basic Plus waiver limit the amount of service you may receive.~~

~~((6)))~~ Your service hours are determined by the assistance you need to reach your employment outcomes as described in WAC 388-828-9325.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

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

- (1) Individuals contracted with (~~DD~~) DDA to provide residential support as a "companion home" provider;
- (2) Individuals contracted with (~~DD~~) DDA to provide training as an "alternative living provider";
- (3) Agencies contracted with (~~DD~~) DDA and certified per chapter 388-101 WAC;
- (4) State-operated living alternatives (SOLA);
- (5) Licensed and contracted group care homes, foster homes, child placing agencies or staffed residential homes per chapter 388-148 WAC.

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

**WAC 388-845-1510 Who are qualified providers of residential habilitation services for the community protection waiver?** Providers of residential habilitation services for participants of the community protection waiver are limited to state operated living alternatives (SOLA) and supported living providers who are contracted with (~~DD~~) DDA and certified under chapter 388-101 WAC as a residential community protection provider intensive supported living services (CP-ISLS).

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

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

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

- (a) Room and board;
- (b) The cost of building maintenance, upkeep, improvement, modifications or adaptations required to assure the health and safety of residents, or to meet the requirements of the applicable life safety code;
- (c) Activities or supervision already being paid for by another source;
- (d) Services provided in your parent's home unless you are receiving alternative living services for a maximum of six months to transition you from your parent's home into your own home.

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

- (a) Exceed forty hours per month;
- (b) Provide personal care or protective supervision.
- (4) The following persons cannot be paid providers for your service:
  - (a) Your spouse;
  - (b) Your natural, step, or adoptive parents if you are a child age seventeen or younger;
  - (c) Your natural, step, or adoptive parent unless your parent is certified as a residential agency per chapter 388-101

WAC or is employed by a certified or licensed agency qualified to provide residential habilitation services.

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

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

**WAC 388-845-1600 What is respite care?** Respite care is short-term intermittent relief for persons who normally provide care for and live with you. This service is available in the (~~Basic~~) Basic Plus, CIIBS, and Core waivers.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

**WAC 388-845-1605 Who is eligible to receive respite care?** You are eligible to receive respite care if you are in the (~~Basic~~) Basic Plus, CIIBS or Core waiver and:

(1) You live in a private home and no person living with you is contracted by (~~ADSA~~) DSHS to provide you with a service; or

(2) You are age eighteen or older and:

(a) You live with your natural, step or adoptive parent(s) who is also contracted by (~~ADSA~~) DSHS to provide you with a service; and

(b) No one else living with you is contracted by (~~ADSA~~) DSHS to provide you with a service; or

(3) You are under the age of eighteen and:

(a) You live with your natural, step or adoptive parent(s); and

(b) There is a person living with you who is contracted by (~~ADSA~~) DSHS to provide you with a service; or

(4) You live with a caregiver who is paid by (~~DD~~)

DDA to provide supports as:

(a) A contracted companion home provider; or

(b) A licensed children's foster home provider.

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

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

**WAC 388-845-1607 Can someone who lives with me be my respite provider?** Someone who lives with you may be your respite provider as long as (~~they are~~) he or she is not the person who normally provides care for you and is not contracted to provide any other DSHS paid service to you.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

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

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

(b) Relative's home;

- (c) Licensed children's foster home;
  - (d) Licensed, contracted and (~~DD~~) DDA certified group home;
  - (e) Licensed assisted living facility contracted as an adult residential center;
  - (f) Adult residential rehabilitation center;
  - (g) Licensed and contracted adult family home;
  - (h) Children's licensed group home, licensed staffed residential home, or licensed childcare center;
  - (i) Other community settings such as camp, senior center, or adult day care center.
- (2) Additionally, your respite care provider may take you into the community while providing respite services.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

**WAC 388-845-1615 Who are qualified providers of respite care?** Providers of respite care can be any of the following individuals or agencies contracted with (~~DD~~) DDA for respite care:

- (1) Individuals meeting the provider qualifications under chapter 388-825 WAC;
- (2) Homecare/home health agencies, licensed under chapter 246-335 WAC, Part 1;
- (3) Licensed and contracted group homes, foster homes, child placing agencies, staffed residential homes and foster group care homes;
- (4) Licensed and contracted adult family homes;
- (5) Licensed and contracted adult residential care (~~facility~~) facilities;
- (6) Licensed and contracted adult residential treatment (~~facility~~) facilities under chapter 246-337 WAC;
- (7) Licensed child care centers under chapter 170-295 WAC;
- (8) Licensed child day care centers under chapter 170-295 WAC;
- (9) Adult day care providers under chapter 388-71 WAC contracted with (~~DD~~) DDA;
- (10) Certified provider under chapter 388-101 WAC when respite is provided within the (~~DD~~) DDA contract for certified residential services; or
- (11) Other (~~DD~~) DDA contracted providers such as community center, senior center, parks and recreation, summer programs(~~, adult day care~~).

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

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

- (1) The (~~DD~~) DDA assessment will determine how much respite you can receive per chapter 388-828 WAC.
- (2) Respite cannot replace:
  - (a) Day care while your parent or guardian is at work; and/or
  - (b) Personal care hours available to you. When determining your unmet need, (~~DD~~) DDA will first consider the personal care hours available to you.

(3) Respite providers have the following limitations and requirements:

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

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

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

(4) Your caregiver may not provide (~~DD~~) DDA services for you or other persons during your respite care hours.

(5) If your personal care provider is your parent, your parent provider will not be paid to provide respite services to any client in the same month that you receive respite services.

(6) If your personal care provider is your parent and you live in your parent's adult family home you may not receive respite.

(7) (~~DD~~) DDA may not pay for any fees associated with the respite care; for example, membership fees at a recreational facility, or insurance fees.

(8) If you require respite from a licensed practical nurse (LPN) or a registered nurse (RN), services may be authorized as skilled nursing services per WAC 388-845-1700 using an LPN or RN. If you are in the Basic Plus waiver, skilled nursing services are limited to the dollar limits of your aggregate services per WAC 388-845-0210.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

**WAC 388-845-1650 What are sexual deviancy evaluations?** (1) Sexual deviancy evaluations:

(a) Are professional evaluations that assess the person's needs and the person's level of risk of sexual offending or sexual recidivism;

(b) Determine the need for psychological, medical or therapeutic services; and

(c) Provide treatment recommendations to mitigate any assessed risk.

(2) Sexual deviancy evaluations are available in all (~~DD~~) DDA HCBS waivers.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

**WAC 388-845-1655 Who is a qualified provider of sexual deviancy evaluations?** The provider of sexual deviancy evaluations must:

(1) Be a certified sexual offender treatment provider (SOTP); and

(2) Meet the standards contained in WAC 246-930-030 (education required prior to (~~examination~~) certification) and WAC 246-930-040 (professional experience required prior to examination).

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

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

(2) Sexual deviancy evaluations require prior approval by the ~~((DD))~~ DDA regional administrator or designee.

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

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

**WAC 388-845-1705 Who is a qualified provider of skilled nursing services?** The provider of skilled nursing services must be a licensed practical nurse (LPN) or registered nurse (RN) acting within the scope of the ~~((Nurse Practice Act))~~ Standards of Nursing Conduct or Practice chapter ~~((246-845))~~ 246-700 WAC and contracted with ~~((DD))~~ DDA to provide this service.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

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

(1) Skilled nursing services with the exception of nurse delegation and nursing evaluations require prior approval by the ~~((DD))~~ DDA regional administrator or designee.

(2) ~~((DD))~~ DDA and the treating professional determine the need for and amount of service.

(3) ~~((DD))~~ DDA reserves the right to require a second opinion by a department-selected provider.

(4) The dollar limitation for aggregate services in your Basic Plus waiver limits the amount of skilled nursing services ~~((unless provided as a behavioral health stabilization service))~~ you may receive.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

**WAC 388-845-1800 What are specialized medical equipment and supplies?** (1) Specialized medical equipment and supplies are durable and nondurable medical equipment not available through medicaid or the state plan which enables individuals to:

(a) Increase their abilities to perform their activities of daily living; or

(b) Perceive, control or communicate with the environment in which they live.

(2) Durable ~~((and nondurable))~~ medical equipment and medical supplies are defined in WAC 182-543-1000 ~~((182-543-2800))~~ 182-543-5500 respectively.

(3) Also included are items necessary for life support; and ancillary supplies and equipment necessary to the proper functioning of the equipment and supplies described in subsection (1) above.

(4) Specialized medical equipment and supplies are available in all ~~((DD))~~ DDA HCBS waivers.

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

**WAC 388-845-1805 Who are the qualified providers of specialized medical equipment and supplies?** The provider of specialized medical equipment and supplies must be a medical equipment supplier contracted with ~~((DD))~~ DDA or have a state contract as a Title XIX vendor.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

**WAC 388-845-1810 Are there limitations to my receipt of specialized medical equipment and supplies?** The following limitations apply to your receipt of specialized medical equipment and supplies:

(1) Specialized medical equipment and supplies require prior approval by the ~~((DD))~~ DDA regional administrator or designee for each authorization.

(2) ~~((DD))~~ DDA reserves the right to require a second opinion by a department-selected provider.

(3) Items reimbursed with waiver funds shall be in addition to any medical equipment and supplies furnished under the medicaid state plan.

(4) Items must be of direct medical or remedial benefit to the individual and necessary as a result of the individual's disability.

(5) Medications, prescribed or nonprescribed, and vitamins are excluded.

(6) The dollar limitations for aggregate services in your ~~((Basic or))~~ Basic Plus waiver limit the amount of service you may receive.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

**WAC 388-845-1845 Who are qualified providers of specialized nutrition and specialized clothing?** (1) Providers of specialized nutrition are:

(a) Certified dietitians contracted with ~~((DD))~~ DDA to provide this service or employed by an agency contracted with ~~((DD))~~ DDA to provide this service; and

(b) Specialized nutrition vendors contracted with ~~((DD))~~ DDA to provide this service.

(2) Providers of specialized clothing are specialized clothing vendors contracted with ~~((DD))~~ DDA to provide this service.

AMENDATORY SECTION (Amending WSR 12-16-095, filed 8/1/12, effective 9/1/12)

**WAC 388-845-1850 Are there limitations to my receipt of specialized nutrition and specialized clothing?**

(1) The following limitations apply to your receipt of specialized nutrition services:

(a) Specialized nutrition may be authorized as a waiver service if the service is not covered by medicaid or private

insurance. You must assist the department in determining whether third party payments are available;

(b) Services must be safe, effective, and individualized;

(c) Services must be ordered by a physician licensed to practice in the state of Washington;

(d) Specialized diets must be periodically monitored by a certified dietitian;

(e) Specialized nutrition products will not constitute a full nutritional regime unless an enteral diet is the primary source of nutrition;

(f) Department coverage of specialized nutrition products is limited to costs that are over and above inherent family food costs;

(g) ~~((DDD))~~ DDA reserves the right to require a second opinion by a department selected provider; and

(h) Prior approval by regional administrator or designee is required.

(2) The following limitations apply to your receipt of specialized clothing:

(a) Specialized clothing may be authorized as a waiver service if the service is not covered by medicaid or private insurance. You must assist the department in determining whether third party payments are available.

(b) The department requires written documentation from an appropriate health professional regarding your need for the service. This recommendation must take into account that the health professional has recently examined you, reviewed your medical records, and conducted an assessment.

(c) The department may require a second opinion from a department selected provider that meets the same criteria as subsection (b) of this section.

(d) Prior approval by regional administrator or designee is required.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

**WAC 388-845-1900 What are specialized psychiatric services?** (1) Specialized psychiatric services are specific to the individual needs of persons with developmental disabilities who are experiencing ~~((mental))~~ behavioral health symptoms. These services are available in all ~~((DDD))~~ DDA HCBS waivers.

(2) Service may be any of the following:

- (a) Psychiatric evaluation,
- (b) Medication evaluation and monitoring,
- (c) Psychiatric consultation.

(3) These services are also available as a behavioral health stabilization service in accordance with WAC 388-845-1150 through 388-845-1160.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

**WAC 388-845-1910 Are there limitations to the specialized psychiatric services I can receive?** (1) Specialized psychiatric services are excluded if they are available through other medicaid programs.

(2) The dollar limitations for aggregate service in your ~~((Basic and))~~ Basic Plus waiver limit the amount of special-

ized psychiatric services unless provided as a behavioral health stabilization service.

(3) Specialized psychiatric services require prior approval by the ~~((DDD))~~ DDA regional administrator or designee.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

**WAC 388-845-2000 What is staff/family consultation and training?** (1) Staff/family consultation and training is professional assistance to families or direct service providers to help them better meet the needs of the waiver person. This service is available in all ~~((DDD))~~ DDA HCBS waivers.

(2) Consultation and training is provided to families, direct staff, or personal care providers to meet the specific needs of the waiver participant as outlined in the individual's individual support plan, including:

- (a) Health and medication monitoring;
- (b) Positioning and transfer;
- (c) Basic and advanced instructional techniques;
- (d) Positive behavior support;
- (e) Augmentative communication systems;
- (f) Diet and nutritional guidance;
- (g) Disability information and education;
- (h) Strategies for effectively and therapeutically interacting with the participant;
- (i) Environmental consultation; and
- (j) For the CIIBS waiver only, individual and family counseling.

AMENDATORY SECTION (Amending WSR 12-16-095, filed 8/1/12, effective 9/1/12)

**WAC 388-845-2005 Who is a qualified provider of staff/family consultation and training?** To provide staff/family consultation and training, a provider must be one of the following licensed, registered or certified professionals and be contracted with ~~((DDD))~~ DDA:

- (1) Audiologist;
- (2) Licensed practical nurse;
- (3) Marriage and family therapist;
- (4) Mental health counselor;
- (5) Occupational therapist;
- (6) Physical therapist;
- (7) Registered nurse;
- (8) Sex offender treatment provider;
- (9) Speech/language pathologist;
- (10) Social worker;
- (11) Psychologist;
- (12) Certified American sign language instructor;
- (13) Nutritionist;
- (14) Counselors registered or certified in accordance with the requirements of chapter 18.19 RCW;
- (15) Certified dietician;
- (16) Recreation therapist registered in Washington and certified by the National Council for Therapeutic Recreation;
- (17) Providers listed in WAC 388-845-0506 and contracted with ~~((DDD))~~ DDA to provide CIIBS intensive services;
- (18) Certified music therapist (for CIIBS only); or

(19) Psychiatrist.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

**WAC 388-845-2010 Are there limitations to the staff/family consultation and training I can receive?** (1) Expenses to the family or provider for room and board or attendance, including registration, at conferences are excluded as a service under staff/family consultation and training.

(2) Staff/family consultation and training require prior approval by the ~~((DDD))~~ DDA regional administrator or designee.

(3) The dollar limitations for aggregate services in your ~~((Basic or))~~ Basic Plus waiver limit the amount of service you may receive.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

**WAC 388-845-2100 What are supported employment services?** Supported employment services are for those interested in integrated gainful employment. These services provide you with intensive ongoing support if you need individualized assistance to gain and/or maintain employment. These services are tailored to your individual needs, interests, abilities, and promote your career development. These services are provided in individual or group settings and are available in the ~~((Basic,))~~ Basic Plus, Core and Community Protection waivers.

(1) Individual supported employment services include activities needed to sustain minimum wage pay or higher. These services are conducted in integrated business environments and include the following:

(a) ~~((Creation of work opportunities through job development))~~ Intake: an initial meeting to gather and share basic information and a general overview of employment supports, resources in the community and the type of available supports that the individual may receive;

(b) ~~((On-the-job training))~~ Discovery: a person-centered approach to learn the individual's likes and dislikes, job preferences, employment goals and skills;

(c) ~~((Training for your supervisor and/or peer workers to enable them to serve as natural supports to you on the job))~~ Job preparation: includes activities of work readiness resume development, work experience, volunteer support transportation training;

(d) ~~((Modification of your work-site tasks))~~ Marketing: a method to identify and negotiate jobs, building relationships with employers and customize employment development;

(e) ~~((Employment retention and follow along support))~~ Job coaching: the supports needed to keep the job; ~~((and))~~

(f) ~~((Development of career and promotional opportunities))~~ Job retention: the supports needed to keep the job, maintain relationship with employer, identify opportunities, negotiate a raise in pay, promotion and/or increased benefits.

(2) Group supported employment services are a step on your pathway toward gainful employment in an integrated setting and include:

(a) ~~((The activities outlined in individual supported employment services))~~ Supports and paid training in an integrated business setting;

(b) ~~((Daily))~~ Supervision by a qualified employment provider during working hours; ~~((and))~~

(c) Groupings of no more than eight workers with disabilities; and

(d) Individualized supports to obtain gainful employment.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

**WAC 388-845-2105 Who are qualified providers of supported employment services?** Providers of supported employment services ~~((providers))~~ must be a county, or ~~((agencies))~~ agency or ~~((individuals))~~ an individual contracted with a county or ~~((DDD))~~ DDA.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

**WAC 388-845-2110 Are there limits to the supported employment services I can receive?** The following limitations apply to your receipt of supported employment services:

(1) You must be age twenty and graduating from high school prior to your July or August twenty-first birthday, age twenty-one and graduated from high school, or age twenty-two or older to receive supported employment services.

(2) Payment will be made only for the employment support you require as a result of your disabilities.

(3) Payment for individual supported employment excludes the supervisory activities rendered as a normal part of the business setting.

(4) You will not be authorized to receive supported employment services in addition to community access or pre-vocational services.

(5) ~~((The dollar limitations for employment/day program services in your Basic or Basic Plus waiver limit the amount of supported employment service you may receive.~~

~~((6))~~ Your service hours are determined by the assistance you need to reach your employment outcomes as described in WAC 388-828-9325 and might not equal the number of hours you spend on the job or in job related activities.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

**WAC 388-845-2160 What is therapeutic equipment and supplies?** (1) Therapeutic equipment and supplies are only available in the CIIBS waiver.

(2) Therapeutic equipment and supplies are equipment and supplies that are ~~((incorporated in))~~ necessary to implement a behavioral support plan or other therapeutic plan, designed by an appropriate professional, such as a sensory integration or communication therapy plan, and necessary in order to fully implement the therapy or intervention.

(3) Included are items such as a weighted blanket, supplies that assist to calm or redirect the child to a constructive activity, or a vestibular swing.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

**WAC 388-845-2165 Who are qualified providers of therapeutic equipment and supplies?** Providers of therapeutic equipment and supplies are therapeutic equipment and supply vendors contracted with ~~((DDD))~~ DDA to provide this service.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

**WAC 388-845-2200 What are transportation services?** Transportation services provide reimbursement to a provider when the transportation is required and specified in the waiver individual support plan. This service is available in all ~~((DDD))~~ DDA HCBS waivers if the cost and responsibility for transportation is not already included in your provider's contract and payment.

(1) Transportation provides you access to waiver services, specified by your individual support plan.

(2) Whenever possible, you must use family, neighbors, friends, or community agencies that can provide this service without charge.

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

**WAC 388-845-2205 Who is qualified to provide transportation services?** (1) The provider of transportation services can be an individual or agency contracted with ~~((DDD))~~ DDA whose contract includes transportation in the statement of work.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

**WAC 388-845-2210 Are there limitations to the transportation services I can receive?** The following limitations apply to transportation services:

(1) Transportation to/from medical or medically related appointments is a medicaid transportation service and is to be considered and used first.

(2) Transportation is offered in addition to medical transportation but cannot replace medicaid transportation services.

(3) Transportation is limited to travel to and from a waiver service.

(4) Transportation does not include the purchase of a bus pass.

(5) Reimbursement for provider mileage requires prior approval by ~~((DDD))~~ DDA and is paid according to contract.

(6) This service does not cover the purchase or lease of vehicles.

(7) Reimbursement for provider travel time is not included in this service.

(8) Reimbursement to the provider is limited to transportation that occurs when you are with the provider.

(9) You are not eligible for transportation services if the cost and responsibility for transportation is already included in your provider's contract and payment.

(10) The dollar limitations for aggregate services in your ~~((Basic or))~~ Basic Plus waiver limit the amount of service you may receive.

(11) Transportation services require prior approval by the ~~((DDD))~~ DDA regional administrator or designee.

(12) If your individual personal care provider uses his/her own vehicle to provide transportation to you for essential shopping and medical appointments as a part of your personal care service, your provider may receive up to sixty miles per month in mileage reimbursement. If you work with more than one individual personal care provider, your limit is still a total of sixty miles per month. This cost is not counted toward the dollar limitation for aggregate services in the ~~((Basic or))~~ Basic Plus waiver.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

**WAC 388-845-2265 Who are providers of vehicle modifications?** Providers of vehicle modifications are:

(1) Vehicle service providers contracted with ~~((DDD))~~ DDA to provide this service; or

(2) Vehicle adaptive equipment vendors contracted with ~~((DDD))~~ DDA to provide this service.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

**WAC 388-845-2270 Are there limitations to my receipt of vehicle modification services?** The following limitations apply to your receipt of vehicle modifications under the CIIBS waiver:

(1) Prior approval by the regional administrator or designee is required.

(2) Vehicle modifications are excluded if they are of general utility without direct medical or remedial benefit to the individual.

(3) Vehicle modifications must be the most cost effective modification based upon a comparison of contractor bids as determined by ~~((DDD))~~ DDA.

(4) Modifications will only be approved for a vehicle that serves as the participant's primary means of transportation and is owned by the family.

(5) The department requires your treating professional's written recommendation regarding your need for the service. This recommendation must take into account that the treating professional has recently examined you, reviewed your medical records, and conducted a functional evaluation.

(6) The department may require a second opinion from a department selected provider that meets the same criteria as subsection (5) of this section.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

**WAC 388-845-3000 What is the process for determining the services I need?** Your service needs are determined through the ~~((DDD))~~ DDA assessment and the service planning process as defined in chapter 388-828 WAC. Only identified health and welfare needs will be authorized for payment in the ISP.

(1) You receive an initial and annual assessment of your needs using a department-approved form.

(a) You meet the eligibility requirements for ICF/ID level of care.

(b) The "comprehensive assessment reporting evaluation (CARE)" tool will determine your eligibility and amount of personal care services.

(c) If you are in the (~~(Basic,))~~ Basic Plus, CIIBS, or Core waiver, the (~~(DDD))~~ DDA assessment will determine the amount of respite care available to you.

(2) From the assessment, (~~(DDD))~~ DDA develops your waiver individual support plan (ISP) with you and/or your legal representative and others who are involved in your life such as your parent or guardian, advocate and service providers.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

**WAC 388-845-3055 What is a waiver individual support plan (ISP)?** (1) The individual support plan (ISP) is the primary tool (~~(DDD))~~ DDA uses to determine and document your needs and to identify the services to meet those needs.

(2) Your ISP must include:

(a) Your identified health and welfare needs;

(b) Both paid and unpaid services and supports approved to meet your identified health and welfare needs as identified in WAC 388-828-8040 and 388-828-8060; and

(c) How often you will receive each waiver service; how long you will need it; and who will provide it.

(3) For an initial ISP, you or your legal representative must sign or give verbal consent to the plan indicating your agreement to the receipt of services.

(4) For a reassessment or review of your ISP, you or your legal representative must sign or give verbal consent to the plan indicating your agreement to the receipt of services.

(5) You may choose any qualified provider for the service, who meets all of the following:

(a) Is able to meet your needs within the scope of their contract, licensure and certification;

(b) Is reasonably available;

(c) Meets provider qualifications in chapters 388-845 and 388-825 WAC for contracting; and

(d) Agrees to provide the service at department rates.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

**WAC 388-845-3056 What if I need assistance to understand my individual support plan?** If you are unable to understand your individual support plan and the individual who has agreed to provide assistance to you as your necessary supplemental accommodation representative is unable to assist you with understanding your individual support plan, (~~(DDD))~~ DDA will take the following steps:

(1) Consult with the office of the attorney general to determine if you require a legal representative or guardian to assist you with your individual support plan.

(2) Continue your current waiver services.

(3) If the office of the attorney general or a court determines that you do not need a legal representative, (~~(DDD))~~

DDA will continue to try to provide necessary supplemental accommodations in order to help you understand your individual support plan.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

**WAC 388-845-3060 When is my individual support plan effective?** Your individual support plan is effective the last day of the month in which (~~(DDD))~~ DDA signs it after a signature or consent is obtained.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

**WAC 388-845-3061 Can a change in my individual support plan be effective before I sign it?** If you verbally request a change in service to occur immediately, (~~(DDD))~~ DDA can sign the individual support plan and approve it prior to receiving your signature.

(1) Your individual support plan will be mailed to you for signature.

(2) You retain the same appeal rights as if you had signed the individual support plan.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

**WAC 388-845-3062 Who is required to sign or give verbal consent to the individual support plan?** (1) If you do not have a legal representative, you must sign or give verbal consent to the individual support plan.

(2) If you have a legal representative, your legal representative must sign or give verbal consent to the individual support plan.

(3) If you need assistance to understand your individual support plan, (~~(DDD))~~ DDA will follow the steps outlined in WAC 388-845-3056 (1) and (3).

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

**WAC 388-845-3063 Can my individual support plan be effective before the end of the month?** You may request to (~~(DDD))~~ DDA to have your individual support plan effective prior to the end of the month. The effective date will be the date (~~(DDD))~~ DDA signs it after receiving your signature or verbal consent.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

**WAC 388-845-3070 What happens if I do not sign or verbally consent to my individual support plan (ISP)?** If (~~(DDD))~~ DDA is unable to obtain the necessary signature or verbal consent for an initial, reassessment or review of your individual support plan (ISP), (~~(DDD))~~ DDA will take one or more of the following actions:

(1) If this individual support plan is an initial plan, (~~(DDD))~~ DDA will be unable to provide waiver services. (~~(DDD))~~ DDA will not assume consent for an initial plan and

will follow the steps described in WAC 388-845-3056 (1) and (3).

(2) If this individual support plan is a reassessment or review and you are able to understand your ISP:

(a) ~~((DDD))~~ DDA will continue providing services as identified in your most current ISP until the end of the ten-day advance notice period as stated in WAC 388-825-105.

(b) At the end of the ten-day advance notice period, unless you file an appeal, ~~((DDD))~~ DDA will assume consent and implement the new ISP without the required signature or verbal consent as defined in WAC 388-845-3062 above.

(3) If this individual support plan is a reassessment or review and you are not able to understand your ISP, ~~((DDD))~~ DDA will continue your existing services and take the steps described in WAC 388-845-3056.

(4) You will be provided written notification and appeal rights to this action to implement the new ISP.

