

WSR 10-13-123
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Medicaid Purchasing Administration)

[Filed June 22, 2010, 11:08 a.m., effective June 24, 2010]

Effective Date of Rule: June 24, 2010.

Purpose: Under sections 201 and 209, chapter 564, Laws of 2009 (ESHB 1244) for fiscal years 2010 and 2011, funding for dental services is reduced from current levels. The department is amending language in sections in chapter 388-535 WAC in order to meet these targeted budget expenditure levels. The changes include, for clients through age twenty, reducing coverage of restorative services (crowns) and reducing coverage for repairs to partial dentures; for clients age twenty-one and older, reducing coverage for endodontic treatment and oral and maxillofacial surgery; and for all clients, reducing coverage for partial dentures.

Citation of Existing Rules Affected by this Order: Amending WAC 388-535-1084, 388-535-1090, 388-535-1100, 388-535-1261, 388-535-1266, 388-535-1267, 388-535-1269, and 388-535-1271.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: Sections 201 and 209, chapter 564, Laws of 2009 (ESHB 1244).

Under RCW 34.05.350 the agency for good cause finds that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: Emergency rule adoption is required in order for the department to comply with sections 201 and 209 of the operating budget for fiscal years 2010 and 2011 with respect to dental services. This emergency filing is necessary to continue the current emergency rule filed as WSR 10-06-030 on February 23, 2010. A public hearing for the permanent rule was held on June 8, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 8, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.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 8, Repealed 0.

Date Adopted: June 15, 2010.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-06-042, filed 3/1/07, effective 4/1/07)

WAC 388-535-1084 Covered dental-related services for clients through age twenty—Restorative services. The department covers medically necessary dental-related restorative services, subject to the coverage limitations listed, for clients through age twenty as follows:

(1) **Restorative/operative procedures.** The department covers restorative/operative procedures performed in a hospital or an ambulatory surgical center for:

- (a) Clients ages eight and younger;
- (b) Clients ages nine through twenty only on a case-by-case basis and when prior authorized; and
- (c) Clients of the division of developmental disabilities according to WAC 388-535-1099.

(2) **Amalgam restorations for primary and permanent teeth.** The department considers:

(a) Tooth preparation, all adhesives (including amalgam bonding agents), liners, bases, and polishing as part of the amalgam restoration.

(b) The occlusal adjustment of either the restored tooth or the opposing tooth or teeth as part of the amalgam restoration.

(c) Buccal or lingual surface amalgam restorations, regardless of size or extension, as a one surface restoration. The department covers one buccal and one lingual surface per tooth.

(d) Multiple amalgam restorations of fissures and grooves of the occlusal surface of the same tooth as a one surface restoration.

(e) Amalgam restorations placed within six months of a crown preparation by the same provider or clinic to be included in the payment for the crown.

(3) **Amalgam restorations for primary posterior teeth only.** The department covers amalgam restorations for a maximum of two surfaces for a primary first molar and maximum of three surfaces for a primary second molar. (See subsection (9)(c) of this section for restorations for a primary posterior tooth requiring additional surfaces.) The department does not pay for additional amalgam restorations.

(4) **Amalgam restorations for permanent posterior teeth only.** The department:

(a) Covers two occlusal amalgam restorations for teeth one, two, three fourteen, fifteen, and sixteen, if the restorations are anatomically separated by sound tooth structure.

(b) Covers amalgam restorations for a maximum of five surfaces per tooth for a permanent posterior tooth, once per client, per provider or clinic, in a two-year period.

(c) Covers amalgam restorations for a maximum of six surfaces per tooth for teeth one, two, three, fourteen, fifteen, and sixteen, once per client, per provider or clinic, in a two-year period (see (a) of this subsection).

(d) Does not pay for replacement of amalgam restoration on permanent posterior teeth within a two-year period unless the restoration has an additional adjoining carious surface. The department pays for the replacement restoration as one multi-surface restoration. The client's record must include radiographs and documentation supporting the medical necessity for the replacement restoration.

(5) **Resin-based composite restorations for primary and permanent teeth.** The department:

(a) Considers tooth preparation, acid etching, all adhesives (including resin bonding agents), liners and bases, polishing, and curing as part of the resin-based composite restoration.

(b) Considers the occlusal adjustment of either the restored tooth or the opposing tooth or teeth as part of the resin-based composite restoration.

(c) Considers buccal or lingual surface resin-based composite restorations, regardless of size or extension, as a one surface restoration. The department covers only one buccal and one lingual surface per tooth.

(d) Considers resin-based composite restorations of teeth where the decay does not penetrate the dentoenamel junction (DEJ) to be sealants (see WAC 388-535-1082(4) for sealants coverage).

(e) Considers multiple preventive restorative resin, flowable composite resin, or resin-based composites for the occlusal, buccal, lingual, mesial, and distal fissures and grooves on the same tooth as a one surface restoration.

(f) Does not cover preventive restorative resin or flowable composite resin on the interproximal surfaces (mesial and/or distal) when performed on posterior teeth or the incisal surface of anterior teeth.

(g) Considers resin-based composite restorations placed within six months of a crown preparation by the same provider or clinic to be included in the payment for the crown.

(6) **Resin-based composite restorations for primary teeth only.** The department covers:

(a) Resin-based composite restorations for a maximum of three surfaces for a primary anterior tooth (see subsection (9)(b) of this section for restorations for a primary anterior tooth requiring a four or more surface restoration). The department does not pay for additional composite or amalgam restorations on the same tooth after three surfaces.

(b) Resin-based composite restorations for a maximum of two surfaces for a primary first molar and a maximum of three surfaces for a primary second molar. (See subsection (9)(c) of this subsection for restorations for a primary posterior tooth requiring additional surfaces.) The department does not pay for additional composite restorations on the same tooth.

(c) Glass (~~(ionomer)~~) ionomer restorations only for primary teeth, and only for clients ages five and younger. The department pays for these restorations as a one surface resin-based composite restoration.

(7) **Resin-based composite restorations for permanent teeth only.** The department covers:

(a) Two occlusal resin-based composite restorations for teeth one, two, fourteen, fifteen, and sixteen if the restorations are anatomically separated by sound tooth structure.

(b) Resin-based composite restorations for a maximum of five surfaces per tooth for a permanent posterior tooth, once per client, per provider or clinic, in a two-year period.

(c) Resin-based composite restorations for a maximum of six surfaces per tooth for permanent posterior teeth one, two, three, fourteen, fifteen, and sixteen, once per client, per provider or clinic, in a two-year period (see (a) of this subsection).

(d) Resin-based composite restorations for a maximum of six surfaces per tooth for a permanent anterior tooth, once per client, per provider or clinic, in a two-year period.

(e) Replacement of resin-based composite restoration on permanent teeth within a two-year period only if the restoration has an additional adjoining carious surface. The department pays the replacement restoration as a one multi-surface restoration. The client's record must include radiographs and documentation supporting the medical necessity for the replacement restoration.

(8) **Crowns.** The department:

(a) Covers the following crowns once every five years, per tooth, for permanent anterior teeth for clients ages twelve through twenty when the crowns meet prior authorization criteria in WAC 388-535-1220 and the provider follows the prior authorization requirements in (d) of this subsection:

(i) Porcelain/ceramic crowns to include all porcelains, glasses, glass-ceramic, and porcelain fused to metal crowns; and

(ii) Resin crowns and resin metal crowns to include any resin-based composite, fiber, or ceramic reinforced polymer compound.

~~(b) ((Covers full coverage metal crowns once every five years, per tooth, for permanent posterior teeth to include high noble, titanium, titanium alloys, noble, and predominantly base metal crowns for clients ages eighteen through twenty when they meet prior authorization criteria and the provider follows the prior authorization requirements in (d) and (e) of this subsection.~~

~~(c))~~ Considers the following to be included in the payment for a crown:

(i) Tooth and soft tissue preparation;

(ii) Amalgam and resin-based composite restoration, or any other restorative material placed within six months of the crown preparation. Exception: The department covers a one surface restoration on an endodontically treated tooth, or a core buildup or cast post and core;

(iii) Temporaries, including but not limited to, temporary restoration, temporary crown, provisional crown, temporary prefabricated stainless steel crown, ion crown, or acrylic crown;

(iv) Packing cord placement and removal;

(v) Diagnostic or final impressions;

(vi) Crown seating (placement), including cementing and insulating bases;

(vii) Occlusal adjustment of crown or opposing tooth or teeth; and

(viii) Local anesthesia.

~~((c))~~ (c) Requires the provider to submit the following with each prior authorization request:

(i) Radiographs to assess all remaining teeth;

(ii) Documentation and identification of all missing teeth;

(iii) Caries diagnosis and treatment plan for all remaining teeth, including a caries control plan for clients with rampant caries;

(iv) Pre- and post-endodontic treatment radiographs for requests on endodontically treated teeth; and

(v) Documentation supporting a five-year prognosis that the client will retain the tooth or crown if the tooth is crowned.

~~((e))~~ (d) Requires a provider to bill for a crown only after delivery and seating of the crown, not at the impression date.

(9) **Other restorative services.** The department covers:

(a) All recementations of permanent indirect crowns.

(b) Prefabricated stainless steel crowns with resin window, resin-based composite crowns, prefabricated esthetic coated stainless steel crowns, and fabricated resin crowns for primary anterior teeth once every three years without prior authorization if the tooth requires a four or more surface restoration.

(c) Prefabricated stainless steel crowns for primary posterior teeth once every three years without prior authorization if:

(i) Decay involves three or more surfaces for a primary first molar;

(ii) Decay involves four or more surfaces for a primary second molar; or

(iii) The tooth had a pulpotomy.

(d) Prefabricated stainless steel crowns for permanent posterior teeth once every three years when prior authorized.

(e) Prefabricated stainless steel crowns for clients of the division of developmental disabilities according to WAC 388-535-1099.

(f) Core buildup, including pins, only on permanent teeth, when prior authorized at the same time as the crown prior authorization.

(g) Cast post and core or prefabricated post and core, only on permanent teeth, when prior authorized at the same time as the crown prior authorization.

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

AMENDATORY SECTION (Amending WSR 07-06-042, filed 3/1/07, effective 4/1/07)

WAC 388-535-1090 Covered dental-related services for clients through age twenty—Prosthodontics (removable). The department covers medically necessary prosthodontics (removable) services, subject to the coverage limitations listed, for clients through age twenty as follows:

(1) **Prosthodontics.** The department:

(a) Requires prior authorization for all removable prosthodontic and prosthodontic-related procedures, except as stated in (c)(ii)(B) of this subsection. Prior authorization requests must meet the criteria in WAC 388-535-1220. In addition, the department requires the dental provider to submit:

(i) Appropriate and diagnostic radiographs of all remaining teeth.

(ii) A dental record which identifies:

(A) All missing teeth for both arches;

(B) Teeth that are to be extracted; and

(C) Dental and periodontal services completed on all remaining teeth.

(ii) A prescription written by a dentist when a denturist's prior authorization request is for an immediate denture or a cast metal partial denture.

(b) Covers complete dentures, as follows:

(i) A complete denture, including an immediate denture or overdenture, is covered when prior authorized.

(ii) Three-month post-delivery care (e.g., adjustments, soft relines, and repairs) from the seat (placement) date of the complete denture, is considered part of the complete denture procedure and is not paid separately.

(iii) Replacement of an immediate denture with a complete denture is covered if the complete denture is prior authorized at least six months after the seat date of the immediate denture.

(iv) Replacement of a complete denture or overdenture is covered only if prior authorized at least five years after the seat date of the complete denture or overdenture being replaced. The replacement denture must be prior authorized.

(c) Covers partial dentures, as follows:

(i) A partial denture, including a resin (~~or flexible base~~) partial denture, is covered for anterior and posterior teeth when the partial denture meets the following department coverage criteria.

(A) The remaining teeth in the arch must have a reasonable periodontal diagnosis and prognosis;

(B) The client has established caries control;

(C) One or more anterior teeth are missing or four or more posterior teeth are missing;

(D) There is a minimum of four stable teeth remaining per arch; and

(E) There is a three-year prognosis for retention of the remaining teeth.

(ii) Prior authorization of partial dentures:

(A) Is required for clients ages nine and younger; and

(B) Not required for clients ages ten through twenty.

Documentation supporting the medical necessity for the service must be included in the client's file.

(iii) Three-month post-delivery care (e.g., adjustments, soft relines, and repairs) from the seat date of the partial denture, is considered part of the partial denture procedure and is not paid separately.

(iv) Replacement of a resin or flexible base denture is covered only if prior authorized at least three years after the seat date of the resin or flexible base partial denture being replaced. The replacement denture must be prior authorized and meet department coverage criteria in (c)(i) of this subsection.

(d) Covers cast-metal framework partial dentures, as follows:

(i) Cast-metal framework with resin-based partial dentures, including any conventional clasps, rests, and teeth, are covered for clients ages eighteen through twenty only once in a five-year period, on a case-by-case basis, when prior authorized and department coverage criteria listed in subsection (d)(v) of this subsection are met.

(ii) Cast-metal framework partial dentures for clients ages seventeen and younger are not covered.

(iii) Three-month post-delivery care (e.g., adjustments, soft relines, and repairs) from the seat date of the cast metal

partial denture is considered part of the partial denture procedure and is not paid separately.

(iv) Replacement of a cast metal framework partial denture is covered on a case-by-case basis and only if placed at least five years after the seat date of the partial denture being replaced. The replacement denture must be prior authorized and meet department coverage criteria listed in (d)(v) of this subsection.

(v) Department authorization and payment for cast metal framework partial dentures is based on the following criteria:

(A) The remaining teeth in the arch must have a stable periodontal diagnosis and prognosis;

(B) The client has established caries control;

(C) All restorative and periodontal procedures must be completed before the request for prior authorization is submitted;

(D) There are fewer than eight posterior teeth in occlusion;

(E) There is a minimum of four stable teeth remaining per arch; and

(F) There is a five-year prognosis for the retention of the remaining teeth.

(vi) The department may consider resin partial dentures as an alternative if the department determines the criteria for cast metal framework partial dentures listed in (d)(v) of this subsection are not met.

(e) Requires a provider to bill for removable prosthetic procedures only after the seating of the prosthesis, not at the impression date. Refer to subsection (2)(e) and (f) for what the department may pay if the removable prosthesis is not delivered and inserted.

(f) Requires a provider to submit the following with a prior authorization request for removable prosthetics for a client residing in an alternate living facility (ALF) as defined in WAC 388-513-1301 or in a nursing facility:

(i) The client's medical diagnosis or prognosis;

(ii) The attending physician's request for prosthetic services;

(iii) The attending dentist's or denturist's statement documenting medical necessity;

(iv) A written and signed consent for treatment from the client's legal guardian when a guardian has been appointed; and

(v) A completed copy of the denture/partial appliance request for skilled nursing facility client form (DSHS 13-788) available from the department's published billing instructions.

(g) Limits removable partial dentures to resin-based partial dentures for all clients residing in one of the facilities listed in (f) of this subsection. The department may consider cast metal partial dentures if the criteria in subsection (1)(d) are met.

(h) Requires a provider to deliver services and procedures that are of acceptable quality to the department. The department may recoup payment for services that are determined to be below the standard of care or of an unacceptable product quality.

(2) **Other services for removable prosthodontics.** The department covers:

(a) Adjustments to complete and partial dentures three months after the date of delivery.

(b) Repairs to complete and partial dentures, once in a twelve month period. The cost of repairs cannot exceed the cost of replacement. The department covers additional repairs on a case-by-case basis and when prior authorized.

(c) A laboratory reline or rebase to a complete or cast-metal partial denture, once in a three-year period when performed at least six months after the seating date. An additional reline or rebase may be covered for complete or cast-metal partial dentures on a case-by-case basis when prior authorized.

(d) Up to two tissue conditionings, and only when performed within three months after the seating date.

(e) Laboratory fees, subject to the following:

(i) The department does not pay separately for laboratory or professional fees for complete and partial dentures; and

(ii) The department may pay part of billed laboratory fees when the provider obtains prior authorization, and the client:

(A) Is not eligible at the time of delivery of the prosthesis;

(B) Moves from the state;

(C) Cannot be located;

(D) Does not participate in completing the complete, immediate, or partial dentures; or

(E) Dies.

(f) A provider must submit copies of laboratory prescriptions and receipts or invoices for each claim when billing for laboratory fees.

AMENDATORY SECTION (Amending WSR 07-06-042, filed 3/1/07, effective 4/1/07)

WAC 388-535-1100 Dental-related services not covered for clients through age twenty. (1) The department does not cover the following for clients through age twenty:

(a) The dental-related services described in subsection (2) of this section unless the services are covered under the early periodic screening, diagnosis and treatment (EPSDT) program. See WAC 388-534-0100 for information about the EPSDT program.

(b) Any service specifically excluded by statute.

(c) More costly services when less costly, equally effective services as determined by the department are available.

(d) Services, procedures, treatment, devices, drugs, or application of associated services:

(i) Which the department or the Centers for Medicare and Medicaid Services (CMS) considers investigative or experimental on the date the services were provided.

(ii) That are not listed as covered in one or both of the following:

(A) Washington Administrative Code (WAC).

(B) The department's current published documents.

(2) The department does not cover dental-related services listed under the following categories of service for clients through age twenty (see subsection (1)(a) of this section for services provided under the EPSDT program):

- (a) **Diagnostic services.** The department does not cover:
- (i) Extraoral radiographs.
 - (ii) Comprehensive periodontal evaluations.
- (b) **Preventive services.** The department does not cover:
- (i) Nutritional counseling for control of dental disease.
 - (ii) Tobacco counseling for the control and prevention of oral disease.
 - (iii) Removable space maintainers of any type.
 - (iv) Sealants placed on a tooth with the same-day occlusal restoration, preexisting occlusal restoration, or a tooth with occlusal decay.
 - (v) Space maintainers for clients ages nineteen through twenty.
- (c) **Restorative services.** The department does not cover:
- (i) Restorations for wear on any surface of any tooth without evidence of decay through the enamel or on the root surface:
 - (ii) Gold foil restorations.
 - ~~((i+))~~ ~~(iii)~~ Metallic, resin-based composite, or porcelain/ceramic inlay/onlay restorations.
 - ~~((i+))~~ ~~(iv)~~ Preventive restorations.
 - ~~(v)~~ Crowns for cosmetic purposes (e.g., peg laterals and tetracycline staining).
 - ~~((iv+))~~ ~~(vi)~~ Permanent crowns for ~~((third molars one, sixteen, seventeen, and thirty two)) bicuspid or molar teeth.~~
 - ~~((+))~~ ~~(vii)~~ Temporary or provisional crowns (including ion crowns).
 - ~~((vi+))~~ ~~(viii)~~ Labial veneer resin or porcelain laminate restorations.
 - ~~((vii+))~~ ~~(ix)~~ Any type of coping.
 - ~~((viii+))~~ ~~(x)~~ Crown repairs.
 - ~~((ix+))~~ ~~(xi)~~ Polishing or recontouring restorations or overhang removal for any type of restoration.
- (d) **Endodontic services.** The department does not cover:
- (i) Any endodontic therapy on primary teeth, except as described in WAC 388-535-1086 (3)(a).
 - (ii) Apexification/recalcification for root resorption of permanent anterior teeth.
 - (iii) Any apexification/recalcification procedures for bicuspid or molar teeth.
 - (iv) Any apicoectomy/periradicular services for bicuspid or molar teeth.
 - (v) Any surgical endodontic procedures including, but not limited to, retrograde fillings (except for anterior teeth), root amputation, reimplantation, and hemisections.
- (e) **Periodontic services.** The department does not cover:
- (i) Surgical periodontal services including, but not limited to:
 - (A) Gingival flap procedures.
 - (B) Clinical crown lengthening.
 - (C) Osseous surgery.
 - (D) Bone or soft tissue grafts.
 - (E) Biological material to aid in soft and osseous tissue regeneration.
 - (F) Guided tissue regeneration.
 - (G) Pedicle, free soft tissue, apical positioning, subepithelial connective tissue, soft tissue allograft, combined connective tissue and double pedicle, or any other soft tissue or osseous grafts.
 - (H) Distal or proximal wedge procedures.
 - (ii) Nonsurgical periodontal services including, but not limited to:
 - (A) Intracoronal or extracoronal provisional splinting.
 - (B) Full mouth or quadrant debridement.
 - (C) Localized delivery of chemotherapeutic agents.
 - (D) Any other type of nonsurgical periodontal service.
 - (f) **Removable prosthodontics.** The department does not cover:
 - (i) Removable unilateral partial dentures.
 - (ii) Any interim complete or partial dentures.
 - (iii) Flexible base partial dentures.
 - ~~(iv)~~ Any type of permanent soft reline (e.g., molloplast).
 - ~~(v)~~ Precision attachments.
 - ~~((iv+))~~ ~~(vi)~~ Replacement of replaceable parts for semi-precision or precision attachments.
- (g) **Implant services.** The department does not cover:
- (i) Any type of implant procedures, including, but not limited to, any tooth implant abutment (e.g., periosteal implant, eposteal implant, and transosteal implant), abutments or implant supported crown, abutment supported retainer, and implant supported retainer.
 - (ii) Any maintenance or repairs to procedures listed in (g)(i) of this subsection.
 - (iii) The removal of any implant as described in (g)(i) of this subsection.
- (h) **Fixed prosthodontics.** The department does not cover:
- (i) Any type of fixed partial denture pontic or fixed partial denture retainer.
 - (ii) Any type of precision attachment, stress breaker, connector bar, coping, cast post, or any other type of fixed attachment or prosthesis.
- (i) **Oral and maxillofacial surgery.** The department does not cover:
- (i) Any oral surgery service not listed in WAC 388-535-1094.
 - (ii) Any oral surgery service that is not listed in the department's list of covered current procedural terminology (CPT) codes published in the department's current rules or billing instructions.
- (j) **Adjunctive general services.** The department does not cover:
- (i) Anesthesia, including, but not limited to:
 - (A) Local anesthesia as a separate procedure.
 - (B) Regional block anesthesia as a separate procedure.
 - (C) Trigeminal division block anesthesia as a separate procedure.
 - (D) Medication for oral sedation, or therapeutic intramuscular (IM) drug injections, including antibiotic and injection of sedative.
 - (E) Application of any type of desensitizing medicament or resin.
 - (ii) Other general services including, but not limited to:
 - (A) Fabrication of an athletic mouthguard.
 - (B) Occlusion analysis.

(C) Occlusal adjustment, tooth or restoration adjustment or smoothing, or odontoplasties.

(D) Enamel microabrasion.

(E) Dental supplies such as toothbrushes, toothpaste, floss, and other take home items.

(F) Dentist's or dental hygienist's time writing or calling in prescriptions.

(G) Dentist's or dental hygienist's time consulting with clients on the phone.

(H) Educational supplies.

(I) Nonmedical equipment or supplies.

(J) Personal comfort items or services.

(K) Provider mileage or travel costs.

(L) Fees for no-show, cancelled, or late arrival appointments.

(M) Service charges of any type, including fees to create or copy charts.

(N) Office supplies used in conjunction with an office visit.

(O) Teeth whitening services or bleaching, or materials used in whitening or bleaching.

AMENDATORY SECTION (Amending WSR 07-06-041, filed 3/1/07, effective 4/1/07)

WAC 388-535-1261 Covered dental-related services for clients age twenty-one and older—Endodontic services. The department covers dental-related endodontic services only as listed in this section for clients age twenty-one and older (for dental-related services provided to clients eligible under the GA-U or ADATSA program, see WAC 388-535-1065).

(1) **Pulpal debridement.** The department covers pulpal debridement on permanent teeth. Pulpal debridement is not covered when performed with palliative treatment or when performed on the same day as endodontic treatment.

(2) **Endodontic treatment.** The department:

(a) Covers endodontic treatment for permanent anterior teeth only;

(b) Considers the following included in endodontic treatment:

(i) Pulpectomy when part of root canal therapy;

(ii) All procedures necessary to complete treatment; and

(iii) All intra-operative and final evaluation radiographs for the endodontic procedure.

(c) Pays separately for the following services that are related to the endodontic treatment:

(i) Initial diagnostic evaluation;

(ii) Initial diagnostic radiographs; and

(iii) Post treatment evaluation radiographs if taken at least three months after treatment.

~~((d) Requires prior authorization for endodontic retreatment and considers endodontic retreatment to include:~~

~~(i) The removal of post(s), pin(s), old root canal filling material, and all procedures necessary to prepare the canals;~~

~~(ii) Placement of new filling material; and~~

~~(iii) Retreatment for permanent maxillary and mandibular anterior teeth only.~~

~~(e) Pays separately for the following services that are related to the endodontic retreatment:~~

~~(i) Initial diagnostic evaluation;~~

~~(ii) Initial diagnostic radiographs; and~~

~~(iii) Post treatment evaluation radiographs if taken at least three months after treatment.~~

~~(f) Does not pay for endodontic retreatment when provided by the original treating provider or clinic.))~~

AMENDATORY SECTION (Amending WSR 07-06-041, filed 3/1/07, effective 4/1/07)

WAC 388-535-1266 Covered dental-related services for clients age twenty-one and older—Prosthodontics (removable). The department covers dental-related prosthodontics (removable) services only as listed in this section for clients age twenty-one and older (for dental-related services provided to clients eligible under the GA-U or ADATSA program, see WAC 388-535-1065).

(1) **Removable prosthodontics.** The department:

(a) Requires prior authorization requests for all removable prosthodontics and prosthodontic-related procedures listed in this subsection. Prior authorization requests must meet the criteria in WAC 388-535-1280. In addition, the department requires the dental provider to:

(i) Submit:

(A) Appropriate and diagnostic radiographs of all remaining teeth.

(B) A dental record that identifies:

(I) All missing teeth for both arches;

(II) Teeth that are to be extracted; and

(III) Dental and periodontal services completed on all remaining teeth.

(C) A prescription written by a dentist when a dentist's prior authorization request is for an immediate denture or cast metal partial denture.

(ii) Obtain a signed agreement of acceptance from the client at the conclusion of the final denture try-in for a department authorized complete denture or a cast-metal denture described in this section. If the client abandons the complete denture or the cast-metal partial denture after signing the agreement of acceptance, the department will deny subsequent requests for the same type dental prosthesis if the request occurs prior to the dates specified in this section. A copy of the signed agreement that documents the client's acceptance of the dental prosthesis must be submitted to the department's dental prior authorization section before the department pays the claim.

(b) Covers a complete denture, as follows:

(i) A complete denture, including an immediate denture or overdenture, is covered when prior authorized and the complete denture meets department coverage criteria;

(ii) Post-delivery care (e.g., adjustments, soft relines, and repairs) provided within three months of the seat date of a complete denture, is considered part of the complete denture procedure and is not paid separately;

(iii) Replacement of an immediate denture with a complete denture is covered only when the replacement occurs at least ~~((six months))~~ five years from the seat date of the immediate denture. The replacement complete denture must be prior authorized; and

(iv) Replacement of a complete denture or overdenture is covered only when the replacement occurs at least five years from the seat date of the complete denture or overdenture being replaced. The replacement denture must be prior authorized.

(c) Covers partial dentures as follows:

(i) Department authorization and payment for a resin (~~(or flexible)~~) base partial denture for anterior and posterior teeth is based on the following criteria:

(A) The remaining teeth in the arch must have a reasonable periodontal diagnosis and prognosis;

(B) The client has established caries control;

(C) One or more anterior teeth are missing, or four or more posterior teeth, excluding second and third molars, per arch are missing. The department does not pay for replacement of second or third molars;

(D) There is a minimum of four stable teeth remaining per arch; and

(E) There is a three-year prognosis for retention of all remaining teeth.

(ii) Post-delivery care (e.g. adjustments, soft relines, and repairs) provided after three months from the seat date of the partial denture, is considered part of the partial denture and is not paid separately; and

(iii) Replacement of a resin (~~(or flexible)~~) base denture is covered only when the replacement occurs at least three years from the seat date of the partial denture being replaced. The replacement denture must be prior authorized and meet department coverage criteria.

(d) Covers cast metal framework partial dentures as follows:

(i) A cast metal framework with resin-based denture, including any conventional clasps, rests, and teeth, is covered on a case-by-case basis when prior authorized and department coverage criteria listed in (d)(iv) of this subsection are met.

(ii) Post-delivery care (e.g., adjustments, soft relines, and repairs) provided within three months of the seat date of the cast metal partial denture, is considered part of the partial denture procedure and is not paid separately.

(iii) Replacement of a cast metal framework partial denture is covered on a case-by-case basis and only when the replacement occurs at least five years from the seat date of the partial denture being replaced. The replacement denture must be prior authorized and meet department coverage criteria listed in (d)(iv) of this subsection.

(iv) Department authorization and payment for cast metal framework partial dentures is based on the following criteria:

(A) The remaining teeth in the arch must have a stable periodontal diagnosis and prognosis;

(B) The client has established caries control;

(C) All restorative and periodontal procedures must be completed before the request for prior authorization is submitted;

(D) ~~((There are fewer than eight posterior teeth in occlusion))~~ Four or more posterior teeth, excluding second and third molars, per arch are missing. The department does not pay for replacement of second or third molars;

(E) There is a minimum of four stable teeth remaining per arch;

(F) There is a five-year prognosis, based on the sole discretion of the department, for retention of all remaining teeth.

(v) The department may consider resin partial dentures as an alternative if the criteria for cast metal framework partial dentures listed in (d)(iv) of this subsection do not meet department specifications.

(e) Requires the provider to bill for covered removable prosthetic procedures only after the seating of the prosthesis, not at the impression date. Refer to (2)(c) and (d) of this subsection if the removable prosthesis is not delivered and inserted.

(f) Requires a provider to submit the following with prior authorization requests for removable prosthetics for a client residing in a nursing home, group home, or other facility:

(i) The client's medical diagnosis and prognosis;

(ii) The attending physician's request for prosthetic services;

(iii) The attending dentist's or denturist's statement documenting medical necessity;

(iv) A written and signed consent from the client's legal guardian when a guardian has been appointed; and

(v) A completed copy of the Denture/Partial Appliance Request for Skilled Nursing Facility Client form (DSHS 13-788) available from the department.

(g) Limits removable partial dentures to resin based partial dentures for all clients who reside in one of the facilities listed in (f) of this subsection. The department may consider cast metal partial dentures if the criteria in (d) of this subsection are met.

(h) Requires a provider to deliver services and procedures that are of acceptable quality to the department. The department may recoup payment for services that are determined to be below the standard of care or of an unacceptable product quality.

(2) **Other services for removable prosthetics.** The department covers:

(a) ~~((Repairs to complete and partial dentures;~~

~~h))~~ A laboratory reline or rebase to a complete or cast metal partial denture, once in a three-year period when performed at least six months after the seat (placement) date; and

~~((e))~~ (b) Laboratory fees, subject to all of the following:

(i) The department does not pay laboratory and professional fees for complete and partial dentures, except as stated in (ii) of this subsection;

(ii) The department may pay part of billed laboratory fees when the provider has obtained prior authorization from the department, and:

(A) At the time of delivery of the prosthesis, the patient is no longer an eligible medical assistance client (see also WAC 388-535-1280(3));

(B) The client moves from the state; or

(C) The client dies.

(iii) A provider must submit copies of laboratory prescriptions and receipts or invoices for each claim when billing for laboratory fees.

AMENDATORY SECTION (Amending WSR 07-06-041, filed 3/1/07, effective 4/1/07)

WAC 388-535-1267 Covered dental-related services for clients age twenty-one and older—Oral and maxillofacial surgery services. The department covers oral and maxillofacial surgery services only as listed in this section for clients age twenty-one and older (for dental-related services provided to clients eligible under the GA-U or ADATSA program, see WAC 388-535-1065).

(1) **Oral and maxillofacial surgery services.** The department:

(a) Requires enrolled dental providers who do not meet the conditions in WAC 388-535-1070(3) to bill claims for services that are listed in this subsection using only the current dental terminology (CDT) codes.

(b) Requires (~~enrolled providers~~) oral and maxillofacial surgeons ~~(i)~~ who meet the conditions in WAC 388-535-1070(3) to bill claims using current procedural terminology (CPT) codes unless the procedure is specifically listed in the department's current published billing instructions as a CDT covered code (e.g., extractions).

(c) Does not cover oral surgery services described in WAC 388-535-1267 that are performed in a hospital operating room or ambulatory surgery center.

(d) Requires the client's record to include supporting documentation for each type of extraction or any other surgical procedure billed to the department. The documentation must include:

(i) An appropriate consent form signed by the client or the client's legal representative;

(ii) Appropriate radiographs;

(iii) Medical justification with diagnosis;

(iv) Client's blood pressure, when appropriate;

(v) A surgical narrative;

(vi) A copy of the post-operative instructions; and

(vii) A copy of all pre- and post-operative prescriptions.

(e) Covers routine and surgical extractions.

(f) Covers debridement of a granuloma or cyst that is five millimeters or greater in diameter. The department includes debridement of a granuloma or cyst that is less than five millimeters as part of the global fee for the extraction.

(g) Covers biopsy, as follows:

(i) Biopsy of soft oral tissue (~~or brush biopsy do~~) does not require prior authorization; and

(ii) All biopsy reports must be kept in the client's record.

(h) (~~Covers alveoloplasty only when three or more teeth are extracted per arch.~~)

(~~i~~) Covers surgical excision of soft tissue lesions only on a case-by-case basis and when prior authorized.

(~~j~~) Covers only the following excisions of bone tissue in conjunction with placement of immediate, complete, or partial dentures when prior authorized:

(i) ~~Removal of lateral exostosis;~~

(ii) ~~Removal of torus palatinus or torus mandibularis;~~

and

(iii) ~~Surgical reduction of soft tissue or osseous tuberosity.~~)

(2) **Surgical incision-related services.** The department covers (~~the following surgical incision-related services:~~

(~~a~~)) uncomplicated intraoral and extraoral soft tissue incision and drainage of abscess. The department does not cover this service when combined with an extraction or root canal treatment. Documentation supporting medical necessity must be in the client's record.

(~~b~~) ~~Removal of foreign body from mucosa, skin, or subcutaneous alveolar tissue when prior authorized. Documentation supporting medical necessity must be in the client's record.~~)

AMENDATORY SECTION (Amending WSR 07-06-041, filed 3/1/07, effective 4/1/07)

WAC 388-535-1269 Covered dental-related services for clients age twenty-one and older—Adjunctive general services. The department covers dental-related adjunctive general services only as listed in this section for clients age twenty-one and older (for dental-related services provided to clients eligible under the GA-U or ADATSA program, see WAC 388-535-1065).

(1) **Adjunctive general services.** The department:

(a) Covers palliative (emergency) treatment, not to include pulpal debridement, for treatment of dental pain, limited to once per day, per client, as follows:

(i) The treatment must occur during limited evaluation appointments;

(ii) A comprehensive description of diagnosis and services provided must be documented in the client's record; and

(iii) Appropriate radiographs must be in the client's record to support medical necessity for the treatment.

(b) Covers local anesthesia and regional blocks as part of the global fee for any procedure being provided to clients.

(c) Covers office based oral or parenteral sedation:

(i) For services listed as covered in WAC 388-535-1267;

(ii) For all current published current procedural terminology (CPT) dental codes;

(iii) When the provider's current valid anesthesia permit is on file with the department; and

(iv) For clients of the division of developmental disabilities according to WAC 388-535-1099.

(d) Covers office based general anesthesia for:

(i) Extraction of three or more teeth;

(ii) (~~Services listed as covered in WAC 388-535-1267~~) ~~(i)~~ and ~~(j)~~;

(iii) ~~For all current published CPT dental codes;~~

(~~iv~~) ~~When the provider's current valid anesthesia permit is on file with the department; and~~

(~~v~~) ~~(iii) For clients of the division of developmental disabilities, according to WAC 388-535-1099.~~

(e) Covers inhalation of nitrous oxide, once per day.

(f) Requires providers of oral or parenteral conscious sedation, or general anesthesia to meet:

(i) The prevailing standard of care;

(ii) The provider's professional organizational guidelines;

(iii) The requirements in chapter 246-817 WAC; and

(iv) Relevant department of health (DOH) medical, dental, and nursing anesthesia regulations;

(g) Pays for anesthesia services according to WAC 388-535-1350;

(h) Covers professional consultation/diagnostic services as follows:

(i) A dentist or a physician other than the practitioner providing treatment must provide the services; and

(ii) A client must be referred by the department for the services to be covered.

(2) **Nonemergency dental services.** The department covers nonemergency dental services performed in a hospital or ambulatory surgical center for clients of the division of developmental disabilities according to WAC 388-535-1099.

(3) **Professional visits.** The department covers:

(a) Up to two house/extended care facility calls (visits) per facility, per provider. The department limits payment to two facilities per day, per provider.

(b) One hospital call (visit), including emergency care, per day, per provider, per client. The department does not pay for additional hospital calls if billed for the same client on the same day.

(c) Emergency office visits after regularly scheduled hours. The department limits payment to one emergency visit per day, per provider.

(4) **Drugs and/or medicaments (pharmaceuticals).** The department covers drugs and/or medicaments (pharmaceuticals) only when used with parenteral conscious sedation, deep sedation, or general anesthesia. The department's dental program does not pay for oral sedation medications.

(5) **Miscellaneous services.** The department covers:

(a) Behavior management that requires the assistance of one additional dental staff other than the dentist only for clients of the division of developmental disabilities((-)) (see WAC 388-535-1099). Documentation supporting the need for the behavior management must be in the client's record.

(b) Treatment of post-surgical complications (e.g., dry socket). Documentation supporting the medical necessity for the service must be in the client's record.

AMENDATORY SECTION (Amending WSR 07-06-041, filed 3/1/07, effective 4/1/07)

WAC 388-535-1271 Dental-related services not covered for clients age twenty-one and older. (1) The department does not cover the following for clients age twenty-one and older (see WAC 388-535-1065 for dental-related services for clients eligible under the GA-U or ADATSA program):

(a) The dental-related services and procedures described in subsection (2) of this section;

(b) Any service specifically excluded by statute;

(c) More costly services when less costly, equally effective services as determined by the department are available; and

(d) Services, procedures, treatment, devices, drugs, or application of associated services:

(i) Which the department or the Centers for Medicare and Medicaid Services (CMS) considers investigative or experimental on the date the services were provided.

(ii) That are not listed as covered in one or both of the following:

(A) Washington Administrative Code (WAC).

(B) The department's published documents (e.g., billing instructions).

(2) The department does not cover dental-related services listed under the following categories of service for clients age twenty-one and older:

(a) **Diagnostic services.** The department does not cover:

(i) Detailed and extensive oral evaluations or reevaluations;

(ii) Comprehensive periodontal evaluations;

(iii) Extraoral or occlusal intraoral radiographs;

(iv) Posterior-anterior or lateral skull and facial bone survey films;

(v) Sialography;

(vi) Any temporomandibular joint films;

(vii) Tomographic survey;

(viii) Cephalometric films;

(ix) Oral/facial photographic images;

(x) Viral cultures, genetic testing, caries susceptibility tests, adjunctive prediagnostic tests, or pulp vitality tests; or

(xi) Diagnostic casts.

(b) **Preventive services.** The department does not cover:

(i) Nutritional counseling for control of dental disease;

(ii) Tobacco counseling for the control and prevention of oral disease;

(iii) Oral hygiene instructions (included as part of the global fee for oral prophylaxis);

(iv) Removable space maintainers of any type;

(v) Sealants;

(vi) Space maintainers of any type or recementation of space maintainers; or

(vii) Fluoride trays of any type.