(5) Your appeal rights are in WAC 388-845-4000 and 388-825-120 through 388-825-165.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

**WAC 388-845-3075 What if my needs change?** You may request a review of your individual support plan at any time by calling your case manager. If there is a significant change in your condition or circumstances, ~~((DDD))~~ DDA must reassess your individual support plan with you and amend the plan to reflect any significant changes. This reassessment does not affect the end date of your annual individual support plan.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

**WAC 388-845-3080 What if my needs exceed the maximum yearly funding limit or the scope of services under the ~~((Basic or))~~ Basic Plus waiver?** (1) If you are on the ~~((Basic or))~~ Basic Plus waiver and your assessed need for services exceeds the maximum permitted, ~~((DDD))~~ DDA will make the following efforts to meet your health and welfare needs:

(a) Identify more available natural supports;

(b) Initiate an exception to rule to access available non-waiver services not included in the ~~((Basic or))~~ Basic Plus waiver other than natural supports;

(c) Authorize emergency ~~((services))~~ assistance up to six thousand dollars per year if your needs meet the definition of emergency ~~((services))~~ assistance in WAC 388-845-0800.

(2) If emergency ~~((services))~~ assistance and other efforts are not sufficient to meet your needs, you will be offered:

(a) An opportunity to apply for an alternate waiver that has the services you need;

(b) Priority for placement on the alternative waiver when there is capacity to add people to that waiver;

(c) Placement in an ICF/ID.

(3) If none of the options in subsections (1) and (2) above is successful in meeting your health and welfare needs, ~~((DDD))~~ DDA may terminate your waiver eligibility.

(4) If you are terminated from a waiver, you will remain eligible for nonwaiver ~~((DDD))~~ DDA services but access to

state-only funded ~~((DDD))~~ DDA services is limited by availability of funding.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

**WAC 388-845-3085 What if my needs exceed what can be provided under the CIIBS, Core or Community Protection waiver?** (1) If you are on the CIIBS, Core or Community Protection waiver and your assessed need for services exceeds the scope of services provided under your waiver, ~~((DDD))~~ DDA will make the following efforts to meet your health and welfare needs:

(a) Identify more available natural supports;

(b) Initiate an exception to rule to access available non-waiver services not included in the CIIBS, Core or Community Protection waiver other than natural supports;

(c) Offer you the opportunity to apply for an alternate waiver that has the services you need, subject to WAC 388-845-0045;

(d) Offer you placement in an ICF/ID.

(2) If none of the above options is successful in meeting your health and welfare needs, ~~((DDD))~~ DDA may terminate your waiver eligibility.

(3) If you are terminated from a waiver, you will remain eligible for nonwaiver ~~((DDD))~~ DDA services but access to state-only funded ~~((DDD))~~ DDA services is limited by availability of funding.

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

**WAC 388-845-3090 What if my identified health and welfare needs are less than what is provided in my current waiver?** If your identified health and welfare needs are less than what is provided in your current waiver, ~~((DDD))~~ DDA may terminate you from your current waiver and enroll you in a waiver that meets but does not exceed your assessed need for waiver services.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

**WAC 388-845-3095 Will I have to pay toward the cost of waiver services?** (1) You are required to pay toward board and room costs if you live in a licensed facility or in a companion home as room and board is not considered to be a waiver service.

(2) You will not be required to pay towards the cost of your waiver services if you receive SSI.

(3) You may be required to pay towards the cost of your waiver services if you do not receive SSI. ~~((DDD))~~ DDA determines what amount, if any, you pay in accordance with WAC ~~((388-515-1510))~~ 182-515-1510.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

**WAC 388-845-4005 Can I appeal a denial of my request to be enrolled in a waiver?** (1) If you are not enrolled in a waiver and your request to be enrolled in a

waiver is denied, your appeal rights are limited to the decision that you are not eligible to have your request documented in a statewide data base due to the following:

(a) You do not need ICF/ID level of care per WAC 388-845-0070, 388-828-8040 and 388-828-8060; or

(b) You requested enrollment in the CIIBS waiver and do not meet CIIBS eligibility per WAC 388-828-8500 through 388-828-8520.

(2) If you are enrolled in a waiver and your request to be enrolled in a different waiver is denied, your appeal rights are limited to the following:

(a) ~~((DDD's))~~ DDA's decision that the services contained in a different waiver are not necessary to meet your health and welfare needs and that the services available on your current waiver can meet your health and welfare needs; or

(b) ~~((DDD's))~~ DDA's decision that you are not eligible to have your request documented in a statewide database because you requested enrollment in the CIIBS waiver and do not meet CIIBS eligibility per WAC 388-828-8500 through 388-828-8520.

(3) If ~~((DDD))~~ DDA determines that the services offered in a different waiver are necessary to meet your health and welfare needs, but there is not capacity on the different waiver, you do not have the right to appeal any denial of enrollment on a different waiver when ~~((DDD))~~ DDA determines there is not capacity to enroll you on a different waiver.

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

**WAC 388-845-4010 How do I appeal a department action?** (1) Your rights to appeal a department decision are in RCW 71A.10.050 and WAC 388-825-120 and are limited to an applicant, recipient, or former recipient of services from the ~~((division of developmental disabilities))~~ DDA.

(2) If you want to appeal a department action, you must request an appeal within ninety days from receipt of the department notice of the action you are disputing.

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

**WAC 388-845-4015 Will my services continue during an appeal?** Services may continue according to the provisions contained in WAC 388-825-145.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-845-0205 Basic waiver services.

#### WSR 14-02-001

#### PERMANENT RULES

#### LIQUOR CONTROL BOARD

[Filed December 18, 2013, 1:23 p.m., effective January 18, 2014]

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

Purpose: SSB 5396 and SSB 5517 passed in the 2013 legislative session directs the board to adopt rules to implement the new privileges that allow a spirits retailer to conduct spirits tastings. The requirements for grocery store licensees to conduct beer and wine tastings changed.

Citation of Existing Rules Affected by this Order: Amending WAC 314-02-102 and 314-02-106.

Statutory Authority for Adoption: RCW 66.24.363 and 66.24.660.

Other Authority: RCW 66.08.030.

Adopted under notice filed as WSR 13-22-092 on November 6, 2013.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

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

Date Adopted: December 18, 2013.

Sharon Foster  
Chairman

AMENDATORY SECTION (Amending WSR 11-01-133, filed 12/21/10, effective 1/21/11)

**WAC 314-02-102 What are the requirements for a grocery store licensee to conduct beer and wine tastings?**

(1) To be issued a beer and wine tasting endorsement, the licensee must meet the following criteria:

(a) ~~((The licensee has retail sales of grocery products for off-premises consumption, not to include candy, soda pop, beer or wine, that are more than fifty percent of the licensee's gross sales, or the licensee is a membership organization that requires members to be at least eighteen years of age;~~

~~((b)))~~ The licensee operates a fully enclosed retail area encompassing at least ~~((nine))~~ ten thousand square feet. The board may issue the endorsement to a licensee with a retail area with less than ~~((nine))~~ ten thousand square feet if there is no licensee in the community that meets the ~~((nine))~~ ten thousand square foot requirement under the following conditions: There must be at least two employees on duty any time the licensee is conducting beer and wine tasting events. One employee must be dedicated to beer and wine tastings during these events;

~~((c)))~~ (b) The licensee has not had more than one public safety administrative violation within the last two years. The two-year window is counted from two years prior to the date of the application for the beer and wine tasting endorsement. (See WAC 314-29-020 for a list of public safety violations.)

(2) In addition to the conditions in RCW 66.24.363, a beer and wine tasting must be conducted under the following:

(a) The licensee must provide a sketch of the tasting area. Fixed or moveable barriers are required around the tasting area to ensure persons under twenty-one years of age do not possess or consume alcohol;

(b) Signs advertising beer and wine tastings may not be placed in the windows or outside of the premises that can be viewed from the public right of way;

(c) Persons serving beer and wine during tasting events must hold a class 12 alcohol server permit.

(3) Licensees are required to send a list of scheduled beer and wine tastings to their regional enforcement office at the beginning of each month. The date and time for each beer and wine tasting must be included.

AMENDATORY SECTION (Amending WSR 12-12-065, filed 6/5/12, effective 7/6/12)

**WAC 314-02-106 What is a spirits retailer license?**

(1) A spirits retailer licensee may not sell spirits under this license until June 1, 2012. A spirits retailer is a retail license. The holder of a spirits retailer license is allowed to:

(a) Sell spirits in original containers to consumers for off-premises consumption;

(b) Sell spirits in original containers to permit holders (see chapter 66.20 RCW);

(c) Sell spirits in original containers to on-premises liquor retailers, for resale at their licensed premises, although no single sale may exceed twenty-four liters, and single sales to an on-premises licensee are limited to one per day; and

(d) Export spirits in original containers.

(2) A spirits retailer licensee that intends to sell to another retailer must possess a basic permit under the Federal Alcohol Administration Act. This permit must provide for purchasing distilled spirits for resale at wholesale. A copy of the federal basic permit must be submitted to the board. A federal basic permit is required for each location from which the spirits retailer licensee plans to sell to another retailer.

(3) A sale by a spirits retailer licensee is a retail sale only if not for resale to an on-premises spirits retailer. On-premises retail licensees that purchase spirits from a spirits retail licensee must abide by RCW 66.24.630.

(4) A spirits retail licensee must pay to the board seventeen percent of all spirits sales. The first payment is due to the board October 1, 2012, for sales from June 1, 2012, to June 30, 2012 (see WAC 314-02-109 for quarterly reporting requirements).

Reporting of spirits sales and payment of fees must be submitted on forms provided by the board.

(5) A spirits retail licensee may apply for a spirits sampling endorsement to conduct spirits sampling if they meet the following criteria:

(a) Be a participant in the responsible vendor program;

(b) Advertising:

(i) For spirits retail licensees that also hold a grocery store license, signs advertising spirits samplings may not be placed in the windows or outside of the premises that can be viewed from the public right of way;

(ii) For spirits retail licensees that also hold a beer/wine specialty store license, advertising of spirits sampling may be advertised but not state that sampling is free of charge.

(c) Spirits samplings are to be conducted in the following manner:

(i) Spirits samplings service area and facilities must be located within the licensees' fully enclosed retail area and must be of a size and design that the licensee can observe and control persons in the area.

(ii) The licensee must provide a sketch of the sampling area. Fixed or moveable barriers are required around the sampling area to ensure that persons under twenty-one years of age and apparently intoxicated persons cannot possess or consume alcohol. The sketch is to be included with the application for the spirits sampling endorsement.

(iii) Each sample may be no more than one-half ounce of spirits, and no more than a total of one and one-half ounces of spirits samples per person during any one visit to the premises. Spirits samples must be unaltered.

(iv) The licensee must have food available for the sampling participants.

(v) Customers must remain in the service area while consuming samples.

(vi) All employees serving spirits during sampling events must hold a class 12 server permit.

(vii) There must be at least two employees on duty when conducting spirits sampling events.

(viii) Spirits sampling activities are subject to RCW 66.28.305 and 66.28.040.

(d) Licensees are required to send a list of scheduled spirits samplings to their regional enforcement office at the beginning of each month. The date and time for each sampling must be included.

(6) The annual fee for a spirits retail license is one hundred sixty-six dollars.

**WSR 14-02-002**

**PERMANENT RULES**

**LIQUOR CONTROL BOARD**

[Filed December 18, 2013, 3:07 p.m., effective January 18, 2014]

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

Purpose: There are public safety concerns related to mixing alcohol and marijuana. I-502 prohibited consumption of marijuana in public view. This needs to be clarified for liquor licensees so they do not allow their patrons to consume marijuana at their liquor licensed establishments.

Citation of Existing Rules Affected by this Order: Amending WAC 314-11-015.

Statutory Authority for Adoption: RCW 66.08.030.

Adopted under notice filed as WSR 13-22-031 on October 30, 2013.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: December 18, 2013.

Sharon Foster  
Chairman

**AMENDATORY SECTION** (Amending WSR 11-22-035, filed 10/26/11, effective 11/26/11)

**WAC 314-11-015 What are my responsibilities as a liquor licensee?** (1)(a) Liquor licensees are responsible for the operation of their licensed premises in compliance with the liquor laws and rules of the board (Title 66 RCW and Title 314 WAC). Any violations committed or permitted by employees will be treated by the board as violations committed or permitted by the licensee.

(b) The penalties for violations of liquor laws or rules are in: WAC 314-29-015 through 314-29-035, as now or hereafter amended, for licensees; and WAC 314-17-105 and 314-17-110, as now or hereafter amended, for employees who hold mandatory alcohol server training permits. These rules also outline aggravating and mitigating circumstances that may affect what penalty is applied if a licensee or employee violates a liquor law or rule.

(2) Licensees and their employees also have the responsibility to conduct the licensed premises in compliance with the following laws, as they now exist or may later be amended:

- Titles 9 and 9A RCW, the criminal code laws;
- Title 69 RCW, which outlines the laws regarding controlled substances; and
- Titles 70.155, 82.24 RCW, and RCW 26.28.080 which outline laws regarding tobacco.

(3) Licensees have the responsibility to control their conduct and the conduct of employees and patrons on the premises at all times. Except as otherwise provided by law, licensees or employees may not:

- (a) Be disorderly or apparently intoxicated on the licensed premises;
- (b) Permit any disorderly person to remain on the licensed premises;
- (c) Engage in or allow behavior that provokes conduct which presents a threat to public safety;
- (d) Consume liquor of any kind while working on the licensed premises; except that:
  - (i) Entertainers per WAC 314-02-010 may drink while performing under the following conditions:
    - (A) Alcohol service must be monitored by MAST servers;
    - (B) Drinks must be served in unlabeled containers;

(C) Entertainers may not advertise any alcohol brands or products;

(D) Entertainers may not promote drink specials; and

(E) If any member of the entertainment group is under twenty-one years of age, alcohol may not be consumed by any member of the group while performing.

(ii) Licensed beer manufacturers and their employees may sample beer of their own manufacture for manufacturing, evaluating or pricing product in areas where the public is not served, so long as the licensee or employee does not become apparently intoxicated;

(iii) Licensed wine manufacturers and their employees may:

(A) Sample wine for manufacturing, evaluating, or pricing product, so long as the licensee or employee does not become apparently intoxicated; and the licensee or employee who is sampling for these purposes is not also engaged in serving alcohol to the public; and

(B) Sample wine of their own manufacture for quality control or consumer education purposes, so long as the licensee or employee does not become apparently intoxicated.

(e) Engage in, or permit any employee or other person to engage in, conduct on the licensed premises which is prohibited by any portion of Titles 9, 9A, or 69 RCW; ((~~or~~))

(f) Engage in or permit any employee or other person to engage in the consumption of any type of marijuana, usable marijuana, or marijuana-infused products in a liquor licensed business, including outdoor service areas or any part of the property owned or controlled by the licensee;

(g) Permit any person consuming, or who has consumed within the licensed premises, any type of marijuana, usable marijuana, or marijuana-infused products to remain on any part of the licensed premises; or

(h) Sell or serve liquor by means of "drive-in" or by "curb service."

(4) Licensees have the responsibility to control the interaction between the licensee or employee and their patrons. At a minimum, licensees or employees may not:

(a) Solicit any patron to purchase any beverage for the licensee or employee, or allow a person to remain on the premises for such purpose;

(b) Spend time or dance with, or permit any person to spend time or dance with, any patron for direct or indirect compensation by a patron.

(c) See WAC 314-11-050 for further guidelines on prohibited conduct.

## WSR 14-02-009

### PERMANENT RULES

### DEPARTMENT OF AGRICULTURE

[Filed December 19, 2013, 12:02 p.m., effective January 19, 2014]

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

Purpose: This rule-making order amends chapter 16-497 WAC, Hop disease quarantine, by:

(1) Lifting the quarantine against Oregon and Idaho;

(2) Adding language to allow the director to issue special permits specifying the terms and conditions for the transport-

tation, distribution, disposal, or planting of hop plants from the quarantine area;

(3) Adding language regarding prohibited acts; and

(4) Making the language more clear and readable.

Citation of Existing Rules Affected by this Order: Repealing WAC 16-497-020 and 16-497-030; and amending WAC 16-497-005, 16-497-010, and 16-497-050.

Statutory Authority for Adoption: RCW 17.24.011, 17.24.041.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 13-21-145 on October 23, 2013.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 2, Repealed 2.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 3, Amended 3, Repealed 2.

Date Adopted: December 19, 2013.

Don R. Hover  
Director

AMENDATORY SECTION (Amending WSR 09-18-116, filed 9/2/09, effective 10/3/09)

**WAC 16-497-005 Hop disease quarantine—Definitions.** (1) "Dangerous diseases" means:

(a) "Arabis mosaic viruses" means a grouping of viruses that are polyhedral, have a bipartite genome and induce diseases such as bare-bine, spidery hop, split leaf blotch and hop chlorotic disease. In combination with satellite RNA, arabis mosaic virus induces hop nettlehead disease.

(b) "Hop stunt viroid" means a group of viroids consisting of hop stunt viroid and its genetic variants.

(c) "Iilar viruses" means a grouping of viruses, including apple mosaic virus and Prunus necrotic ringspot, which share common characteristics including spherical in shape, with genetic material in three different particles and commonly inducing ring spots in hosts.

(d) "Powdery mildew" means the disease caused by *Podosphaera macularis* (WALLR.: FR) Lind = *Podosphaera humuli* (DC) Burrill.

(e) "Verticillium wilt" means the disease caused by *Verticillium albo-atrum* Reinke & Berth. or hop strains of this organism.

(2) "Department" means the Washington state department of agriculture.

(3) "Director" means the director of the Washington state department of agriculture or the director's authorized representative.

("Hop stunt viroid" means a group of viroids consisting of hop stunt viroid and its genetic variants.

"Iilar viruses" means a grouping of viruses, including apple mosaic virus and Prunus necrotic ringspot, which share common characteristics including spherical in shape, with genetic material in three different particles and commonly inducing ring spots in hosts.

"Powdery mildew" means the disease caused by *Podosphaera macularis* (WALLR.: FR) Lind = *Podosphaera humuli* (DC) Burrill.

"Verticillium wilt" means the disease caused by *Verticillium albo-atrum* Reinke & Berth. or hop strains of this organism.) (4) "Hops" means *Humulus lupulus* L.

(5) "Regulated articles" means plants and all parts (except the cones) of hops.

AMENDATORY SECTION (Amending WSR 80-01-093, filed 12/31/79, effective 6/1/80)

**WAC 16-497-010 Quarantine area.** The quarantine area is all ((areas outside of the territorial borders of the state of Washington)) states and districts of the United States outside of the states of Washington, Idaho, and Oregon.

NEW SECTION

**WAC 16-497-035 Prohibited acts.** The sale, offering to sell, transporting, disposing of, distributing and/or planting of regulated articles from or originating in the quarantine area are prohibited.

AMENDATORY SECTION (Amending WSR 09-18-116, filed 9/2/09, effective 10/3/09)

**WAC 16-497-050 Exemption.** The restrictions on the movement of regulated articles set forth in this chapter shall not apply to hop plants or parts of plants imported for research purposes by the United States Department of Agriculture or the ((state experiment stations in the state of)) Clean Plant Center at Washington State University, Prosser, Washington.

NEW SECTION

**WAC 16-497-055 Permits.** The director may allow by special permit the transportation, distribution, disposal, or planting of regulated articles from the quarantine area. Such permit shall specify terms and conditions pursuant to RCW 17.24.041 and 17.24.091. Permits may be requested by contacting the Washington State Department of Agriculture, Plant Protection Division, 1111 Washington Street S.E., P.O. Box 42560, Olympia, WA 98504-2560; fax 360-902-2094; or e-mail: [PlantServices@agr.wa.gov](mailto:PlantServices@agr.wa.gov).

NEW SECTION

**WAC 16-497-065 Penalties and violations.** All violations of this chapter shall be dealt with according to the provisions in RCW 17.24.141.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 16-497-020 Regulated articles.  
 WAC 16-497-030 Regulations—Conditions governing the movement of regulated articles.

**WSR 14-02-013**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 13-304—Filed December 19, 2013, 3:09 p.m., effective January 19, 2014]

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

Purpose: The purpose of this proposal is to make updates, technical changes, and structural improvements to commercial rules in accordance with the WAC overhaul project currently underway. This rule project updates, clarifies, and streamlines language in oyster reserve sales rules and fish receiving ticket rules, and removes the requirement to submit a hard copy of a fish receiving ticket for those people who submit an electronic PDF of a fish receiving ticket to satisfy quick-reporting requirements for salmon and sturgeon. Changes also implement a treaty Indian shellfish receiving ticket, replacing the use of an outdated form that did not specifically capture shellfish species harvested under a treaty right. The changes include updates to RCW references and penalty language due to statute changes.

Reasons Supporting Proposal: This rule change proposal was discussed during the fish and wildlife commission meeting and public hearing held on November 8, 2013. The proposed changes were adopted by the commission at the December 6, 2013, commission meeting. The changes promote increases in conservation and the availability of resources, clarity for stakeholders and the department, and flexibility for people using electronic means to submit fish tickets for salmon and sturgeon quick reporting.

Citation of Existing Rules Affected by this Order: Amending WAC 220-60-010 Publishing notice of sales, 220-60-040 Loads to be measured, 220-60-050 Payment, 220-60-060 Oyster growers' associations, 220-60-070 Purchasers' licenses, 220-60-080 Director may limit use of licenses, 220-60-090 Director to establish broodstock sale prices, 220-69-210 Fish receiving ticket definitions, 220-69-230 Description of Washington state nontreaty fish receiving tickets, 220-69-234 Description of treaty Indian fish receiving ticket, 220-69-240 Duties of commercial purchasers and receivers, 220-69-241 Duties of commercial fishers, 220-69-243 Duties of aquatic farmers, 220-69-250 Required information on nontreaty fish receiving tickets, 220-69-254 Required information on treaty Indian fish and shellfish receiving tickets, 220-69-260 Distribution of copies of nontreaty fish receiving tickets, 220-69-264 Distribution of copies of treaty Indian fish receiving tickets, 220-69-26401 Distribution of copies of shellfish receiving ticket, and 220-69-280 Fish receiving ticket accountability.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 77.12.047.

Adopted under notice filed as WSR 13-20-136 on October 2, 2013.

Changes Other than Editing from Proposed to Adopted Version: Some changes were made from the proposed to the adopted version. However, these were all technical changes rather than substantive. Changes include typographical corrections to WAC 220-60-010 and 220-60-060, as well as clarifying technical edits made to the definition of "treaty" and "treaty Indian" for fish receiving ticket purposes in WAC 220-69-210.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 19, Repealed 0.

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

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

Date Adopted: December 6, 2013.

Miranda Wecker, Chair  
Fish and Wildlife Commission

AMENDATORY SECTION (Amending WSR 04-01-054, filed 12/11/03, effective 1/11/04)

**WAC 220-60-010 (~~(Publishing)~~) State oyster reserves sales—Notice (~~(of)~~) for sales over 50 bushels.** (1) Sales of oysters (~~(and)~~) or clams from (~~(the)~~) state oyster reserves (~~(of the state)~~) in excess of 50 bushels (~~(shall take place only after)~~) must occur by bid at public auction.

(2) The department must publish notice of (~~(such)~~) a sale (~~(s has been published)~~) of over 50 bushels of oysters or clams from state oyster reserves in one newspaper of general circulation in the area (~~(in which such)~~) where the state oyster reserves sale (~~(s shall)~~) will occur before the oyster reserves sale may take place.

AMENDATORY SECTION (Amending Order 248, filed 3/1/60)

**WAC 220-60-040 (~~(Loads to be measured-)~~) State oyster reserves sales—Harvest and measuring loads.** (~~(Before each)~~) (1) Oyster harvest from state reserves must occur under the supervision of authorized department personnel. Harvest from state reserves may only occur as specified in writing in the department contract with the harvester.

(2) Purchasers must contact department personnel to measure loads of oysters or clams before leaving a state oyster reserve. It is unlawful for any scow, (~~(or)~~) dredge, or other conveyance (~~(s)~~) containing oysters or clams to leave (~~(s any)~~)

a state oyster reserve(~~(, the person in charge of such seow or dredge shall contact the nearest authorized agent of the director for measuring the load. Such load shall not be removed from the reserve without permission of the director or his authorized agent. Invoices will be issued in triplicate, showing the number of bushels and/or pounds in each such load. One copy of such invoice shall be given to the buyer, one copy shall be forwarded to the central office of the department, and the third copy shall be retained by the authorized agent of the director))~~ unless department personnel grants permission to leave the reserve.

(3) A violation of subsection (1) or (2) of this section is a gross misdemeanor under RCW 77.15.560, Commercial fish, shellfish harvest or delivery—Failure to report—Penalty.

AMENDATORY SECTION (Amending Order 1179, filed 11/19/74)

**WAC 220-60-050 State oyster reserves sales—Invoices and Payment.** ~~((AH))~~ (1) The department issues invoices for loads of oysters or clams leaving state reserves in triplicate. Invoices must show the number of bushels or pounds in each load of oysters or clams. The department agent must retain a copy of the invoice, give one copy to the buyer, and forward a copy to the department's central office.

(2) Purchasers of oysters or clams from ((any of the)) state oyster reserves ((shall make remittance)) must pay for purchases by bank draft or check payable to the treasurer of the state of Washington(, and shall render such). Purchasers must make payments to ((the)) authorized ((agent of the director)) department personnel by the Friday of ((each)) the week following the week ((for)) invoices ((of the previous week)) are issued.

AMENDATORY SECTION (Amending Order 248, filed 3/1/60)

**WAC 220-60-060 State oyster reserves sales—Oyster growers' associations—Representative.** ~~((Any))~~ An organized oyster growers' association may, at ((its discretion)) the association's expense, appoint a ((qualified)) representative to be present ((at any or all times)) during purchases of oysters ((and/or)) or clams from state oyster reserves. ((Such)) The representative ((shall)) will have access to the department's boat and all records pertaining to ((such)) those state oyster reserves sales. ~~((Any expenses of such representative shall not be borne by the department of fisheries.))~~

AMENDATORY SECTION (Amending WSR 85-24-045, filed 11/27/85)

**WAC 220-60-070 State oyster reserves sales—Purchasers' licenses.** ~~((AH))~~ (1) It is unlawful for purchasers of oysters or clams from ((any of the)) state oyster reserves ((shall, in advance of the removal of)) to remove any oysters ((and/or)) or clams from any ((such)) state oyster reserve(, obtain from the department)) without first obtaining an oyster reserve license from the department as required by RCW ((75.28.290)) 77.65.260.

(2) A violation of this section is a gross misdemeanor or class C felony under RCW 77.15.500, Commercial fishing

without a license—Penalty, depending on the circumstances of the violation.

AMENDATORY SECTION (Amending WSR 85-24-045, filed 11/27/85)

**WAC 220-60-080 State oyster reserves sales—Director may limit use of licenses.** ~~((Nothing in this chapter shall prevent the director or his authorized agent from limiting)) The department may limit the number of bushels of oysters or pounds of clams ((which may be)) sold to ((any one)) an oyster reserve licensee. The department ((of fisheries reserves the right to)) may also limit the number of dredges operated by ((any one)) a licensee.~~

AMENDATORY SECTION (Amending WSR 85-24-045, filed 11/27/85)

**WAC 220-60-090 ((Director to establish)) State oyster reserves sales—Broodstock sale prices.** (1) Sale of oysters from the state oyster reserves ((for broodstock purposes)) to registered oyster farmers for broodstock purposes in amounts of 50 bushels or less may occur at a price established by the director ((taking into)) that accounts for costs associated with the sale(, but in no event may). However, the director's established price cannot be less than the average price paid at the ((latest)) most recent bid sale.

(2) Sales of oysters for broodstock purposes in amounts over 50 bushels ((shall be)) must occur by bid at public auction.

AMENDATORY SECTION (Amending WSR 12-04-028, filed 1/26/12, effective 2/26/12)

**WAC 220-69-210 Fish receiving ticket definitions.** The following definitions apply to this chapter:

(1) "Broker" means a person whose business it is to bring a seller of fish and shellfish and a purchaser of those fish and shellfish together. A broker is not required to have a wholesale fish dealer's license if the fish or shellfish only transit the state of Washington, and no storage, handling, processing, or repackaging occurs within the state.

(2) A broker who takes physical possession of fish or shellfish is an original receiver and ~~((is required to))~~ must complete a fish receiving ticket. A broker acting strictly as an intermediary is not required to complete a fish receiving ticket for fish or shellfish that are delivered to an original receiver in the state of Washington. A broker ~~((is required to))~~ must complete a fish receiving ticket for brokering an interstate or foreign sale from a Washington fisher who is not a holder of a direct retail endorsement, or a sale of fish or shellfish that have entered the state from another state, territory, or country, if the fish or shellfish are placed into interstate or foreign commerce without having been delivered to an original receiver in the state of Washington.

(3) ("Buyer" means a person who receives fish or shellfish and who is required to complete a fish receiving ticket. A wholesale fish dealer or a retail seller who directly receives fish or shellfish from a commercial fisher or receives fish or shellfish in interstate or foreign commerce is acting in the capacity of a buyer and is required to complete a fish receiving

ing ticket. A buyer who is acting as an agent for a wholesale fish dealer is required to have a fish buyer's license.

((4)) (4) "Department" means the Washington Department of Fish and Wildlife, ~~((Information Systems))~~ Fish Program - Commercial Harvest Data Team, 600 Capitol Way North, Olympia, Washington 98501-1091.

((5)) (4) "Delivery" means arrival at a place or port and includes arrivals from offshore waters to waters within the state, arrivals ashore from state or offshore waters, and arrivals within the state from interstate or foreign commerce.

((6)) (5) "Electronic fish receiving ticket" means the groundfish catch reporting system described in 50 C.F.R. § 660.113 (b)(4)(ii) that is used to submit harvest and fishing information to the department and the National Marine Fisheries Service.

((7)) (6) "Fish" means food fish classified under WAC 220-12-010 and game fish taken by treaty fishers and sold commercially.

(7) "Fish buyer" or "buyer" means a person who receives fish or shellfish and who is required to complete a fish receiving ticket. A wholesale fish dealer or a retail seller who directly receives fish or shellfish taken by a commercial fisher, or receives fish or shellfish in interstate or foreign commerce is acting in the capacity of a buyer and is required to complete a fish receiving ticket. A buyer who is acting as an agent for a wholesale fish dealer is required to have a fish buyer's license issued by the department.

(8) "Fish receiving ticket" means a document produced by the department for commercial catch accounting purposes and includes nontreaty fish receiving tickets, such as Puget Sound salmon, troll, marine, utility, and shellfish receiving tickets; treaty Indian fish receiving tickets; and treaty Indian shellfish receiving tickets.

(9) "Fisher" means a ~~((Washington licensed commercial fisher or holder of a delivery permit))~~ person engaged in commercial fishing activities.

((9)) (10) "Fresh" means unprocessed and unfrozen, regardless of whether the fish or shellfish are in the round, cleaned, or packaged for retail sale.

((10)) (11) "Frozen" means completely frozen throughout. Flash frozen and surface glaze frozen fish and shellfish are unfrozen fish and shellfish.

((11)) (12) "Nontreaty" means all entities not qualified by definition as "treaty."

((12)) (13) "Original receiver" or "receiver" means the first person in possession of fish or shellfish in the state of Washington who is acting in the capacity of a buyer. A fisher who is not the holder of a direct retail endorsement and who sells fish or shellfish to anyone other than a dealer, or a fisher who delivers fish or shellfish and places the fish or shellfish into interstate or foreign commerce, is the original receiver of the fish or shellfish. A cold storage facility that holds fish or shellfish for a fisher is not an original receiver, provided that the facility does not process, package, or otherwise handle the fish or shellfish. A person transporting fish or shellfish on behalf of a fisher, and who is in possession of an accurately completed commercial food fish and shellfish transportation ticket, is not an original receiver, provided that the fish or shellfish are transported only to a cold storage facility or to a buyer.

((13)) (14) "Processed" means preparing and preserving and requires a wholesale fish dealer's license. Preserving includes treating with heat, including smoking and kippering. Cooked crab is processed. Preserving also includes freezing fish and shellfish.

((14)) (15) "Shellfish" means shellfish classified under WAC 220-12-020.

((15)) (16) "Treaty" and "treaty Indian," for purposes of fish receiving tickets only, means persons who are members of federally recognized Indian tribes ~~((that are entitled to harvest fish or shellfish under the Makah, Medicine Creek, Nez Perce, Point Elliott, Point No Point, Quinault, Umatilla and Walla Walla, and Yakima treaties, or persons who are members of federally recognized treaty tribes whose reservations are located within Washington state and))~~ who harvest fish or shellfish ~~((within their tribe's))~~ in Washington pursuant to an Indian treaty, whether such harvest is on or off reservation.

((16)) (17) "Wholesale fish dealer" or "dealer" means a person who, acting for commercial purposes, takes possession or ownership of fish or shellfish and sells, barter, or exchanges or attempts to sell, barter, or exchange fish or shellfish that have been landed into the state of Washington or entered the state of Washington in interstate or foreign commerce. A wholesale fish dealer ~~((is required to))~~ must be licensed. A fisher who is not a holder of a direct retail endorsement and sells fish or shellfish to anyone other than a wholesale fish dealer is required to have a wholesale dealer's license. A retail seller who receives fish or shellfish in interstate or foreign commerce, or from a person who is not a wholesale fish dealer, is required to have a wholesale fish dealer's license.

((17)) (18) "Working day" means Monday through Friday, exclusive of a Washington state or federal holiday.

AMENDATORY SECTION (Amending WSR 12-04-028 and 12-05-009, filed 1/26/12 and 2/3/12, effective 2/26/12 and 3/5/12)

**WAC 220-69-240 Duties of commercial purchasers and receivers.** (1) It is unlawful for any person originally receiving or buying fresh ~~((or))~~, iced ~~((fish or shellfish))~~, or frozen fish or shellfish ~~((that have))~~, whether or not ~~((been))~~ the fish or shellfish was previously delivered in another state, territory, or country, ~~((except purchases or receipts made by individuals or consumers at retail))~~ to fail to:

(a) Be a licensed wholesale fish dealer or fish buyer; ~~((or))~~ and

(b) Immediately, completely, accurately, and legibly prepare the appropriate state of Washington fish receiving ticket for each and every purchase or receipt of such commodities. ~~((Each delivery))~~

(i) The original receiver must ~~((be recorded))~~ record each delivery on a separate fish receiving ticket; and

(ii) The original receiver must prepare a fish receiving ticket for purchases of fish or shellfish from fishers who are also fish dealers if the fisher/dealer has not previously completed a fish receiving ticket and provided a copy of the fish receiving ticket or the ticket number as proof.

~~(2) ((This section does)) Failure to be licensed under subsection (1) of this section is punishable under RCW 77.15.620. Failure to properly prepare a fish receiving ticket is punishable under RCW 77.15.630.~~

~~(3) It is unlawful for the original receiver to fail to initiate the completion of the fish receiving ticket upon receipt of any portion of a commercial catch. If delivery of the catch takes more than one day, the original receiver must enter the date that the delivery is completed on the fish receiving ticket as the date of delivery. If, for any reason, the delivery vessel leaves the delivery site, the original receiver must immediately enter the date the vessel leaves the delivery site on the fish receiving ticket.~~

~~(4) It is unlawful for any original receiver of shellfish to fail to record all shellfish aboard the vessel making the delivery to the original receiver. The poundage of any fish or shellfish that are unmarketable, discards, or weigh backs must be shown on the fish receiving ticket and identified as such, but a zero dollar value may be entered for those fish or shellfish.~~

~~(5) Any employee of a licensed wholesale dealer who is authorized to receive or purchase fish or shellfish for that dealer on the premises of the primary business address or any of its plant locations as declared on the license application, is authorized to initiate and sign fish receiving tickets on behalf of his or her employer. The business, firm, and/or licensed wholesale fish dealer the buyers are operating under is responsible for the accuracy and legibility of all documents initiated in its name.~~

~~(6) This section does not apply to purchases or receipts made by individuals or consumers at retail.~~

~~(7) Subsections (1) through (4) of this section do not apply to persons delivering or receiving fish taken under the Pacific Coast Groundfish Shoreside Individual Fishing Quota (IFQ) Program (50 C.F.R. § 660.140) who are in compliance with the provisions of WAC 220-69-250(5) and who:~~

~~(a) Complete electronic fish receiving tickets prior to either processing fish or removing the fish from the delivery site; and~~

~~(b) Electronically submit the electronic fish receiving tickets to the National Marine Fisheries Service and the department no later than twenty-four hours after the date the fish are received.~~

~~(c) Electronically submit any amendments made to the mandatory information required under WAC 220-69-256 after the initial submission required under (b) of this subsection.~~

~~((3)) (8) For purposes of this section((-));~~

~~(a) The term "completed" means that scale weights have been recorded for all delivered fish((-); and~~

~~(b) The term "submitted" means that all mandatory information required under WAC 220-69-256 has been entered and timelines under subsection ((2)) (7)(b) of this section have been met.~~

~~((4) Failure to be licensed under subsection (1) of this section is punishable under RCW 77.15.620. Failure to properly prepare a fish receiving ticket is punishable under RCW 77.15.630.~~

~~(5) It is unlawful for any person originally receiving fresh or iced fish or shellfish previously delivered in another~~

~~state, territory, or country, to fail to be a licensed wholesale fish dealer or fish buyer, and to fail to immediately, completely, accurately, and legibly prepare the appropriate state of Washington fish receiving ticket for each and every purchase or receipt of such commodities. Failure to prepare a fish receiving ticket under this subsection is punishable under RCW 77.15.630.~~

~~(6) It is unlawful for any original receiver of shellfish to fail to record all shellfish aboard the vessel making the delivery to the original receiver. The poundage of any fish or shellfish deemed to be unmarketable, discards, or weigh backs must be shown on the fish receiving ticket and identified as such, but a zero dollar value may be entered for such fish or shellfish. Failure to prepare a fish receiving ticket under this subsection is punishable under RCW 77.15.630.~~

~~(7) Any employee of a licensed wholesale dealer who has authorization to receive or purchase fish or shellfish for that dealer on the premises of the primary business address or any of its plant locations as declared on the license application, shall be authorized to initiate and sign fish receiving tickets on behalf of his or her employer. The business, firm, and/or licensed wholesale fish dealer who the buyers are operating under shall be responsible for the accuracy and legibility of all such documents initiated in its name.~~

~~(8) It is unlawful for the original receiver to fail to initiate the completion of the fish receiving ticket upon receipt of any portion of a commercial catch. Should the delivery of the catch take more than one day, the date that the delivery is completed must be entered on the fish receiving ticket as the date of delivery. If, for any reason, the delivery vessel leaves the delivery site, the original receiver must immediately enter the current date on the fish receiving ticket. Violation of this subsection is punishable under RCW 77.15.630.)~~

~~(9) Forage fish:~~

~~(a) It is unlawful for any person receiving forage fish to fail to report the forage fish on fish receiving tickets initiated and completed on the day the forage fish are delivered.~~

~~(i) Herring ((are)) must also ((required to)) be reported on herring harvest logs.~~

~~(ii) The harvested amount of forage fish must be entered upon the fish ticket when the forage fish are off-loaded from the catcher vessel.~~

~~(iii) An estimate of herring, candlefish, anchovy, or sardine caught but not sold due to mortality must be included on the fish ticket as "loss estimate."~~

~~(b) In the coastal sardine fishery, it is unlawful to purchase, per sardine fishery vessel, more than fifteen percent cumulative weight of sardines for the purposes of conversion into fish flour, fishmeal, fish scrap, fertilizer, fish oil, other fishery products, or by-products, for purposes other than human consumption or fishing bait during the sardine fishery season. Sardines purchased for these purposes must be included, by weight, on the fish ticket as "reduction."~~

~~(c) In any forage fish fishery, it is unlawful to purchase anchovy in excess of fifteen percent, by weight, of the total landing weight per vessel, for the purposes of conversion into fish flour, fishmeal, fish scrap, fertilizer, fish oil, or other fishery products. Anchovy purchased for these purposes must be included, by weight, on the fish ticket as "reduction."~~

~~((d)) Any violation under this subsection is a gross misdemeanor, punishable under RCW 77.15.630.))~~

(10) Geoduck: It is unlawful for any person receiving geoduck, ~~((regardless of))~~ whether or not the receiver holds a license as required under Title 77 RCW, to fail to accurately and legibly complete the fish receiving ticket initiated on the harvest tract immediately upon the actual delivery of geoduck from the harvesting vessel onto the shore. This fish receiving ticket ~~((shall))~~ must accompany the harvested geoduck from the department of natural resources harvest tract to the point of delivery. ~~((Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.630.))~~

(11) Puget Sound shrimp - Pot gear:

~~(a) ((It is unlawful for the original receiver of shrimp other than ghost shrimp taken from Puget Sound by pot gear to fail to report to the department the previous week's purchases by 10:00 a.m. the following Monday. For harvest in Crustacean Management Regions 1 or 2, reports must be made to the La Conner district office by phone at 360-466-4345, extension 245, or by fax at 360-466-0515. For harvest in Crustacean Management Regions 3, 4, or 6, reports must be made to the Point Whitney Shellfish Laboratory by phone at 1-360-796-4601, option 1, or by fax at 360-586-8408. All reports must specify the serial numbers of the fish receiving tickets on which the previous week's shrimp were sold, plus the total number of pounds caught by gear type, the Marine Fish-Shellfish Management and Catch Reporting Area (Catch Area), and the species listed on each ticket. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.630.~~

~~(b)) It is unlawful for any person originally receiving or purchasing shrimp, other than ghost shrimp, harvested from Catch Area 23A, to fail to record 23A-C, 23A-E, 23A-W, or 23A-S on shellfish receiving tickets based on the location of harvest and the boundary definitions specified in WAC 220-52-051. ((Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.630.~~

~~(c)) (b) It is unlawful for any person originally receiving or purchasing shrimp, other than ghost shrimp, harvested from Catch Area 26A, to fail to record either 26A-E or 26A-W on shellfish receiving tickets based on the location of harvest and the boundary definitions specified in WAC 220-52-051. ((Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.630.~~

~~(d)) (c) It is unlawful for any person originally receiving or purchasing shrimp, other than ghost shrimp, harvested from Catch Area 26B, to fail to record either 26B-1 or 26B-2 on shellfish receiving tickets based on the location of harvest and the boundary definitions specified in WAC 220-52-051. ((Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.630.~~

~~(e)) (d) It is unlawful for any person originally receiving or purchasing shrimp, other than ghost shrimp, harvested from Catch Areas 20B, 21A, and 22A, to fail to record 1A-20B, 1A-22A, 1B-20B, 1B-21A, 1B-22A, or 1C-21A on shellfish receiving tickets based on the location of harvest and the boundary definitions specified in WAC 220-52-051. ((Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.630.))~~

(12) Puget Sound shrimp - Trawl gear:

(a) It is unlawful for the original receiver of shrimp other than ghost shrimp taken from Puget Sound by trawl gear to fail to report to the department the previous day's purchases by 10:00 a.m. the following morning.

~~(b) ((For harvest in Crustacean Management Region 1, reports must be made to the La Conner district office by phone at 360-466-4345, extension 245, or by fax at 360-466-0515.)) Reports must be made by fax at 360-796-0108 or by text message or e-mail at [shrimpreport@dfw.wa.gov](mailto:shrimpreport@dfw.wa.gov).~~

~~(c) ((For harvest in Crustacean Management Region 3, reports must be made to the Point Whitney Shellfish Laboratory by phone at 1-360-796-4601, option 1, or by fax at 360-586-8408.~~

~~(d) All reports must specify the serial numbers of the fish receiving tickets on which the previous day's shrimp were sold, the total number of pounds caught by gear type, the Marine Fish-Shellfish Management and Catch Reporting Area, and the species listed on each ticket.~~

~~(e) Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.630.)) Reports must include, for each fish receiving ticket prepared:~~

~~(i) The buyer name, fisher name, and date of sale;~~

~~(ii) The fish receiving ticket number, including the first alphanumeric letter;~~

~~(iii) The total number of pounds caught per shrimp species; and~~

~~(iv) The Marine Fish-Shellfish Management and Catch Reporting Area where the shrimp was harvested.~~

(13) Puget Sound crab:

~~(a) It is unlawful for any wholesale dealer acting in the capacity of an original receiver of Dungeness crab taken ((by nontreaty fishers;)) from Puget Sound((;)) by nontreaty fishers to fail to report to the department the previous day's purchases by 10:00 a.m. the following business day.~~

~~(b) Reports must be made to the Mill Creek Regional Office by fax at 425-338-1066, or by e-mail at [crabreport@dfw.wa.gov](mailto:crabreport@dfw.wa.gov).~~

~~(c) Reports must ((be made to the Point Whitney Shellfish Laboratory by fax at 360-586-8408 or by phone at 1-866-859-8439, option 5, and must specify)) include:~~

~~(i) The ((dealer)) dealer's name; ((dealer))~~

~~(ii) The dealer's phone number;~~

~~(iii) The date of delivery of crab to the original receiver; and~~

~~(iv) The total number of pounds of crab caught by nontreaty fishers, by Crab Management Region or by Marine Fish-Shellfish Management and Catch Reporting Area. ((Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.630.))~~

(14) Salmon and sturgeon:

(a) During any Puget Sound fishery opening that is designated as "quick reporting required," per WAC 220-47-001:

(i) It is unlawful for any wholesale dealer acting in the capacity of an original receiver to fail to report all purchases of salmon and sturgeon made on the previous calendar day, or for a direct retail endorsement (DRE) holder to fail to report all salmon offered for retail sale on the previous calendar day.

(ii) The report must include:

(A) The dealer or DRE holder name and purchasing location;

(B) The date of purchase;

(C) Each fish receiving ticket number, including ~~((alpha))~~ the first alphanumeric letter, used on the purchasing date; and

(D) The following catch data for each fish ticket used: The total number of days fished, gear, catch area, species, number, and total weight for each species purchased and all take home fish not purchased (wholesale dealer) or sold (DRE).

(iii) When quick reporting is required, Puget Sound reports must be submitted by 10:00 a.m. on the day after the purchase date. Submission of a report is not complete until the report arrives at the designated department location. Reports can be submitted via fax at 360-902-2949; via e-mail at [psfishtickets@dfw.wa.gov](mailto:psfishtickets@dfw.wa.gov); or via phone at 1-866-791-1279. In fisheries under Fraser Panel Control within Fraser Panel Area Waters (area defined under Art. XV, Annex II, Pacific Salmon Treaty 1985), other reporting requirements not listed in this subsection may be necessary under Subpart F of the International Fisheries Regulations, 50 C.F.R. Ch. III § 300.93.

(b) During any coastal troll fishery opening that is designated by rule as "quick reporting required":

(i) It is unlawful for any wholesale dealer acting in the capacity of an original receiver to fail to report all purchases of salmon and sturgeon made on the previous calendar day, or for a DRE holder to fail to report all salmon offered for retail sale on the previous calendar day.

(ii) The report must include dealer or DRE holder name and purchasing location; date of purchase; each fish receiving ticket number, including ~~((alpha))~~ the first alphanumeric letter, used on the purchasing date; and the following catch data for each fish ticket used: Total number of days fished, gear, catch area, species, number, and total weight for each species purchased and all take home fish not purchased (wholesale dealer) or sold (DRE).

(iii) When quick reporting is required, coastal troll reports must be submitted by 10:00 a.m. on the day after the purchase date. Submission of a report is not complete until the report arrives at the designated department location. Reports can be made via fax at 360-902-2949; via e-mail at [trollfishtickets@dfw.wa.gov](mailto:trollfishtickets@dfw.wa.gov); or via phone at 1-866-791-1279.

(c) During any Grays Harbor or Willapa Bay fishery opening that is designated by rule as "quick reporting required":

(i) It is unlawful for any wholesale dealer acting in the capacity of an original receiver to fail to report all purchases of salmon and sturgeon made on the previous calendar day, or for a DRE holder to fail to report all salmon offered for retail sale on the previous calendar day.

(ii) The report must include dealer or DRE holder name and purchasing location; date of purchase; each fish receiving ticket number, including ~~((alpha))~~ the first alphanumeric letter, used on the purchasing date; and the following catch data for each fish ticket used:

(A) The total number of days fished((-);

(B) The gear((-) used;

(C) The catch area((-) fished; and

(D) The species, number, and total weight for each species purchased and all take home fish not purchased (wholesale dealer) or sold (DRE).

(ii) When quick reporting is required, Grays Harbor and Willapa Bay reports must be submitted by 10:00 a.m. on the day after the purchase date. Submission of a report is not complete until the report arrives at the designated department location. Reports can be made via fax at ~~((360-664-0689))~~ 360-249-1229; e-mail at [harborfishtickets@dfw.wa.gov](mailto:harborfishtickets@dfw.wa.gov); or phone at 1-866-791-1280.

(d) During any Columbia River fishery opening that is designated by rule as "quick reporting required":

(i) It is unlawful for any wholesale dealer acting in the capacity of an original receiver to fail to report all purchases of salmon and sturgeon, or for a DRE holder to fail to report all salmon offered, for retail sale.

(ii) The report must include dealer or DRE holder name and purchasing location; date of purchase; each fish receiving ticket number, including ~~((alpha))~~ the first alphanumeric letter, used on the purchasing date; and the following catch data for each fish ticket used: Total number of days fished, gear, catch area, species, number, and total weight for each species purchased and all take home fish not purchased (wholesale dealer) or sold (DRE).

(iii) When quick reporting is required, Columbia River reports must be submitted within 5, 8, 12, or 24 hours of closure of the designated fishery.

(A) The department establishes the time frame for submitting reports (~~(will be established by the department)~~) at the time of adoption of the quick reporting fishery. Adoption and communication of the quick reporting regulations for a given fishery (~~(will)~~) occurs in conjunction with the adoption of ~~((said))~~ the fishery through the Columbia River Compact.

(B) Submission of a report is not complete until the report arrives at the designated department location. Reports can be made via fax at 360-906-6776 or 360-906-6777; via e-mail at [crfishtickets@dfw.wa.gov](mailto:crfishtickets@dfw.wa.gov); or via phone at 1-866-791-1281.

(e) Faxing or reporting electronically in portable document format (PDF) a copy of each fish receiving ticket used, within the previously indicated time frames specified per area, satisfies the quick reporting requirement.

~~((f) Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.630.))~~

~~(15)((a))~~ Sea urchins and sea cucumbers:

(a) It is unlawful for any wholesale dealer acting in the capacity of an original receiver and receiving sea urchins or sea cucumbers from nontreaty fishers to fail to report to the department each day's purchases by 10:00 a.m. the following day.

(i) Wholesale dealers must report by:

(A) Fax at 360-902-2943;

(B) Toll-free telephone at 866-207-8223; or

(C) Text message or e-mail at [seurchinreport@dfw.wa.gov](mailto:seurchinreport@dfw.wa.gov) for sea urchins or [seacucumberreport@dfw.wa.gov](mailto:seacucumberreport@dfw.wa.gov) for sea cucumbers.

(ii) For red sea urchins, the report must specify the number of pounds received from each sea urchin district.

(iii) For green sea urchins and sea cucumbers, the report must specify the number of pounds received from each Marine Fish-Shellfish Management and Catch Reporting Area.

(iv) For sea cucumbers, the report must specify whether the landings were "whole-live" or "split-drained." ~~((The report must be made by fax at 360-902-2943, or by toll-free telephone at 866-207-8223.))~~

(b) It is unlawful for the original receiver of red sea urchins to fail to record on the fish receiving ticket the sea urchin district where the red sea urchins were taken~~((;))~~ and ~~((it is unlawful for the original receiver of any sea urchins to fail to record on the fish receiving ticket))~~ the name of the port of landing where the sea urchins were landed ashore.

(c) It is unlawful for the original receiver of sea cucumbers to fail to record on the fish receiving ticket whether the sea cucumbers were delivered "whole-live" or "split-drained."

~~((+))~~ (16) A violation of ~~((this subsection))~~ the documentation or reporting requirements in this section is ~~((a gross misdemeanor,))~~ punishable under RCW 77.15.630, Unlawful fish and shellfish catch accounting—Penalty.

AMENDATORY SECTION (Amending WSR 10-02-002, filed 12/23/09, effective 1/23/10)

**WAC 220-69-230 Description of Washington state nontreaty fish receiving tickets.** (1) ~~((There is hereby created))~~ The department creates, prepares, prints, and distributes upon request the following nontreaty fish receiving ticket forms ~~((to be prepared, printed, and distributed upon request, by the department))~~:

(a) Puget Sound salmon~~((;))~~;

(b) Troll~~((;))~~;

(c) Marine~~((;))~~;

(d) Utility~~((;))~~; and

(e) Shellfish. ~~((These))~~

(2) Fish receiving ticket forms ~~((shall))~~ must contain space for the following information:

(a) Fisherman: The name of the licensed deliverer.

(b) Address: The address of the licensed deliverer.

(c) Boat name: The name or Coast Guard number of the landing vessel.

(d) WDFW boat registration: The Washington department of fish and wildlife boat registration number.

(e) Gear: The code number or name of the specific type of gear used.

(f) Fisherman's signature: The signature of the licensed deliverer.

(g) Date: Date of landing.

(h) Dealer: Name of dealer~~((;))~~ and the department number assigned to dealer.

(i) Buyer: The name of buyer~~((;))~~ and the department number assigned to buyer.

(j) Receiver's signature: The signature of the original receiver.

(k) Number of days fished: Days spent catching fish.

(l) Fish or shellfish caught inside or outside 3-mile limit: Check one box.

(m) Catch area:

(i) The salmon catch area code if salmon are caught.

(ii) The marine fish/shellfish catch area code if marine fish are caught or shellfish are caught or harvested.

(n) Tally space for dealer's use: Used at the dealer's discretion.

(o) Species code: The department assigned species code.

(p) Individual number of salmon and sturgeon.

(q) Individual numbers of other fish species~~((;))~~ if ~~((such))~~ fish other than salmon or sturgeon are landed as part of an incidental catch allowance or catch ratio restriction ~~((that is expressed in numbers of fish rather than in pounds))~~.

(r) The number of ghost shrimp in dozens, the number of oysters in dozens or gallons, and the species description for all fish and shellfish.

(s) The original total weight in round pounds of all shellfish or fish, except that pounds of legally dressed fish and shellfish may be recorded in original dressed weight~~((;))~~ so long as dressed fish and shellfish ~~((must be))~~ are designated as dressed on the fish receiving ticket.