(c) **Restorative services.** The department does not cover:

(i) Restorative/operative procedures performed in a hospital operating room or ambulatory surgical center for clients age twenty-one and older. For clients of the division of developmental disabilities, see WAC 388-535-1099;

(ii) Restorations for wear on any surface of any tooth without evidence of decay through the enamel or on the root surface:

~~(iii)~~ (iii) Gold foil restorations;

~~((iii))~~ (iv) Metallic, resin-based composite, or porcelain/ceramic inlay/onlay restorations;

~~((iv))~~ (v) Prefabricated (~~(resin crowns)~~) restorations;

~~((v))~~ (vi) Temporary or provisional crowns (including ion crowns);

~~((vi))~~ (vii) Any type of permanent or temporary crown.

For clients of the division of developmental disabilities see WAC 388-535-1099;

~~((vii))~~ (viii) Recementation of any crown, inlay/onlay, or any other type of indirect restoration;

~~((viii))~~ (ix) Sedative fillings;

~~((ix))~~ (x) Preventive (~~(restorative resins)~~) restorations;

~~((x))~~ (xi) Any type of core buildup, cast post and core, or prefabricated post and core;

~~((xi))~~ (xii) Labial veneer resin or porcelain laminate restoration;

~~((xii))~~ (xiii) Any type of coping;

~~((xiii))~~ (xiv) Crown repairs; or

~~((xix))~~ (xv) Polishing or recontouring restorations or overhang removal for any type of restoration.

(d) **Endodontic services.** The department does not cover:

- (i) Indirect or direct pulp caps;
- (ii) Endodontic therapy on any primary teeth for clients age twenty-one and older;
- (iii) Endodontic therapy on permanent bicuspid or molar teeth;
- (iv) Endodontic retreatment of permanent anterior, bicuspid, or molar teeth;
- (v) Any apexification/recalcification procedures;
- ~~((v))~~ (vi) Any apicoectomy/periradicular service; or
- ~~((vi))~~ (vii) Any surgical endodontic procedures including, but not limited to, retrograde fillings, root amputation, reimplantation, and hemisections.

(e) **Periodontic services.** The department does not cover:

- (i) Surgical periodontal services that include, but are not limited to:
 - (A) Gingival or apical flap procedures;
 - (B) Clinical crown lengthening;
 - (C) Any type of osseous surgery;
 - (D) Bone or soft tissue grafts;
 - (E) Biological material to aid in soft and osseous tissue regeneration;
 - (F) Guided tissue regeneration;
 - (G) Pedicle, free soft tissue, apical positioning, subepithelial connective tissue, soft tissue allograft, combined connective tissue and double pedicle, or any other soft tissue or osseous grafts; or
 - (H) Distal or proximal wedge procedures; or
- (ii) Nonsurgical periodontal services, including but not limited to:
 - (A) Intracoronal or extracoronal provisional splinting;
 - (B) Full mouth debridement;
 - (C) Localized delivery of chemotherapeutic agents; or
 - (D) Any other type of nonsurgical periodontal service.

(f) **Prosthodontics (removable).** The department does not cover any type of:

- (i) Removable unilateral partial dentures;
- (ii) Adjustments to any removable prosthesis;
- (iii) Repairs to any partial denture;
- (iv) Flexible base partial dentures;
- (v) Replacement of second or third molars for any removable prosthesis;
- (vi) Any type of permanent soft relines (e.g., molloplast);
- (vii) Chairside complete or partial denture relines;
- ~~((iv))~~ (viii) Any interim complete or partial denture;
- ~~((v))~~ (ix) Precision attachments; or
- ~~((vi))~~ (x) Replacement of replaceable parts for semi-precision or precision attachments.

(g) **Oral and maxillofacial prosthetic services.** The department does not cover any type of oral or facial prosthesis other than those listed in WAC 388-535-1266.

(h) **Implant services.** The department does not cover:

- (i) Any implant procedures, including, but not limited to, any tooth implant abutment (e.g., periosteal implant, epostal implant, and transosteal implant), abutments or implant sup-

ported crown, abutment supported retainer, and implant supported retainer;

- (ii) Any maintenance or repairs to procedures listed in (h)(i) of this subsection; or
- (iii) The removal of any implant as described in (h)(i) of this subsection.

(i) **Prosthodontics (fixed).** The department does not cover any type of:

- (i) Fixed partial denture pontic;
- (ii) Fixed partial denture retainer;
- (iii) Precision attachment, stress breaker, connector bar, coping, or cast post; or
- (iv) Other fixed attachment or prosthesis.

(j) **Oral and maxillofacial surgery.** The department does not cover:

- (i) Any nonemergency oral surgery performed in a hospital or ambulatory surgical center for current dental terminology (CDT) procedures;
- (ii) Brush biopsy;
- (iii) Any type of alveoplasty;
- (iv) Any type of excisions of bone tissue including, but not limited to:
 - (A) Removal of lateral exostosis;
 - (B) Removal of torus palatinus or torus mandibularis;
- and
- (C) Surgical reduction of osseous tuberosity.
- (v) Any type of surgical reduction of fibrous tuberosity;
- (vi) Removal of foreign body from mucosa, skin, or subcutaneous tissue;

- (vii) Vestibuloplasty;
- ~~((iii))~~ (viii) Frenuloplasty/frenulectomy;
- ~~((iv))~~ (ix) Any oral surgery service not listed in WAC 388-535-1267;

~~((v))~~ (x) Any oral surgery service that is not listed in the department's list of covered current procedural terminology (CPT) codes published in the department's current rules or billing instructions;

- ~~((vi))~~ (xi) Any type of occlusal orthotic splint or device, bruxing or grinding splint or device, temporomandibular joint splint or device, or sleep apnea splint or device; or
- ~~((vii))~~ (xii) Any type of orthodontic service or appliance.

(k) **Adjunctive general services.** The department does not cover:

- (i) Anesthesia to include:
 - (A) Local anesthesia as a separate procedure;
 - (B) Regional block anesthesia as a separate procedure;
 - (C) Trigeminal division block anesthesia as a separate procedure;
 - (D) Analgesia or anxiolysis as a separate procedure except for inhalation of nitrous oxide;
 - (E) Medication for oral sedation, or therapeutic drug injections, including antibiotic or injection of sedative; or
 - (F) Application of any type of desensitizing medicament or resin.
- (ii) Other general services including, but not limited to:
 - (A) Fabrication of athletic mouthguard, occlusal guard, or nightguard;
 - (B) Occlusion analysis;

- (C) Occlusal adjustment, tooth or restoration adjustment or smoothing, or odontoplasties;
- (D) Enamel microabrasion;
- (E) Dental supplies, including but not limited to, toothbrushes, toothpaste, floss, and other take home items;
- (F) Dentist's or dental hygienist's time writing or calling in prescriptions;
- (G) Dentist's or dental hygienist's time consulting with clients on the phone;
- (H) Educational supplies;
- (I) Nonmedical equipment or supplies;
- (J) Personal comfort items or services;
- (K) Provider mileage or travel costs;
- (L) Missed or late appointment fees;
- (M) Service charges of any type, including fees to create or copy charts;
- (N) Office supplies used in conjunction with an office visit; or
- (O) Teeth whitening services or bleaching, or materials used in whitening or bleaching.

WSR 10-13-132**EMERGENCY RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Medicaid Purchasing Administration)

[Filed June 22, 2010, 3:27 p.m., effective June 26, 2010]

Effective Date of Rule: June 26, 2010.

Purpose: To implement necessary language regarding:

- (1) Exemption of certain property from resources for medicaid and CHIP eligibility for Native Americans, as required under the American Recovery and Reinvestment Act (ARRA) of 2009 (recovery act); and
- (2) Payments or interest accrued on payments made under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) listed as excluded resources for SSI-related medical programs.

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0040, 388-450-0080, 388-455-0005, 388-455-0015, 388-470-0045, 388-475-0350, 388-475-0550, and 388-475-0600.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: ARRA of 2009 (recovery act), Public Law 111-5, Section 5006(b); 42 C.F.R. 435.601, EEOICPA of 2000, Public Law 106398, Sec. 1, app., Title XXXVI (Oct. 30, 2000) (Section 1 adopting as Appendix H.R. 5408), Section 3646 of the Appendix.

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

Reasons for this Finding: Amendments to these WAC sections are needed to be in compliance with federal requirements of the ARRA of 2009 (recovery act), which provides protections for American natives in medicaid and children's health insurance program (CHIP), and the EEOICPA of 2000 which provides exemption of payments or interest accrued on

payments received under the EEOICPA as countable resources for SSI-related medical programs. This emergency filing is necessary to continue the current emergency rules filed as WSR 10-06-059 on February 25, 2010. The permanent rules are scheduled for public hearing on July 6, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 8, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 8, Repealed 0.

Date Adopted: June 15, 2010.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

WAC 388-450-0040 Native American benefits and payments. This section applies to TANF/SFA, RCA, GA medical and food assistance programs.

(1) The following types of income are not counted when a client's benefits are computed:

(a) Up to two thousand dollars per individual per calendar year received under the Alaska Native Claims Settlement Act, P.L. 92-203 and 100-241;

(b) Income received from Indian trust funds or lands held in trust by the Secretary of the Interior for an Indian tribe or individual tribal member. Income includes:

(i) Interest; and

(ii) Investment income accrued while such funds are held in trust.

(c) Income received from Indian judgement funds or funds held in trust by the Secretary of the Interior distributed per capita under P.L. 93-134 as amended by P.L. 97-458 and 98-64. Income includes:

(i) Interest; and

(ii) Investment income accrued while such funds are held in trust.

(d) Up to two thousand dollars per individual per calendar year received from leases or other uses of individually owned trust or restricted lands, P.L. 103-66;

(e) Payments from an annuity fund established by the Puyallup Tribe of Indians Settlement Act of 1989, P.L. 101-41, made to a Puyallup Tribe member upon reaching twenty-one years of age; and

(f) Payments from the trust fund established by the P.L. 101-41 made to a Puyallup Tribe member.

(2) Other Native American payments and benefits that are excluded by federal law are not counted when determin-

ing a client's benefits. Examples include but are not limited to:

(a) White Earth Reservation Land Settlement Act of 1985, P.L. 99-264, Section 16;

(b) Payments made from submarginal land held in trust for certain Indian tribes as designated by P.L. 94-114 and P.L. 94-540; ~~((and))~~

(c) Payments under the Seneca Nation Settlement Act, P.L. 101-503; and

(d) For medical assistance, receipt of money by a member of a federally recognized tribe from exercising federally protected rights or extraction of protected resources, such as fishing, shell-fishing, or selling timber, is considered conversion of an exempt resource during the month of receipt. Any amounts remaining from the conversion of this exempt resource on the first of the month after the month of receipt will remain exempt if the funds were used to purchase another exempt resource. Any amounts remaining in the form of countable resources (such as in checking or savings accounts) on the first of the month after receipt, will be added to other countable resources for eligibility determinations.

AMENDATORY SECTION (Amending WSR 06-15-049, filed 7/12/06, effective 9/1/06)

WAC 388-450-0080 What is self-employment income? This section applies to cash assistance, Basic Food, and medical programs for children, pregnant women and families.

(1) Self-employment income is income you earn from running a business, performing a service, selling items you make, or reselling items to make a profit.

(2) You are self-employed if you earn income without having an employer/employee relationship with the person who pays you. This includes, but is not limited to, when:

(a) You have primary control of the way you do your work; or

(b) You report your income using IRS Schedule C, Schedule C-EZ, Schedule K-1, or Schedule SE.

(3) You usually have an employer/employee relationship when:

(a) The person you provide services for has primary control of how you do your work; or

(b) You get an IRS form W-2 to report your income.

(4) Your self-employment does not have to be a licensed business for your business or activity to qualify as self-employment. Some examples of self-employment include:

(a) Child care that requires a license under chapter 74.15 RCW;

(b) Driving a taxi cab;

(c) Farming/fishing;

(d) Odd jobs such as mowing lawns, house painting, gutter cleaning, or car care;

(e) Running a lodging for roomers and/or boarders. Roomer income includes money paid to you for shelter costs by someone not in your assistance unit who lives with you when:

(i) You own or are buying your residence; or

(ii) You rent all or a part of your residence and the total rent you charge all others in your home is more than your total rent.

(f) Running an adult family home;

(g) Providing services such as a massage therapist or a professional escort;

(h) Retainer fees to reserve a bed for a foster child;

(i) Selling items you make or items that are supplied to you;

(j) Selling or donating your own biological products such as providing blood or reproductive material for profit;

(k) Working as an independent contractor; and

(l) Running a business or trade either on your own or in a partnership.

(5) For medical programs, we do not count receipt of money by a member of a federally-recognized tribe from exercising federally protected rights or extraction of exempt resources as self-employment income (such as fishing, shell-fishing, or selling timber from protected tribal land). We count this as conversion of a resource. See WAC 388-450-0040.

(6) If you are an employee of a company or person who does the activities listed in subsection (2) above as a part of your job, we do not count the work you do as self-employment.

~~((6))~~ (7) Self-employment income is counted as earned income as described in WAC 388-450-0030 except as described in subsection ~~((7))~~ (8).

~~((7))~~ (8) For cash assistance and Basic Food there are special rules about renting or leasing out property or real estate that you own.

(a) We count the income you get as unearned income unless you spend at least twenty hours per week managing the property.

(b) For TANF/SFA, we count the income as unearned income unless the use of the property is a part of your approved individual responsibility plan.

AMENDATORY SECTION (Amending WSR 08-11-105, filed 5/20/08, effective 7/1/08)

WAC 388-455-0005 How do lump sum payments affect benefits? (1) A lump sum payment is money that someone receives but does not expect to receive on a continuing basis.

(2) For cash assistance and family medical programs, we count a lump sum payment:

(a) As a resource, under WAC 388-455-0010, if it was awarded for wrongful death, personal injury, damage, or loss of property.

(b) As income, under WAC 388-455-0015, if it was received for any other reason, with the exception of subsection (3) of this section.

(3) For medical programs, receipt of a lump sum by a member of a federally-recognized tribe from exercising federally protected rights or extraction of exempt resources is considered an exempt resource in the month of receipt. Any amounts remaining on the first of the next month will be counted if they remain in the form of a countable resource. Any amounts remaining the first of the month after conver-

sion will remain exempt if they are in the form of an exempt resource.

(4) For Basic Food, we count lump sum payments for a previous period as a resource under WAC 388-470-0055. We count any amount for current or future months as income to your assistance unit.

AMENDATORY SECTION (Amending WSR 08-11-105, filed 5/20/08, effective 7/1/08)

WAC 388-455-0015 When and how does the department treat lump sum payments as income for cash assistance and family medical programs. This section applies to cash and family medical programs.

(1) If you receive a lump sum payment that is not awarded for wrongful death, personal injury, damage, or loss of property, we count this payment as income to your assistance unit. We budget this income according to effective date rules under WAC 388-418-0020.

(2) For cash assistance, if you cannot access some or all of your lump sum payment for reasons beyond your control, we will adjust the amount we count as income to your assistance unit as described under WAC 388-450-0005.

(3) To decide the amount of your lump sum we count as income, we take the following steps:

(a) First, we subtract the value of your current resources from the resource limit under WAC 388-470-0005;

(b) Then, we subtract the difference in (3)(a) from the total amount of the lump sum; and

(c) The amount left over is what we count as income, as specified in WAC 388-450-0025 and 388-450-0030.

(4) When the countable amount of the lump sum payment is:

(a) Less than your payment standard plus additional requirements, we count it as income in the month it is received.

(b) More than one month's payment standard plus additional requirements but less than two months:

(i) We count the portion equal to one month's payment standard plus additional requirements as income in the month it is received; and

(ii) We count the remainder as income the following month.

(c) Equal to or greater than the total of the payment standard plus additional requirements for the month of receipt and the following month, we count the payment as income for those months.

(5) If you receive a one-time lump sum payment, and you are ineligible or disqualified from receiving cash benefits:

(a) We allocate the payment to meet your needs as described under WAC 388-450-0105; and

(b) Count the remainder as a lump sum payment available to eligible members of your assistance unit according to the rules of this section.

(6) For family medical programs:

(a) We count lump sum payments as income in the month you receive the payment.

(b) We count lump sums received by a member of a federally-recognized tribe for exercising federally protected

rights or extraction of exempt resources as an exempt resource in the month of receipt. Any amount remaining the first of the next month in the form of an exempt resource will remain exempt. Any amount remaining the first of the month will be countable if in the form of a countable resource.

(c) If you cannot access some or all of your lump sum payment for reasons beyond your control, will adjust the amount we count as income to your assistance unit as described under WAC 388-450-0005.

~~((e))~~ (d) We count any money that remains on the first of the next month as a resource except for recipients as described in WAC 388-470-0026 (1) and (2).

AMENDATORY SECTION (Amending WSR 09-09-103, filed 4/20/09, effective 4/21/09)

WAC 388-470-0045 How do my resources count toward the resource limits for cash assistance and family medical programs? (1) We count the following resources toward your assistance unit's resource limits for cash assistance and family medical programs to decide if you are eligible for benefits under WAC 388-470-0005:

(a) Liquid resources not specifically excluded in subsection (2) below. These are resources that are easily changed into cash. Some examples of liquid resources are:

(i) Cash on hand;

(ii) Money in checking or savings accounts;

(iii) Money market accounts or certificates of deposit (CDs) less any withdrawal penalty;

(iv) Available retirement funds or pension benefits, less any withdrawal penalty;

(v) Stocks, bonds, annuities, or mutual funds less any early withdrawal penalty;

(vi) Available trusts or trust accounts; ~~((f))~~

(vii) Lump sum payments as described in chapter 388-455 WAC; or

(viii) Any funds retained beyond the month of receipt from conversion of federally protected rights or extraction of exempt resources by members of a federally-recognized tribe that are in the form of countable resources.

(b) The cash surrender value (CSV) of whole life insurance policies.

(c) The CSV over fifteen hundred dollars of revocable burial insurance policies or funeral agreements.

(d) The amount of a child's irrevocable educational trust fund that is over four thousand dollars per child.

(e) Funds withdrawn from an individual development account (IDA) if they were removed for a purpose other than those specified in RCW 74.08A.220.

(f) Any real property like a home, land or buildings not specifically excluded in subsection (3) below.

(g) The equity value of vehicles as described in WAC 388-470-0070.

(h) Personal property that is not:

(i) A household good;

(ii) Needed for self-employment; or

(iii) Of "great sentimental value," due to personal attachment or hobby interest.

(i) Resources of a sponsor as described in WAC 388-470-0060.

- (j) For cash assistance only, sales contracts.
- (2) The following types of liquid resources do not count when we determine your eligibility:
- (a) Bona fide loans, including student loans;
 - (b) Basic Food benefits;
 - (c) Income tax refunds in the month of receipt;
 - (d) Earned income tax credit (EITC) in the month received and the following month;
 - (e) Advance earned income tax credit payments;
 - (f) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;
 - (g) Individual development accounts (IDAs) established under RCW 74.08A.220;
 - (h) Retroactive cash benefits or TANF/SFA benefits resulting from a court order modifying a decision of the department;
 - (i) Underpayments received under chapter 388-410 WAC;
 - (j) Educational benefits that are excluded as income under WAC 388-450-0035;
 - (k) The income and resources of an SSI recipient;
 - (l) A bank account jointly owned with an SSI recipient if SSA already counted the money for SSI purposes;
 - (m) Foster care payments provided under Title IV-E and/or state foster care maintenance payments;
 - (n) Adoption support payments;
 - (o) Self-employment accounts receivable that the client has billed to the customer but has been unable to collect;
- ~~((and))~~
- (p) Resources specifically excluded by federal law; and
 - (q) For medical benefits, receipts from exercising federally protected rights or extracted exempt resources (fishing, shell-fishing, timber sales, etc.) during the month of receipt for a member of a federally-recognized tribe.
- (3) The following types of real property do not count when we determine your eligibility:
- (a) Your home and the surrounding property that you, your spouse, or your dependents live in;
 - (b) A house you do not live in, if you plan on returning to the home and you are out of the home because of:
 - (i) Employment;
 - (ii) Training for future employment;
 - (iii) Illness; or
 - (iv) Natural disaster or casualty.
 - (c) Property that:
 - (i) You are making a good faith effort to sell;
 - (ii) You intend to build a home on, if you do not already own a home;
 - (iii) Produces income consistent with its fair market value, even if used only on a seasonal basis; or
 - (iv) A household member needs for employment or self-employment. Property excluded under this section and used by a self-employed farmer or fisher retains its exclusion for one year after the household member stops farming or fishing.
 - (d) Indian lands held jointly with the Tribe, or land that can be sold only with the approval of the Bureau of Indian Affairs.
- (4) If you deposit excluded liquid resources into a bank account with countable liquid resources, we do not count the

excluded liquid resources for six months from the date of deposit.

(5) If you sell your home, you have ninety days to reinvest the proceeds from the sale of a home into an exempt resource.

(a) If you do not reinvest within ninety days, we will determine whether there is good cause to allow more time. Some examples of good cause are:

(i) Closing on your new home is taking longer than anticipated;

(ii) You are unable to find a new home that you can afford;

(iii) Someone in your household is receiving emergent medical care; or

(iv) Your children are in school and moving would require them to change schools.

(b) If you have good cause, we will give you more time based on your circumstances.

(c) If you do not have good cause, we count the money you got from the sale as a resource.

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

AMENDATORY SECTION (Amending WSR 04-09-003, filed 4/7/04, effective 6/1/04)

WAC 388-475-0350 SSI-related medical—Property and contracts excluded as resources. (1) The department does not count the following resources when determining eligibility for SSI-related medical assistance:

(a) A client's household goods and personal effects;

(b) One home (which can be any shelter), including the land on which the dwelling is located and all contiguous property and related out-buildings in which the client has ownership interest, when:

(i) The client uses the home as his or her primary residence; or

(ii) The client's spouse lives in the home; or

(iii) The client does not currently live in the home but the client or his/her representative has stated the client intends to return to the home; or

(iv) A relative, who is financially or medically dependent on the client, lives in the home and the client, client's representative, or dependent relative has provided a written statement to that effect.

(c) The value of ownership interest in jointly owned real property is an excluded resource for as long as sale of the property would cause undue hardship to a co-owner due to loss of housing. Undue hardship would result if the co-owner:

(i) Uses the property as his or her principal place of residence;

(ii) Would have to move if the property were sold; and

(iii) Has no other readily available housing.

(2) Cash proceeds from the sale of the home described in subsection (1)(b) above are not considered if the client uses them to purchase another home by the end of the third month after receiving the proceeds from the sale.

(3) An installment contract from the sale of the home described in subsection (1)(b) above is not a resource as long as the person plans to use the entire down payment and the

entire principal portion of a given installment payment to buy another excluded home, and does so within three full calendar months after the month of receiving such down payment or installment payment.

(4) The value of sales contracts is excluded when the:

- (a) Current market value of the contract is zero,
- (b) Contract cannot be sold, or

(c) Current market value of the sales contract combined with other resources does not exceed the resource limits.

(5) Sales contracts executed before December 1, 1993, are exempt resources as long as they are not transferred to someone other than a spouse.

(6) A sales contract for the sale of the client's principal place of residence executed between December 1, 1993 and May 31, 2004 is considered an exempt resource unless it has been transferred to someone other than a spouse and it:

(a) Provides interest income within the prevailing interest rate at the time of the sale;

(b) Requires the repayment of a principal amount equal to the fair market value of the property; and

(c) The term of the contract does not exceed thirty years.

(7) A sales contract executed on or after June 1, 2004 on a home that was the principal place of residence for the client at the time of institutionalization is considered exempt as long as it is not transferred to someone other than a spouse and it:

(a) Provides interest income within the prevailing interest rate at the time of the sale;

(b) Requires the repayment of a principal amount equal to the fair market value of the property within the anticipated life expectancy of the client; and

(c) The term of the contract does not exceed thirty years.

(8) Payments received on sales contracts of the home described in subsection (1)(b) above are treated as follows:

(a) The interest portion of the payment is treated as unearned income in the month of receipt of the payment;

(b) The principal portion of the payment is treated as an excluded resource if reinvested in the purchase of a new home within three months after the month of receipt;

(c) If the principal portion of the payment is not reinvested in the purchase of a new home within three months after the month of receipt, that portion of the payment is considered a liquid resource as of the date of receipt.

(9) Payments received on sales contracts described in subsection (4) are treated as follows:

(a) The principal portion of the payment on the contract is treated as a resource and counted toward the resource limit to the extent retained at the first moment of the month following the month of receipt of the payment; and

(b) The interest portion is treated as unearned income the month of receipt of the payment.

(10) For sales contracts that meet the criteria in subsections (5), (6), or (7) but do not meet the criteria in subsections (3) or (4), both the principal and interest portions of the payment are treated as unearned income in the month of receipt.

(11) Property essential to self-support is not considered a resource within certain limits. The department places property essential to self-support in several categories:

(a) Real and personal property used in a trade or business (income-producing property), such as:

- (i) Land,
- (ii) Buildings,
- (iii) Equipment,
- (iv) Supplies,
- (v) Motor vehicles, and
- (vi) Tools.

(b) Nonbusiness income-producing property, such as:

(i) Houses or apartments for rent, or

(ii) Land, other than home property.

(c) Property used to produce goods or services essential to an individual's daily activities, such as land used to produce vegetables or livestock, which is only used for personal consumption in the individual's household. This includes personal property necessary to perform daily functions including vehicles such as boats for subsistence fishing and garden tractors for subsistence farming, but does not include other vehicles such as those that qualify as automobiles (cars, trucks).

(12) The department will exclude an individual's equity in real and personal property used in a trade or business (income producing property listed in subsection (11)(a) above) regardless of value as long as it is currently in use in the trade or business and remains used in the trade or business.

(13) The department excludes up to six thousand dollars of an individual's equity in nonbusiness income-producing property listed in subsection (11)(b) above, if it produces a net annual income to the individual of at least six percent of the excluded equity.

(a) If a person's equity in the property is over six thousand dollars, only the amount over six thousand dollars is counted toward the resource limit, as long as the net annual income requirement of six percent is met on the excluded equity.

(b) If the six percent requirement is not met due to circumstances beyond the person's control, and there is a reasonable expectation that the activities will again meet the six percent rule, the same exclusions as in subsection (13)(a) above apply.

(c) If a person has more than one piece of property in this category, each is looked at to see if it meets the six percent return and the total equities of all those properties are added to see if the total is over six thousand dollars. If the total is over the six thousand dollars limit, the amount exceeding the limit is counted toward the resource limit.

(d) The equity in each property that does not meet the six percent annual net income limit is counted toward the resource limit, with the exception of property that represents the authority granted by a governmental agency to engage in an income-producing activity if it is:

(i) Used in a trade or business or nonbusiness income-producing activity; or

(ii) Not used due to circumstances beyond the individual's control, e.g., illness, and there is a reasonable expectation that the use will resume.

(14) Property used to produce goods or services essential to an individual's daily activities is excluded if the individual's equity in the property does not exceed six thousand dollars.

(15) Personal property used by an individual for work is not counted, regardless of value, while in current use, or if the required use for work is reasonably expected to resume.

(16) Interests in trust or in restricted Indian land owned by an individual who is of Indian descent from a federally recognized Indian tribe or held by the spouse or widow/er of that individual, is not counted if permission of the other individuals, the tribe, or an agency of the federal government must be received in order to dispose of the land.

(17) Receipt of money by a member of a federally-recognized tribe from exercising federally protected rights or extraction of exempt resources, such as fishing, shell-fishing, or selling timber from protected land, is considered conversion of an exempt resource during the month of receipt. Any amount remaining from the conversion of this exempt resource on the first of the month after the month of receipt will remain exempt if it is used to purchase another exempt resource. Any amount remaining in the form of a countable resource (such as in a checking or savings account) on the first of the month after receipt, will be added to other countable resources for eligibility determinations.

AMENDATORY SECTION (Amending WSR 06-04-046, filed 1/26/06, effective 2/26/06)

WAC 388-475-0550 SSI-related medical—All other excluded resources. All resources described in this section are excluded resources for SSI-related medical programs. Unless otherwise stated, interest earned on the resource amount is counted as unearned income.

(1) Resources necessary for a client who is blind or disabled to fulfill a department approved self-sufficiency plan.

(2) Retroactive payments from SSI or RSDI, including benefits a client receives under the interim assistance reimbursement agreement with the Social Security Administration, are excluded for nine months following the month of receipt. This exclusion applies to:

(a) Payments received by the client, spouse, or any other person financially responsible for the client;

(b) SSI payments for benefits due for the month(s) before the month of continuing payment;

(c) RSDI payments for benefits due for a month that is two or more months before the month of continuing payment; and

(d) Proceeds from these payments as long as they are held as cash, or in a checking or savings account. The funds may be commingled with other funds, but must remain identifiable from the other funds for this exclusion to apply. This exclusion does not apply once the payments have been converted to any other type of resource.

(3) All resources specifically excluded by federal law, such as those described in subsections (4) through ~~((+1))~~ 12 as long as such funds are identifiable.

(4) Payments made under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(5) Payments made to Native Americans as listed in 20 CFR 416.1182, Appendix to subpart K, section IV, paragraphs (b) and (c), and in 20 CFR 416.1236.

(6) The following Native American/Alaska Native funds are excluded resources:

(a) Resources received from a Native Corporation under the Alaska Native Claims Settlement Act, including:

(i) Shares of stock held in a regional or village corporation;

(ii) Cash or dividends on stock received from the Native Corporation up to two thousand dollars per person per year;

(iii) Stock issued by a native corporation as a dividend or distribution on stock;

(iv) A partnership interest;

(v) Land or an interest in land; and

(vi) An interest in a settlement trust.

(b) All funds contained in a restricted Individual Indian Money (IIM) account.

(7) Exercise of federally protected rights, including extraction of exempt resources by a member of a federally-recognized tribe during the month of receipt. Any funds from the conversion of the exempt resource which are retained on the first of the month after the month of receipt will be considered exempt if they are in the form of an exempt resource, and will be countable if retained in the form of a countable resource.

(8) Restitution payment and any interest earned from this payment to persons of Japanese or Aleut ancestry who were relocated and interned during war time under the Civil Liberties Act of 1988 and the Aleutian and Pribilof Islands Restitution Act.

~~((8))~~ (9) Funds received from the Agent Orange Settlement Fund or any other funds established to settle Agent Orange liability claims.

~~((9))~~ (10) Payments or interest accrued on payments received under the Radiation Exposure Compensation Act received by the injured person, the surviving spouse, children, grandchildren, or grandparents.

(11) Payments or interest accrued on payments received under the Energy Employees Occupational Illness Compensation Act of 2000 (EEOICA) received by the injured person, the surviving spouse, children, grandchildren, or grandparents.

~~((+0))~~ (12) Payments from:

(a) The Dutch government under the Netherlands' Act on Benefits for Victims of Persecution (WUV).

(b) The Victims of Nazi Persecution Act of 1994 to survivors of the Holocaust.

(c) Susan Walker vs. Bayer Corporation, et al., 96-C-5024 (N.D. Ill.) (May 8, 1997) settlement funds.

(d) Ricky Ray Hemophilia Relief Fund Act of 1998 P.L. 105-369.

~~((+1))~~ (13) The unspent social insurance payments received due to wage credits granted under sections 500 through 506 of the Austrian General Social Insurance Act.

~~((+2))~~ (14) Earned income tax credit refunds and payments are excluded as resources for nine months after the month of receipt.

~~((+3))~~ (15) Payments from a state administered victim's compensation program for a period of nine calendar months after the month of receipt.

~~((14))~~ (16) Cash or in-kind items received as a settlement for the purpose of repairing or replacing a specific excluded resource are excluded:

(a) For nine months. This includes relocation assistance provided by state or local government.

(b) Up to a maximum of thirty months, when:

(i) The client intends to repair or replace the excluded resource; and

(ii) Circumstances beyond the control of the settlement recipient prevented the repair or replacement of the excluded resource within the first or second nine months of receipt of the settlement.

(c) For an indefinite period, if the settlement is from federal relocation assistance.

(d) Permanently, if the settlement is assistance received under the Disaster Relief and Emergency Assistance Act or other assistance provided under a federal statute because of a catastrophe which is declared to be a major disaster by the President of the United States, or is comparable assistance received from a state or local government or from a disaster assistance organization. Interest earned on this assistance is also excluded from resources. Any cash or in-kind items received as a settlement and excluded under this subsection are considered as available resources when not used within the allowable time periods.

~~((15))~~ (17) Insurance proceeds or other assets recovered by a Holocaust survivor as defined in WAC 388-470-0026(4).

~~((16))~~ (18) Pension funds owned by an ineligible spouse. Pension funds are defined as funds held in a(n):

(a) Individual retirement account (IRA) as described by the IRS code; or

(b) Work-related pension plan (including plans for self-employed individuals, known as Keogh plans).

~~((17))~~ (19) Cash payments received from a medical or social service agency to pay for medical or social services are excluded for one calendar month following the month of receipt.

~~((18))~~ (20) SSA- or DVR-approved plans for achieving self-support (PASS) accounts, allowing blind or disabled individuals to set aside resources necessary for the achievement of the plan's goals, are excluded.

~~((19))~~ (21) Food and nutrition programs with federal involvement. This includes Washington Basic Food, school reduced and free meals and milk programs and WIC.

~~((20))~~ (22) Gifts to, or for the benefit of, a person under eighteen years old who has a life-threatening condition, from an organization described in section 501 (c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of that Code, as follows:

(a) In-kind gifts that are not converted to cash; or

(b) Cash gifts up to a total of two thousand dollars in a calendar year.

~~((21))~~ (23) Veteran's payments made to, or on behalf of, natural children of Vietnam veterans regardless of their age or marital status, for any disability resulting from spina bifida suffered by these children.

~~((22))~~ (24) The following are among assets that are not considered resources and as such are neither excluded nor counted:

(a) Home energy assistance/support and maintenance assistance;

(b) Retroactive in-home supportive services payments to ineligible spouses and parents; and

(c) Gifts of domestic travel tickets. For a more complete list please see POMS @ <http://policy.ssa.gov/poms.nsf/lnx/0501130050>.

AMENDATORY SECTION (Amending WSR 04-09-004, filed 4/7/04, effective 6/1/04)

WAC 388-475-0600 SSI-related medical—Definition of income. (1) Income is anything an individual receives in cash or in-kind that can be used to meet his/her needs for food, clothing, or shelter. Income can be earned or unearned.

(2) Some receipts are not income because they do not meet the definition of income above, including:

(a) Cash or in-kind assistance from federal, state, or local government programs whose purpose is to provide medical care or services;

(b) Some in-kind payments that are not food, clothing or shelter coming from nongovernmental programs whose purposes are to provide medical care or medical services;

(c) Payments for repair or replacement of an exempt resource;

(d) Refunds or rebates for money already paid;

(e) Receipts from sale of a resource; ~~((and))~~

(f) Replacement of income already received. See 20 CFR 416.1103 for a more complete list of receipts that are not income; and

(g) Receipts from extraction of exempt resources for a member of a federally-recognized tribe.

(3) Earned income includes the following types of payments:

(a) Gross wages and salaries, including garnished amounts;

(b) Commissions and bonuses;

(c) Severance pay;

(d) Other special payments received because of employment;

(e) Net earnings from self-employment (WAC 388-475-0840 describes net earnings);

(f) Self-employment income of tribal members unless the income is specifically exempted by treaty;

(g) Payments for services performed in a sheltered workshop or work activities center;

(h) Royalties earned by an individual in connection with any publication of his/her work and any honoraria received for services rendered; or

(i) In-kind payments made in lieu of cash wages, including the value of food, clothing or shelter.

(4) Unearned income is all income that is not earned income. Some types of unearned income are:

(a) Annuities, pensions, and other periodic payments;

(b) Alimony and support payments;

(c) Dividends and interest;

(d) Royalties (except for royalties earned by an individual in connection with any publication of his/her work and any honoraria received for services rendered which would be earned income);

- (e) Capital gains;
- (f) Rents;
- (g) Benefits received as the result of another's death to the extent that the total amount exceeds the expenses of the deceased person's last illness and burial paid by the recipient;
- (h) Gifts;
- (i) Inheritances; ((~~o~~))
- (j) Prizes and awards; or
- (k) Amounts received by tribal members from gaming revenues.

(5) Some items which may be withheld from income, but the department considers as received income are:

- (a) Federal, state, or local income taxes;
 - (b) Health or life insurance premiums;
 - (c) SMI premiums;
 - (d) Union dues;
 - (e) Penalty deductions for failure to report changes;
 - (f) Loan payments;
 - (g) Garnishments;
 - (h) Child support payments, court ordered or voluntary (WAC 388-475-0900 has an exception for deemors);
 - (i) Service fees charged on interest-bearing checking accounts;
 - (j) Inheritance taxes;
 - (k) Guardianship fees if presence of a guardian is not a requirement for receiving the income.
- (6) Countable income, for the purposes of this chapter, means all income that is available to the individual:
- (a) If it cannot be excluded, and
 - (b) After deducting all allowable disregards and deductions.

WSR 10-14-008
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-162—Filed June 24, 2010, 9:12 a.m., effective June 26, 2010]

Effective Date of Rule: June 26, 2010.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-25500Y; and amending WAC 220-56-255.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: There is sufficient halibut quota remaining in Marine Area 1 to allow two more days of recreational halibut fishing. This rule conforms to federal action taken by the Pacific Fisheries Management Council. There is insufficient time to adopt permanent rules.

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

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: June 24, 2010.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-56-25500Z Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-56-250 and WAC 220-56-255, effective June 26, 2010, until further notice, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section:

(1) **Catch Record Card Area 2 (Northern Nearshore fishery)** - Those waters from 47 °31.70'N. latitude south to 46°58.00'N. latitude and east of a line approximating the 30-fathom depth contour as defined by the following coordinates: Open seven days per week until further notice:

47 ° 31.70 N. lat, 124 ° 37.03 W. long

47 ° 25.67 N. lat, 124 ° 34.79 W. long

47 ° 12.82 N. lat, 124 ° 29.12 W. long

46 ° 58.00 N. lat, 124 ° 24.24 W. long

(2) Daily limit one halibut, no minimum size limit. The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit.

(3) All other permanent rules remain in effect.

REPEALER

The following section of the Washington Administrative code is repealed effective June 26, 2010:

WAC 220-56-25500Y Halibut—Areas and seasons.
(10-146)

WSR 10-14-011
EMERGENCY RULES
DEPARTMENT OF PERSONNEL

[Filed June 24, 2010, 1:23 p.m., effective June 24, 2010, 1:23 p.m.]

Effective Date of Rule: Immediately.

Purpose: These changes are a result of the passage of ESSB 6503. This bill requires immediate action to reduce expenditures during the 2009-2011 fiscal biennium. It is the intent of this bill that state agencies of the legislative branch,

judicial branch, and executive branch including institutions of higher education, shall achieve a reduction in government operating expenses as provided in the bill. For some state employers this means implementing temporary layoffs. There are provisions in the bill which require us to make changes to the current temporary layoff rules in order to implement temporary layoffs as described in the bill.