(t) Value of fish and shellfish sold or purchased: Summary information for species, or species groups landed.

~~((+))~~ (u) All species or categories of bottomfish having a vessel trip limit must be listed separately (see WAC 220-44-050).

~~((+))~~ (v) Work area for dealer's use: Used at dealer's discretion, ~~((with the following exceptions))~~ except:

(i) Federal sablefish endorsed limited entry permit numbers ~~((must be recorded in this area))~~ for each delivery of sablefish landed under the authority of ~~((this))~~ the permit must be recorded on the fish receiving ticket in the space reserved for dealer's use. Separate fish tickets are required for each permit number ~~((being))~~ used.

(ii) At the time of landing of coastal bottomfish into a Washington port, the fish buyer receiving the fish ~~((is required to))~~ must clearly ~~((mark on the fish receiving ticket in the space reserved for dealer's use))~~ record all legally defined trawl gear aboard the vessel at the time of delivery of the bottomfish on the fish receiving ticket in the space reserved for dealer's use. The ~~((three))~~ 3 trawl gear types are: Midwater trawl, roller trawl, and small foot rope trawl (foot rope less than ~~((eight))~~ 8 inches in diameter). The ~~((notation of the))~~ gear type(s) aboard the vessel ~~((is required prior to the signing of))~~ must be recorded on the fish receiving ticket ~~((by))~~ before the vessel representative signs the fish receiving ticket.

~~((+))~~ (w) Total amount: Total value of landing.

~~((+))~~ (x) Take-home fish: Species, number, and pounds of fish or shellfish retained for personal use.

~~((+))~~ (y) Crew: The name and signature of crew members who take home fish for personal use.

~~((2- The))~~ (3) A Puget Sound salmon fish receiving ticket ~~((shall be used))~~ must be completely, accurately, and legibly prepared for:

(a) Deliveries of nontreaty salmon caught in inland waters~~((;))~~; and

(b) ~~((Any other delivery of nontreaty salmon where the catch may be easily recorded:))~~

~~((+))~~ Any imports of fresh salmon into the state of Washington.

~~((3) The)~~ (4) A troll fish receiving ticket ~~((shall be used))~~ must be completely, accurately, and legibly prepared for:

(a) Deliveries of nontreaty coastal salmon and incidental catch(-);

~~(b) ((Any other nontreaty deliveries where the species delivered may be easily recorded.~~

~~(e))~~ Any imports of fresh salmon into the state of Washington(-

~~(d)); and~~

(c) Any bottomfish or halibut ~~((that are))~~ subject to a catch allowance or ratio restriction, when those species are taken incidental to salmon fishing.

~~((4) The)~~ (5) A marine fish receiving ticket ~~((shall be used))~~ must be completely, accurately, and legibly prepared for:

(a) Nontreaty deliveries of marine fish or bottomfish that do not include salmon(-); and

(b) Any imports of fresh marine fish or bottomfish.

~~((5) The)~~ (6) A marine or utility fish receiving ticket ~~((shall be used))~~ must be completely, accurately, and legibly prepared for:

(a) Any nontreaty deliveries that do not include salmon, where other fish receiving tickets are not appropriate(-); and

(b) Any imports of fresh fish or shellfish that do not include salmon.

~~((6) The)~~ (7) A shellfish receiving ticket ~~((shall be used))~~ must be completely, accurately, and legibly prepared for:

(a) Any nontreaty deliveries of shellfish(-);

(b) Any imports of fresh shellfish(-); and

(c) Any incidental catch of bottomfish made while fishing for shellfish. The species name, total pounds, and price per pounds must be entered for each species of bottomfish caught.

AMENDATORY SECTION (Amending WSR 07-04-030, filed 1/29/07, effective 3/1/07)

**WAC 220-69-234 Description of treaty Indian fish receiving ticket and treaty Indian shellfish receiving ticket.** (1) ~~((There is hereby created a))~~ The department creates, prepares, prints, and distributes upon request the following treaty Indian fish receiving ticket forms ~~((to be prepared, printed, and distributed upon request, by the department, which shall))~~:

(a) The treaty Indian fish receiving ticket; and

(b) The treaty Indian shellfish receiving ticket.

(2) Treaty Indian fish receiving ticket forms must contain space for the following information:

(a) ~~((Tribal name))~~ Tribe: Name or identification number of tribe.

(b) ~~((Fisherman))~~ Name: Name ~~((or))~~ and identification number of deliverer or fisher.

(c) Signature: Signature of deliverer ~~((on tribal copy of ticket)).~~

(d) Date: Date of harvest for bivalves (clams, oysters, geoduck), and date of landing for all fish and shellfish.

(e) Dealer: Name of the dealer, and the department number assigned to the dealer.

(f) Buyer: Name of the buyer, and the department number assigned to the buyer.

(g) Gear: Code name or number of the specific gear type used.

(h) ~~((Receiver's))~~ Dealer's signature: Signature of the original receiver.

(i) Catch area:

(i) River name for ~~((river catch,))~~ river-caught species;

(ii) Salmon catch area for ~~((saltwater))~~ saltwater-caught salmon ~~((catch,))~~ species;

(iii) Marine fish/shellfish catch area for ~~((nonsalmon saltwater catch))~~ saltwater-caught nonsalmon species, except bivalve shellfish; or

(iv) The catch area, department of natural resources tract number, or department beach identification number for harvested bivalve shellfish.

~~((Tally space for dealer's use: Used at dealer's discretion.))~~ The individual number of salmon, steelhead, and sturgeon.

~~((Individual number of salmon, steelhead, sturgeon.))~~ Species description for all fish and shellfish.

(l) On treaty Indian shellfish receiving tickets only:

(i) The Washington department of health issued certification number (WDOH certification);

(ii) The number of ghost shrimp in dozens(-);

(iii) The number of oysters in dozens or gallons ~~((species description for all fish and shellfish,))~~; and

(iv) The number of razor clams.

(m) Species code: The department assigned species code for the species harvested.

(n) The original total weight for each species or species group in round pounds, except:

(i) Pounds of legally dressed fish and shellfish may be recorded in original dressed weight ~~((Dressed))~~ so long as the fish and shellfish ~~((must be))~~ are designated as dressed(-); and

(ii) Weight is not required for oysters.

(o) The value of fish and shellfish purchased. ~~((Summary information for species, or species group landed. All species or categories of bottomfish having a vessel trip limit must be listed separately (see WAC 220-44-050).))~~

~~((H))~~ (p) Tribal tax: The amount of tribal tax collected.

~~((M))~~ (q) Take-home ~~((fish)), ceremonial, subsistence: The species, number, and pounds of fish or shellfish retained for personal, ceremonial, or subsistence use.~~

~~((Z))~~ (r) Tally space for dealer's use: Used at the dealer's discretion.

(3) The treaty Indian fish receiving ticket ~~((shall))~~ or treaty Indian shellfish receiving ticket, whichever is applicable, must be ~~((used))~~ completed for any deliveries of fish or shellfish caught by Washington treaty Indians.

AMENDATORY SECTION (Amending WSR 12-04-028, filed 1/26/12, effective 2/26/12)

**WAC 220-69-250 Required information on nontreaty fish receiving tickets.** (1) ~~((Except as provided in subsection (5) of this section,))~~ It is unlawful for a person required to complete a nontreaty fish receiving ticket to fail to enter the mandatory information referenced in WAC 220-69-

230 ~~((+))~~ (2)(a) through (m) and (p) through ~~((+))~~ (y) on each nontreaty fish receiving ticket, except as provided in subsection (5) of this section.

(2) A valid license card or duplicate license card issued by the department ~~((shall be))~~ used ~~((in conjunction))~~ with an approved mechanical imprinter ~~((in lieu of))~~ satisfies the requirements in WAC 220-69-230 ~~((+))~~ (2)(a) through (e), except as provided in WAC 220-69-273.

(3) A valid dealer or buyer card issued by the department ~~((shall be))~~ used ~~((in conjunction))~~ with an approved mechanical imprinter ~~((in lieu of))~~ satisfies the requirements in WAC 220-69-230 ~~((+))~~ (2)(h) and (i).

(4) ~~((During the period))~~ December 1 through December 30, the crab inspection certificate number is a required entry on all shellfish receiving tickets documenting landings and sale of Dungeness crab from the Pacific Ocean, Coastal Washington, Grays Harbor, Willapa Harbor, and Columbia River waters. The crab inspection certificate number must be entered legibly ~~((on the left hand side of the ticket))~~ in the space indicated for dealer's use.

(5) ~~((Persons selling or receiving))~~ A person who sells or receives deliveries of fish made under the Pacific Coast Groundfish Shoreside Individual Fishing Quota (IFQ) Program (50 C.F.R. § 660.140) may use the electronic fish ticket system described in 50 C.F.R. § 660.113 (b)(4)(ii) to enter mandatory information in lieu of completing a nontreaty fish receiving ticket, ~~((provided that the following conditions are met))~~ so long as:

(a) All information required under WAC 220-69-256 ~~((has been))~~ is entered on the electronic fish receiving ticket;

(b) Both the fisherman and original receiver ~~((have signed))~~ sign a legible, printed copy of the original electronic fish receiving ticket, plus all amended copies declaring the document and information contained therein as being true and accurate, and ~~((they have submitted such))~~ submit those signed copies as prescribed in WAC 220-69-260; and

(c) A signed copy of the electronic fish receiving ticket and all amended copies are maintained by the original receiver at the original receiver's place of business for ~~((a period of three))~~ 3 years ~~((preceding))~~ after the date of initiation.

(6) Violation of this section is a gross misdemeanor~~(:)~~ or a class C felony punishable under RCW 77.15.630, Unlawful fish and shellfish catch accounting—Penalty, depending on the circumstances of the violation.

**AMENDATORY SECTION** (Amending WSR 07-04-030, filed 1/29/07, effective 3/1/07)

**WAC 220-69-254 Required information on treaty Indian fish and shellfish receiving tickets.** (1) It is unlawful for a person required to complete a treaty Indian fish receiving ticket or a treaty Indian shellfish receiving ticket to fail to enter the mandatory information, when applicable, referenced in WAC 220-69-234 ~~((+))~~ (2)(a) through (l) and ~~((p))~~ (n) through (q) on each treaty Indian fish receiving ticket or treaty Indian shellfish receiving ticket, whichever is appropriate.

(2) A valid treaty Indian identification card may be used in lieu of WAC 220-69-234 ~~((+))~~ (2)(a) and (b).

(3) A valid dealer or buyer card issued by the department ~~((shall))~~ may be used in lieu of WAC 220-69-234 ~~((+))~~ (2)(e) and (f).

(4) Violation of this section is a gross misdemeanor, punishable under RCW ~~((77.15.640))~~ 77.15.630, Unlawful fish and shellfish catch accounting—Penalty.

**AMENDATORY SECTION** (Amending WSR 07-23-001, filed 11/7/07, effective 12/8/07)

**WAC 220-69-241 Duties of commercial fishers.** (1)~~((a))~~ Every fisher selling food) It is unlawful for a fisher who does not possess a valid wholesale dealer's license or a direct retail endorsement to:

(a) Sell fish or shellfish to a consumer, restaurant, ~~((boat house,))~~ or other retail outlet~~((, or donating));~~

(b) Donate fish or shellfish that have not been previously delivered to an original receiver to a nonprofit or other organization~~((,);~~ and

~~((every fisher who places))~~ (c) Place, or attempt~~((s))~~ to place, into ~~((inter-state))~~ interstate commerce any ~~((food))~~ fish or shellfish previously landed in ~~((this))~~ Washington state, or caught or harvested from the territorial waters of ~~((this))~~ Washington state~~((, is required to possess a valid wholesale dealer's license or a direct retail endorsement)).~~

~~((b))~~ (2) A violation of subsection (1) of this section is punishable under RCW 77.15.620, Engaging in fish dealing activity—Unlicensed—Penalty.

(3) It is unlawful for ~~((such))~~ fishers engaging in activities described in subsection (1) of this section to fail to immediately, completely, accurately, and legibly prepare the appropriate state of Washington fish receiving ticket in ~~((their))~~ the fisher's own name for each delivery of fish or shellfish. The fish receiving ticket must show the total of all fish and shellfish aboard the harvesting vessel upon delivery. A violation of this subsection is punishable under RCW 77.15.630, Unlawful fish and shellfish catch accounting—Penalty.

~~((e))~~ (4) It is unlawful for a fisher selling at retail to fail to complete ~~((a))~~ the appropriate fish receiving ticket before offering fish or shellfish for retail sale, except ~~((that the))~~ a fisher may complete a fish receiving ticket with an estimated number or weight if ~~((food))~~ the fisher offers the fish or shellfish ~~((are being offered))~~ for sale directly off the catcher vessel. ~~((At the completion of))~~ After the retail activity is completed, the fisher who ~~((has))~~ completed a fish receiving ticket with an estimated number or weight of fish or shellfish is required to complete a corrected fish receiving ticket with the actual number and weight of fish or shellfish ~~((that were))~~ sold at retail. ~~((d))~~ Failure to be licensed under this subsection is punishable under RCW 77.15.620.

~~((e))~~ Failure to prepare a fish receiving ticket under) A violation of this subsection is punishable under RCW 77.15.630, Unlawful fish and shellfish catch accounting—Penalty.

~~((2))~~ (5) It is unlawful for a fisher offering ~~((food))~~ fish or shellfish for retail sale to fail to maintain a sequentially numbered receipt book~~((, which receipt book shall contain a receipt duplicate copy and shall)).~~ The fisher must give each purchaser of ~~((salmon or crab))~~ fish or shellfish a receipt

showing the number, weight, and value of ~~((food))~~ fish or shellfish sold to that purchaser. The receipt book must contain a duplicate copy of the receipt given to the purchaser that remains with the receipt book.

~~((b))~~ It is unlawful for the retail seller to fail to retain the duplicate receipts for one year.

~~((e))~~ A violation of this subsection is ~~((a gross misdemeanor,))~~ punishable under RCW ~~((77.15.640))~~ 77.15.630, Unlawful fish and shellfish catch accounting—Penalty.

~~((3))~~ (6)(a) In the commercial geoduck fishery, it is unlawful for a vessel operator ~~((sø))~~ designated by the geoduck tract holder to fail to be present at all times on each vessel commercially harvesting geoducks or having commercially harvested geoducks aboard.

(b) For each day's harvest of geoducks from each tract, it is unlawful for the designated operator to fail to completely, legibly and accurately enter the following information on a fish receiving ticket before leaving the department of natural resources geoduck harvest tract:

(i) Enter in the "dealer's use" column the number of cages of geoducks harvested~~((:))~~;

(ii) Write ~~((across the top of the fish receiving ticket, directly below the tear strip,))~~ the harvest vessel name, its Washington department of fish and wildlife identification number, and the date~~((:))~~ across the top of the fish receiving ticket directly below the tear strip; and

(iii) Sign the fish receiving ticket as the fisher.

~~((e))~~ (7) A violation of ~~((this))~~ subsection (6) of this section is ~~((a gross misdemeanor,))~~ punishable under RCW ~~((77.15.640))~~ 77.15.630, Unlawful fish and shellfish catch accounting—Penalty.

~~((4))~~ (8)(a) It ~~((shall be))~~ is unlawful for operators of commercial fishing vessels catching ~~((their own))~~ forage fish for the purposes of using them as bait~~((:))~~ to fail to accurately report ~~((such))~~ those harvests on a state of Washington fish receiving ticket along with the target ~~((food))~~ fish or shellfish when ~~((such food))~~ those fish or shellfish are delivered to an original receiver.

(b) A violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.560.

~~((5))~~ (9)(a) It ~~((shall be))~~ is unlawful for an operator~~((s))~~ of a commercial fishing vessel~~((s))~~ to allow~~((, for monetary consideration,))~~ the distribution or transfer of forage fish for monetary consideration from ~~((their))~~ the nets or other holding devices under ~~((their))~~ his or her control to anyone other than a licensed wholesale fish dealer~~((:))~~ unless the operator~~((s))~~ of the commercial fishing vessel~~((s hold))~~;

(i) Possesses a wholesale fish dealers license~~((-Fisher men who are also licensed wholesale fish dealers and who distribute or transfer forage fish to others for use as bait in other commercial fisheries will be responsible for completing)); and~~

(ii) Completes a fish receiving ticket for ~~((such))~~ those transfers.

(b) A violation of this subsection is ~~((a gross misdemeanor,))~~ punishable under RCW 77.15.630, Unlawful fish and shellfish catch accounting—Penalty.

AMENDATORY SECTION (Amending WSR 04-17-096, filed 8/17/04, effective 9/17/04)

**WAC 220-69-243 Duties of aquatic farmers.** (1) It is unlawful for an aquatic farmer shipping out-of-state or selling private sector cultured aquatic products to fail to:

(a) Keep complete and accurate records showing the quantity of ~~((these))~~ products sold and the location of the aquatic farm where ~~((they))~~ products were grown~~((, and to fail to)); and~~

(b) Completely, accurately, and legibly prepare an aquatic farm production report.

(2) An aquatic farm production report ~~((shall))~~ must document each aquatic farm's monthly production~~((, showing))~~ and contain the information required in WAC 220-69-23402 (1)~~((4))~~ (a) through (g)~~((, and shall be mailed)). Aquatic farmers must submit aquatic farm production reports for each quarter to the department within thirty days of the end of each quarter for which production is reported.~~

~~((2))~~ (3) The aquatic farmer must retain copies of quarterly production reports ~~((copies are required to be maintained by the aquatic farmer))~~ for one year and ~~((presented on demand))~~ make the reports available for inspection upon request by authorized department personnel.

~~((3))~~ (4) Violation of this section is a misdemeanor, punishable under RCW 77.15.350, Inspection and disease control of aquatic farms—Rules violation—Penalty.

AMENDATORY SECTION (Amending WSR 12-04-028, filed 1/26/12, effective 2/26/12)

**WAC 220-69-260 Distribution of copies of nontreaty fish receiving tickets.** (1) State of Washington nontreaty fish receiving tickets ~~((shall))~~ must be made out in quadruplicate (four copies) at the time of delivery of fish or shellfish. ~~((Upon completion of the fish receiving ticket,))~~ It is unlawful for the original receiver who completes a fish receiving ticket to fail to distribute the copies as follows:

(a) Except for original receivers who submit a fish receiving ticket in portable document format (PDF) to satisfy quick reporting requirements for salmon and sturgeon under WAC 220-69-240 (14)(e), the ~~((person completing the fish receiving ticket to fail to distribute the copies as follows:~~

(a) The dealer copies (white and yellow) shall be retained by the receiver for his or her use.

(b)) original receiver must mail the state copy (green) ~~((shall be mailed))~~ of the fish receiving ticket to the department of fish and wildlife (department). ~~((It is required that))~~ The department must receive the state ~~((copies be received by the department))~~ copy no later than the sixth working day after the day ~~((the ticket was completed by))~~ the original receiver completes the fish ticket.

(b) The original receiver must retain the dealer copies (white and yellow) of the fish receiving ticket for his or her records.

(c) The deliverer must retain the fisher copy (gold) ~~((shall be retained by the deliverer))~~ for his or her ~~((use))~~ records.

(2) It is unlawful for an original receiver ~~((to fail to comply with the following provisions:~~

(a) signed copy of all electronic fish receiving ticket submissions must be mailed to the department.

(b) The electronic fish receiving tickets must be received by the department no later than the sixth working day after the ticket was completed or amended by the original receiver) who submits an electronic fish receiving ticket to fail to retain a signed copy of the electronic fish receiving ticket for three years.

(3) A violation of this section is ((a gross misdemeanor,)) punishable under RCW 77.15.630, Unlawful fish and shellfish catch accounting—Penalty.

AMENDATORY SECTION (Amending WSR 04-17-096, filed 8/17/04, effective 9/17/04)

**WAC 220-69-264 Distribution of copies of treaty Indian fish receiving tickets.** (1) State of Washington treaty Indian fish receiving tickets ((shall)) must be made out in quintuplicate (five copies) at the time of landing. ((Upon completion of the treaty Indian fish receiving ticket,)) It is unlawful for the ((person completing)) original receiver who completes the fish receiving ticket to fail to distribute the copies as follows:

((1)) ~~The dealer copy (white) shall be retained by receiver for their use.~~

(2)) (a) The original receiver must mail the state copy (green) and the NWIFC copy (pink) ((shall be mailed)) to the Northwest Indian Fisheries Commission (NWIFC), P.O. Box 5247, Lacey, Washington 98509. ((It is required that)) The NWIFC must receive the state copy and ((game)) NWIFC copy ((be received by the Northwest Indian Fisheries Commission)) no later than the sixth working day after the day ((the ticket was completed by)) the original receiver((-

(3)) completes the fish ticket.

(b) The original receiver must mail the tribal copy (yellow) ((shall be mailed)) with the state and NWIFC copies to the Northwest Indian Fisheries Commission, P.O. Box 5247, Lacey, Washington 98509((- Provided, That upon)). However, if the department has a written agreement ((received by the department)) from a specific tribe and buyer indicating the desire to transmit the tribe's copy directly to the fisher's tribe, then that one copy may be ((so disposed-)) sent directly to the fisher's tribe.

(c) The original receiver must retain the dealer copy (white) for his or her records; and

((4)) (d) The ((fisherman)) deliverer must retain the fisher's copy (gold) ((shall be retained by the deliverer)) for ((their use)) his or her records.

((5)) (2) A violation of this section is ((a gross misdemeanor,)) punishable under RCW ((77.15.640)) 77.15.630, Unlawful fish and shellfish catch accounting—Penalty.

AMENDATORY SECTION (Amending WSR 08-21-023, filed 10/6/08, effective 11/6/08)

**WAC 220-69-26401 Distribution of copies of shellfish receiving ticket.** (1) State of Washington shellfish receiving tickets must be made out in quintuplicate (five copies) at the time of delivery of shellfish. ((Upon completing these tickets,)) It is unlawful for the ((fish)) original receiver ((must)) to fail to distribute the fish receiving ticket copies as follows:

((1)) ~~The dealer copies (white and yellow) stay with the receiver for his or her records.~~

(2)) (a)(i) For shellfish other than geoduck clams from department of natural resources (DNR) geoduck tracts, the original receiver must mail the state copies (green and pink) ((must be mailed)) to the department of fish and wildlife (department). The department must receive ((these)) the state copies no later than the sixth working day after the day the original receiver ((completed)) completes the ticket.

((b)) (ii) For geoduck clams from ((department of natural resources geoduck)) DNR tracts, the original receiver must mail one state copy (green) ((must be mailed)) to the department ((of fish and wildlife)). The department must receive its copy no later than the sixth working day after the day the original receiver ((completed)) completes the ticket. The original receiver must give the other state copy (pink) ((must be given)) to ((the department of natural resources)) DNR at the time of weigh-out, unless otherwise directed by ((the department of natural resources)) DNR.

(b) The original receiver must retain the dealer copies (white and yellow) for his or her records.

((3)) (c) The ((fisherman's)) deliverer must retain the fisher's copy (gold) ((must be retained by the deliverer)) for his or her ((use)) records.

((4)) ~~It is unlawful for a fish receiver to fail to distribute fish receiving tickets as directed above.)~~ (2) A violation of this section is ((a gross misdemeanor,)) punishable under RCW ((77.15.640)) 77.15.630, Unlawful fish and shellfish catch accounting—Penalty.

AMENDATORY SECTION (Amending WSR 07-04-030, filed 1/29/07, effective 3/1/07)

**WAC 220-69-280 Fish receiving ticket accountability.** (1) Only current state of Washington fish receiving tickets ((shall)) may be used((- and shall be subject to the following orders:

(1)):

(2) Official state of Washington fish receiving tickets may be ordered free of charge from the department.

((2)) (3) It is unlawful:

(a) To fail to use fish receiving ticket books and fish receiving tickets in numerical sequence, starting with the lowest numbered ticket issued to the original receiver((-

(3) It is unlawful);

(b) To transfer fish receiving tickets or ticket books from one original receiver to another original receiver without written permission from the department((-

(4) It is unlawful);

(c) For any purchaser or receiver terminating business to fail to notify the department in writing and to fail to return all unused fish receiving tickets and ticket books to the department within thirty days after termination of business((-

(5) It is unlawful);

(d) To fail to return the state copy of all fish receiving tickets to the state. All fish receiving tickets that are incorrectly made out, voided, or otherwise unused, ((are required to)) must be submitted to the department accompanying, and in sequence with, other fish receiving tickets((-

(6) It is unlawful);

~~(e) To fail to account for all ((fish receiving tickets that are)) lost, destroyed, or otherwise missing fish receiving tickets in writing to the department(~~(-~~~~

~~(7) It is unlawful));~~

~~(f) To transfer fish receiving tickets to anyone who is not a licensed wholesale fish dealer, licensed fish buyer, or holder of a direct retail sale license endorsement(~~(-~~ and it is unlawful for));~~

~~(g) For any person who is not ((sø)) a licensed wholesale fish dealer, licensed fish buyer, or holder of a direct retail sale license endorsement to have fish receiving tickets in his or her possession(~~(-~~~~

~~(8) It is unlawful)); and~~

~~(h) For a wholesale dealer or holder of a direct retail sale endorsement to fail to maintain the dealer copy or copies of a completed fish receiving ticket at the dealer's or holder's regular place of business for three years after the date of use of the fish ticket.~~

~~((9)) (4) A violation of this section is ~~((a gross misdemeanor;))~~ punishable under RCW ~~((77.15.640))~~ 77.15.630. Unlawful fish and shellfish catch accounting—Penalty.~~

**WSR 14-02-016**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 13-305—Filed December 19, 2013, 4:20 p.m., effective January 19, 2014]

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

Purpose: Changes to commercial shellfish dive fishery rules to prohibit certain gear types on commercial shellfish harvest vessels will make it more difficult for people to illegally harvest geoducks under the guise of participating in lawful shellfish dive fisheries. The department amends commercial scallop, sea cucumber, and sea urchin fishery rules and adds two new sections containing definitions for dive fishery gear. Improved definitions for gear types and uniform season-opening and closing dates will increase rule clarity and promote resource conservation. Allowing the director to set sea urchin size limits by emergency rule will also facilitate resource management. Technical changes to rule titles, language, and structure increases the rules' intelligibility, functionality, and efficiency.

Reasons Supporting Proposal: This rule change proposal was discussed during the fish and wildlife commission meeting and public hearing held on November 8, 2013. The proposed changes were adopted by the commission at the December 6, 2013, commission meeting. The Washington department of fish and wildlife (WDFW) needs these changes to increase efficiency, functionality, and clarity of the rules within WDFW's administrative code. The changes promote increased conservation and availability of resources, clarity for stakeholders and the department, and enforceability of the rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-52-069, 220-52-071, and 220-52-073.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 77.12.047.

Adopted under notice filed as WSR 13-20-147 on October 2, 2013.