Citation of Existing Rules Affected by this Order: Amending WAC 357-01-174, 357-31-390, 357-31-435, 357-31-190, 357-46-067, 357-46-066, 357-58-553, 357-58-554, 357-31-010, 357-31-020, 357-31-120, 357-31-125, 357-31-180, and 357-31-175.

Statutory Authority for Adoption: Chapter 41.06 RCW.

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

Reasons for this Finding: State agencies and/or institutions would not be able to implement temporary layoffs as described in ESSB 6503 without adoption of these rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 3, Amended 14, 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 3, Amended 14, Repealed 0.

Date Adopted: June 24, 2010.

Eva Santos
Director

AMENDATORY SECTION (Amending WSR 05-12-093, filed 5/27/05, effective 7/1/05)

WAC 357-01-174 Full-time employee. An employee who is scheduled to work:

- Forty hours in one workweek;
- For hospital personnel assigned to a fourteen-day schedule, eighty hours over a fourteen-day period; or
- For law enforcement positions, one hundred sixty hours in the twenty-eight-day work period.

For the purpose of this definition, time spent on temporary layoff will count towards the hourly requirement.

AMENDATORY SECTION (Amending WSR 09-03-013, filed 1/9/09, effective 2/13/09)

WAC 357-31-010 Which employees qualify for holiday compensation? (1) Full-time general government employees who work full monthly schedules qualify for holiday

compensation if they are employed before the holiday and are in pay status:

(a) For at least eighty nonovertime hours during the month of the holiday; or

(b) For the entire work shift preceding the holiday.

(c) Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(2) Full-time higher education employees and cyclic year position employees who work full monthly schedules qualify for holiday compensation if they are in pay status for the entire work shift preceding the holiday.

(3) Cyclic year position employees scheduled to work less than full monthly schedules throughout their work year qualify for holiday compensation if they work or are in pay status on their last regularly scheduled working day before the holiday(s) in that month.

(4) Part-time general government employees who are in pay status during the month of the holiday qualify for holiday pay on a pro rata basis in accordance with WAC 357-31-020, except that part-time employees hired during the month of the holiday will not receive compensation for holidays that occur prior to their hire date.

(5) Part-time higher education employees who satisfy the requirements of subsection (1) of this section are entitled to the number of paid hours on a holiday that their monthly schedule bears to a full-time schedule.

AMENDATORY SECTION (Amending WSR 05-08-136, filed 4/6/05, effective 7/1/05)

WAC 357-31-020 For general government part-time employees, how is holiday compensation (~~pro-rated~~) prorated? Compensation for holidays (including personal holiday) for part-time general government employees will be proportionate to the number of hours in pay status in the month to that required for full-time employment, excluding all holiday hours. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this section.

AMENDATORY SECTION (Amending WSR 05-08-136, filed 4/6/05, effective 7/1/05)

WAC 357-31-120 Do employees accrue sick leave if they have taken leave without pay during the month? (1) Full-time general government employees who are in pay status for less than eighty nonovertime hours in a month do not earn a monthly accrual of sick leave. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(2) Full-time and part-time higher education employees who have more than ten working days of leave without pay in a month do not earn a monthly accrual of sick leave.

AMENDATORY SECTION (Amending WSR 05-08-136, filed 4/6/05, effective 7/1/05)

WAC 357-31-125 For general government part-time employees, how is leave accrual pro rated? Vacation and sick leave accruals for part-time general government employ-

ees will be proportionate to the number of hours in pay status in the month to that required for full-time employment. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this section.

AMENDATORY SECTION (Amending WSR 05-08-137, filed 4/6/05, effective 7/1/05)

WAC 357-31-180 When an employee has taken leave without pay during the month is the employee's rate of accrual adjusted for the leave without pay? Leave without pay taken for military leave of absence without pay, for temporary layoff as provided in WAC 357-46-063, or for scheduled mandatory periods of leave without pay for employees in cyclic year positions do not affect the rate at which employees accrue vacation leave. For all other periods of leave without pay, the following applies:

(1) When a general government employee takes leave without pay which exceeds fifteen consecutive calendar days, the employee's anniversary date and unbroken service date are adjusted in accordance with WAC 357-31-345. These adjustments affect the rate at which an employee accrues vacation leave.

(2) When a higher education employee takes more than ten working days of leave without pay, that month does not qualify as a month of employment under WAC 357-31-165.

AMENDATORY SECTION (Amending WSR 05-08-137, filed 4/6/05, effective 7/1/05)

WAC 357-31-175 Do employees accrue vacation leave if they have taken leave without pay during the month? (1) Full-time general government employees who are in pay status for less than eighty nonovertime hours in a month do not earn a monthly accrual of vacation leave. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(2) Full-time and part-time higher education employees who have more than ten working days of leave without pay in a month do not earn a monthly accrual of vacation leave.

AMENDATORY SECTION (Amending WSR 05-08-137, filed 4/6/05, effective 7/1/05)

WAC 357-31-190 When can an employee start to use accrued vacation leave? An employee (part-time or full-time) must complete six months of continuous state employment before ~~((he/she))~~ they can use vacation leave. The only exception to the six-month requirement is that during the 2009-2011 fiscal biennium if an employee's monthly full-time equivalent base salary is two thousand five hundred dollars or less and the employee's office or institution enacts a temporary layoff as described in chapter 32, Laws of 2010, the employee can use accrued vacation leave.

AMENDATORY SECTION (Amending WSR 08-15-043, filed 7/11/08, effective 10/1/08)

WAC 357-31-390 What criteria does an employee have to meet to be eligible to receive shared leave? An

employee may be eligible to receive shared leave if the agency head or higher education institution president has determined the employee meets the following criteria:

(1) The employee:

(a) Suffers from, or has a relative or household member suffering from, an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature;

(b) The employee has been called to service in the uniformed services;

(c) A state of emergency has been declared anywhere within the United States by the federal or any state government and the employee has the needed skills to assist in responding to the emergency or its aftermath and volunteers ~~((his/her))~~ their services to either a governmental agency or to a nonprofit organization engaged in humanitarian relief in the devastated area, and the governmental agency or nonprofit organization accepts the employee's offer of volunteer services; or

(d) The employee is a victim of domestic violence, sexual assault, or stalking as defined in RCW 41.04.655.

(e) During the 2009-2011 fiscal biennium only, an employee whose monthly full-time equivalent base salary is two thousand five hundred dollars or less is eligible to use shared leave in lieu of temporary layoff as described in chapter 32, Laws of 2010.

(2) The illness, injury, impairment, condition, call to service, or emergency volunteer service, or consequence of domestic violence, sexual assault, or stalking has caused, or is likely to cause, the employee to:

(a) Go on leave without pay status; or

(b) Terminate state employment.

(3) The employee's absence and the use of shared leave are justified.

(4) The employee has depleted or will shortly deplete ~~((his or her))~~ their:

(a) Compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, accrued vacation leave, and accrued sick leave if the employee qualifies under subsection (1)(a) of this section; or

(b) Compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, accrued vacation leave, and paid military leave allowed under RCW 38.40.060 if the employee qualifies under subsection (1)(b) of this section; or

(c) Compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, and accrued vacation leave if the employee qualifies under (1)(c) or (d) of this section.

(d) Compensatory time, recognition leave as described in WAC 357-31-565, and accrued vacation leave if the employee qualifies under subsection (1)(e) of this section.

(5) The employee has abided by employer rules regarding:

(a) Sick leave use if the employee qualifies under subsection (1)(a) of this section; or

(b) Military leave if the employee qualifies under subsection (1)(b) of this section.

(6) If the illness or injury is work-related and the employee has diligently pursued and been found to be ineli-

gible for benefits under chapter 51.32 RCW if the employee qualifies under subsection (1)(a) of this section.

AMENDATORY SECTION (Amending WSR 08-15-043, filed 7/11/08, effective 10/1/08)

WAC 357-31-435 Must employees use their own leave before using shared leave? Employees who qualify for shared leave under WAC 357-31-390 (1)(a) must first use all compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, sick leave, and vacation leave that they have accrued before using shared leave. Employees who qualify under WAC 357-31-390 (1)(b) must first use all of their compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, accrued vacation leave, and paid military leave allowed under RCW 38.40.060 before using shared leave. Employees who qualify under WAC 357-31-390 (1)(c) and (d) must first use all compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, and vacation leave that they have accrued before using shared leave. Employees who qualify for shared leave under WAC 357-31-390 (1)(e) must first use all compensatory time, recognition leave as described in WAC 357-31-565, and vacation leave that they have accrued before using shared leave.

NEW SECTION

WAC 357-46-069 How is an employee's temporary layoff day determined when an employee works a night shift schedule which begins one calendar day and ends on the next? For employees working a shift which begins on one calendar day and ends on the next, the twenty-four hour period during which the temporary layoff occurs must be determined by the employer to start either at the start of the shift that begins on the day of temporary layoff, or the start of the shift that precedes the day of temporary layoff. For example:

The employer has determined that July 12th will be a temporary layoff day. The employee's regular work schedule is 6:00 p.m. to 3:00 a.m. Sunday through Thursday. The employer must determine if the employee's temporary layoff will occur for the shift which begins at 6:00 p.m. on July 11th or the shift that begins at 6:00 p.m. on July 12th.

NEW SECTION

WAC 357-58-556 How is a WMS employee's temporary layoff day determined when an employee works a night shift schedule which begins one calendar day and ends on the next? For WMS employees working a shift which begins on one calendar day and ends on the next, the twenty-four hour period during which the temporary layoff occurs must be determined by the employer to start either at the start of the shift that begins on the day of temporary layoff, or the start of the shift that precedes the day of temporary layoff. For example:

The employer has determined that July 12th will be a temporary layoff day. The employee's regular work schedule is 6:00 p.m. to 3:00 a.m. Sunday through Thursday. The employer must determine if the employee's temporary layoff

will occur for the shift which begins at 6:00 p.m. on July 11th or the shift that begins at 6:00 p.m. on July 12th.

NEW SECTION

WAC 357-52-012 Does an employee who has been temporarily laid off under chapter 32, Laws of 2010 have the right to appeal the temporary layoff? An employee who has been temporarily laid off under chapter 32, Laws of 2010 does not have the right to appeal the temporary layoff.

AMENDATORY SECTION (Amending WSR 05-12-074, filed 5/27/05, effective 7/1/05)

WAC 357-46-066 What is the notice requirement to temporarily layoff an employee? An employer must provide the employee seven calendar days' notice of temporary layoff. The temporary layoff notice must inform the employee of ~~((his/her))~~ their status during temporary layoff and the expected duration of the temporary layoff. Notice of temporary layoff may be provided by using alternative methods as described in WAC 357-04-105.

AMENDATORY SECTION (Amending WSR 09-11-063, filed 5/14/09, effective 6/16/09)

WAC 357-46-067 What is an employee's status during temporary layoff? (1) The following applies during a temporary layoff:

(a) An employee's anniversary ~~((date))~~, seniority, ~~((or))~~ and unbroken service dates ~~((is))~~ are not adjusted for periods of time spent on temporary layoff;

(b) ~~((An employee continues to accrue vacation and sick leave in accordance with chapter 357-31-WAC))~~ An employee's vacation and sick leave accruals will not be impacted by periods of time spent on temporary layoff; ~~((and))~~

(c) An employee's holiday compensation will not be impacted by periods of time spent on temporary layoff; and

(d) The duration of an employee's probationary period or trial service period shall not be extended for periods of time spent on temporary layoff.

(2) An employee who is temporarily laid off is not entitled to:

(a) Layoff rights, including the ability to bump any other position or be placed on the employer's internal or statewide layoff list;

(b) Payment for ~~((his/her))~~ their vacation leave balance; and

(c) Use of ~~((his/her))~~ their accrued vacation leave for hours the employee is not scheduled to work if the temporary layoff was due to lack of funds.

(3) If the temporary layoff was not due to lack of funds, an employer may allow an employee to use accrued vacation leave in lieu of temporary layoff.

AMENDATORY SECTION (Amending WSR 06-07-048, filed 3/9/06, effective 4/10/06)

WAC 357-58-553 What is the notice requirement to temporarily layoff a WMS employee? An employer must

provide the WMS employee seven calendar days' notice of temporary layoff. The temporary layoff notice must inform the WMS employee of ~~((his/her))~~ their status during temporary layoff and the expected duration of the temporary layoff. Notice of temporary layoff may be provided by using alternative methods as described in WAC 357-04-105.

AMENDATORY SECTION (Amending WSR 09-17-060, filed 8/13/09, effective 9/16/09)

WAC 357-58-554 What is a WMS employee's status during temporary layoff? (1) The following applies during a temporary layoff:

(a) ~~((A-WMS))~~ An employee's anniversary date, seniority, or unbroken service date is not adjusted for periods of time spent on temporary layoff;

(b) ~~((A-WMS employee continues to accrue vacation and sick leave in accordance with chapter 357-31 WAC))~~ An employee's vacation and sick leave accruals will not be impacted by periods of time spent on temporary layoff; ~~((and))~~

(c) An employee's holiday compensation will not be impacted by periods of time spent on temporary layoff; and

(d) The duration of an employee's review period shall not be extended for periods of time spent on temporary layoff.

(2) A WMS employee who is temporarily laid off is not entitled to:

(a) Layoff rights, including the ability to bump any other position or be placed on the employer's internal or statewide layoff list;

(b) Payment for ~~((his/her))~~ their vacation leave balance; and

(c) Use of ~~((his/her))~~ their accrued vacation leave for hours the employee is not scheduled to work if the temporary layoff was due to lack of funds.

(3) If the temporary layoff was not due to lack of funds, an employer may allow a WMS employee to use accrued vacation leave in lieu of temporary layoff.

**WSR 10-14-012
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 10-166—Filed June 24, 2010, 3:32 p.m., effective June 24, 2010, 3:32 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-24-04000V and 220-24-04000W; and amending WAC 220-24-040.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Projections indicate that only enough harvestable chinook salmon remain to have the last scheduled opening with a twenty-five chinook per boat limit. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 2.

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

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

Date Adopted: June 24, 2010.

Philip Anderson
Director

NEW SECTION

WAC 220-24-04000W All-citizen commercial salmon troll. Notwithstanding the provisions of WAC 220-24-040, effective immediately until further notice, it is unlawful to fish for salmon with troll gear or to land salmon taken with troll gear into a Washington port except during the seasons provided for in this section:

(1) Salmon Management and Catch Reporting Areas 1, 2, 3, and that portion of Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude, open: June 25 through June 29, 2010.

(2) Landing and possession limit of 25 Chinook per boat per each entire open period for the entire catch areas 1, 2, 3 and 4 through June 29th.

(3) The Cape Flattery and Columbia River Control Zones are closed. Mandatory Yelloweye Rockfish Conservation Area is closed.

(4) Minimum size for Chinook salmon is 28 inches in length. No minimum size for pink, sockeye or chum salmon. It is unlawful to possess coho salmon and Halibut.

(5) Lawful troll gear is restricted to all legal troll gear with single point, single shank barbless hooks.

(6) Fishers must land and deliver their catch within 24 hours of any closure of a fishery provided for in this section, and vessels fishing or in possession of salmon while fishing north of Leadbetter Point must land and deliver their fish within the area and North of Leadbetter point. Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point.

(7) The Cape Flattery Control Zone is defined as the area from Cape Flattery (48°23'00" N latitude) to the northern boundary of the U.S. Exclusive Economic Zone, and the area from Cape Flattery south to Cape Alava, 48°10'00" N latitude, and west of 125°05'00" W longitude.

(8) Columbia Control Zone - An area at the Columbia River mouth, bounded on the west by a line running north-east/southwest between the red lighted Buoy #4 (46°13'35" N. Lat., 124°06'50" W. long.) and the green lighted Buoy #7 (46°15'09" N. lat., 124°06'16" W. long.); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14'00" N. lat., 124°03'07" W. long., to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°14'48" N. lat., 124°05'20" W. long.), and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14'03" N. lat., 124°04'05" W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

(9) Mandatory Yelloweye Rockfish Conservation Area - The area in Washington Marine Catch Area 3 from 48°00.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°16.50' W longitude to 48°00.00' N latitude; 125°16.50' W longitude and connecting back to 48°00.00' N latitude; 125°14.00' W longitude.

(10) It is unlawful to fish in Salmon Management and Catch Reporting Areas 1, 2, 3 or 4 with fish on board taken south of Cape Falcon, Oregon and all fish taken from Salmon Management and Catch Reporting Areas 1, 2, 3, and 4 must be landed before fishing south of Cape Falcon, Oregon.

(11) It is unlawful for wholesale dealers and trollers retailing their fish to fail to report their landing by 10:00 a.m. the day following landing. Ticket information can be telephoned in by calling 1-866-791-1279, or faxing the information to (360) 902-2949, or e-mailing to trollfishtickets@dfw.wa.gov. Report the dealer name, the dealer license number, the purchasing location, the date of purchase, the fish ticket numbers, the gear used, the catch area, the species, the total number for each species, and the total weight for each species, including halibut.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-24-04000V	All-citizen commercial salmon troll. (10-154)
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The following section of the Washington Administrative Code is repealed effective July 1, 2010:

WAC 220-24-04000W	All-citizen commercial salmon troll.
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WSR 10-14-017 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 10-160—Filed June 25, 2010, 10:55 a.m., effective June 25, 2010, 10:55 a.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia River while protecting salmon listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes and federal law governing Washington's relationship with Oregon.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100I; and amending WAC 220-32-051.

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Puget Sound Gillnetters Ass'n v. Moos*, 92 Wn.2d 939, 603 P.2d 819 (1979); *State v. James*, 72 Wn.2d 746, 435 P.2d 521 (1967); 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Sets two additional weekly commercial fishing periods for summer season treaty gill net fisheries. Continues to allow sales of fish caught in areas above and below Bonneville Dam with platform hook-and-line gear, if caught during an open mainstem treaty gill net period. Continues to allow sales of fish from Yakama Nation tributary fisheries, if caught during an open mainstem treaty gill net period. Based on the preseason forecast, 25,500 adult chinook are available for treaty Indian harvest. Impact limits to ESA-listed chinook remain available for treaty Indian fisheries. Harvest is expected to remain within the allocation and guidelines of the 2008-2017 management agreement. Rule is consistent with action of the Columbia River compact on June 10 and 24, 2010. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

Regulations include fisheries that are described in the MOA between Washington state and the Yakama Nation. Regulations also include fisheries that are described in individual MOUs between Washington state and the Umatilla and Warm Springs tribes. The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fish-

eries under the supervision of the federal courts. Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 1, Amended 0, Repealed 1.

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

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

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

Date Adopted: June 25, 2010.

Philip Anderson
Director

NEW SECTION

WAC 220-32-05100J Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052, and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, walleye, carp, yellow perch, catfish and bass for commercial purposes in Columbia River Salmon Management Catch Reporting Areas (SMCRA) 1E, 1F, 1G, and 1H, and in the Wind River, White Salmon River, Klickitat River, Icicle River and Drano Lake, except as provided in the following subsections, and except that individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, walleye, shad, carp, yellow perch, catfish, bass, or sturgeon under the following provisions, pursuant to lawfully enacted tribal rules:

1. Mainstem Columbia River above Bonneville Dam

a) SEASON: 6:00 a.m. June 29 to 6:00 p.m. July 1, 2010. 6:00 a.m. July 6 to 6:00 p.m. July 8, 2010.

b) AREA: Zone 6 (SMCRA 1F, 1G, 1H).

c) GEAR: Gillnets. No mesh restriction

2. Mainstem Columbia River above Bonneville Dam

a) SEASON: Immediately until further notice.

b) AREA: Zone 6 (SMCRA 1F, 1G, 1H).

c) GEAR: Hoop nets, dip bag nets, and rod and reel with hook-and-line.

3. Columbia River Tributaries above Bonneville Dam

a) SEASON: Immediately until further notice, but only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members, and have openings or allow platform gear and sales of fish in Zone 6 (SMCRA 1F, 1G, 1H).

b) AREA: Drano Lake, and the Wind, White Salmon, Klickitat, and Icicle rivers.

c) GEAR: Hoop nets, dip bag nets, and rod and reel with hook-and-line. Gill nets may only be used in Drano Lake (no mesh restriction, 150-foot length restriction).

4. Mainstem Columbia River below Bonneville Dam

a) PARTICIPANTS: Tribal members may participate under the conditions described in the 2007 Memo of Agreement (MOA) with the Yakama Nation (YN), in the 2010 MOU (Memo of Understanding) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), and the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS). Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

b) SEASON: Immediately until further notice, except closed Thursdays through Saturdays for the CTUIR and the CTWS when non-tribal salmon fishing is open in the MOU area. Sales allowed when platform gear and sales of fish are allowed in Zone 6 (SMCRA 1F, 1G, 1H).

c) AREA: SMCRA 1E, Yakama Nation MOA: on the Washington shoreline from 600 feet below the fish ladder at the Bonneville Dam North shore powerhouse, downstream to Beacon Rock (bank fishing only). Umatilla and Warm Springs MOU: Covers the banks of the Columbia River bounded by a deadline marker on the Oregon bank approximately four miles downstream of Bonneville Dam Powerhouse #1 in a straight line through the western tip of Pierce Island, to a deadline marker on the Washington bank at Beacon Rock, up the river to a point 600 feet below the Bonneville Dam, but excluding the following four areas:

1. Between the markers located 150 feet upstream and 450 feet downstream from the mouth of Tanner Creek, out to the center of the Columbia river, during the period from August 16, 2010, until further notice.

2. Inside the south navigation lock at Bonneville Dam from a marker on the western-most tip of Robins Island to a marker on the Oregon mainland shore.

3. From Bradford Island below Bonneville Dam from the south shore between the dam and a line perpendicular to the shore marker at the west end of riprap.

4. from the north shore between the fishway entrance and a line perpendicular to the shoreline marker 850 feet downstream. From Robins Island below Bonneville Dam downstream to a line perpendicular to the shoreline marker on the mooring cell.

d) GEAR: Hoop nets, dip bag nets, and rod and reel with hook-and-line, consistent with tribal regulations.

5. SANCTUARIES: Standard river mouth and dam sanctuaries are applicable to these gear types, except that the Spring Creek Hatchery sanctuary is not in effect.

6. ALLOWABLE SALES: Chinook, coho, sockeye, steelhead, walleye, shad, carp, yellow perch, catfish and bass. Sturgeon may not be sold. Sturgeon between 43-54 inches in fork length in The Dalles and John Day pools (SMCRA 1G, 1H) may be retained for subsistence. Sturgeon between 38-54 inches in fork length in the Bonneville pool (SMCRA 1F) may also be retained for subsistence. **Sturgeon caught below Bonneville Dam may NOT be retained and may NOT be sold.** Fish may NOT be sold on USACE Property below Bonneville Dam, but may be caught and transported off USACE Property for sale.

7. ADDITIONAL REGULATIONS: 24-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-32-05100I	Columbia River salmon seasons above Bonneville Dam. (10-152)
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WSR 10-14-018
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-163—Filed June 25, 2010, 10:58 a.m., effective June 27, 2010]

Effective Date of Rule: June 27, 2010.

Purpose: The purpose of this rule making is to allow nontreaty recreational fishing opportunity in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act. This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900H; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

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

Reasons for this Finding: The catch and effort in the estuary sturgeon fishery have been less than expected and an additional 6,500 white sturgeon remain on the guideline for this area. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 1; **Federal Rules or Standards:** New 1, Amended 0, 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 1, Amended 0, Repealed 1.

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

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

Date Adopted: June 25, 2010.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900S Exceptions to statewide rules—Columbia River sturgeon. Notwithstanding the provisions of WAC 232-28-619:

(1) Effective immediately until further notice, it is unlawful to retain sturgeon caught in those waters of the Columbia River and tributaries from Bonneville Dam upstream to McNary Dam.

(2) Effective immediately through August 31, 2010, it is unlawful to fish for or possess sturgeon in those waters of the Columbia River upstream from a line crossing the Columbia from Navigation Marker 82 on the Oregon shore through the upstream exposed end of Skamania Island, continuing in a straight line to a boundary marker on the Washington shore.

(3) Effective June 27 through July 11, 2010, a person may retain white sturgeon caught in those waters of the Columbia River from the mouth upstream to the Wauna power lines, and all adjacent Washington tributaries. Daily limit 1 fish. Minimum size limit is 41 inches fork length; maximum size 54 inches fork length.

REPEALER

The following section of the Washington Administrative Code is repealed effective June 27, 2010:

WAC 232-28-61900H	Exceptions to statewide rules—Columbia River sturgeon. (10-102)
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WSR 10-14-019
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-164—Filed June 25, 2010, 11:00 a.m., effective June 26, 2010]

Effective Date of Rule: June 26, 2010.

Purpose: The purpose of this rule making is to allow nontreaty recreational fishing opportunity in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900M and 232-28-61900V; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively

by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

The Columbia River sockeye run size is currently projected to be 250,000 fish, which is at least two times the pre-season forecast. It is expected that the Wenatchee component of the run will meet the escapement goal based on the updated run size. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 2; Federal Rules or Standards: New 1, Amended 0, Repealed 2; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 2.

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

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

Date Adopted: June 25, 2010.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900V Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 232-28-619, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

1. Columbia River:

Effective June 26 through July 31, 2010, retention of sockeye is allowed from the Astoria-Megler Bridge upstream to Priest Rapids Dam.

REPEALER

The following section of the Washington Administrative code is repealed effective June 26, 2010:

WAC 232-28-61900M	Exceptions to statewide rules—Columbia River. (10-125)
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The following section of the Washington Administrative Code is repealed effective August 1, 2010:

WAC 232-28-61900V	Exceptions to statewide rules—Columbia River.
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WSR 10-14-023
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-165—Filed June 25, 2010, 1:24 p.m., effective July 1, 2010]

Effective Date of Rule: July 1, 2010.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
 Amending WAC 220-49-057.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This emergency rule modifies the weekly open period and places a prohibition on nighttime fishing for the Puget Sound commercial smelt fishery in order to reduce conflicts between commercial smelt fishers, homeowners and recreational smelt fishers. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 25, 2010.

Philip Anderson
 Director

NEW SECTION

WAC 220-49-05700A Smelt fishing—Weekly periods. Notwithstanding the provisions of WAC 220-49-057, effective July 1, 2010, until further notice, it is unlawful to fish for smelt for commercial purposes in Puget Sound except as provided for in this section:

(1) Open weekly from 8:00 a.m. Sunday to 10:00 p.m. Thursday, except Marine Fish – Shellfish Management and Catch Reporting Areas 24A and 24C open weekly from 8:00 a.m. Monday to 10:00 p.m. Thursday. It is unlawful to possess smelt taken for commercial purposes during the closed period.

(2) It is unlawful to operate commercial smelt gear from one hour after official sunset to one hour before official sunrise.

WSR 10-14-024
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-161—Filed June 25, 2010, 4:23 p.m., effective July 1, 2010]

Effective Date of Rule: July 1, 2010.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 232-28-61900Q; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Sockeye salmon returns above Priest Rapids Dam are predicted to be well in excess of needs for wild fish escapement to the spawning grounds. The population is not listed under the Endangered Species Act. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 25, 2010.

Philip Anderson
 Director

NEW SECTION

WAC 232-28-61900Q Exceptions to statewide rules—Columbia, Okanogan and Similkameen rivers. Notwithstanding the provisions of WAC 232-28-619, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect in the following waters:

(1) Special daily limit of 6 salmon; Up to 3 adult Chinook, of which only one wild adult Chinook may be retained. Sockeye minimum size 12 inches in length. All coho and steelhead must be released. Release all sockeye and Chinook with floy (anchor) tag attached.

(a) July 1 through August 31, 2010, Columbia River from Priest Rapids Dam to Wanapum Dam.

(b) July 1 through October 15, 2010, Columbia River from Wanapum Dam to Wells Dam.

(c) July 16 - Aug 31, 2010, Columbia River from Wells Dam to Hwy 173 Bridge in Brewster.

(d) July 1 through October 15, 2010, Columbia River from Hwy 173 Bridge in Brewster to Hwy 17 Bridge in Bridgeport.

(e) July 1 through October 15, 2010, Okanogan River from the mouth to Hwy 97 Bridge immediately upstream of mouth.

(f) July 1 through September 15, 2010, Okanogan River from Hwy 97 Bridge immediately upstream of mouth to Hwy 97 Bridge crossing at Oroville.

(g) July 1 through September 15, 2010, Similkameen River from the mouth to Enloe Dam.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 16, 2010:

WAC 232-28-61900Q	WAC 232-28-61900Q Exceptions to statewide rules—Columbia, Okanogan and Similkameen rivers.
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WSR 10-14-025
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-167—Filed June 25, 2010, 4:30 p.m., effective July 1, 2010]

Effective Date of Rule: July 1, 2010.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-25000K; and amending WAC 220-56-250.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Yelloweye rockfish are one of seven overfished species managed under rebuilding plans by the Pacific Fishery [Fisheries] Management Council. Yelloweye rockfish may be caught incidentally when anglers target lingcod in deeper waters. Management measures, including depth restrictions, have been effective at reducing the incidental catch of overfished species including yelloweye rockfish while anglers are targeting lingcod. This rule conforms to federal action taken by Pacific Fisheries Management Council.

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

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

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

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

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

Date Adopted: June 25, 2010.

Philip Anderson
Director

NEW SECTION

WAC 220-56-25000K Lingcod—Areas and seasons. Notwithstanding the provisions of WAC 220-56-250, effective July 1 through August 31, 2010, it is unlawful to fish for or possess lingcod seaward of a line approximating the 30 fathom depth contour south of 46°58' N. Latitude on Fridays and Saturdays in Marine Area 2.

REPEALER

The following section of the Washington Administrative Code is repealed effective September 1, 2010:

WAC 220-56-25000K	Lingcod—Areas and seasons.
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WSR 10-14-031
EMERGENCY RULES
DEPARTMENT OF REVENUE

[Filed June 28, 2010, 11:36 a.m., effective June 28, 2010, 11:36 a.m.]

Effective Date of Rule: Immediately.

Purpose: WAC 458-20-196 (Rule 196) provides information about the tax treatment of bad debts under the business and occupation (B&O), retail sales, public utility, and use taxes.

The department has amended Rule 196 to recognize provisions of chapter 23, Laws of 2010 1st sp. sess., (2ESSB 6143). This amendment recognizes that only the original seller in the transaction that generated the bad debt, or a certified service provider used by the seller, may claim a retail sales or use tax credit or refund on or after July 1, 2010.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-196 Bad debts.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060.

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

Reasons for this Finding: An emergency adoption of this rule is necessary because an amended permanent rule explaining the restriction added by 2ESSB 6143 cannot be adopted by the effective date of this change.

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

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

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

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

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

Date Adopted: June 28, 2010.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-01-005, filed 12/8/05, effective 1/8/06)

WAC 458-20-196 Bad debts. (1) Introduction.

~~((a) New laws effective July 1, 2004.))~~ This ~~((rule))~~ section provides information about the tax treatment of bad debts under the business and occupation (B&O), public utility, retail sales, and use taxes ~~((, and reflects legislation enacted in 2003 and 2004 conforming Washington law to provisions of the national Streamlined Sales and Use Tax Agreement. See chapter 168, Laws of 2003 and chapter 153, Laws of 2004. The new laws related to bad debts are effective July 1, 2004.))~~.

~~((b))~~ (a) Bad debt deduction for accrual basis taxpayers. Bad debt credits, refunds, and deductions occur when income reported by a taxpayer is not received. Taxpayers who report using the cash method do not report income until it is received. For this reason, bad debts are most relevant to taxpayers reporting income on an accrual basis. However, some transactions must be reported on an accrual basis by all taxpayers, including installment sales and leases. These transactions are eligible for a bad debt credit, refund, or deduction as described in this ~~((rule))~~ section. For information on cash and accrual accounting methods, refer to WAC 458-20-197 (When tax liability arises) and WAC 458-20-199 (Accounting methods). Refer to WAC 458-20-198 (Installment sales, method of reporting) and WAC 458-20-199(3) for information about reporting installment sales.

~~((c))~~ (b) Relationship between retailing B&O tax deduction and retail sales tax credit. Generally, a retail sales tax credit for bad debts is reported as a deduction from the measure of sales tax on the excise tax return. The amount of this deduction, or the measure of a recovery of sales tax that must be reported, ~~((is the same as the amount reported as a deduction or recovery under the retailing B&O tax classification.))~~

~~((d))~~ may differ from the amount reported as a deduction or recovery from the retailing B&O tax classification due to exempt sales (for example: Sales of motor vehicles and trailers for use in interstate or foreign commerce (RCW 82.08.0263); sales of manufacturing machinery and equipment (RCW 82.08.02565).))

(c) Relationship to federal income tax return. Washington credits, refunds, and deductions for bad debts are based on federal standards for worthlessness under section 166 of the Internal Revenue Code. If a federal income tax return is not required to be filed (for example, where the taxpayer is an exempt entity for federal purposes), the taxpayer is eligible for a bad debt credit, refund, or deduction on the Washington tax return if the taxpayer would otherwise be eligible for the federal bad debt deduction.

(2) Retail sales and use tax.

(a) General rule. Under RCW 82.08.037 and 82.12.037, sellers are entitled to a credit or refund for sales and use taxes previously paid on "bad debts" under section 166 of the Internal Revenue Code, as amended or renumbered as of January 1, 2003. Taxpayers may claim the credit or refund for the tax reporting period in which the bad debt is written off as uncollectible in the taxpayer's books and records and would be eligible for a bad debt deduction for federal income tax purposes. However, ~~((the amount of any credit or refund must be adjusted to exclude amounts attributable to))~~ "bad debts" do not include:

(i) Amounts due on property that remains in the possession of the seller until the full purchase price is paid;

(ii) Expenses incurred in attempting to collect debt; ~~((and))~~

(iii) Debts sold or assigned by the seller to third parties, where the third party is without recourse against the seller (see (c) of this subsection for additional information about this restriction); and

(iv) The value of repossessed property taken in payment of debt.

(b) Recoveries. If a taxpayer takes a credit or refund for sales or use taxes paid on a bad debt and later collects some or all of the debt, the amount of sales or use tax recovered must be repaid in the tax-reporting period during which collection was made. The amount of tax that must be repaid is determined by applying the recovered amount first proportionally to the taxable price of the property or service and the sales or use tax thereon and secondly to any interest, service charges, and any other charges.

(c) Assigned debt and installment sales. Effective July 1, 2010, RCW 82.08.037 and 82.12.037 limit who can claim a credit or refund for retail sales or use tax. Only the original seller in the transaction that generated the bad debt, or a certified service provider (CSP) used by the seller, is entitled to claim a credit or refund on or after July 1, 2010. If the original seller in the transaction that generated the bad debt has sold or assigned the debt instrument to a third party with recourse, the original seller may claim a credit or refund only after the debt instrument is reassigned by the third party to the original seller. In the case where the seller uses a CSP to administer its sales tax responsibilities the CSP may claim, on behalf of the seller, the credit or refund allowed. See chapter 23, Laws of 2010, 1st sp. sess., (2ESSB 6143).

(3) Business and occupation tax.

(a) **General rule.** Under RCW 82.04.4284, taxpayers may deduct from the measure of B&O tax "bad debts" under section 166 of the Internal Revenue Code, as amended or renumbered as of January 1, 2003, on which tax was previously paid. Taxpayers may claim the deduction for the tax reporting period in which the bad debt is written off as uncollectible in the taxpayer's books and records and would be eligible for a bad debt deduction for federal income tax purposes. However, the amount of the deduction must be adjusted to exclude amounts attributable to:

- (i) Amounts due on property that remains in the possession of the seller until the full purchase price is paid;
- (ii) Sales or use taxes payable to a seller;
- (iii) Expenses incurred in attempting to collect debt; and
- (iv) The value of repossessed property taken in payment of debt.

(b) **Recoveries.** Recoveries received by a taxpayer after a bad debt is claimed are applied under the rules described in subsection (2)(b) of this section if the transaction involved is a retail sale. The amount attributable to "taxable price" is reported under the retailing B&O tax classification. If the recovery of debt is not related to a retail sale, recovered amount is applied proportionally against the components of the debt (e.g., interest and principal remaining on a wholesale sale).

(c) **Extracting and manufacturing classifications.** Bad debt deductions are only allowed under the extracting or manufacturing classifications when the value of products is computed on the basis of gross proceeds of sales.

(4) **Public utility tax.** Under RCW 82.16.050(5), taxpayers may deduct from the measure of public utility tax "bad debts" under section 166 of the Internal Revenue Code, as amended or renumbered as of January 1, 2003, on which tax was previously paid. Taxpayers may claim the deduction for the tax reporting period in which the bad debt is written off as uncollectible in the taxpayer's books and records and would be eligible for a bad debt deduction for federal income tax purposes. No deduction is allowed for collection or other expenses.

(5) **Application of payments - general rule.** The special rules for application of payments received in recovery of previously claimed bad debts described in subsections (2)(b) and (3)(b) of this section are not used for other payments. Payments received before a bad debt credit, refund, or deduction is claimed should be applied first against interest and then ratably against other charges. Another commercially reasonable method may be used if approved by the department.

(6) ~~(Assigned debt and installment sales.~~

~~(a) **General rule.** If a person makes a retail sale under an installment sales contract and then legally assigns his or her rights under the contract to another party, the assignee "steps into the shoes" of the person making the sale and may claim a bad debt credit or refund for unpaid retail sales tax to the extent a credit or refund would have been available to the original seller and to the extent that the assignee actually incurs a loss. The seller's B&O tax deduction for bad debt may not be claimed by an assignee. A retail sales tax bad debt credit or refund for unpaid sales tax is available only to the~~

~~person who makes the retail sale or an assignee under the contract. For example, a bank that loans money to the purchaser of a vehicle may not claim a retail sales tax bad debt credit or refund. The bank did not sell the vehicle and is not an assignee of the dealer who made the retail sale.~~

~~(b) **Discounts.** A person who makes a retail sale on credit and then assigns the sales contract in exchange for less than the face value of the contract may not claim a bad debt credit, refund, or deduction for the difference between the face value and the amount received. The discount is a nondeductible cost of doing business, not a bad debt. An assignee of a retail sales contract that pays less than face value for the contract is not required to reduce the amount of a retail sales tax bad debt credit or refund in proportion to the amount of the discount. The assignee may take a credit or refund for the amount that would have been available to the original seller if the original seller had retained the contract and received the payments made by the buyer.~~

~~(c) **Recourse financing.** An assignee who receives payment on a bad debt from the assignor must reduce the sales tax credit in proportion to the payment. The assignor may claim a sales tax credit and retailing B&O tax deduction in proportion to the payment if obligated to make the payment and otherwise qualified under this rule.~~

~~(d) **Documentation.** All persons claiming a bad debt credit for installment contracts must retain appropriate documentation, including documentation establishing:~~

- ~~(i) The amount of the original sale by the seller, and component amounts necessary to determine that amount, such as credits for trade-ins, down payments, and individual amounts charged for different products;~~
- ~~(ii) The buyer's equity in any trade-in property;~~
- ~~(iii) The contract principal owed at the time of repossession, if any; and~~
- ~~(iv) The deductibility of the debt as worthless for federal income tax purposes.~~

~~(7)) **Reserve method.** Ordinarily, taxpayers must report bad debt refunds, credits or deductions for specifically identified transactions. However, taxpayers who are allowed by the Internal Revenue Service to use a reserve method of reporting bad debts for federal income tax purposes, or who secure permission from the department to do so, may deduct a reasonable addition to a reserve for bad debts. What constitutes a reasonable addition to a reserve for bad debts must be determined in light of the facts and will vary between classes of business and with conditions of business prosperity. An addition to a reserve allowed as a deduction by the Internal Revenue Service for federal income tax purposes, in the absence of evidence to the contrary, will be presumed reasonable. When the reserve method is employed, an adjustment to the amount of loss deducted must be made annually to make the total loss claimed for the tax year coincide with the amount actually sustained.~~

~~((8)) **(7) Statute of limitations for claiming bad debts.** No credit, refund, or deduction, as applicable, may be claimed for debt that became eligible for a bad debt deduction for federal income tax purposes more than four years before the beginning of the calendar year in which the credit, refund, or deduction is claimed.~~

~~((9))~~ **(8) Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

In all cases, an eight percent combined state and local sales tax rate is assumed. Figures are rounded to the nearest dollar. Payments are applied first against interest and then ratably against the taxable price, sales tax, and other charges except when the special rules for subsequent recoveries on a bad debt apply (see subsections (2) and (3) of this section). It is assumed that the income from all retail sales described has been properly reported under the retailing B&O tax classification and that all interest or service fees described have been accrued and reported under the service and other activities B&O tax classification.