Changes Other than Editing from Proposed to Adopted Version: The department further refined what type of geoduck dive gear is prohibited on vessels engaged in the commercial sea urchin, sea cucumber, and scallop dive fisheries in WAC 220-52-069, 220-52-071, and 220-52-073, instead of a general reference to "geoduck dive gear." The department refined prohibited gear on vessels engaged in these fisheries to "a hose or combination of hoses measuring thirty feet or more or water jet nozzles." Hoses thirty feet in length and water jet nozzles are necessary geoduck dive gear and prohibiting possession of them on vessels engaged in other dive fisheries accomplishes the goal of reducing potential illegal harvest of geoducks and clarifies requirements for users.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 3, Repealed 0.

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

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

Date Adopted: December 6, 2013.

Miranda Wecker, Chair  
Fish and Wildlife Commission

NEW SECTION

**WAC 220-16-101 Definitions—Shellfish dive gear.** "Shellfish dive gear" is defined as compressed gas delivery equipment required for breathing underwater and attire required to provide thermal protection during underwater shellfish dive harvest operations.

NEW SECTION

**WAC 220-16-102 Definitions—Hand held tool.** "Hand held tool" is defined as tools that are held by hand and are not powered by internal combustion, hydraulics, pneumatics, or electricity.

AMENDATORY SECTION (Amending WSR 11-07-108, filed 3/23/11, effective 4/23/11)

**WAC 220-52-069 Commercial scallop fishery—Puget Sound.** ~~((It is unlawful to fish for or possess scallops taken for commercial purposes from Puget Sound except as provided for in this section:))~~

(1) **Licensing and permits:**

(a) ~~((Rock scallops and weathervane scallops:))~~ It is unlawful to fish for, take, or possess scallops with shellfish

dive gear without a valid shellfish dive fishery license. A violation of this subsection is a gross misdemeanor or class C felony punishable under RCW 77.15.500. Commercial fishing without a license—Penalty, depending on the circumstances of the violation.

(b) It is unlawful ((at any time)) to fish for, take, or possess rock or weathervane scallops ((taken)) for commercial purposes from Puget Sound unless a person ((has)) first ((obtained)) obtains a valid scallop brood stock collection permit issued by the department. ((The permit will specify)) A violation of this subsection is a gross misdemeanor or class C felony punishable under RCW 77.15.500, violation of commercial fishing without a license—Penalty, depending on the circumstances of the violation.

(c) It is unlawful to harvest scallops for brood stock or culture purposes in a manner that violates scallop brood stock collection permit provisions. Scallop brood stock collection permit provisions include, but are not limited to, the location, date and time restrictions on harvest, and the species((-location, time-)) and quantity of scallops ((that can be taken)) the permit holder may take for brood stock or culture purposes. A violation of this subsection is a misdemeanor, punishable under RCW 77.15.750, Unlawful use of a department permit—Penalty.

((b) Licensing: A shellfish dive fishery license is a license that allows a permittee to retain rock and weathervane scallops for brood stock purposes-))

(2) ((Pink scallops and spiny scallops-)) **Harvest areas and seasons.**

(a) ((General provisions:

(i)) It is unlawful to take or possess pink ((and)) or spiny scallops ((may be harvested from Puget Sound at any time.

(ii) The minimum commercial pink or spiny scallop size is 2 inches in length from the hinge to the outer margin of the shell.

(iii) Persons fishing for pink or spiny scallops must have approval of the Washington state department of health. Scallops may only be taken from areas approved by the department of health and any fisher taking pink or spiny scallops must have on board the harvesting vessel a valid department of health shellfish toxin sampling agreement.

(iv) No other shellfish except octopus and squid may be retained while scallop fishing or while scallop are possessed aboard the scallop fishing vessel.

(b) Trawl gear provisions: Otter trawl gear may not be used to fish for scallops in Puget Sound at any time.

(c) Shellfish diver gear provisions:

(i) Diving for scallops is prohibited in Sea Urchin Districts 1 and 2 closed waters as defined in WAC 220-52-073 (1)(a)(i), (ii), (1)(b)(i), and (ii).

(ii) Licensing: A shellfish dive fishery license is the license required to take scallops with shellfish diver gear-)) for commercial purposes, except during open scallop harvest seasons from open shellfish management areas as provided by emergency rule.

(b) It is unlawful to fish for, take, or possess scallops from the closed waters in Sea Urchin Districts 1, 2, 5, and 7 as defined in WAC 220-52-073.

(c) It is unlawful to fish for or take pink or spiny scallops from official sunset through 5:59 a.m. the following morning.

(3) A violation of subsection (2) of this section is a gross misdemeanor or class C felony punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty, depending on the circumstances of the violation.

(4) **Size limits:** It is unlawful to take or possess pink or spiny scallops less than 2 inches in length, measured from the hinge to the outer margin of the shell. A violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

(5) **Shellfish dive gear and harvest vessel restrictions:**

(a) It is unlawful to fish for, take, or possess pink or spiny scallops by any means other than by hand with shellfish dive gear. A violation of this subsection is a gross misdemeanor punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(b) It is unlawful to operate a vessel engaged in scallop harvest operations unless the vessel registration number assigned by the department is properly displayed as provided by department rule. A violation of this subsection is a misdemeanor punishable under RCW 77.15.540, Unlawful use of a commercial fishery license—Penalty.

(c) It is unlawful for more than one diver from a harvest vessel to be in the water at any one time during pink or spiny scallop harvest operations or when commercial quantities of pink or spiny scallops are on board the vessel. A violation of this subsection is a gross misdemeanor punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(d) It is unlawful for a vessel engaged in the harvest of pink or spiny scallops to have through-hull fittings for water discharge hoses to be below the surface of the water. Through-hull fittings above the water line must be visible at all times. A violation of this subsection is a gross misdemeanor punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(e) It is unlawful to possess a single hose or combination of hoses capable of measuring longer than thirty feet or water jet nozzles onboard a vessel engaged in the commercial pink or spiny scallop fishery. A violation of this subsection is a gross misdemeanor punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(6) **Possession restrictions:** It is unlawful to possess geoduck clams during pink or spiny scallop harvest operations, or possess geoduck clams on a vessel that has pink or spiny scallops on board. A violation of this subsection is a gross misdemeanor or class C felony punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty, depending on the circumstances of the violation.

AMENDATORY SECTION (Amending WSR 03-16-098, filed 8/6/03, effective 9/6/03)

**WAC 220-52-071 Commercial sea cucumber((s)) fishery.** ((It is unlawful to take or possess sea cucumbers taken for commercial purposes except as provided for in this section-))

(1) **Licensing:** It is unlawful to fish for, take, or possess sea cucumbers with shellfish dive gear without a valid shellfish dive fishery license. A violation of this subsection is a

gross misdemeanor or class C felony punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

**(2) Harvest areas and seasons:**

(a) It is unlawful to fish for, take, or possess sea cucumbers for commercial purposes, except during open sea cucumber harvest seasons and from open sea cucumber districts as provided by emergency rule.

(b) It is unlawful to fish for or take sea cucumbers from official sunset to 5:59 a.m. the following morning.

(c) A violation of this subsection is a gross misdemeanor or class C felony punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

**(3) Sea cucumber districts defined:**

(a) Sea Cucumber District 1 is defined as those waters of Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B, and 23B outside of the following closed areas:

(i) San Juan Channel and Upright Channel within the following lines: South of a line projected from Flat Point on Lopez Island true west to Shaw Island; west of a line from Neck Point on Shaw Island to Steep Point on Orcas Island; south of a line from Steep Point on Orcas Island to Limestone Point on San Juan Island north of a line from Flat Point on Lopez Island to the northernmost point of Turn Island and thence projected true west to San Juan Island.

(ii) Haro Strait north of a line projected due west from the southernmost point of Cattle Point on San Juan Island to the international border and south of a line projected due west from a point one-quarter mile north of Lime Kiln Light on San Juan Island to the international border.

(b) Sea Cucumber District 2 is defined as the waters of Marine Fish-Shellfish Management and Catch Reporting Areas 23A, 23C, 23D, 25A, 25B, 25C, 25D, 25E, and 29.

(c) Sea Cucumber District 3 is defined as the waters of Marine Fish-Shellfish Management and Catch Reporting Areas 24A, 24B, 24C, 24D, 26A, 26B, and 26C. The following areas within Sea Cucumber District 3 are closed to the harvest of sea cucumbers:

(i) Those waters of Eagle Harbor west of a line projected from Wing Point to Eagle Harbor Creosote Light Number 1, then projected due west to shore on Bainbridge Island.

(ii) Those waters of Sinclair Inlet west of a line projected southerly from the easternmost point of Point Turner to landfall directly below the Veteran's Home in Annapolis.

(d) Sea Cucumber District 4 is defined as the waters of Marine Fish-Shellfish Management and Catch Reporting Areas 27A, 27B, and 27C.

(e) Sea Cucumber District 5 is defined as the waters of Marine Fish-Shellfish Management and Catch Reporting Areas 26D, 28A, 28B, 28C, and 28D.

~~**((2)) Sea cucumber areas and seasons:**~~

~~Sea cucumber areas and seasons will be set by emergency rule.~~

~~On days open to sea cucumber harvest, it is unlawful to take sea cucumbers from one half hour before official sunset to 5:59 a.m. the next morning. Violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.~~

~~**(3)) (4) Shellfish ((diver)) dive gear and harvest vessel restrictions:**~~

~~(a) ((Divers operating from)) It is unlawful to fish for, take, or possess sea cucumbers taken for commercial purposes by any means other than by hand with shellfish dive gear. A violation of this subsection is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.~~

~~(b) It is unlawful to operate a vessel ((must have a)) engaged in commercial sea cucumber harvest operations unless the vessel registration number assigned by the department ((placed on both sides and the top of the vessel in such a manner that the number is clearly visible when the vessel is viewed from either side or from the air, and the letters must be black on white no less than eighteen inches in height and of proportional width. Failure to display these numbers)) is properly displayed on the vessel as provided by department rule. A violation of this subsection is a misdemeanor punishable under RCW 77.15.540, Unlawful use of a commercial fishery license.~~

~~((b) Only)) (c) It is unlawful for more than one diver from ((each harvesting)) a harvest vessel ((is allowed)) to be in the water at any one time during ((the)) sea cucumber harvest operations or when commercial quantities of sea cucumbers are aboard, except that two divers from a harvest vessel may be in the water at one time if the vessel ((has been)) is designated on two sea cucumber dive fishery licenses. A violation of this subsection is a gross misdemeanor punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.~~

~~((c) Divers may not fish for or)) (d) It is unlawful for a vessel engaged in the harvest of sea cucumbers to have through-hull fittings for water discharge hoses below the surface of the water. Through-hull fittings above the water line must be visible at all times. A violation of this subsection is a gross misdemeanor punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.~~

~~(e) It is unlawful to possess a single hose or combination of hoses capable of measuring longer than thirty feet or water jet nozzles onboard a vessel engaged in the commercial sea cucumber fishery. A violation of this subsection is a gross misdemeanor punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.~~

~~**(5) Possession restrictions:** It is unlawful to possess geoduck clams during commercial sea cucumber ((harvesting)) harvest operations, or possess geoduck clams on a vessel that has sea cucumbers on board. A violation of this subsection is a gross misdemeanor or class C felony punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty, depending on the circumstances of the violation.~~

~~((d) Licensing: A sea cucumber dive fishery license is the license required to operate the gear provided for in this section.~~

~~**(4) Trawl gear:**~~

~~It is unlawful to fish for or possess sea cucumbers taken with trawl gear. Violation of this subsection is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.))~~

AMENDATORY SECTION (Amending WSR 08-15-127, filed 7/22/08, effective 8/22/08)

**WAC 220-52-073 Commercial sea urchin((s)) fisher-**  
**ies.** ~~((It is unlawful to take or possess sea urchins taken for commercial purposes except as provided for in this section.))~~

(1) **Licensing:** It is unlawful to fish for, take, or possess sea urchins for commercial purposes with shellfish dive gear without a valid shellfish dive fishery license. A violation of this subsection is a gross misdemeanor or class C felony punishable under RCW 77.15.500. Commercial fishing without a license—Penalty, depending on the circumstances of the violation.

**(2) Harvest areas, seasons, and size restrictions:**

(a) It is unlawful to fish for, take, or possess sea urchins for commercial purposes except during open sea urchin harvest seasons, from open sea urchin districts, and within the size restrictions as set by emergency rule.

(b) It is unlawful to fish for or take sea urchins from official sunset through 5:59 a.m. the following morning.

(c) It is unlawful to harvest or possess sea urchins taken from less than ten feet below mean lower low water.

(d) It is unlawful to process sea urchins aboard the harvest vessel.

(e) It is unlawful to take sea urchins for commercial use for purposes other than human consumption.

(3) A violation of subsection (2) of this section is a gross misdemeanor or class C felony punishable under RCW 77.15.550. Violation of commercial fishing area or time—Penalty, depending on the circumstances of the violation.

**(4) Sea urchin districts defined:**

(a) Sea Urchin District 1 (Northern San Juan Islands) is defined as Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, and those waters of Area 22A north of a line projected east-west one-quarter mile north of Lime Kiln Light on San Juan Island and west of a line projected true north from Limestone Point on San Juan Island.

(b) Sea Urchin District 2 (Southern San Juan Islands and Port Townsend) is defined as those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A south of a line projected east-west one-quarter mile north of Lime Kiln Light on San Juan Island and east of a line projected true north from Limestone Point on San Juan Island and Areas 21A, 21B, 22B, 23A, 23B, 25A and 25B. The following areas within Sea Urchin District 2 are closed to the harvest of sea urchins at all times:

(i) Those waters of Haro Strait north of a line projected due west from the southernmost point of Cattle Point on San Juan Island to the international border and south of a line projected due west from a point one-quarter mile north of Lime Kiln Light on San Juan Island to the international border.

(ii) Those waters of San Juan Channel and Upright Channel within the following lines: South of a line projected from Flat Point on Lopez Island true west to Shaw Island; west of a line from Neck Point on Shaw Island to Steep Point on Orcas Island; south of a line from Steep Point on Orcas Island to Limestone Point on San Juan Island north of a line from Flat Point on Lopez Island to the northernmost point of Turn Island and thence projected true west to San Juan Island.

(c) Sea Urchin District 3 (Port Angeles) is defined as those waters of Marine Fish-Shellfish Management and Catch Reporting Area 23C east of a line projected true north from Low Point, along 123°49'30" W. longitude, and Area 23D.

(d) Sea Urchin District 4 (Sekiu) is defined as those waters of Marine Fish-Shellfish Management and Catch Reporting Area 23C west of a line projected true north from Low Point, along 123°49'30" W. longitude, and those waters of Area 29 east of a line projected true north from the mouth of Rasmussen Creek (3.1 miles southeast of Sail Rock).

(e) Sea Urchin District 5 is defined as those waters of Marine Fish-Shellfish Management and Catch Reporting Area 29 west of a line projected true north from the mouth of Rasmussen Creek (3.1 miles southeast of Sail Rock) and Areas 59A and 59B. Within Sea Urchin District 5, waters within one-quarter mile of Tatoosh Island are closed to the harvest of sea urchins at all times.

(f) Sea Urchin District 6 is defined as those waters of Marine Fish-Shellfish Management and Catch Reporting Areas 24A, 24B, 24C, 24D and 26A.

(g) Sea Urchin District 7 is defined as those waters of Marine Fish-Shellfish Management and Catch Reporting Areas 26B, 26C, 26D and 28A. The following areas within Sea Urchin District 7 are closed to the harvest of sea urchins at all times.

(i) Those waters of Eagle Harbor west of a line projected from Wing Point to Eagle Harbor Creosote Light Number 1, then projected due west to the shore on Bainbridge Island.

(ii) The waters of Sinclair Inlet west of a line projected southerly from the easternmost point of Point Turner to landfall directly below the Veteran's Home in Annapolis.

~~**((2) Sea urchin seasons and sizes:**~~

~~(a) Sea urchin seasons will be set by emergency rule.~~

~~(b) Green sea urchins in all sea urchin districts—unlawful to harvest urchins smaller than 2.25 inches (size in largest test diameter exclusive of spines).~~

~~(c) Red sea urchins in Sea Urchin Districts 1 and 2: Unlawful to harvest urchins smaller than 4.0 inches or larger than 5.5 inches (size in largest test diameter exclusive of the spines).~~

~~(d) Red sea urchins in Sea Urchin Districts 3 and 4: Unlawful to harvest urchins smaller than 3.25 inches or larger than 5.0 inches (size in largest test diameter exclusive of spines).~~

~~**((3)) (5) Shellfish ((diver)) dive gear and harvest vessel restrictions:**~~

~~(a) It is unlawful to fish for, take, or possess sea urchins by any means other than ((shellfish diver gear.~~

~~(b) Divers may only use hand-operated equipment)) with hand held tools that ((does)) do not penetrate the shell.~~

~~((c) Sea urchins may not be taken from water shallower than 10 feet below mean lower low water.~~

~~(d) Purple sea urchins may not be taken.~~

~~(e) Divers operating from a vessel must have a number assigned by the department, placed on both sides and the top of the vessel in such a manner that the number is clearly visible when the vessel is viewed from either side or from the air and the number must be black on white no less than 18 inches high and of proportionate width.~~

~~(f) Divers may not take sea urchins from one half hour after sunset to one half hour before sunrise.~~

~~(g) No processing of sea urchins is permitted aboard the harvest vessel.~~

~~(h) Divers may not take sea urchins for use other than as human food.~~

~~(i) Only~~ (b) It is unlawful for more than one diver from ~~((each harvesting))~~ a harvest vessel ~~((is allowed))~~ to be in the water at any one time during ~~((the))~~ sea urchin ~~((harvesting))~~ harvest operations or when commercial quantities of sea urchins are ~~((aboard))~~ onboard, except that two divers may be in the water if the harvest vessel ~~((has been))~~ is designated on two sea urchin dive fishery licenses.

~~((j) Variance from any of the provisions of this subsection is only allowed if authorized by a permit issued by the director.~~

~~(k) Licensing: A sea urchin dive fishery license is the license required to operate the gear provided for in this section.~~ (c) It is unlawful for a vessel engaged in the harvest of sea urchins to have through-hull fittings for water discharge hoses below the surface of the water. Through-hull fittings above the water line must be visible at all times. A violation of this subsection is a gross misdemeanor punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(d) It is unlawful to possess a single hose or combination of hoses capable of measuring longer than thirty feet or water jet nozzles onboard a vessel engaged in the commercial sea urchin fishery. A violation of this subsection is a gross misdemeanor punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(e) It is unlawful to operate a vessel engaged in sea urchin harvest operations unless the vessel registration number assigned by the department is properly displayed as provided by department rule. A violation of this subsection is a misdemeanor punishable under RCW 77.15.540, Unlawful use of a commercial fishery license—Penalty.

(6) **Possession restrictions:** It is unlawful to possess geoduck clams during commercial sea urchin harvest operations, or possess geoduck clams on a vessel that has sea urchins onboard. A violation of this subsection is a gross misdemeanor or class C felony punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty, depending on the circumstances of the violation.

## WSR 14-02-026

### PERMANENT RULES

#### DEPARTMENT OF HEALTH

(Nursing Care Quality Assurance Commission)

[Filed December 20, 2013, 2:32 p.m., effective January 20, 2014]

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

Purpose: WAC 246-840-125 establishes a new section for a retired active license status for registered nurses and licensed practical nurses. The rule allows these nurses to practice on an intermittent or emergent basis, yet retain competency through continuing education and practice hours. It gives direction to nurses on the limits of a retired active sta-

tus, renewal process, and reinstatement process. Fees for this new credential have been adopted separately.

Statutory Authority for Adoption: RCW 18.130.250 and 18.79.110.

Adopted under notice filed as WSR 13-20-084 on September 30, 2013.

Changes Other than Editing from Proposed to Adopted Version: Minor clarifying language was added to subsection (4)(b); "nursing" was inserted before and "every three years" was inserted following the word "education."

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.

Date Adopted: November 8, 2013.

Paula R. Meyer, MSN, RN  
Executive Director  
Nursing Care Quality  
Assurance Commission

### NEW SECTION

**WAC 246-840-125 Retired active credential.** (1) A registered or licensed practical nurse may place their credential in "retired active" status by meeting the requirements of this section.

(2) A registered or licensed practical nurse who holds a retired active credential may only practice in intermittent or emergent circumstances.

(a) Intermittent means the registered or licensed practical nurse will practice no more than ninety days a year.

(b) Emergent means the registered or licensed practical nurse will practice only in emergency circumstances such as earthquakes, floods, times of declared war, or other states of emergency.

(3) To obtain a retired active credential a registered or a licensed practical nurse must:

(a) Meet the requirements in WAC 246-12-120.

(b) Pay the appropriate fee in WAC 246-840-990.

(4) To renew a retired active credential the registered nurse or licensed practical nurse must:

(a) Meet the requirements in WAC 246-12-130. The retired active credential fee is in WAC 246-840-990.

(b) Have completed forty-five hours of continuing nursing education every three years in compliance with WAC 246-840-203 (1)(a)(iii)(A) through (F). Education may include CPR and first aid.

(c) Demonstrate they have practiced at least ninety-six hours every three years. Practice may be paid or volunteer, but must require nursing knowledge or a nursing license.

(d) Renew their retired active credential every year on their birthday.

(5) To return to active status the registered or licensed practical nurse must:

(a) Meet the requirements in WAC 246-12-140. The active renewal fee is in WAC 246-840-990.

(b) Meet the continuing competency requirements in WAC 246-840-205.

(6) A registered or licensed practical nurse who holds a retired active credential is subject to a continuing competency audit.

(a) All late renewals and a percentage up to five percent of registered and licensed practical nurses renewing their license may be audited by the commission.

(b) A registered or practical nurse being audited will have thirty calendar days to complete and submit to the commission the audit form documenting at least ninety-six hours of active practice, and forty-five hours of continuing nursing education every three years. Active practice hours are not to exceed ninety days each year.

(c) To document practice hours and continuing nursing education a registered or licensed practical nurse shall comply with WAC 246-840-206 (4) and (5).

### WSR 14-02-037

#### PERMANENT RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed December 23, 2013, 12:28 p.m., effective January 23, 2014]

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

Purpose: The department is amending WAC 388-400-0050 If I am not eligible for federal benefits through Washington Basic Food program because of my alien status, can I receive benefits through the state-funded food assistance program?

These amendments are needed to change the benefit level for the state-funded food assistance program under RCW 74.08A.120. Section 207(5) of 3ESSB 5034 states that the legislature establishes the benefit under the state food assistance program at seventy-five percent of the federal supplemental nutrition assistance program (SNAP) benefit amount. Prior to July 1, 2013, the benefit amount was fifty percent of the SNAP benefit amount.

Citation of Existing Rules Affected by this Order: Amending WAC 388-400-0050.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.500, 74.04.510, 74.04.515, 74.08.090, 74.08A.120, and 3ESSB 5034 (operating budget).

Adopted under notice filed as WSR 13-21-124 on October 22, 2013.

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

Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: December 17, 2013.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-18-024, filed 8/27/12, effective 9/27/12)

**WAC 388-400-0050 If I am not eligible for federal benefits through Washington Basic Food program because of my alien status, can I receive benefits through the state-funded food assistance program?** (1) If you are not eligible for federally funded Basic Food benefits solely because you do not meet the alien status requirements under WAC 388-424-0020, you may be eligible for the state-funded food assistance program (FAP) if you meet both of the following requirements:

(a) You are a Washington state resident; and

(b) You meet the alien status requirements under WAC 388-424-0030.

(2) FAP 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) Benefits for FAP are set by the biennial state operating budget as described in RCW 74.08A.120(3). These benefits are calculated as described in subsections (4) and (5) of this section.

(4) If your assistance unit (AU) includes both people who are eligible for federally funded Basic Food benefits and people who are eligible for state-funded FAP benefits, we determine the amount of your federal and state food benefits by applying the following process:

(a) We calculate your AU's monthly benefits under WAC 388-450-0162 **as if** all the eligible persons in your AU could receive federally funded Basic Food benefits; and

(b) We then calculate your AU's monthly benefits under WAC 388-450-0162 for only the people in your AU **who are** eligible for federally funded benefits.

If (a) is more than (b)	If (b) is more than (a)
Your AU receives: • Basic Food benefits in the amount calculated using step (b); and • FAP benefits equal to <del>((half))</del> <u>three fourths</u> the difference between (a) and (b), rounded down to the next whole dollar.	Your AU receives Basic Food benefits in the amount calculated using step (b).

(5) If your AU only includes persons eligible for FAP, we determine the amount of your state-funded FAP benefits by:

(a) Applying the calculation for Basic Food under WAC 388-450-0162 **as if** all the persons in your AU were eligible to receive Basic Food; and

(b) Issuing FAP benefits to your AU equal to ~~((half))~~ three fourths the amount calculated in subsection (5)(a), rounded down to the next whole dollar.

**WSR 14-02-040**  
**PERMANENT RULES**  
**DEPARTMENT OF HEALTH**

[Filed December 23, 2013, 1:59 p.m., effective January 23, 2014]

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

Purpose: WAC 246-310-010 Definitions (certificate of need) and WAC 246-320-141 Patient rights and organizational ethics (hospital licensing). Implementing the Governor's Directive 13-12. Clarifying when change in control of a hospital is subject to certificate of need (CoN) review and amending hospital licensing rules to improve transparency.

The department of health (department) amended the CoN rules to clarify that change in control of a hospital, whether by sale, purchase, lease, affiliations, corporate restructuring, mergers, and other arrangements are subject to CoN review. The department also amended the hospital licensing rules to improve transparency for consumer information and the public's ease of access to hospital information. Rules are in response to the Governor's Directive 13-12.

Citation of Existing Rules Affected by this Order: Amending WAC 246-310-010 and 246-320-141.

Statutory Authority for Adoption: RCW 70.38.135, 70.38.115, and 70.41.030.

Other Authority: Chapters 70.38 and 70.41 RCW.

Adopted under notice filed as WSR 13-21-076 on October 17, 2013.

A final cost-benefit analysis is available by contacting Janis Sigman, P.O. Box 47852, Olympia, WA 98502-7852, phone (360) 236-2956, fax (360) 236-2321, e-mail Janis.Sigman@doh.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

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

Date Adopted: December 23, 2013.

John Wiesman, DrPH, MPH  
 Secretary

AMENDATORY SECTION (Amending WSR 08-19-018, filed 9/5/08, effective 10/6/08)

**WAC 246-310-010 Definitions.** For the purposes of chapter 246-310 WAC, the following words and phrases have the following meanings unless the context clearly indicates otherwise.

(1) "Acute care facilities" means hospitals and ambulatory surgical facilities.

(2) "Affected person" means an interested person who:

(a) Is located or resides in the applicant's health service area;

(b) Testified at a public hearing or submitted written evidence; and

(c) Requested in writing to be informed of the department's decision.

(3) "Alterations," see "construction, renovation, or alteration."

(4) "Ambulatory care facility" means any place, building, institution, or distinct part thereof not a health care facility as defined in this section and operated for the purpose of providing health services to individuals without providing such services with board and room on a continuous twenty-four-hour basis. The term "ambulatory care facility" includes the offices of private physicians, whether for individual or group practice.

(5) "Ambulatory surgical facility" means any free-standing entity, including an ambulatory surgery center that operates primarily for the purpose of performing surgical procedures to treat patients not requiring hospitalization. This term does not include a facility in the offices of private physicians or dentists, whether for individual or group practice, if the privilege of using the facility is not extended to physicians or dentists outside the individual or group practice.

(6) "Applicant," means:

(a) Any person proposing to engage in any undertaking subject to review under chapter 70.38 RCW; or

(b) Any person or individual with a ten percent or greater financial interest in a partnership or corporation or other comparable legal entity engaging in any undertaking subject to review under chapter 70.38 RCW.

(7) "Bed banking" means the process of retaining the rights to nursing home bed allocations which are not licensed as outlined in WAC 246-310-395.

(8) "Bed supply" means within a geographic area the total number of:

(a) Nursing home beds which are licensed or certificate of need approved but not yet licensed or beds banked under RCW 70.38.111 (8)(a) or where the need is deemed met under RCW 70.38.115 (13)(b), excluding:

(i) Those nursing home beds certified as intermediate care facility for the mentally retarded (ICF-MR) the operators of which have not signed an agreement on or before July 1, 1990, with the department of social and health services department of social and health services to give appropriate notice prior to termination of the ICF-MR service;

(ii) New or existing nursing home beds within a CCRC which are approved under WAC 246-310-380(5); or

(iii) Nursing home beds within a CCRC which is excluded from the definition of a health care facility per RCW 70.38.025(6); and

(iv) Beds banked under RCW 70.38.115 (13)(b) where the need is not deemed met.

(b) Licensed hospital beds used for long-term care or certificate of need approved hospital beds to be used for long-term care not yet in use, excluding swing-beds.

(9) "Bed-to-population ratio" means the nursing home bed supply per one thousand persons of the estimated or forecasted resident population age seventy and older.

(10) "Capital expenditure": Except for WAC 246-310-280, capital expenditure means an expenditure, including a force account expenditure (i.e., an expenditure for a construction project undertaken by a nursing home facility as its own contractor), which, under generally accepted accounting principles, is not properly chargeable as an expense of operation or maintenance. The costs of any studies, surveys, designs, plans, working drawings, specifications, and other activities (including staff effort, consulting and other services which, under generally accepted accounting principles, are not properly chargeable as an expense of operation and maintenance) shall be considered capital expenditures. Where a person makes an acquisition under lease or comparable arrangement, or through donation, which would have required certificate of need review if the acquisition had been made by purchase, this acquisition shall be deemed a capital expenditure. Capital expenditures include donations of equipment or facilities to a nursing home facility, which if acquired directly by the facility, would be subject to review under this chapter and transfer of equipment or facilities for less than fair market value if a transfer of the equipment or facilities at fair market value would be subject to the review.

(11) "Certificate of need" means a written authorization by the secretary's designee for a person to implement a proposal for one or more undertakings.

(12) "Certificate of need program" means that organizational program of the department responsible for the management of the certificate of need program.

(13) "Commencement of the project" means whichever of the following occurs first: In the case of a construction project, giving notice to proceed with construction to a contractor for a construction project provided applicable permits have been applied for or obtained within sixty days of the notice; beginning site preparation or development; excavating or starting the foundation for a construction project; or

beginning alterations, modification, improvement, extension, or expansion of an existing building. In the case of other projects, initiating a health service.

(14) "Construction, renovation, or alteration" means the erection, building, remodeling, modernization, improvement, extension, or expansion of a physical plant of a health care facility, or the conversion of a building or portion thereof to a health care facility.

(15) "Continuing care contract" means 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. The contract is conditioned on the transfer of property, the payment of an entrance fee to the provider of the 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.

(16) "Continuing care retirement community (CCRC)" means any of a variety of entities, unless excluded from the definition of health care facility under RCW 70.38.025(6), which provides shelter and services based on continuing care contracts with its residents which:

Maintains for a period in excess of one year a CCRC contract with a resident which provides or arranges for at least the following specific services:

(a) Independent living units;

(b) Nursing home care with no limit on the number of medically needed days;

(c) Assistance with activities of daily living;

(d) Services equivalent in scope to either state chore services or medicaid home health services;

(e) Continues a contract, if a resident is no longer able to pay for services;

(f) Offers services only to contractual residents with limited exception during a transition period; and

(g) Holds the medicaid program harmless from liability for costs of care, even if the resident depletes his or her personal resources.

(17) "Days" means calendar days. Days are counted starting the day after the date of the event from which the designated period of time begins to run. If the last day of the period falls on a Saturday, Sunday, or legal holiday observed by the state of Washington, a designated period runs until the end of the first working day following the Saturday, Sunday, or legal holiday.

(18) "Department" means the Washington state department of health.

(19) "Effective date of facility closure" means:

(a) The date on which the facility's license was relinquished, revoked or expired; or

(b) The date the last resident leaves the facility, whichever comes first.

(20) "Enhance the quality of life for residents" means, for the purposes of voluntary bed banking, those services or facility modifications which have a direct and immediate benefit to the residents. These include, but are not limited to: Resident activity and therapy facilities; family visiting rooms; spiritual rooms and dining areas. These services or facility modifications shall not include those that do not have

direct and immediate benefit to the residents, such as: Modifications to staff offices; meeting rooms; and other staff facilities.

(21) "Established ratio" means a bed-to-population ratio of forty beds per one thousand persons of the estimated or forecast resident population age seventy and older established for planning and policy-making purposes. The department may revise this established ratio using the process outlined in WAC 246-310-370.

(22) "Estimated bed need" means the number of nursing home beds calculated by multiplying the planning area's forecasted resident population by the established ratio for the projection year.

(23) "Estimated bed projection" means the number of nursing home beds calculated by the department statewide or within a planning area, by the end of the projection period.

(24) "Ex parte contact" means any oral or written communication between any person in the certificate of need program or any other person involved in the decision regarding an application for, or the withdrawal of, a certificate of need and the applicant for, or holder of, a certificate of need, any person acting on behalf of the applicant or holder, or any person with an interest regarding issuance or withdrawal of a certificate of need.

(25) "Expenditure minimum" means one million dollars for the twelve-month period beginning with July 24, 1983, adjusted annually by the department according to WAC 246-310-900.

(26) "Health care facility" means hospitals, psychiatric hospitals, nursing homes, kidney disease treatment centers including freestanding dialysis units, ambulatory surgical facilities, continuing care retirement communities, hospices and home health agencies, and includes the facilities when owned and operated by a political subdivision or instrumentality of the state and other facilities as required by federal law and rules, but does not include any health facility or institution conducted by and for those who rely exclusively upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denomination, or any health facility or institution operated for the exclusive care of members of a convent as defined in RCW 84.36.800 or rectory, monastery, or other institution operated for the care of members of the clergy.

(a) In addition, the term "health care facility" does not include any nonprofit hospital:

(i) Operated exclusively to provide health care services for children;

(ii) Which does not charge fees for the services; and

(iii) If not contrary to federal law as necessary to the receipt of federal funds by the state.

(b) In addition, the term "health care facility" does not include a continuing care retirement community which:

(i) Offers services only to contractual residents;

(ii) Provides its residents a contractually guaranteed range of services from independent living through skilled nursing, including some form of assistance with activities of daily living;

(iii) Contractually assumes responsibility for costs of services exceeding the resident's financial responsibility as stated in contract, so that, with the exception of insurance

purchased by the retirement community or its residents, no third party, including the medicaid program, is liable for costs of care even if the resident depletes personal resources;

(iv) Offers continuing care contracts and operates a nursing home continuously since January 1, 1988, or obtained a certificate of need to establish a nursing home;

(v) Maintains a binding agreement with the department of social and health services assuring financial liability for services to residents, including nursing home services, shall not fall upon the department of social and health services;

(vi) Does not operate, and has not undertaken, a project resulting in a number of nursing home beds in excess of one for every four living units operated by the continuing care retirement community, exclusive of nursing home beds; and

(vii) Has undertaken no increase in the total number of nursing home beds after January 1, 1988, unless a professional review of pricing and long-term solvency was obtained by the retirement community within the prior five years and fully disclosed to residents.

(27) "Health maintenance organization" means a public or private organization, organized under the laws of the state, which:

(a) Is a qualified health maintenance organization under Title XIII, Section 1310(d) of the Public Health Service Act; or

(b) Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: Usual physician services, hospitalization, laboratory, X ray, emergency and preventive services, and out-of-area coverage;

(c) Is compensated (except for copayments) for the provision of the basic health care services listed in this subsection to enrolled participants by a payment made on a periodic basis without regard to the date the health care services are provided and fixed without regard to the frequency, extent, or kind of health service actually provided; and

(d) Provides physicians' services primarily:

(i) Directly through physicians who are either employees or partners of the organization; or

(ii) Through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

(28) "Health service area" means a geographic region appropriate for effective health planning including a broad range of health services.

(29) "Health services" means clinically related (i.e., preventive, diagnostic, curative, rehabilitative, or palliative) services and includes alcoholism, drug abuse, and mental health services.

(30) "Home health agency" means an entity which is, or has declared its intent to become, certified as a provider of home health services in the medicaid or medicare program.

(31) "Hospice" means an entity which is, or has declared its intent to become, certified as a provider of hospice services in the medicaid or medicare program.

(32) "Hospital" means any institution, place, building or agency or distinct part thereof which qualifies or is required to qualify for a license under chapter 70.41 RCW, or as a psychiatric hospital licensed under chapter 71.12 RCW.

(33) "Inpatient" means a person receiving health care services with board and room in a health care facility on a continuous twenty-four-hour-a-day basis.

(34) "Interested persons" means:

(a) The applicant;

(b) Health care facilities and health maintenance organizations providing services similar to the services under review and located in the health service area;

(c) Third-party payers reimbursing health care facilities in the health service area;

(d) Any agency establishing rates for health care facilities and health maintenance organizations in the health service area where the proposed project is to be located;

(e) Health care facilities and health maintenance organizations which, in the twelve months prior to receipt of the application, have submitted a letter of intent to provide similar services in the same planning area;

(f) Any person residing within the geographic area to be served by the applicant; and

(g) Any person regularly using health care facilities within the geographic area to be served by the applicant.

(35) "Licensee" means an entity or individual licensed by the department of health or the department of social and health services. For the purposes of nursing home projects, licensee refers to the operating entity and those persons specifically named in the license application as defined under chapter 388-97 WAC.

(36) "Net estimated bed need" means estimated bed need of a planning area changed by any redistribution as follows:

(a) Adding nursing home beds being redistributed from another nursing home planning area or areas; or

(b) Subtracting nursing home beds being redistributed to another nursing home planning area or areas.

(37) "New nursing home bed" means a nursing home bed never licensed by the state or beds banked under RCW 70.38.115(13), where the applicant must demonstrate need for the previously licensed nursing home beds. This term does not include beds banked under RCW 70.38.111(8).

(38) "Nursing home" means any entity licensed or required to be licensed under chapter 18.51 RCW or distinct part long-term care units located in a hospital and licensed under chapter 70.41 RCW.

(39) "Obligation," when used in relation to a capital expenditure, means the following has been incurred by or on behalf of a health care facility:

(a) An enforceable contract has been entered into by a health care facility or by a person on behalf of the health care facility for the construction, acquisition, lease, or financing of a capital asset; or

(b) A formal internal commitment of funds by a health care facility for a force account expenditure constituting a capital expenditure; or

(c) In the case of donated property, the date on which the gift is completed in accordance with state law.

(40) "Offer," when used in connection with health services, means the health facility provides one or more specific health services.

(41) "Over the established ratio" means the bed-to-population ratio is greater than the statewide current established ratio.

(42) "Person" means an individual, a trust or estate, a partnership, ((a)) any public or private corporation (including associations, joint stock companies, and insurance companies), the state, or a political subdivision or instrumentality of the state, including a municipal corporation or a hospital district.

(43) "Planning area" means each individual county designated by the department as the smallest geographic area for which nursing home bed need projections are developed, except as follows:

(a) Clark and Skamania counties shall be one planning area.

(b) Chelan and Douglas counties shall be one planning area.

(44) "Predevelopment expenditures" means capital expenditures, the total of which exceeds the expenditure minimum, made for architectural designs, plans, drawings, or specifications in preparation for the acquisition or construction of physical plant facilities. "Predevelopment expenditures" exclude any obligation of a capital expenditure for the acquisition or construction of physical plant facilities and any activity which the department may consider the "commencement of the project" as this term is defined in this section.

(45) "Professional review of continuing care retirement community pricing and long-term solvency" means prospective financial statements, supported by professional analysis and documentation, which:

(a) Conform to Principles and Practices Board Statement Number 9 of the Healthcare Financial Management Association, "Accounting and Reporting Issues Related to Continuing Care Retirement Communities"; and

(b) Project the financial operations of the continuing care retirement community over a period of ten years or more into the future; and

(c) Are prepared and signed by a qualified actuary as defined under WAC 284-05-060 or an independent certified public accountant, or are prepared by management of the continuing care retirement community and reviewed by a qualified actuary or independent certified public accountant who issues a signed examination or compilation report on the prospective financial statements; and

(d) Include a finding by management that the intended expansion project of the continuing care retirement project is financially feasible.

(46) "Project" means all undertakings proposed in a single certificate of need application or for which a single certificate of need is issued.

(47) "Project completion" for projects requiring construction, means the date the facility is licensed. For projects not requiring construction, project completion means initiating the health service.

(48) "Projection period" means the three-year time interval following the projection year.

(49) "Projection year" for nursing home purposes, means the one-year time interval preceding the projection period.

(50) "Public comment period" means the time interval during which the department shall accept comments regarding a certificate of need application.

(51) "Redistribution" means the shift of nursing home bed allocations between two or more planning areas or the

shift of nursing home beds between two or more nursing homes.

(52) "Replacement authorization" means a written authorization by the secretary's designee for a person to implement a proposal to replace existing nursing home beds in accordance with the eligibility requirements in WAC 246-310-044 and notice requirements in WAC 246-310-396.

(53) "Resident population" for purposes of nursing home projects, means the number of residents sixty-five years of age and older living within the same geographic area which:

(a) Excludes contract holders living within a recognized CCRC:

(i) With approval for new nursing home beds under WAC 246-310-380(4); or

(ii) Excluded from the definition of a health care facility per RCW 70.38.025(6);

(b) Is calculated using demographic data obtained from:

(i) The office of financial management; and

(ii) Certificate of need applications and exemption requests previously submitted by a CCRC.

(54) "Sale, purchase, or lease" means any transaction in which the control, either directly or indirectly, of part or all of any existing hospital changes to a different person including, but not limited to, by contract, affiliation, corporate membership restructuring, or any other transaction.

(55) "Secretary" means the secretary of the Washington state department of health or the secretary's designee.

~~((55))~~ (56) "State Health Planning and Resources Development Act" means chapter 70.38 RCW.

~~((56))~~ (57) "Statewide current ratio" means a bed-to-population ratio computed from the most recent statewide nursing home bed supply and the most recent estimate of the statewide resident population.

~~((57))~~ (58) "Swing beds" means up to the first five hospital beds designated by an eligible rural hospital which are available to provide either acute care or nursing home services.

~~((58))~~ (59) "Tertiary health service" means a specialized service meeting complicated medical needs of people and requires sufficient patient volume to optimize provider effectiveness, quality of service, and improved outcomes of care.

~~((59))~~ (60) "Transition period" means the period of time, not exceeding five years, between the date a CCRC is inhabited by a member, and the date it fully meets the requirements of a CCRC.

~~((60))~~ (61) "Under the established ratio" means the bed-to-population ratio is less than the statewide current established ratio.

~~((61))~~ (62) "Undertaking" means any action subject to the provisions of chapter 246-310 WAC.

~~((62))~~ (63) "Working days" excludes Saturdays, Sundays, and legal holidays observed by the state of Washington. Working days are counted in the same way as calendar days.

AMENDATORY SECTION (Amending WSR 09-07-050, filed 3/11/09, effective 4/11/09)

**WAC 246-320-141 Patient rights and organizational ethics.** The purpose of this section is to improve patient care

and outcomes by respecting every patient and maintaining ethical relationships with the public.

Hospitals must:

(1) Adopt and implement policies and procedures that define each patient's right to:

(a) Be treated and cared for with dignity and respect;

(b) Confidentiality, privacy, security, complaint resolution, spiritual care, and communication. If communication restrictions are necessary for patient care and safety, the hospital must document and explain the restrictions to the patient and family;

(c) Be protected from abuse and neglect;

(d) Access protective services;

(e) Complain about their care and treatment without fear of retribution or denial of care;

(f) Timely complaint resolution;

(g) Be involved in all aspects of their care including:

(i) Refusing care and treatment; and

(ii) Resolving problems with care decisions((:)).

(h) Be informed of unanticipated outcomes according to RCW 70.41.380;

(i) Be informed and agree to their care;

(j) Family input in care decisions;

(k) Have advance directives and for the hospital to respect and follow those directives;

(l) Request no resuscitation or life-sustaining treatment;

(m) End of life care;

(n) Donate organs and other tissues according to RCW 68.50.500 and 68.50.560 including:

(i) Medical staff input; and

(ii) Direction by family or surrogate decision makers((:)).

(2) Provide each patient a written statement of patient rights from subsection (1) of this section;

(3) Adopt and implement policies and procedures to identify patients who are potential organ and tissue donors;

(4) Adopt and implement policies and procedures to address research, investigation, and clinical trials including:

(a) How to authorize research;

(b) Require staff to follow informed consent laws; and

(c) Not hindering a patient's access to care if a patient refuses to participate.

(5) No later than sixty days following the effective date of this section, every hospital must submit to the department its policies related to access to care:

(a) Admission;

(b) Nondiscrimination;

(c) End of life care; and

(d) Reproductive health care.

(6) The department shall post a copy of the policies received under subsection (5) of this section on its web site.

(7) If a hospital makes changes or additions to any of the policies listed under subsection (5) of this section, it must submit a copy of the changed or added policy to the department within thirty days after the hospital approves the changes or additions.

(8) Hospitals must post a copy of the policies provided under subsection (5) of this section to its own web site where it is readily accessible to the public, without requiring a login or other restriction.

**WSR 14-02-055**  
**PERMANENT RULES**  
**CRIMINAL JUSTICE**  
**TRAINING COMMISSION**

[Filed December 26, 2013, 8:55 a.m., effective January 26, 2014]

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

Purpose: Chapter 139-37 WAC, Certified firearms instructors—Private security, private investigators, and bail bond recovery agents, addressing the requirements of private security certified firearms instructors to provide firearms certification training and qualifications to private security, private investigators, and bail bond recovery agents, is being revised as chapter 139-33 WAC is a new WAC regarding bail bond recovery agents and is not included in chapter 139-37 WAC.

Citation of Existing Rules Affected by this Order: Amending WAC 139-37-005 and 139-37-010.

Statutory Authority for Adoption: RCW 43.101.080.

Adopted under notice filed as WSR 13-21-117 on October 22, 2013.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

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

Date Adopted: December 26, 2013.

Sonja Hirsch  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-19-073, filed 9/16/09, effective 10/17/09)

**WAC 139-37-005 Certified firearms instructors—Requirements.** (1) For the purposes of chapters 139-30, 139-33, and 139-35 WAC, "certified firearms instructor" means any individual who:

(a) Applies for certified firearms instructor certification to the commission on a form prescribed by the commission for such purpose; and

(b) Satisfactorily completes an instructor orientation course regarding the requirements of instruction and testing for firearms certification of private security guards, private investigators, and bail bond recovery agents; and

(c) Has not been convicted of a gross misdemeanor or felony; and has not been convicted of a misdemeanor involving the use or threatened use of a firearm; and has not committed any act involving moral turpitude, dishonesty, or corruption, whether the act constitutes a crime or not.

(2) A certified firearms instructor is authorized to conduct an approved program of instruction and testing for firearms certification of private security guards, private investigators, and bail bond recovery agents. The certified firearms instructor shall not be considered an employee, agent, contractor, or representative of the commission.

(3) The commission may monitor and review the program of instruction and testing conducted by a certified firearms instructor for the purpose of determining compliance with the commission's program materials and standards.

(4) Certified firearms instructor status may be revoked by the commission for cause, including, but not limited to:

(a) Misrepresentation of facts on the initial application for certified firearms instructor certification; or

(b) Conviction of a gross misdemeanor or felony; or conviction of a misdemeanor involving the use or threatened use of a firearm; or the commission of any act involving moral turpitude, dishonesty, or corruption, whether the act constitutes a crime or not; or

(c) Failure to conduct the armed private guard, armed private investigator, or bail bond recovery agent firearms certification/recertification program as prescribed by the commission; or

(d) Falsification of any documentation or score relating to the firearms certification/recertification program; or

(e) Unsafe firearms handling during the firearms certification/recertification process.

(5) The commission may require periodic instructor update training at its discretion, but no more frequently than once a year.

AMENDATORY SECTION (Amending WSR 09-19-073, filed 9/16/09, effective 10/17/09)

**WAC 139-37-010 Certified firearms instructors—Records.** (1) A master record of firearms certificate issuances by the commission to private security guards, private investigators, and bail bond recovery agents shall be maintained by the commission.

(2) A master record of certified firearms instructors for purposes of chapters 139-30, 139-33, and 139-35 WAC shall be maintained by the commission.

(3) The aforementioned records shall be accessible by any individual, organization, private security company, private investigation agency, or bail bond recovery/bail bond agency making written inquiry to the commission to WSC-JTC, Public Records Officer, 19010 1st Ave. S., Burien, WA 98148.

**WSR 14-02-060**  
**PERMANENT RULES**  
**STATE BOARD OF EDUCATION**

[Filed December 26, 2013, 11:37 a.m., effective January 26, 2014]

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

Purpose: The purpose of this rule is to specify the timeline, content and process for charter school authorizers under RCW 28A.710.080 to submit annual reports to the state board of education, as directed in RCW 28A.710.100(4).

Statutory Authority for Adoption: RCW 28A.710.100.

Adopted under notice filed as WSR 13-16-088 on August 6, 2013.

Changes Other than Editing from Proposed to Adopted Version:

- Adds subsection (2)(c) requiring the authorizer to report the names and job titles of any employees or contractors to whom the school district has delegated responsibilities under RCW 28A.710.100, with contact information for each.
- Strikes "at-risk students served" in subsection (2)(f)(ii) and inserts language requiring each authorizer to report, for each charter school, enrollment for each student subgroup as defined in RCW 28A.300.042.
- Strikes in two places, for clarity, "in statistical relation to" and substitutes "in comparison to."
- Inserts, in subsection (2)(g), language requiring the authorizer to report the financial performance of the charter school in absolute values and in comparison to the annual performance targets set by the authorizer under RCW 28A.710.170.
- Inserts subsection (2)(h), requiring the authorizer to report the organizational performance of the governing board of each operating charter school overseen by the authorizer.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 0, Repealed 0.

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

Date Adopted: November 15, 2013.

Ben Rarick  
Executive Director

## NEW SECTION

### **WAC 180-19-210 Annual report by authorizer.** (1)

Each authorizer must, no later than November 1st of each year starting in 2014, submit an annual report to the state board of education meeting the requirements of RCW 28A.710.100(4). The board shall develop and post on its web site by September 1st of each year a standard form which must be used, and instructions which must be followed by each authorizer in making its report. The completed report must be sent via electronic mail to [sbe@k12.wa.us](mailto:sbe@k12.wa.us) and shall be posted on the board's web site.

(2) The report must include:

(a) The date of authorizer approval by the board;

(b) The names and job titles of district personnel having principal authorizing responsibilities with contact information for each;

(c) The names and job titles of any employees or contractors to whom the district has delegated responsibilities under RCW 28A.710.100, with contact information for each;

(d) An executive summary including, but not limited to, an overview of authorizing activity during the prior year and the status and performance of the charter schools authorized;

(e) The authorizer's strategic vision for chartering, as submitted to the state board under WAC 180-19-030 (3)(a), and its assessment of progress toward achieving that vision;

(f) The status of the authorizer's charter school portfolio, identifying all charter schools in each of the following categories:

(i) Approved but not yet open, including for each, the targeted student population and the community the school hopes to serve; the location or geographic area proposed for the school; the projected enrollment; the grades to be operated each year of the term of the charter contract; the names of and contact information for the governing board, and the planned date for opening;

(ii) Operating, including for each, location; grades operated; enrollment in total and by grade; and for each student subgroup as defined in RCW 28A.300.042 in totals and as percentages of enrollment;

(iii) Charter renewed with date of renewal;

(iv) Charter transferred to another authorizer during the prior year, with date of transfer;

(v) Charter revoked during the prior year with date of and reasons for revocation;

(vi) Voluntarily closed;

(vii) Never opened, with no planned date for opening.

(g) The academic performance of each operating charter school overseen by the authorizer, based on the authorizer's performance framework, including:

(i) Student achievement on each of the required indicators of academic performance in RCW 28A.710.170 (2)(a) through (f), as applicable by grade, in absolute values and in comparison to the annual performance targets set by the charter school under RCW 28A.710.170(3). Student academic proficiency, student academic growth, achievement gaps, graduation rates and postsecondary readiness must be included as reported in the achievement index developed by the state board of education under RCW 28A.657.110.

(ii) Student achievement on each additional indicator of academic performance the authorizer has chosen to include in its performance framework to augment external evaluations of performance, in absolute values and in comparison to the annual performance targets set by the authorizer under RCW 28A.710.170.

(iii) Student achievement on each indicator must be disaggregated by major student subgroups including gender, race and ethnicity, poverty status, special education status, English language learner status, and highly capable status as required of performance frameworks in RCW 28A.710.170.

(h) The financial performance of each operating charter school overseen by the authorizer, based on the indicators

and measures of financial performance and sustainability in the authorizer's performance framework, in absolute values and in comparison to the annual performance targets set by the authorizer under RCW 28A.710.170;

(i) The organizational performance of the governing board of each operating charter school overseen by the authorizer, based on the indicators and measures of organizational performance in the authorizer's performance framework, including compliance with all applicable laws, rules and terms of the charter contract;

(j) The authorizer's operating costs and expenses for the prior year for fulfilling the responsibilities of an authorizer as enumerated in RCW 28A.710.100(1) and provided under the terms of each charter contract, detailed in annual financial statements that conform with generally accepted accounting principles and applicable reporting and accounting requirements of the office of the superintendent of public instruction;

(k) The contracted, fee-based services purchased from the authorizer by the charter schools under its jurisdiction under RCW 28A.710.110, including a brief description of each service purchased, an itemized accounting of the revenue received from the schools for the services, and the actual costs of these services to the authorizer.