(a) ~~((Seller))~~ **Scenario 1. Joe's Hardware** makes a retail sale of goods with a selling price of \$500 and pays \$40 in sales tax to the department. No payment is received by ~~((Seller))~~ Joe at the time of sale.

(i) Bad debt. One and a half years later, no payment has been received by ~~((Seller))~~ Joe, and the balance with interest is \$627. ~~((Seller))~~ Joe is entitled to claim a bad debt deduction on ~~((the))~~ his federal income tax return. ~~((Seller))~~ He is also entitled to claim a bad debt sales tax credit or refund in the amount of \$40, a B&O tax deduction of \$500 under the retailing B&O tax classification, and a B&O tax deduction of \$87 under the service and other activities B&O tax classification.

~~((b) The facts are the same as in (a) of this subsection, except that)~~ (ii) Recoveries. Six months after the credit and deduction are claimed, a \$50 payment is received on the debt. Recoveries received on a retail sale after a credit and deduction have already been claimed must be applied first proportionally to the taxable price and sales tax thereon in order to determine the amount of tax that must be repaid. Therefore, ~~((Seller))~~ Joe must report \$4, or $\$50 \times (\$40/\$540)$, of sales tax on the current excise tax return and \$46, or $\$50 \times (\$500/\$540)$ under the retailing B&O tax classification. Additional recoveries should be applied in the same manner until the original \$40 credit for sales tax is reduced to zero.

~~((e) Seller)~~ (b) **Scenario 2. Joe** makes a retail sale of goods on credit for \$500 and pays \$40 in sales tax to the department. No payment is received at the time of sale. Over the following year, regular payments are received and the debt is reduced to \$345, exclusive of any interest or service charges. The \$345 represents sales tax due to ~~((Seller))~~ Joe in the amount of \$26, or $\$345 \times (\$40/\$540)$, and \$319 remaining of the original purchase price, or $\$345 \times (\$500/\$540)$. Payments cease.

(i) Bad debt. Six months later the balance with interest and service fees is \$413. ~~((Seller))~~ Joe is entitled to claim a bad debt deduction on the federal income tax return. ~~((Seller))~~ He is also entitled to claim a sales tax refund or credit on the current excise tax return of \$26, a deduction under the retailing B&O tax classification of \$319, and a deduction under the service and other activities B&O tax classification of \$68.

~~((d) The facts are the same as in (e) of this subsection, except that before Seller)~~ (ii) Recoveries. Before Joe charges off the debt, ~~((Seller))~~ he repossesses the goods. At

that time, the goods have a fair market value of \$250. No credit is allowed for repossessed property, so the value of the collateral must be applied against the outstanding balance. After the value of the collateral is applied, ~~((Seller))~~ Joe has a remaining balance of \$163, or $\$413 - \250 . The allocation rules for recoveries do not apply because a bad debt credit or refund has not yet been taken. The value is applied first against the \$68, or $\$413 - \345 , of interest, so the \$163 remaining is attributable entirely to taxable price and sales tax. Any costs ~~((Seller))~~ Joe may incur related to locating, repossessing, storing, or selling the goods do not offset the value of the collateral because no credit is allowed for collection costs. ~~((Seller))~~ Joe is entitled to a sales tax refund or credit in the amount of \$12, or $\$163 \times (\$40/\$540)$ and deduction of \$151, or $\$163 \times (\$500/\$540)$ under the retailing B&O tax classification.

(iii) Sales of repossessed goods. If ~~((Seller))~~ Joe later sells the repossessed goods, ~~((Seller))~~ he must pay B&O tax and collect retail sales tax as applicable. If the sales price of the repossessed goods is different from the fair market value previously reported and the statute of limitations applicable to the original transaction has not expired, ~~((Seller))~~ Joe must report the difference between the selling price and the claimed fair market value as an additional bad debt credit or deduction or report it as an additional recovery, as appropriate.

~~((e) Seller)~~ (c) **Scenario 3. Phil of Phil's Fine Cars.** sells a car at retail for \$1000 and charges Alice, the buyer, an additional \$50 for license and registration fees. ~~((Seller))~~

(i) Trade-in accepted. Phil accepts trade-in property with a value of \$500 in which ~~((the buyer))~~ Alice has \$300 of equity. (The value of trade-in property of like kind is excluded from the selling price for purposes of the retail sales tax. Refer to WAC 458-20-247 for further information.) ~~((Seller))~~ Phil properly bills ~~((the buyer))~~ Alice for \$40 of sales tax, for a total of \$1090 owed to ~~((Seller))~~ Phil by ~~((the buyer))~~ Alice. ~~((Seller))~~ Phil pays the department the \$40 in sales tax. No payment other than the trade-in is received by ~~((Seller))~~ Phil at the time of sale.

(ii) Bad debt. Eight months later, ~~((Seller))~~ Phil has not received any payment. ~~((Seller))~~ Phil is entitled to claim a bad debt deduction on ~~((the))~~ his federal income tax return. The equity in the trade-in is equivalent to a payment received at the time of purchase, reducing the balance remaining on the initial sale to \$790, or $\$1090 - \300 . ~~((Seller))~~ Phil is entitled to claim a sales tax credit or refund of \$29, or $\$790 \times (\$40/\$1090)$ of sales tax, and a deduction of \$725, or $\$790 \times (\$1000/\$1090)$ under the retailing B&O tax classification, exclusive of any deduction for accrued interest.

~~((f) Seller)~~ (d) **Scenario 4. Phil** sells a car at retail for \$1000, and charges ~~((the buyer))~~ Jake an additional \$50 for license and registration fees. ~~((Seller))~~ Phil properly bills ~~((the buyer))~~ Jake for \$80 of sales tax and remits it to the department. No money is received from ~~((the buyer))~~ Jake at the time of sale.

(i) Bad debt. Eight months later ~~((Seller))~~ Phil is entitled to claim a bad debt deduction on the federal income tax return. ~~((Seller))~~ Phil claims an \$80 sales tax credit, a \$1000 retailing B&O tax deduction, and an additional amount under

the service and other activities classification for accrued interest.

(ii) Recoveries. Six months after ~~((that))~~ claiming a bad debt, ((Seller)) Phil receives a \$200 payment from ~~((the buyer)) Jake~~. Recoveries must be allocated first proportionally to the taxable price (the measure of the sales tax) and the sales tax thereon, and secondly to other charges. B&O tax consequences follow the same rules. Accordingly, ~~((Seller)) Phil~~ must report \$15, or \$200 x (\$80/\$1080) of sales tax and \$185, or \$200 x (\$1000/\$1080) of income under the retailing B&O tax classification. Additional recoveries should be applied in the same manner until the original \$80 sales tax credit is reduced to zero.

~~((g-Seller)) (e) Scenario 5.~~ Phil sells a car at retail for \$1000, and charges ~~((the buyer)) Robin~~ an additional \$50 for license and registration fees. ~~((Seller))~~

(i) Trade-in accepted. Phil accepts trade-in property with a value of \$500 in which ~~((the buyer)) Robin~~ has \$300 of equity. ~~((Seller)) Phil~~ properly bills ~~((the buyer)) Robin~~ for \$40 of sales tax for a total of \$1090 owed to ~~((Seller)) Phil~~ by ~~((the buyer)) Robin~~. No payment other than the trade-in is received by ~~((Seller)) Phil~~ at the time of sale.

(ii) Bad debt. Eight months later, no payment has been received by ~~((Seller)) Phil~~. ~~((Seller)) Phil~~ is entitled to claim a bad debt deduction on the federal income tax return. The equity in the trade-in is equivalent to a payment received at the time of purchase, reducing the balance remaining on the initial sale to \$790, or \$1090 - \$300. ~~((Seller)) Phil~~ is entitled to claim a sales tax credit or refund of \$29, or \$790 x (\$40/\$1090) of sales tax, and a deduction of \$725, or \$790 x (\$1000/\$1090) under the retailing B&O tax classification, exclusive of any deduction for accrued interest.

(iii) Recoveries. Six months after that, ~~((Seller)) Phil~~ receives a \$200 payment from ~~((the buyer)) Robin~~. Recoveries must be allocated first proportionally to the taxable price (the measure of the sales tax) and sales tax thereon, and secondly to other charges. B&O tax consequences follow the same rules. Accordingly, ~~((Seller)) Phil~~ must report \$15, or \$200 x (\$40/\$540) in sales tax, and \$185, or \$200 x (\$500/\$540) under the retailing B&O tax classification. Additional recoveries should be applied in the same manner until the original \$29 sales tax credit is reduced to zero.

~~((h)) (f) Scenario 6.~~ The facts are the same as in ~~((e)) Scenario 3 (c)~~ of this subsection, except that immediately after the sale, ~~((Seller)) Phil~~ assigns the contract to a finance company without recourse, receiving face value for the contract. The finance company may not claim the retail sales tax credit or refund ~~((of \$29))~~. The finance company may not claim any deductions for ~~((Seller's)) Phil's~~ B&O tax liability. No bad debt deduction or credit is available to ~~((Seller))~~

~~(i) The facts are the same as in (h) of this subsection, except that the Seller receives less than face value for the contract. The result is the same as in (h) of this subsection for both parties. The finance company may claim a \$29 retail sales tax bad debt credit or refund, but may not claim a B&O bad debt deduction for Seller's B&O tax liability. No bad debt deduction or credit is available to Seller)) Phil, as the contract was sold without recourse.~~

WSR 10-14-046

EMERGENCY RULES

DEPARTMENT OF FISH AND WILDLIFE

[Order 10-169—Filed June 29, 2010, 2:07 p.m., effective June 29, 2010, 2:07 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-03000G and 220-52-03000H; and amending WAC 220-52-030.

Statutory Authority for Adoption: RCW 77.12.047, 77.04.020, and 77.70.430.

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

Reasons for this Finding: Based on historical catches and on-site inspection, there are adequate clams to support an extension for the commercial razor clam harvesters. Biotoxin levels currently fall below the regulatory threshold. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 2.

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

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

Date Adopted: June 29, 2010.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-52-03000H Commercial razor clams Notwithstanding the provisions of WAC 220-52-030, effective immediately through 11:59 p.m. July 17, 2010, a person may dig for and possess razor clams for commercial purposes only in those waters and detached beaches of Razor Clam Area 1, lying south of the Willapa Bay Ship Channel, west of Ellen Sands and north of the tip of Leadbetter point; and in those waters and attached beaches north of the line of boundary markers consisting of four fluorescent orange posts near the northern tip of Leadbetter Point; all other areas remain closed.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-03000G Commercial razor clams.
(10-122)

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. July 18, 2010:

WAC 220-52-03000H Commercial razor clams.

WSR 10-14-047

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed June 30, 2010, 7:51 a.m., effective July 1, 2010]

Effective Date of Rule: July 1, 2010.

Purpose: The department is amending sections of chapter 388-448 WAC and WAC 388-400-0025, to comply with the changes outlined in E2SHB 2782, chapter 8, Laws of 2010, as signed by the governor on March 29, 2010.

This amendment will replace the general assistance program with disability lifeline; amend treatment and referral requirements; and add chemical dependency treatment as a condition of eligibility for disability lifeline clients who are assessed as chemically dependent.

Citation of Existing Rules Affected by this Order: Amending WAC 388-400-0025, 388-448-0010, 388-448-0130, 388-448-0140, and 388-448-0150.

Statutory Authority for Adoption: RCW 74.04.0005 [74.04.005], E2SHB 2782, chapter 8, Laws of 2010, as signed by the governor on March 29, 2010.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: The bill replaces the general assistance program with the disability lifeline program. The disability lifeline program has additional program requirements and conditions of eligibility. The program change and treatment requirements were effective March 29, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 1, Amended 5, 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 5, Repealed 0.

Date Adopted: June 16, 2010.

Katherine I. Vasquez

Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-13-043, filed 6/15/06, effective 7/17/06)

WAC 388-400-0025 Who is eligible for (~~general assistance unemployable~~) disability lifeline benefits? (1) Effective March 29, 2010, the "general assistance" program was replaced by "disability lifeline." Any reference in Washington Administrative Code (WAC) to general assistance also applies to disability lifeline.

(2) You (~~can get general assistance unemployable (GAU)~~) are eligible for disability lifeline (DL) benefits if you:

(a) Are incapacitated as required under WAC (~~388-448-0010~~) 388-448-0001 through 388-448-0120;

(b) Are at least eighteen years old or, if under eighteen, a member of a married couple;

(c) Are in financial need according to (~~GAU~~) DL income and resource rules in chapters 388-450, 388-470 and 388-488 WAC. We determine who is in your assistance unit according to WAC 388-408-0010;

(d) Meet the (~~general assistance~~) disability lifeline citizenship/alien status requirements under WAC 388-424-0015(2);

(e) Provide a Social Security number as required under WAC 388-476-0005;

(f) Reside in the state of Washington as required under WAC 388-468-0005;

(g) Undergo (~~an~~) referrals for assessment, treatment (~~and referral assessment~~), or to other agencies as provided under WAC 388-448-0130 through 388-448-0150;

(h) (~~Assign~~) Sign an interim assistance reimbursement authorization and agree to repay general assistance or disability lifeline benefits duplicated by supplemental security income benefits as (~~provided~~) described under WACs 388-448-0200, 388-448-0210 and 388-474-0020;

(i) Report changes of circumstances as required under WAC 388-418-0005; and

(j) Complete a mid-certification review and provide proof of any changes as required under WAC 388-418-0011.

(~~2~~) (3) You (~~cannot get GAU~~) aren't eligible for disability lifeline benefits if you:

(a) (~~You~~) Are eligible for temporary assistance for needy families (TANF) benefits(=);

(b) ~~((You))~~ Are eligible for state family assistance (SFA) benefits (unless you are not eligible under WAC 388-400-0010);

(c) ~~((You have the ability to, but))~~ Refuse or fail to meet a TANF or SFA eligibility rule(;) ;

(d) ~~((You))~~ Refuse or fail to participate in drug or alcohol treatment as required in WAC 388-448-0220.

(e) Are eligible for supplemental security income (SSI) benefits(;) ;

~~((e-You))~~ (f) Are an ineligible spouse of an SSI recipient(;-or) ;

~~((f) Social Security Administration (SSA) denied your application for benefits or terminated your benefits for failing to follow a SSI program rule or application requirement.~~

~~(3) We determine who is in your assistance unit according to WAC 388-408-0010)~~ (g) Failed to follow a social security administration (SSA) program rule or application requirement and SSA denied or terminated your benefits.

(4) If you reside in a public institution and meet all other requirements, your eligibility for DL depends on the type of institution. A "public institution" is an institution that is supported by public funds, and a governmental unit either is responsible for it or exercises administrative control over it. ~~((If you live in a public institution, you may be eligible for GAU depending on the type of institution you are in.))~~

(a) ~~((If you reside in a public institution and are otherwise eligible for GAU;))~~ You may be eligible for ((general assistance)) disability lifeline if you are:

- (i) A patient in a public medical institution; or
- (ii) A patient in a public mental institution and ~~((are))~~:
 - (A) Sixty-five years of age or older; or
 - (B) Twenty years of age or younger.

(b) You ~~((are not))~~ aren't eligible for ((GAU)) DL when you are in the custody of or confined in a public institution such as a state penitentiary or county jail including placement:

- (i) In a work release program; or
- (ii) Outside of the institution including home detention.

AMENDATORY SECTION (Amending WSR 04-07-140, filed 3/22/04, effective 5/1/04)

WAC 388-448-0010 How do we decide if you are incapacitated? When you apply for ~~((GA))~~ disability lifeline program benefits, you must provide medical evidence to us to show that you are unable to work.

If you are gainfully employed at the time of your application for ~~((GA))~~ DL, we deny incapacity. "**Gainful employment**" means you are performing, in a regular and predictable manner, an activity usually done for pay or profit.

(1) We ~~((do not))~~ don't consider work to be gainful employment when you are working:

(a) Under special conditions that go beyond the employer providing reasonable accommodation, such as in a sheltered workshop we have approved; or

(b) Occasionally or part-time because your impairment limits the hours you are able to work compared to unimpaired workers in the same job as verified by your employer.

(2) We ~~((decide))~~ determine if you are incapacitated when:

(a) You apply for ~~((GA))~~ disability lifeline benefits~~((We may waive this decision if we use the criteria in WAC 388-448-0001 except the PEP to determine you are incapacitated))~~;

(b) You become employed;

(c) You obtain work skills by completing a training program; or

(d) We ~~((get))~~ receive new information that indicates you may be employable.

(3) Unless you meet the other incapacity criteria in WAC 388-448-0001, we decide incapacity by applying the progressive evaluation process (PEP) to the medical evidence that you provide that meets WAC 388-448-0030. The PEP is the sequence of seven steps described in WAC 388-448-0035 through 388-448-0110.

(4) You ~~((are not))~~ aren't eligible for ~~((GA))~~ DL benefits if you are incapacitated ~~((only))~~ primarily because of alcoholism or drug addiction. If you have a physical or mental impairment and you are impaired by alcohol or drug addiction, we decide if you are eligible for ~~((general assistance))~~ disability lifeline. ~~((If you qualify for both GA and the ADATSA Shelter program, you may choose either program.))~~

(5) In determining incapacity, we consider only your ability to perform basic work-related activities. "Basic work-related activities" are activities that anyone would be required to perform in a work setting. They consist of: Sitting, standing, walking, lifting, carrying, handling, seeing, hearing, communicating, and understanding and following instructions.

AMENDATORY SECTION (Amending WSR 01-14-059, filed 6/29/01, effective 8/1/01)

WAC 388-448-0130 Treatment and referral requirements. We refer you ~~((to medical providers for available))~~ for medical treatment or to other agencies for ((treatment)) services, rehabilitation, or work activities when we decide ((#)) medical treatment or services are available, and will improve your ability to ~~((be))~~ become gainfully employed or reduce your need for ~~((GAU))~~ disability lifeline benefits. "**((Available)) Medical treatment**" means any medical, surgical, ~~((chemical dependency, or))~~ mental health service(s), or ~~((a combination of them))~~ any other treatment or service recommended by a medical or mental health provider.

(1) When you are first approved, and at each review determination, we give you written information regarding your medical treatment and agency referral requirements.

(2) You must accept and follow through on required medical treatment and referrals to other agencies and services, ~~((including applying for SSI;))~~ unless you have good cause for not doing so. ~~((Examples of good cause are found))~~ Good cause for medical treatment and referrals is defined in WAC 388-448-0140.