**WSR 14-02-072**  
**PERMANENT RULES**  
**NOXIOUS WEED**  
**CONTROL BOARD**

[Filed December 30, 2013, 8:53 a.m., effective January 30, 2014]

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

Purpose: The Washington state noxious weed list provides the basis for noxious weed control efforts for county and district weed control boards as well as other entities. This rule-making order amends chapter 16-750 WAC by: Changing designations of twelve Class B noxious weeds; reinstating modification to one Class B noxious weed (unintentionally omitted from WAC in 2013); reclassifying two Class A noxious weeds; simplifying yellow hawkweed (*Hieracium* spp.) noxious weed listings; adding lesser celandine, *Ficaria verna*, as a Class B noxious weed to be designated in Snohomish, Skamania, Pend Oreille, and Stevens counties; adding Nonnative *Typha* species and their hybrids including, but not limited to, *Typha angustifolia*, *T. domingensis*, and *T. x glauca* as a Class C noxious weed; and adding Russian olive, *Elaeagnus angustifolia* as a Class C noxious weed.

Citation of Existing Rules Affected by this Order: Amending WAC 16-750-005, 16-750-011, and 16-750-015.

Statutory Authority for Adoption: Chapter 17.10 RCW.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 13-20-137 on October 2, 2013.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: December 30, 2013.

Anthony Stadelman  
 Chairman

AMENDATORY SECTION (Amending WSR 13-01-038, filed 12/12/12, effective 1/12/13)

**WAC 16-750-005 State noxious weed list—Class A noxious weeds.**

<b>Common Name</b>	<b>Scientific Name</b>
broom, French	<i>Genista monspessulana</i>
broom, Spanish	<i>Spartium junceum</i>
<del>((buffalobur</del>	<del><i>Solanum rostratum</i> </del>
common crupina	<i>Crupina vulgaris</i>
cordgrass, common	<i>Spartina anglica</i>
cordgrass, <del>((dense flower))</del>	<i>Spartina densiflora</i>
<u>dense-flowered</u>	
cordgrass, salt meadow	<i>Spartina patens</i>
cordgrass, smooth	<i>Spartina alterniflora</i>
dyer's woad	<i>Isatis tinctoria</i>
eggleaf spurge	<i>Euphorbia oblongata</i>
false brome	<i>Brachypodium sylvaticum</i>
floating primrose-willow	<i>Ludwigia peploides</i>
flowering rush	<i>Butomus umbellatus</i>
garlic mustard	<i>Alliaria petiolata</i>
giant hogweed	<i>Heracleum mantegazzianum</i>
goatsrue	<i>Galega officinalis</i>
<del>((hawkweed, European</del>	<del><i>Hieracium sabaudum</i></del>
<del>hawkweed, yellow devil</del>	<del><i>Hieracium floribundum</i> </del>
hydrilla	<i>Hydrilla verticillata</i>
Johnsongrass	<i>Sorghum halepense</i>
knapweed, bighead	<i>Centaurea macrocephala</i>
knapweed, Vochin	<i>Centaurea nigrescens</i>
kudzu	<i>Pueraria montana</i> var. <i>lobata</i>
meadow clary	<i>Salvia pratensis</i>
oriental clematis	<i>Clematis orientalis</i>

Common Name	Scientific Name	Common Name	Scientific Name
purple starthistle	<i>Centaurea calcitrapa</i>	Texas blueweed	<i>Helianthus ciliaris</i>
reed sweetgrass	<i>Glyceria maxima</i>	thistle, Italian	<i>Carduus pycnocephalus</i>
ricefield bulrush	<i>Schoenoplectus mucronatus</i>	thistle, milk	<i>Silybum marianum</i>
sage, clary	<i>Salvia sclarea</i>	thistle, slenderflower	<i>Carduus tenuiflorus</i>
sage, Mediterranean	<i>Salvia aethiopsis</i>	variable-leaf milfoil	<i>Myriophyllum heterophyllum</i>
shiny geranium	<i>Geranium lucidum</i>	(velvetleaf)	<del><i>Abutilon theophrasti</i></del>
silverleaf nightshade	<i>Solanum elaeagnifolium</i>	wild four o'clock	<i>Mirabilis nyctaginea</i>
spurge flax	<i>Thymelaea passerina</i>		
Syrian bean-caper	<i>Zygophyllum fabago</i>		

AMENDATORY SECTION (Amending WSR 13-01-038, filed 12/12/12, effective 1/12/13)

**WAC 16-750-011 State noxious weed list—Class B noxious weeds.**

Name		Will be a "Class B designate" in all lands lying within:	
(1)	blueweed, <i>Echium vulgare</i>	(a)	regions 1, 2, 3, 4, 6
		(b)	region 5, except Spokane County
(2)	Brazilian elodea, <i>Egeria densa</i>	(a)	region 1, except Grays Harbor and Pacific counties
		(b)	region 2, except Kitsap and Snohomish counties
		(c)	King County of region 2, except lakes Dolloff, Fenwick, Union, Washington, and Sammamish, and the Sammamish River
		(d)	region 3, except Wahkiakum County
		(e)	regions 4, 5, and 6
(3)	bugloss, annual, <i>Anchusa arvensis</i>	(a)	regions 1, 2, 3, 4, and 6
		(b)	region 5, except Spokane County
(4)	bugloss, common, <i>Anchusa officinalis</i>	(a)	regions 1, 2, 3, 4, and 6
		(b)	region 5, except Spokane County
(5)	butterfly bush, <i>Buddleja davidii</i>	(a)	The portion of Thurston County lying below the ordinary high-water mark of the Nisqually River in region 2
		(b)	Cowlitz County of region 3
(6)	camelthorn, <i>Alhagi maurorum</i>	(a)	regions 1, 2, 3, 4, and 5
		(b)	region 6, except Walla Walla County
(7)	common fennel, <i>Foeniculum vulgare</i> (except bulbing fennel, <i>F. vulgare</i> var. <i>azoricum</i> )	(a)	region 1, except Jefferson County
		(b)	region 2, except King and Skagit counties
		(c)	region 3, except Clark County
		(d)	regions 4, 5, and 6
(8)	common reed, <i>Phragmites australis</i> (nonnative genotypes only)	(a)	regions 1, 2, 3, and 4
		(b)	region 5, except Grant County
		(c)	Asotin, Columbia, and Garfield counties of region 6
(9)	Dalmatian toadflax, <i>Linaria dalmatica</i> ssp. <i>dalmatica</i>	(a)	regions 1, 2, and 3
		(b)	Adams and Lincoln counties of region 5
		(c)	Benton and Walla Walla counties of region 6

	Name		Will be a "Class B designate" in all lands lying within:
(10)	Eurasian watermilfoil, <i>Myriophyllum spicatum</i>	(a)	region 1, except Pacific and Mason counties
		(b)	Island and San Juan counties of region 2
		(c)	Clark and Cowlitz counties of region 3
		(d)	Chelan and Okanogan counties, <u>and all lakes with public boat launches except Fan Lake in Pend Oreille County</u> of region 4
		(e)	Adams and Lincoln counties of region 5
		(f)	Asotin, Columbia, and Garfield counties of region 6
(11)	fanwort, <i>Cabomba caroliniana</i>	(a)	regions 2, 4, 5, and 6
		(b)	region 1, except Grays Harbor
		(c)	region 3, except Cowlitz County
(12)	gorse, <i>Ulex europaeus</i>	(a)	region 1, except Grays Harbor and Pacific counties
		(b)	regions 2, 3, 4, 5, 6
(13)	grass-leaved arrowhead, <i>Sagittaria graminea</i>	(a)	region 1, except Mason County
		(b)	region 2, except Snohomish County
		(c)	regions 3, 4, 5, and 6
(14)	hairy willow-herb, <i>Epilobium hirsutum</i>	(a)	regions 1 ( <del>and</del> ), <u>3, and 4</u>
		(b)	region 2, except Thurston and Whatcom counties
		(c)	region 5, except Klickitat County
		(d)	Asotin, Columbia, and Garfield counties of region 6
(15)	hawkweed oxtongue, <i>Picris hieracioides</i>	(a)	regions 1, 2, 4, 5, and 6
		(b)	region 3, except Skamania County
(16)	<del>((hawkweed, mouseear, <i>Hieracium pilosella</i></del>	<del>(a)</del>	<del>region 1, except Grays Harbor County</del>
		<del>(b)</del>	<del>region 2, except Pierce and Thurston counties</del>
		<del>(c)</del>	<del>region 3, except Lewis County</del>
		<del>(d)</del>	<del>regions 4 and 6</del>
		<del>(e)</del>	<del>region 5, except Klickitat County</del>
(17))	hawkweed, orange, <i>Hieracium aurantiacum</i>	(a)	regions 1, 3, and 6
		(b)	region 2, except Whatcom County
		(c)	region 4, except Pend Oreille and Stevens counties
		(d)	region 5, except Kittitas and Spokane counties
((18)	<del>hawkweed, queen devil, <i>Hieracium glomeratum</i></del>	<del>(a)</del>	<del>regions 1, 2, 3, 5, and 6</del>
		<del>(b)</del>	<del>region 4, except Pend Oreille and Stevens counties</del>
(19)	hawkweed, smooth, <i>Hieracium laevigatum</i>	(a)	regions 1, 3, 5, and 6
		(b)	region 2, except Skagit and Whatcom counties
		(c)	region 4, except Pend Oreille and Stevens counties
(20)	hawkweed, tall, <i>Hieracium piloselloides</i>	(a)	regions 1, 2, 3, 5, and 6
		(b)	region 4, except Pend Oreille and Stevens counties
(21)	hawkweed, yellow, <i>Hieracium caespitosum</i>	(a)	region 1, except Pacific County
		(b)	regions 2 and 6
		(c)	region 3, except Cowlitz County
		(d)	region 4, except Pend Oreille and Stevens counties
		(e)	region 5, except Klickitat and Spokane counties))

Name		Will be a "Class B designate" in all lands lying within:	
(17)	<u>hawkweeds: All nonnative species and hybrids of the Meadow subgenus (<i>Pilosella</i>), including, but not limited to, mouseear (<i>Hieracium pilosella</i>), pale (<i>H. lactucella</i>), queen-devil (<i>H. glomeratum</i>), tall (<i>H. piloselloides</i>), whiplash (<i>H. flagellare</i>), yellow (<i>H. caespitosum</i>), and yellow-devil (<i>H. x floribundum</i>)</u>	(a)	<u>region 1</u>
		(b)	<u>region 2, except Pierce and Thurston counties</u>
		(c)	<u>region 3, except Cowlitz County</u>
		(d)	<u>Chelan, Douglas, and Okanogan counties of region 4</u>
		(e)	<u>region 5, except Klickitat and Spokane counties</u>
		(f)	<u>region 6</u>
(18)	<u>hawkweeds: All nonnative species and hybrids of the Wall subgenus (<i>Hieracium</i>), including, but not limited to, common (<i>Hieracium lachenalii</i>), European (<i>H. sabaudum</i>), polar (<i>H. atratum</i>), smooth (<i>H. laevigatum</i>), spotted (<i>H. maculatum</i>), and wall (<i>H. murorum</i>)</u>	(a)	<u>regions 1, 3, 5, and 6</u>
		(b)	<u>region 2, except Skagit and Whatcom counties</u>
		(c)	<u>region 4, except Stevens County</u>
<del>((22))</del> (19)	<u>herb-Robert, <i>Geranium robertianum</i></u>	(a)	<u>regions 4, 5, and 6</u>
<del>((23))</del> (20)	<u>hoary alyssum, <i>Berteroa incana</i></u>	(a)	<u>regions 1, 2, 3, and 6</u>
		(b)	<u>All areas south of highway 20 in Ferry County and all areas in Okanogan County except Ranges 29-31 East of Townships 37-40 North of region 4</u>
		<del>((e))</del>	<del>All areas in Okanogan County of region 4, except Ranges 29-31 East of Townships 37-40 North)</del>
		<del>((d))</del> (c)	<u>region 5, except Klickitat County</u>
<del>((24))</del> (21)	<u>houndstongue, <i>Cynoglossum officinale</i></u>	(a)	<u>regions 1, 2, and 3</u>
		(b)	<u>Chelan County of region 4</u>
		(c)	<u>Yakima, Grant and Adams counties of region 5</u>
		(d)	<u>Benton County of region 6</u>
<del>((25))</del> (22)	<u>indigobush, <i>Amorpha fruticosa</i></u>	(a)	<u>regions 1, 2, and 4</u>
		(b)	<u>Lewis and Skamania counties of region 3</u>
		(c)	<u>region 5, except Klickitat County</u>
<del>((26))</del> (23)	<u>knapweed, black, <i>Centaurea nigra</i></u>		<u>regions 1, 2, 3, 4, 5, and 6</u>
<del>((27))</del> (24)	<u>knapweed, brown, <i>Centaurea jacea</i></u>		<u>regions 1, 2, 3, 4, 5, and 6</u>
<del>((28))</del> (25)	<u>knapweed, diffuse, <i>Centaurea diffusa</i></u>	(a)	<u>region 1, except Mason County</u>
		(b)	<u>regions 2 and 3</u>
		(c)	<u>Adams County of region 5</u>
<del>((29))</del> (26)	<u>knapweed, meadow, <i>Centaurea jacea x nigra</i></u>	(a)	<u>regions 1 <del>((and))</del>, 3, and 4</u>
		(b)	<u>region 2, except Pierce and Whatcom counties</u>
		(c)	<u>Thurston County of region 2, except below the ordinary high water mark of the Nisqually River</u>
		<del>((d))</del>	<del>region 4, except Pend Oreille County)</del>
		<del>((e))</del> (d)	<u>region 5, except Kittitas and Klickitat counties</u>

Name	Will be a "Class B designate" in all lands lying within:
<del>((30))</del> (27) knapweed, Russian, <i>Acroptilon repens</i>	<del>((#))</del> (e) region 6, except Franklin and Walla Walla counties (a) regions 1, 2, and 3 (b) Ferry and Pend Oreille counties of region 4 (c) Lincoln, Spokane, and Whitman counties of region 5 (d) Adams County of region 5, except for the area west of Highway 17 and north of Highway 26 (e) Asotin and Garfield counties of region 6
<del>((31))</del> (28) knapweed, spotted, <i>Centaurea stoebe</i>	(a) region 1, except Grays Harbor (b) region 2, except Whatcom County (c) region 3 (d) Ferry County of region 4 (e) Adams, Grant and Yakima counties of region 5 (f) region 6, except Columbia and Walla Walla counties
<del>((32))</del> (29) knotweed, Bohemian, <i>Polygonum x bohemicum</i>	(a) Island County of region 2 (b) Cowlitz and Skamania counties of region 3 (c) region 4, except <del>((Pend Oreille and))</del> Stevens <del>((counties))</del> <u>County</u> (d) regions 5, except Whitman and Yakima counties (e) region 6
<del>((33))</del> (30) knotweed, giant, <i>Polygonum sachalinense</i>	(a) region 2, except King, Pierce, and Snohomish counties (b) region 3, except Lewis County (c) regions 4, 5, and 6
<del>((34))</del> (31) knotweed, Himalayan, <i>Polygonum polystachyum</i>	(a) region 1, except Pacific County (b) region 2, except King and Pierce counties (c) Cowlitz, Lewis and Skamania counties of region 3 (d) region 4, except Stevens County (e) regions 5 and 6
<del>((35))</del> (32) knotweed, Japanese, <i>Polygonum cuspidatum</i>	(a) Island, San Juan, and Whatcom counties of region 2 (b) Cowlitz and Skamania counties of region 3 (c) region 4, except Okanogan and Stevens counties (d) region 5, except Spokane County (e) region 6
<del>((36))</del> (33) kochia, <i>Kochia scoparia</i>	(a) regions 1, 2, and 3 (b) Stevens and Pend Oreille counties of region 4 (c) Adams County of region 5
(34) <u>lesser celandine, <i>Ficaria verna</i></u>	<u>(a) Snohomish County of region 2</u> <u>(b) Skamania County of region 3</u> <u>(c) Pend Oreille and Stevens counties of region 4</u>
<del>((37))</del> (35) loosestrife, garden, <i>Lysimachia vulgaris</i>	<u>(a) regions 1, 2, 3, 4, 5, 6</u>
<del>((38))</del> (36) loosestrife, purple, <i>Lythrum salicaria</i>	(a) Clallam and Jefferson counties of region 1 (b) region 2, except Kitsap, Pierce, Skagit, and Snohomish counties

Name	Will be a "Class B designate" in all lands lying within:
(( <del>39</del> )) (37) loosestrife, wand, <i>Lythrum virgatum</i>	(c) Clark, Lewis, and Skamania counties of region 3
	(d) region 4, except Douglas County
	(e) region 5, except Grant and Spokane counties
	(f) Columbia, Garfield, and Walla Walla counties of region 6
	(a) Clallam and Jefferson counties of region 1
	(b) region 2, except Kitsap, Pierce, Skagit, and Snohomish counties
(( <del>40</del> )) (38) parrotfeather, <i>Myriophyllum aquaticum</i>	(c) Clark, Lewis, and Skamania counties of region 3
	(d) region 4, except Douglas County
	(e) region 5, except Grant and Spokane counties
	(f) Columbia, Garfield, and Walla Walla counties of region 6
	(a) region 1, except Pacific County
	(b) regions 2, 4, 5, and 6
(( <del>41</del> )) (39) perennial pepperweed, <i>Lepidium latifolium</i>	(c) Clark and Skamania counties of region 3
	(a) regions 1, 2, and 4
	(b) region 3, except Clark and Cowlitz counties
	(c) Kittitas, Lincoln and Spokane counties of region 5
	(d) Columbia and Garfield counties of region 6
(( <del>42</del> )) (40) poison hemlock, <i>Conium maculatum</i>	(a) Clallam, Mason, and Pacific counties of region 1
	(b) region 2, except King, Skagit, and Whatcom counties
	(c) Clark and Skamania counties of region 3
	(d) Chelan and Pend Oreille counties of region 4
	(e) Grant, Kittitas and Lincoln counties of region 5
(( <del>43</del> )) (41) policeman's helmet, <i>Impatiens glandulifera</i>	(a) region 1, except Pacific County
	(b) region 2, except Pierce, Thurston, and Whatcom counties
	(c) region 3, except Clark County
	<del>((d) region 4, except Pend Oreille County))</del>
	<del>((e))</del> (d) regions 4, 5, and 6
(( <del>44</del> )) (42) puncturevine, <i>Tribulus terrestris</i>	(a) regions 1, 2, and 3
	(b) Ferry, Pend Oreille, and Stevens counties of region 4
	(c) region 5, except Grant, Klickitat, and Yakima counties
(( <del>45</del> )) (43) rush skeletonweed, <i>Chondrilla juncea</i>	(a) regions 1 and 3
	(b) region 2, except Kitsap County
	(c) region 4, except all areas of Stevens County south of Township 29
	(d) Kittitas and Yakima counties of region 5, and Adams County, except those areas lying east of Sage Road, the western border of Range 36
	(e) Asotin County of region 6
(( <del>46</del> )) (44) saltcedar, <i>Tamarix ramosissima</i> (unless intentionally planted prior to 2004)	(a) regions 1, 3, 4, and 5
	(b) region 2, except King and Thurston counties
	(c) region 6, except Benton and Franklin counties

Name	Will be a "Class B designate" in all lands lying within:
<del>((47))</del> (45) Scotch broom, <i>Cytisus scoparius</i>	(a) regions 4 and 6 (b) region 5, except Klickitat County
<del>((48))</del> (46) spurge laurel, <i>Daphne laureola</i>	(a) region 1, except Clallam and Jefferson counties (b) region 2, except King <del>((and))</del> , Kitsap, and Pierce counties (c) region 3, except Skamania County (d) regions 4, 5, and 6
<del>((49))</del> (47) spurge, leafy, <i>Euphorbia esula</i>	(a) regions 1, 2, 3, and 4 (b) region 5, except Spokane and Whitman counties (c) region 6, except Columbia and Garfield counties
<del>((50))</del> (48) spurge, myrtle, <i>Euphorbia myrsinites</i>	(a) <del>((regions 1, 3, 5, and 6))</del> <u>region 1, except Clallam and Jefferson counties</u> (b) <u>region 2, except King, Kitsap, and Whatcom counties</u> <del>((b))</del> (c) <del>((region 2, except King, Kitsap, and Whatcom counties))</del> <u>regions 3, 5, and 6</u> <del>((e))</del> (d) region 4, except Okanogan and Stevens counties
<del>((51))</del> (49) sulfur cinquefoil, <i>Potentilla recta</i>	(a) region 1 (b) region 2, except Pierce and Thurston counties (c) region 3, except Lewis and Skamania counties (d) Adams, Grant, Lincoln, and Whitman counties of region 5 (e) region 6, except Asotin County
<del>((52))</del> (50) tansy ragwort, <i>Senecio jacobaea</i>	(a) Island and San Juan counties of region 2 (b) Clark and Wahkiakum counties of region 3 (c) regions 4 and 6 (d) region 5, except Klickitat County
<del>((53))</del> (51) thistle, musk, <i>Carduus nutans</i>	(a) regions 1, 2, 3, and 6 (b) region 4, except Douglas and Ferry counties (c) region 5, except Kittitas County
<del>((54))</del> (52) thistle, plumeless, <i>Carduus acanthoides</i>	(a) regions 1, 2, 3, 5, 6 (b) region 4, except <del>((Pend Oreille County and))</del> those areas north of State Highway 20 in Stevens County
<del>((55))</del> (53) thistle, Scotch, <i>Onopordum acanthium</i>	(a) regions 1, 2, and 3 (b) region 4, except Douglas County (c) region 5, except Spokane and Whitman counties
(54) <u>velvetleaf, <i>Abutilon theophrasti</i></u>	(a) <u>regions 1, 2, 3, and 4</u> (b) <u>region 5, except Yakima County</u> (c) <u>region 6, except Franklin County</u>
<del>((56))</del> (55) water primrose, <i>Ludwigia hexapetala</i>	(a) regions 1, 2, 4, 5, and 6 (b) region 3, except Cowlitz County
<del>((57))</del> (56) white bryony, <i>Bryonia alba</i>	(a) regions 1, 2, 3, and 4 (b) region 5, except Whitman County (c) Benton County of region 6
<del>((58))</del> (57) wild chervil, <i>Anthriscus sylvestris</i>	(a) regions 1, 4, and 6 (b) region 2, except <u>Island and Whatcom</u> <del>((County))</del> <u>counties</u>

Name	Will be a "Class B designate" in all lands lying within:
((59)) (58) yellow archangel, <i>Lamiastrum galeobdolon</i>	(c) Wahkiakum and Lewis counties of region 3
	(d) region 5, except Whitman County
	(a) Clallam County of region 1
	(b) <u>Island</u> , San Juan, Skagit, and Whatcom counties of region 2
((60)) (59) yellow floating heart, <i>Nymphoides peltata</i>	(c) Cowlitz, Skamania and Wahkiakum counties of region 3
	(d) regions 4, 5, and 6
	(a) regions 1, 2, and 6
	(b) region 3, except Cowlitz County
((61)) (60) yellow nutsedge, <i>Cyperus esculentus</i>	(c) region 4, except Stevens County
	(d) region 5, except Spokane County
	(a) regions 1, 3, and 4
	(b) region 2, except Skagit and Thurston counties
((62)) (61) yellow starthistle, <i>Centaurea solstitialis</i>	(c) region 5, except Klickitat and Yakima Counties
	(d) region 6, except Franklin and Walla Walla counties
	(a) regions 1, 2, and 3
	(b) region 4, except T36 R38 ( <del>north of</del> ) <u>in the area contained within Hwy 395/Hwy 20 (<del>and west of</del>)</u> , Pingston Creek Road, <u>and Highland Loop Road</u> in Stevens County
(c) region 5, except Klickitat, and Whitman counties	

**AMENDATORY SECTION** (Amending WSR 13-01-038, filed 12/12/12, effective 1/12/13)

**WAC 16-750-015 State noxious weed list—Class C noxious weeds.**

Common Name	Scientific Name
absinth wormwood	<i>Artemisia absinthium</i>
Austrian fieldcress	<i>Rorippa austriaca</i>
babysbreath	<i>Gypsophila paniculata</i>
black henbane	<i>Hyoscyamus niger</i>
blackberry, evergreen	<i>Rubus laciniatus</i>
blackberry, Himalayan	<i>Rubus armeniacus</i>
blackgrass	<i>Alopecurus myosuroides</i>
<u>buffalobur</u>	<u><i>Solanum rostratum</i></u>
cereal rye	<i>Secale cereale</i>
common barberry	<i>Berberis vulgaris</i>
common catsear	<i>Hypochaeris radicata</i>
common groundsel	<i>Senecio vulgaris</i>
common St. Johnswort	<i>Hypericum perforatum</i>
common tansy	<i>Tanacetum vulgare</i>
common teasel	<i>Dipsacus fullonum</i>
curly-leaf pondweed	<i>Potamogeton crispus</i>
English ivy 4 cultivars only:	<i>Hedera hibernica</i> 'Hibernica'

Common Name	Scientific Name
	<i>Hedera helix</i> 'Baltica'
	<i>Hedera helix</i> 'Pittsburgh'
	<i>Hedera helix</i> 'Star'
field bindweed	<i>Convolvulus arvensis</i>
fragrant water lily	<i>Nymphaea odorata</i>
hairy whitetop	<i>Cardaria pubescens</i>
( <del>hawkweed, common</del> )	<del><i>Hieracium lachenalii</i></del>
hawkweed, polar	<i>Hieracium atratum</i>
hawkweed, other nonnative species	<i>Hieracium spp.</i> , except species designated in the note in the left hand column

**Note:**  
 This listing includes all species of *Hieracium*, except the following:  
 • Species designated as Class A noxious weeds in WAC 16-750-005;  
 • Species designated as Class B noxious weeds in WAC 16-750-011;  
 • Native species designated below:

Common Name	Scientific Name
<del>—Canada hawkweed (<i>H. canadense</i>)</del>	
<del>—houndstongue hawkweed (<i>H. cynoglossoides</i>)</del>	
<del>—long-beaked hawkweed (<i>H. longiberbe</i>)</del>	
<del>—narrow-leaved hawkweed (<i>H. umbellatum</i>)</del>	
<del>—slender hawkweed (<i>H. gracile</i>)</del>	
<del>—western hawkweed (<i>H. albertinum</i>)</del>	
<del>—white-flowered hawkweed (<i>H. albiflorum</i>)</del>	
<del>—woolley weed (<i>H. scouleri</i>)</del>	
hoary cress	<i>Cardaria draba</i>
Japanese eelgrass	<i>Zostera japonica</i>
jointed goatgrass	<i>Aegilops cylindrica</i>
lawnweed	<i>Soliva sessilis</i>
lepyrodiclis	<i>Lepyrodiclis holosteoides</i>
longspine sandbur	<i>Cenchrus longispinus</i>
<u>nonnative cattail species and hybrids</u>	<u>Including, but not limited to, <i>Typha angustifolia</i>, <i>T. domingensis</i>, <i>T. minima</i>, and <i>T. x glauca</i></u>
old man's beard	<i>Clematis vitalba</i>
oxeye daisy	<i>Leucanthemum vulgare</i>
perennial sowthistle	<i>Sonchus arvensis</i> ssp. <i>arvensis</i>
reed canarygrass	<i>Phalaris arundinacea</i>
<u>Russian olive</u>	<u><i>Elaeagnus angustifolia</i></u>
scentless mayweed	<i>Matricaria perforata</i>
smoothseed alfalfa dodder	<i>Cuscuta approximata</i>
spikeweed	<i>Hemizonia pungens</i>
spiny cocklebur	<i>Xanthium spinosum</i>
Swainsonpea	<i>Sphaerophysa salsula</i>
thistle, bull	<i>Cirsium vulgare</i>
thistle, Canada	<i>Cirsium arvense</i>
tree-of-heaven	<i>Ailanthus altissima</i>
white cockle	<i>Silene latifolia</i> ssp. <i>alba</i>
wild carrot (except where commercially grown)	<i>Daucus carota</i>
yellow flag iris	<i>Iris pseudacorus</i>
yellow toadflax	<i>Linaria vulgaris</i>

**WSR 14-02-073**  
**PERMANENT RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed December 30, 2013, 10:42 a.m., effective January 30, 2014]

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

Purpose: Amending WAC 181-86-110 creating duty of administration of a charter school to report to the office of professional practice any educator misconduct as defined in chapter 181-87 WAC. Legislature, by initiative, created charter schools in 2013.

Citation of Existing Rules Affected by this Order: Amending WAC 181-86-110.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 13-21-066 on October 16, 2013.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 400, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: December 30, 2013.

David Brenna  
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 06-02-051, filed 12/29/05, effective 1/1/06)

**WAC 181-86-110 Duty of ESD superintendent, district superintendent and private school administrator to file complaints.** When an educational service district superintendent, a district superintendent, chief administrative officer of a charter school, or the chief administrative officer of an approved private school possesses sufficient reliable information to believe that a certificated employee within such district or approved private school is not of good moral character or personally fit or has committed an act of unprofessional conduct, such superintendent or chief administrative officer, within a reasonable period of time of making such determination, shall file a written complaint with the superintendent of public instruction: Provided, That if an educational service district, charter school, or school district is considering action to discharge an employee of such district, the educational service district, charter school, or school district

superintendent need not file such complaint until ten calendar days after making the final decision to serve or not serve formal notice of discharge.

**WSR 14-02-092**  
**PERMANENT RULES**  
**BOARD OF**  
**PILOTAGE COMMISSIONERS**

[Filed December 31, 2013, 9:11 a.m., effective January 1, 2014]

Effective Date of Rule: January 1, 2014. The board finds that immediate adoption of this rule is necessary for the preservation of public safety and general welfare. The current rule (pilotage tariff) expires on December 31, 2013, so this new rule must take effect January 1, 2014, in order to continue the Puget Sound pilotage district tariff without a break in its effectiveness.

Purpose: To establish an annual tariff for pilotage services in the Puget Sound pilotage district.

Citation of Existing Rules Affected by this Order: Amending WAC 363-116-300.

Statutory Authority for Adoption: RCW 88.16.035.

Adopted under notice filed as WSR 13-21-108 on October 21, 2013.

Changes Other than Editing from Proposed to Adopted Version: None of the proposed changes were adopted except under the *boarding charge category* to which an eight percent increase was applied. The charge increased from \$49.00 to \$53.00 for each boarding/deboarding at the Port Angeles pilot station.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: December 13, 2013.

Peggy Larson  
Executive Director

AMENDATORY SECTION (Amending WSR 12-24-055, filed 11/30/12, effective 1/1/13)

**WAC 363-116-300 Pilotage rates for the Puget Sound pilotage district.** Effective 0001 hours January 1, (~~2013~~) 2014, through 2400 hours December 31, (~~2013~~) 2014.

CLASSIFICATION	RATE
Ship length overall (LOA)	
Charges:	
Per LOA rate schedule in this section.	
Boarding charge:	\$( <del>49.00</del> ) <u>53.00</u>
Per each boarding/deboarding at the Port Angeles pilot station.	
Harbor shift - Live ship (Seattle Port)	LOA Zone I
Harbor shift - Live ship (other than Seattle Port)	LOA Zone I
Harbor shift - Dead ship	Double LOA Zone I
Towing charge - Dead ship:	Double LOA Zone
LOA of tug + LOA of tow + beam of tow	

Any tow exceeding seven hours, two pilots are mandatory. Harbor shifts shall constitute and be limited to those services in moving vessels from dock to dock, from anchorage to dock, from dock to anchorage, or from anchorage to anchorage in the same port after all other applicable tariff charges for pilotage services have been recognized as payable.

Compass Adjustment	\$359.00
Radio Direction Finder Calibration	\$359.00
Launching Vessels	\$540.00
Trial Trips, 6 hours or less (minimum \$1,014.00)	\$169.00 per hour
Trial Trips, over 6 hours (two pilots)	\$338.00 per hour
Shilshole Bay – Salmon Bay	\$211.00
Salmon Bay – Lake Union	\$164.00
Lake Union – Lake Washington (plus LOA zone from Webster Point)	\$211.00

Cancellation Charge

LOA Zone I

Cancellation Charge – Port Angeles:

LOA Zone II

(When a pilot is ordered and vessel proceeds to a port outside the Puget Sound pilotage district without stopping for a pilot or when a pilot order is canceled less than twelve hours prior to the original ETA.)

**Waterway and Bridge Charges:**

*Ships up to 90' beam:*

A charge of \$266.00 shall be in addition to bridge charges for any vessel movements both inbound and outbound required to transit south of Spokane Street in Seattle, south of Eleventh Street in any of the Tacoma waterways, in Port Gamble, or in the Snohomish River. Any vessel movements required to transit through bridges shall have an additional charge of \$127.00 per bridge.

*Ships 90' beam and/or over:*

A charge of \$361.00 shall be in addition to bridge charges for any vessel movements both inbound and outbound required to transit south of Spokane Street in Seattle and south of Eleventh Street in any of the Tacoma waterways. Any vessel movements required to transit through bridges shall have an additional charge of \$251.00 per bridge.

(The above charges shall not apply to transit of vessels from Shilshole Bay to the limits of Lake Washington.)

*Two or three pilots required:*

In a case where two or three pilots are employed for a single vessel waterway or bridge transit, the second and/or third pilot charge shall include the bridge and waterway charge in addition to the harbor shift rate.

**Docking Delay After Anchoring:**

Applicable harbor shift rate to apply, plus \$274.00 per hour standby. No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is \$274.00 for every hour or fraction thereof.

**Sailing Delay:**

No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is \$274.00 for every hour or fraction thereof. The assessment of the standby charge shall not exceed a period of twelve hours in any twenty-four-hour period.

**Slowdown:**

When a vessel chooses not to maintain its normal speed capabilities for reasons determined by the vessel and not the pilot, and when the difference in arrival time is one hour, or greater, from the predicted arrival time had the vessel maintained its normal speed capabilities, a charge of \$274.00 per hour, and each fraction thereof, will be assessed for the resultant difference in arrival time.

**Delayed Arrival – Port Angeles:**

When a pilot is ordered for an arriving inbound vessel at Port Angeles and the vessel does not arrive within two hours of its ETA, or its ETA is amended less than six hours prior to the original ETA, a charge of \$274.00 for each hour delay, or fraction thereof, shall be assessed in addition to all other appropriate charges.

When a pilot is ordered for an arriving inbound vessel at Port Angeles and the ETA is delayed to six hours or more beyond the original ETA, a cancellation charge shall be assessed, in addition to all other appropriate charges, if the ETA was not amended at least twelve hours prior to the original ETA.

**Tonnage Charges:**

*0 to 20,000 gross tons:*

Additional charge to LOA zone mileage of \$0.0084 a gross ton for all gross tonnage up to 20,000 gross tons.

*20,000 to 50,000 gross tons:*

Additional charge to LOA zone mileage of \$0.0871 a gross ton for all gross tonnage in excess of 20,000 gross tons up to 50,000 gross tons.

*50,000 gross tons and up:*

In excess of 50,000 gross tons, the charge shall be \$0.1042 per gross ton.

For vessels where a certificate of international gross tonnage is required, the appropriate international gross tonnage shall apply.

**Transportation to Vessels on Puget Sound:**

March Point or Anacortes	\$195.00
Bangor	190.00
Bellingham	225.00
Bremerton	167.50
Cherry Point	260.00
Dupont	120.00
Edmonds	42.50
Everett	72.50
Ferndale	247.50
Manchester	162.50
Mukilteo	65.00
Olympia	155.00
Point Wells	42.50
Port Gamble	230.00
Port Townsend (Indian Island)	277.50
Seattle	18.75
Tacoma	87.50

(a) Intraharbor transportation for the Port Angeles port area: Transportation between Port Angeles pilot station and Port Angeles harbor docks - \$15.00.

(b) Interport shifts: Transportation paid to and from both points.

(c) Intraharbor shifts: Transportation to be paid both ways. If intraharbor shift is canceled on or before scheduled reporting time, transportation paid one way only.

(d) Cancellation: Transportation both ways unless notice of cancellation is received prior to scheduled reporting time in which case transportation need only be paid one way.

(e) Any new facilities or other seldom used terminals, not covered above, shall be based on mileage x \$2.00 per mile.

**Delinquent Payment Charge:**

1 1/2% per month after 30 days from first billing.

**Nonuse of Pilots:**

Ships taking and discharging pilots without using their services through all Puget Sound and adjacent inland waters shall pay full pilotage charges on the LOA zone mileage basis from Port Angeles to destination, from place of departure to Port Angeles, or for entire distance between two ports on Puget Sound and adjacent inland waters.

**British Columbia Direct Transit Charge:**

In the event that a pilot consents to board or deboard a vessel at a British Columbia port, which consent shall not unreasonably be withheld, the following additional charges shall apply in addition to the normal LOA, tonnage and other charges provided in this tariff that apply to the portion of the transit in U.S. waters:

<b>Direct Transit Charge</b>	\$2,107.00
<b>Sailing Delay Charge.</b> Shall be levied for each hour or fraction thereof that the vessel departure is delayed beyond its scheduled departure from a British Columbia port, provided that no charge will be levied for delays of one hour or less and further provided that the charge shall not exceed a period of 12 hours in any 24 hour period.	\$283.00 per hour
<b>Slow Down Charge.</b> Shall be levied for each hour or fraction thereof that a vessel's arrival at a U.S. or BC port is delayed when a vessel chooses not to maintain its normal safe speed capabilities for reasons determined by the vessel and not the pilot, and when the difference in arrival time is one hour, or greater from the arrival time had the vessel maintained its normal safe speed capabilities.	\$283.00 per hour
<b>Cancellation Charge.</b> Shall be levied when a pilot arrives at a vessel for departure from a British Columbia port and the job is canceled. The charge is in addition to the applicable direct transit charge, standby, transportation and expenses.	\$525.00
<b>Transportation Charge Vancouver Area.</b> Vessels departing or arriving at ports in the Vancouver-Victoria-New Westminster Range of British Columbia.	\$514.00
<b>Transportation Charge Outports.</b> Vessels departing or arriving at British Columbia ports other than those in the Vancouver-Victoria-New Westminster Range.	\$649.00

**Training Surcharge:**

On January 1, 2011, a surcharge of \$15.00 for each pilot trainee then receiving a stipend pursuant to the training program provided in WAC 363-116-078 shall be added to each pilotage assignment.

**LOA Rate Schedule:**

The following rate schedule is based upon distances furnished by National Oceanic and Atmospheric Administration, computed to the nearest half-mile and includes retirement fund contributions.

LOA	ZONE I	ZONE II	ZONE III	ZONE IV	ZONE V	ZONE VI
(Length Overall)	Intra Harbor	0-30 Miles	31-50 Miles	51-75 Miles	76-100 Miles	101 Miles & Over
UP to 449	263	408	695	1,036	1,395	1,810
450 - 459	274	415	699	1,052	1,417	1,819
460 - 469	276	419	711	1,069	1,437	1,827
470 - 479	285	432	719	1,091	1,441	1,830
480 - 489	294	439	722	1,110	1,450	1,839
490 - 499	298	445	733	1,131	1,467	1,848
500 - 509	313	453	744	1,143	1,479	1,859
510 - 519	315	461	751	1,161	1,495	1,866
520 - 529	319	478	762	1,166	1,508	1,881

LOA (Length Overall)	ZONE I Intra Harbor	ZONE II 0-30 Miles	ZONE III 31-50 Miles	ZONE IV 51-75 Miles	ZONE V 76-100 Miles	ZONE VI 101 Miles & Over
530 - 539	329	484	771	1,179	1,532	1,902
540 - 549	334	490	789	1,192	1,555	1,920
550 - 559	341	507	794	1,209	1,568	1,938
560 - 569	353	527	810	1,221	1,582	1,956
570 - 579	361	<del>((528))</del> <u>531</u>	813	1,226	1,599	1,969
580 - 589	376	540	832	1,235	1,608	1,989
590 - 599	393	552	837	1,241	1,632	2,013
600 - 609	408	<del>((538))</del> <u>569</u>	849	1,245	1,652	2,022
610 - 619	431	574	863	1,250	1,668	2,040
620 - 629	447	581	871	1,266	1,687	2,064
630 - 639	468	591	881	1,269	1,702	2,082
640 - 649	486	605	890	1,271	1,716	2,097
650 - 659	520	615	906	1,281	1,737	2,119
660 - 669	530	623	914	1,289	1,756	2,135
670 - 679	550	639	923	1,312	1,776	2,149
680 - 689	557	649	935	1,323	1,791	2,169
690 - 699	574	659	950	1,346	1,810	2,215
700 - 719	599	681	967	1,364	1,845	2,239
720 - 739	634	699	992	1,382	1,881	2,276
740 - 759	659	733	1,011	1,395	1,920	2,318
760 - 779	685	756	1,036	1,417	1,956	2,347
780 - 799	719	790	1,052	1,437	1,989	2,390
800 - 819	748	813	1,072	1,444	2,022	2,426
820 - 839	771	843	1,097	1,467	2,064	2,453
840 - 859	804	877	1,119	1,484	2,095	2,496
860 - 879	834	906	1,138	1,522	2,135	2,532
880 - 899	863	932	1,161	1,557	2,169	2,569
900 - 919	889	963	1,180	1,598	2,215	2,604
920 - 939	917	992	1,209	1,632	2,237	2,640
940 - 959	950	1,018	1,227	1,668	2,276	2,672
960 - 979	971	1,048	1,248	1,702	2,318	2,712
980 - 999	1,003	1,072	1,270	1,737	2,347	2,747
1000 - 1019	1,065	1,141	1,327	1,829	2,459	2,865
1020 - 1039	1,094	1,175	1,368	1,881	2,533	2,949
1040 - 1059	1,127	1,204	1,408	1,938	2,605	3,036
1060 - 1079	1,161	1,246	1,449	1,996	2,686	3,126
1080 - 1099	1,196	1,281	1,491	2,054	2,765	3,221
1100 - 1119	1,230	1,320	1,537	2,118	2,848	3,318
1120 - 1139	1,268	1,363	1,584	2,179	2,933	3,417
1140 - 1159	1,304	1,401	1,629	2,244	3,022	3,521

LOA	ZONE I	ZONE II	ZONE III	ZONE IV	ZONE V	ZONE VI
(Length Overall)	Intra Harbor	0-30 Miles	31-50 Miles	51-75 Miles	76-100 Miles	101 Miles & Over
1160 - 1179	1,343	1,441	1,681	2,312	3,112	3,624
1180 - 1199	1,384	1,485	1,729	2,381	3,206	3,734
1200 - 1219	1,427	1,530	1,780	2,453	3,302	3,844
1220 - 1239	1,467	1,576	1,832	2,527	3,399	3,959
1240 - 1259	1,511	1,622	1,886	2,602	3,502	4,077
1260 - 1279	1,555	1,670	1,944	2,680	3,608	4,199
1280 - 1299	1,602	1,721	2,003	2,760	3,713	4,326
1300 - 1319	1,651	1,770	2,061	2,842	3,825	4,454
1320 - 1339	1,701	1,824	2,125	2,927	3,939	4,589
1340 - 1359	1,749	1,879	2,188	3,014	4,057	4,727
1360 - 1379	1,803	1,933	2,253	3,106	4,177	4,866
1380 - 1399	1,855	1,991	2,322	3,197	4,303	5,014
1400 - 1419	1,912	2,052	2,389	3,292	4,431	5,163
1420 - 1439	1,968	2,114	2,461	3,392	4,566	5,318
1440 - 1459	2,029	2,177	2,536	3,493	4,702	5,477
1460 - 1479	2,086	2,240	2,610	3,597	4,843	5,638
1480 - 1499	2,150	2,307	2,687	3,704	4,986	5,808
1500 - Over	2,215	2,377	2,767	3,817	5,135	5,981

**WSR 14-02-094****PERMANENT RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed December 31, 2013, 9:30 a.m., effective February 1, 2014]

Effective Date of Rule: February 1, 2014.

Purpose: The department is adding new WAC 388-106-0033, to chapter 388-106 WAC on applying for long-term care services, in order to describe when a client may receive enhanced adult residential care-specialized dementia care (SDC). The new WAC clarifies who is eligible to receive SDC services in language that is consistent with the CARE assessment instrument.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Adopted under notice filed as WSR 13-22-080 on November 6, 2013.

Changes Other than Editing from Proposed to Adopted Version: Text contains only editorial changes. Eligibility was reordered as follows: Put the former (d) in the (b) position, but did not change any of the language.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 1, Amended 0, Repealed 0; or

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.

Date Adopted: December 23, 2013.

Katherine I. Vasquez  
Rules Coordinator

**NEW SECTION**

**WAC 388-106-0033 When may I receive services in a facility contracted to provide specialized dementia care services?** (1) You may be eligible to receive services in a licensed assisted living facility that has a DSHS "enhanced adult residential care-specialized dementia care ("EARC-SDC")," which is defined in WAC 388-110-020. You may be eligible to receive EARC-SDC services in a licensed assisted living facility under the following circumstances:

(a) You are enrolled in COPES, as defined in WAC 388-106-0015;

(b) The department has received written or verbal confirmation from a health care practitioner that you have an irreversible dementia (such as Alzheimer's disease, multi-infarct or vascular dementia, Lewy body dementia, Pick's disease, alcohol-related dementia);

(c) You are receiving services in an assisted living facility that has a current EARC-SDC contract, and you are living in the part of the facility that is covered by the contract;

(d) The department has authorized you to receive EARC-SDC services in the assisted living facility; and

(e) You are assessed by the comprehensive assessment reporting evaluation tool ("CARE") as having a cognitive performance score of 3 or above; and any one or more of the following:

(i) An unmet need for assistance with supervision, limited, extensive or total dependence with eating/drinking;

(ii) Inappropriate toileting/menses activities;

(iii) Rummages/takes others belongings;

(iv) Up at night when others are sleeping and requires intervention(s);

(v) Wanders/exit seeking;

(vi) Wanders/not exit seeking;

(vii) Has left home and gotten lost;

(viii) Spitting;

(ix) Disrobes in public;

(x) Eats non-edible substances;

(xi) Sexual acting out;

(xii) Delusions;

(xiii) Hallucinations;

(xiv) Assaultive;

(xv) Breaks, throws items;

(xvi) Combative during personal care;

(xvii) Easily irritable/agitated;

(xviii) Obsessive regarding health/body functions;

(xix) Repetitive movement/pacing;

(xx) Unrealistic fears or suspicions;

(xxi) Repetitive complaints/questions;

(xxii) Resistive to care;

(xxiii) Verbally abusive;

(xxiv) Yelling/screaming;

(xxv) Inappropriate verbal noises; or

(xxvi) Accuses others of stealing.

requirement to earn a total of seventy-five credits remains unchanged.

Citation of Existing Rules Affected by this Order: Amending WAC 296-15-350 Handling of claims and 296-15-360 Qualifications of personnel.

Statutory Authority for Adoption: RCW 51.04.020, 51.14.030.

Adopted under notice filed as WSR 13-21-147 on October 23, 2013.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: January 2, 2014.

Joel Sacks  
Director

AMENDATORY SECTION (Amending WSR 06-06-066, filed 2/28/06, effective 4/1/06)

**WAC 296-15-350 Handling of claims. What elements must a self-insurer have in place to ensure appropriate handling of claims?** Every self-insurer must:

(1) Establish procedures for securing the confidentiality of claim information.

(2) Have sufficient numbers of (~~department approved~~) certified claims administrators to ensure uninterrupted administration of claims.

(a) There must be at least one (~~department approved~~) certified claims administrator involved in the daily management of the employer's claims.

(b) If claims are administered in more than one location, there must be at least one (~~department approved~~) certified claims administrator in each location where claims are managed.

(3) Designate one (~~department approved~~) certified claims administrator as the department's primary contact person for claim issues.

(4) Designate one address for the mailing of all claims-related correspondence. The self-insurer is responsible for forwarding documents to the appropriate location if an employer's claims are managed by more than one organization.

(5) Establish procedures to answer questions and address concerns raised by workers, providers, or the department.

(6) Ensure claims management personnel are informed of new developments in workers' compensation due to changes in statute, case law, rule, or department policy.

### WSR 14-02-121

#### PERMANENT RULES

#### DEPARTMENT OF

#### LABOR AND INDUSTRIES

[Filed January 2, 2014, 9:51 a.m., effective February 2, 2014]

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

Purpose: The rule currently requires that a certified claims administrator who chooses to recertify via continuing education earn seventy-five continuing education credits, with a minimum number of credits in three different categories. This rule making defines those categories, renames one category, and clarifies how course credits are assigned. The

(7) Include the department's claim number in all claim-related communications with workers, providers, and the department.

(8) Legibly date stamp incoming correspondence, identifying both the date received and the location or entity that received it.

(9) Ensure a means of communicating with all injured workers.

AMENDATORY SECTION (Amending WSR 12-03-088, filed 1/17/12, effective 2/17/12)

**WAC 296-15-360 Qualifications of personnel—Certified claims administrators.** (1) What is a certified claims administrator? An experienced adjudicator who has been certified by the department to meet the requirements of WAC 296-15-350(2).

(2) How do I ((initially)) become a certified claims administrator for self-insured claims?

~~((In order to become a certified claims administrator, you must first))~~ (a) Have a minimum of three years of experience, at least twenty hours per week, in the administration or oversight of time loss claims under Title 51 RCW. The experience must have occurred within the five years immediately prior to your filing of the application to take the "self-insurance claims administrator" test

~~test~~;

and

(b) Take and pass the department's "self-insurance claims administrator" test.

After passing the test, you are designated a certified claims administrator. The initial ~~((designation of certified claims administrator))~~ certification is valid for five years.

~~((2))~~ (3) How do I receive approval to take the test? To be approved to take the "self-insurance claims administrator" test, you must apply ~~((to))~~ using the ((department)) department's online data base no less than forty-five days prior to the next scheduled test date.

The department will review your application and determine if you meet the minimum requirements to take the test. We will respond to your application no less than fourteen days prior to the next scheduled test date.

~~((3))~~ (4) What happens if I fail the test? ((If you are not currently a certified claims administrator and you fail the test, you must reapply to take the test again. You will not be permitted to retake the test until)) You may retest six months ((have passed)) after the failed ((result)) test.

If you are a certified claims administrator and you fail the test, your ~~((approval))~~ certification will be ~~((revoked. You must then reapply to take the test again. You will not be permitted to retake the test until six months have passed after the failed result.~~

~~((4))~~ terminated until you retest and pass.

(5) How does a certified claims administrator maintain their certified status beyond the initial five-year designation? A certified claims administrator may maintain certified status by:

(a) Retaking and passing the "self-insurance claims administrator" test as outlined in subsections ~~((1))~~ (2) and ~~((2))~~ (3) of this section;

or

(b) Remaining employed for a minimum of three of the last five years in the administration ~~((of))~~ or ~~((the))~~ oversight of ~~((s))~~ claims under Title 51 RCW ~~((s))~~;

and

Earning the required continuing education credits as outlined in subsection ~~((5))~~ (6) of this section;

and

Applying to the department for renewal.

~~((5))~~ (6) What is required if I choose to maintain my certified status using continuing education credits?

(a) You must earn a minimum of seventy-five credits and submit your renewal application prior to lapse of the certified status. Extensions will not be granted.

Credits must be earned in the following categories:

(i) Forty claims management credits, defined as:

Instruction on any complex claim adjudication activity that is geared to an experienced adjudicator, containing information that goes beyond known, common everyday practices, including instruction on complex medical issues related to the adjudication of claims under Title 51 RCW;

and

That is not specific to the legal category.

(ii) Twenty legal credits, defined as:

Instruction on any recent changes to: Title 51 RCW, the Washington Administrative Code, significant board decisions, and case law. "Recent" will generally be considered decisions and changes that occurred within the eighteen-month period prior to course submittal.

(iii) Fifteen ~~((elective credits (e.g., industry-specific training))~~ general claims education credits, defined as:

Instruction on common everyday claims and related practices such as refresher classes, industry specific training, safety, and injury prevention courses. For this category only, credit will be awarded one credit for every hour of instruction.

Excess claims management or legal credits may be applied toward the ~~((elective))~~ general claims education credit requirement.

The seventy-five credits must include any training designated as mandatory by the department. If you fail to earn sufficient continuing education credits, you will be required to retake the written test to maintain your certified status.

(b) Assignment of course credit will be determined by the ~~((department))~~ curriculum review committee as follows: A maximum of one credit per hour of training will be awarded if all of the material submitted meets the definition of that category. Credit will be assigned based on 0.5 increments; no credit will be awarded for increments less than 0.5. The curriculum review committee's decision will be final.

(c) Courses approved for elective credits prior to the effective date of this rule change ~~((that were assigned different credit categories))~~ will be applied as ~~((follows:~~

~~((i))~~ Claims process/procedure credits will apply toward claims management credits;

~~((ii))~~ Medical credits will apply toward claims management credits;

~~((iii))~~ Ethics credits will apply toward elective credits.

~~((d))~~ Individuals whose certified status expires between October 1, 2011, and September 30, 2012, and who exercise

~~the continuing education option in lieu of retaking the test, must meet the following modified requirements. If the individual's certification expiration date falls between:~~

~~(i) 10/1/2011 – 3/31/2012: Earn a minimum of sixty credits (thirty-two claims management credits, sixteen legal credits, and twelve elective credits);~~

~~(ii) 4/1/2012 – 9/30/2012: Earn a minimum of sixty-five credits (thirty-six claims management credits, eighteen legal credits, and eleven elective credits))~~ general claims education credits.

~~((e))~~ (d) You must track and report earned credits at the department's online data base. You must obtain and retain signed verification of courses attended. Verification of earned credits must be received by the department by the date the certified claims administrator's certification expires. Extensions will not be granted.

~~((f))~~ (e) The department may audit the reported credits of any certified claims administrator at random, or "for cause." Falsification of reported credits will result in revocation of the individual's certified claims administrator status, and may result in the department's refusal of future applications to take the self-insurance claims administrator test.

~~((6))~~ (7) **How often must certified claims administrators notify the department of changes to their contact information?** Certified claims administrators must notify the department within thirty calendar days of the effective date of a change in mailing address, work location, or name. Changes must be reported using the department's online data base.