(3) ~~((We may require you to undergo alcohol or drug treatment before reviewing your eligibility for GAU.~~

~~((4))~~ You may request ~~((a fair))~~ an administrative hearing if you disagree with the medical treatment or agency referral requirements we set for you (see WAC 388-458-0040).

AMENDATORY SECTION (Amending WSR 01-14-059, filed 6/29/01, effective 8/1/01)

WAC 388-448-0140 When does a person have good cause for refusing or failing to participate in medical treatment or referrals to other ((agency referrals)) agencies? ~~((We may determine that you have good cause for refusing))~~ When you refuse or fail to participate in required medical treatment or referrals to other agencies, you may claim good cause by providing a reason for your refusal or failure. We determine whether your reason is valid. We may require you to provide proof to support your good cause claim. ((Valid reasons for refusing treatment and other agency referrals include, but are not limited to, the following:)) These rules do not apply to participation requirements listed in WACs 388-448-0200 through 388-448-0220.

(1) Valid reasons for refusing or failing to participate in medical treatment ~~((referrals))~~:

(a) You are so fearful of the treatment that your fear could interfere with the treatment or reduce its benefits;

(b) ~~((Treatment could))~~ The treatment provider has identified a risk that the treatment may cause further limitations or loss of a function or an organ and you are not willing to take that risk;

(c) You practice an organized religion that prohibits the treatment; or

(d) We determine that treatment is not available because you can't obtain it without cost to you.

(2) Valid reasons for refusing ~~((treatment or))~~ or failing to participate in referrals to other ((agency referrals)) agencies:

(a) ~~((We did not))~~ You are unable to participate because we didn't give you enough information about the requirement;

(b) You ~~((did not))~~ didn't receive written notice of the requirement;

(c) The requirement was made in error;

(d) You ~~((are))~~ provide proof of interference beyond your control that temporarily ((unable to participate because of documented interference:)) prevented you from participating; or

(e) Your medical condition or limitations are consistent with the ~~((definition of))~~ need for necessary supplemental accommodation (NSA), as defined in WAC 388-472-0020 and ((your condition or limitations)) contributed to your refusal or failure, per WAC 388-472-0050.

AMENDATORY SECTION (Amending WSR 00-16-113, filed 8/2/00, effective 9/1/00)

WAC 388-448-0150 Penalty for refusing or failure to participate in medical treatment or other agency referrals. (1) If you refuse or fail to participate in required medical treatment or agency referral without having good cause, we will ~~((stop))~~ terminate your ~~((GAU))~~ disability lifeline benefits.

(2) ~~((We stop))~~ You are ineligible for cash and medical benefits until you participate in:

(a) Chemical dependency treatment as required under WAC 388-448-0220.

(b) Obtaining federal aid assistance as required under WAC 388-448-0200.

~~((3))~~ (3) If we terminate your ((GAU)) disability lifeline benefits ((until you agree to accept and pursue the)) because you didn't have good cause to refuse, or fail to participate in, other required medical treatment services or referrals to other agencies, you are not eligible for cash and medical benefits until you verify that you have agreed to accept and pursue the medical treatment service or referral to other agencies.

~~((4))~~ (4) If you reapply for disability lifeline, you must participate as described in subsection (2) and (3) and wait for a penalty period to pass before you begin ((getting)) receiving benefits. The penalty is based on how often you have refused:

Refusal	Penalty
First	One week
Second within six months	One month
Third and subsequent within one year	Two months

NEW SECTION

WAC 388-448-0220 How does alcohol or drug dependence affect my eligibility for disability lifeline? (1) You must complete a chemical dependency assessment when we have information that indicates you may be chemically dependent.

(2) You must accept an assessment referral and participate in drug or alcohol treatment if a certified chemical dependency counselor indicates a need for treatment, unless you meet one of the following good cause reasons:

(a) We determine that your physical or mental health impairment prevents you from participating in treatment.

(b) The outpatient chemical dependency treatment you need isn't available in the county you live in.

(c) You need inpatient chemical dependency treatment at a location that you can't reasonably access.

WSR 10-14-048

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed June 30, 2010, 8:05 a.m., effective July 1, 2010]

Effective Date of Rule: July 1, 2010.

Purpose: The department is amending via emergency adoption WAC 388-310-2100 Career services program. This amendment will eliminate nonassistance food stamps (NAFS) recipients from program eligibility requirements in response to reduced budget. The amended rule needs to be in effect July 1, 2010 as it is the beginning of new state fiscal year (SFY) 2011.

Citation of Existing Rules Affected by this Order: Amending WAC 388-310-2100.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, and 74.08A.-120,

Other Authority: Supplemental budget 2010.

Under RCW 34.05.350 the agency for good cause finds that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: The supplemental budget (2010) reduced funding for the career services program by \$3.6 million in SFY 2011 (budget step H10). Savings are assumed through elimination of career services provided to non-WorkFirst food stamp recipients. The department is concurrently working on the regular rule-filing process. The preproposal statement of inquiry CR-101 was filed on December 22, 2009, as WSR 10-01-160, and the proposed rule making CR-102 was filed on March 3, 2010, as WSR 10-06-117.

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: June 25, 2010.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-02-029, filed 12/30/08, effective 2/1/09)

WAC 388-310-2100 Career services program. (1) What is the career services program?

Career services, administered by employment security department, within available funds, provides up to six months of:

- Basic needs payments;
- Wage progression services; and
- Job retention services.

(2) How can I get career services?

(a) To get career services, you must meet the following eligibility requirements:

(i) Be working thirty hours or more per week in a paid unsubsidized job; and

(ii) Not have left temporary assistance for needy families (TANF)/state family assistance (SFA) in sanction status within the previous six months; and

(iii) Be a custodial parent or caretaker relative who(~~(A))~~ received TANF/SFA or diversion cash assistance (DCA) within at least one of the past two calendar months(~~(A))~~ ~~or~~

~~(B) Receives basic food assistance for your family and does not qualify under subsection (A) of this section or does not currently receive cash benefits under the TANF, SFA, refugee, or general assistance programs).~~

(b) You must also enroll with the employment security department during the following timeframes:

(i) Within the first two calendar months after your TANF/SFA ends; or

(ii) Within the first two calendar months after you received your first diversion cash assistance (DCA) payment(~~(A))~~

~~(iii) Anytime starting the month after you meet eligibility criteria for career services while receiving basic food. You aren't eligible for career services based on receiving basic food assistance if you have already received career services during the current state fiscal year (July 1 through June 30)).~~

(c) Each adult in your family who meets these conditions and enrolls in the program can receive the payments and services.

(3) What services and payments are available while I am enrolled in the career services program?

The career services program provides wage progression services, job retention services and basic needs payments.

(a) Services include employment planning that will help you keep your job and increase your wages.

(b) As shown in the chart below, cash payments and bonuses are made monthly, for up to six consecutive months after leaving TANF/SFA, or receiving DCA(~~(A))~~ ~~or while receiving Basic Food assistance).~~

(c) You may receive up to six hundred fifty dollars in cash payments and bonuses over the six-month period following your TANF/SFA case closing, ((getting)) or receiving your first DCA payment(~~(A))~~ ~~or while receiving Basic Food assistance).~~

Program	Enrollment Period	Frequency	Payment Period	Payment & Bonus Amount	Payment Description
TANF/SFA or DCA	<ul style="list-style-type: none"> • First two months after TANF/SFA ends, or • Two months after first DCA payment 	People can enroll the first two months after they: <ul style="list-style-type: none"> • Exit TANF/SFA or • Receive first DCA payment 	Month 1 or 2	\$150.00	One-time enrollment bonus when you sign up for the program.
			Month 1-6 after TANF/SFA ends	\$50.00	Monthly payments begin once you enroll. If you enroll during Month 2, then you are not eligible for the Month 1 payment.
			Month 4 and 6	\$100.00 month 4 \$100.00 month 6	Bonus for completing the career services assessment and employment planning interview.
((Basic Food))	((Any time starting the month after becoming eligible for career services))	((One time in a fiscal year (July through June)))	((1st Month))	(((\$150.00))	((One time enrollment bonus when you sign up for the program.))
			((Month 1-6))	(((\$50.00))	((Monthly payments begin once you enroll.))
			((Month 4 and 6))	(((\$100.00 month 4 \$100.00 month 6))	((Bonus for completing the career services assessment and employment planning interview.))

(4) How long can I receive career services?

(a) Career services are available for a maximum of six consecutive months. Month one begins the calendar month after your TANF/SFA assistance ends or the calendar month after you receive your first DCA payment.

~~(b) ((If you are eligible for career services because you receive basic food assistance, career services are available for a maximum of six consecutive months beginning the month you enroll.~~

~~(c))~~ Your career services will stop for any of the following reasons:

- (i) The employment security department (ESD) learns you are no longer working thirty hours a week in unsubsidized employment;
- (ii) You begin receiving TANF/SFA assistance;
- (iii) ESD does not have your current mailing address;
- (iv) You are not living in Washington; or
- (v) It has been more than six months since your initial DCA payment or since you stopped receiving TANF/SFA ~~((or since you enrolled in the career services program because you receive basic food assistance)).~~

(5) What happens if the employment security department learns I am no longer working thirty hours or more per week?

(a) The employment security department will provide you with a letter with at least ten days advance notice that your career services will close. Your career services will stop at the end of the month in which your ten days notice expires. The letter will tell you how to request an administrative hearing if you disagree with the decision.

(b) If you find a new job or increase your hours back up to thirty hours before the end of the month, you will remain eligible for career services payments.

(c) Employment security staff can help you find new employment or work with you to increase your hours of employment.

(6) What happens if I am approved for TANF/SFA assistance while I am receiving career services?

If you start receiving TANF/SFA assistance, the employment security department will provide you with a letter and close your career services case at the end of the month. The letter will tell you how to request an administrative hearing if you disagree with the decision.

(7) What can I do if I disagree with decisions about career services?

(a) You have the right to request an administrative hearing if you disagree with a decision or action regarding the career services program. For more information, see chapter 388-02 WAC and RCW 74.08.080.

(b) If you receive continued benefits, they will still end when you reach your benefit maximum as outlined under (3)(c) and (4) regardless of any other pending administrative hearing.

WSR 10-14-049
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Medicaid Purchasing Administration)

[Filed June 30, 2010, 8:11 a.m., effective July 1, 2010]

Effective Date of Rule: July 1, 2010.

Purpose: Under sections 201 and 209, chapter 564, Laws of 2009 (ESHB 1244) for fiscal years 2010 and 2011, funding for dental services is reduced from current levels. The department is amending language in sections in chapter 388-535 WAC in order to meet these targeted budget expenditure levels. The changes include, for clients through age twenty, reducing coverage of restorative services (crowns) and reducing coverage for repairs to partial dentures; for clients age twenty-one and older, reducing coverage for endodontic treatment and oral and maxillofacial surgery, eliminating coverage for cast metal framework partial dentures, immediate dentures, oral and parenteral conscious sedation, intravenous conscious sedation, and nonintravenous conscious sedation; and limiting coverage of complete dentures and overdentures. For all clients, the department is reducing coverage for partial dentures. These rules may not be applicable to clients of the division of developmental disabilities.

Citation of Existing Rules Affected by this Order: Amending WAC 388-535-1065, 388-535-1084, 388-535-1090, 388-535-1100, 388-535-1261, 388-535-1266, 388-535-1267, 388-535-1269, 388-535-1271, and 388-535-1450.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: Sections 201 and 209, chapter 564, Laws of 2009 (ESHB 1244).

Under RCW 34.05.350 the agency for good cause finds that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: Emergency rule adoption is required in order for the department to comply with sections 201 and 209 of the operating budget for fiscal years 2010 and 2011 with respect to dental services. This emergency filing is necessary while the department prepares drafts for the permanent rule to share with providers for their input. Following this, the department plans to formally adopt the permanent rule.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 10, 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 10, Repealed 0.

Date Adopted: June 23, 2010.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 10-15 issue of the Register.

WSR 10-14-050
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed June 30, 2010, 8:14 a.m., effective July 1, 2010]

Effective Date of Rule: July 1, 2010.

Purpose: The legislature in ESSB 6872 simplified chapter 74.46 RCW by repealing numerous section[s] and granting the department the authority to incorporate the detail of the repealed sections in chapter 388-96 WAC. To identify the subjects of the rule making view ESSB 6872 at <http://apps.leg.wa.gov/documents/billdocs/2009-10/Pdf/Bills/Senate%20Passed%20Legislature/6872-S.PL.pdf>.

The amendments or adoptions to chapter 388-96 WAC to implement ESSB 6872 include but are not limited to the following (1) the effect of bed banking on rates; (2) financing allowance component rate allocation minimum facility occupancy of licensed beds, regardless of how many beds are set up or in use at eighty-five percent for essential community providers, ninety percent for small nonessential community providers, and at ninety-two percent for large nonessential community providers; (3) to increase the categories for exceptional care rates; and (4) adopt new rules for pay-for-performance supplemental rates.

The department will amend or adopt new rules to implement ESSB 6444 section 206 that include but are not limited to the following: WAC 388-96-766(3) to implement no rate add-ons to nursing facility medicaid payment rates for capital improvements not requiring a certificate of need and a certificate of capital authorization for fiscal year 2011.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-96-202, 388-96-740, 388-96-741, 388-96-742 and 388-96-749; and amending WAC 388-96-010, 388-96-108, 388-96-217, 388-96-218, 388-96-366, 388-96-384, 388-96-534, 388-96-535, 388-96-536, 388-96-542, 388-96-559, 388-96-561, 388-96-565, 388-96-585, 388-96-708, 388-96-709, 388-96-747, 388-96-748, 388-96-758, 388-96-759, 388-96-766, 388-96-776, 388-96-781, 388-96-782, 388-96-802, 388-96-803, 388-96-901, and 388-96-904.

Statutory Authority for Adoption: Chapter 74.46 RCW as amended by chapter 34, Laws of 2010, ESSB 6444 Biennial Appropriations Act.

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

necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: See above.

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 28, Amended 28, Repealed 5.

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

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

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

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

Date Adopted: June 23, 2010.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 10-16 issue of the Register.

WSR 10-14-051

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed June 30, 2010, 8:17 a.m., effective July 1, 2010]

Effective Date of Rule: July 1, 2010.

Purpose: The department is adding new WAC 388-71-06020 through 388-71-06420 as a result of the new operating budget, the home care quality authority is no longer funded and the home care referral registry program is moved to home and community services division effective July 1, 2010.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Other Authority: 2009-2011 supplemental operating budget (ESHB [ESSB] 6444).

Under RCW 34.05.350 the agency for good cause finds that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment

upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: These adjustments are necessary to address the state's revenue shortfall as outlined in the 2009-2011 supplemental operating budget (ESHB 6444). The home care quality authority is no longer funded and the home care referral registry is moving to the home and community services division effective July 1, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 23, 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 23, Amended 0, Repealed 0.

Date Adopted: June 24, 2010.

Katherine I. Vasquez
Rules Coordinator

Referral registry

NEW SECTION

WAC 388-71-06020 What is the purpose of WAC 388-71-06020 through 388-71-06420? The purpose of this chapter is to ensure compliance by the department with the provisions of RCW 74.39.250. The department is authorized to adopt rules under the provisions of the Administrative Procedure Act, chapter 34.05 RCW.

NEW SECTION

WAC 388-71-06040 What definitions apply to WAC 388-71-06020 through 388-71-06420? The following definitions apply to this chapter:

"AAA" refers to the local area agency on aging.

"ALJ" refers to administrative law judge.

"Consumer/employer" refers to an adult or child with functional or developmental disabilities who qualifies for and uses personal care or respite care paid for through medicaid or state-only funds.

"Consumer representative" refers to an individual who is acting on behalf of the consumer/employer.

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

"DSHS" refers to the department of social and health services.

"Emergency provider" means an individual provider who is employed as a back-up for a provider who did not show up or who was unable to work due to unexpected circumstances.

"**Employer**" refers to the consumer.

"**HCR**" refers to the home care referral registry.

"**Home care referral registry operations**" refers to the activities carried out at the local level to recruit and register individual providers or prospective individual providers for the referral registry and assist consumers to utilize the referral registry to find qualified individual providers.

"**Individual provider**" means a person, regardless of relationship, including a personal aide working for a consumer under self-directed care, who has a contract with the department of social and health services to provide personal care or respite care services to adults or children with functional or developmental disabilities and is reimbursed for those services through medicaid or state-only funding.

"**IP**" refers to an individual provider.

"**Malfeasance**" means any unlawful act committed by the provider, whether in the course of employment or otherwise.

"**Mandatory reporter**" is an employee of DSHS; law enforcement officer; social worker; professional school personnel; individual provider; an employee of a facility; an operator of a facility; an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency; county coroner or medical examiner; Christian science practitioner; or health care provider subject to chapter 18.130 RCW.

"**Misfeasance**" means performance of a workplace duty in an improper manner; including events which jeopardize the health and safety of persons, unresolved pattern of performance, issues related to truth or dishonesty, including failure to report a criminal conviction.

"**OAH**" refers to the office of administrative hearings.

"**Prospective individual provider**" refers to someone who is seeking employment with a consumer/employer.

"**Provider**" means an individual provider.

"**Referral registry**" is a data base that is designed to assist consumers with finding individual providers and to assist individual providers to find employment.

"**Respite provider**" means an individual provider who is employed on a prearranged short-term basis to fill in for a routine caregiver.

"**Routine provider**" means an individual provider who is employed on a regularly scheduled basis.

NEW SECTION

WAC 388-71-06060 What is the purpose of the referral registry? The purpose of the referral registry was to increase consumer/employer choice while providing assistance in finding individual providers and prospective individual providers. In addition, the referral registry:

- (1) Takes into account the consumer/employer needs and preferences when identifying potential individual providers;
- (2) Provides for reasonable standards of accountability providers and prospective individual providers listed through the registry;
- (3) Is voluntary for individual providers and prospective individual providers and consumers/employers;
- (4) Promotes job opportunities for individual providers and prospective individual providers;

(5) Provides access to the data base for consumer/employers who want to query a referral independently; and

(6) Increases a consumer/employer's choice of individual providers and prospective individual providers via an established pool of available individual providers and prospective individual providers on the registry.

NEW SECTION

WAC 388-71-06080 Who is eligible to request a referral from the referral registry? The following people are eligible to request a referral from the referral registry:

(1) Consumer/employers who are adults or children with functional or developmental disabilities who qualify for and use personal care or respite care paid for through medicaid or state-only funds.

(2) People who are authorized to request a referral on behalf of a consumer including family members, area agency on aging case managers, department social workers and/or a consumer representative.

NEW SECTION

WAC 388-71-06100 What is the difference between an individual provider and a prospective individual provider? The difference between an individual provider and a prospective individual provider is

(1) An individual provider is someone who has signed a department contract.

(2) A prospective individual provider is someone who is seeking employment with a consumer/employer and who has not yet signed a DSHS contract.

NEW SECTION

WAC 388-71-06120 What qualifies an individual provider or prospective individual provider to be on the referral registry? In order for an individual provider or prospective individual provider to be qualified to be on the referral registry, the individual provider or prospective individual provider must:

(1) Prior to January 1, 2012 satisfactorily complete a Washington state patrol background check and not be convicted of a disqualifying crime or negative action based on the applicable department list of disqualifying crimes and negative actions; and

(2) Complete an FBI fingerprint-based background check if the person has lived in the state of Washington less than three consecutive years immediately before the background check. An individual provider or prospective individual provider that has lived in Washington state less than three consecutive years may be included on the referral registry for a one hundred twenty-day provisional period as allowed by law or program rules when:

(a) A fingerprint-based background check is pending; and

(b) The individual provider or prospective individual provider is not disqualified based on the immediate result of the Washington state patrol background check.

(3) Not be listed on any long-term care abuse and neglect registry used by the department;

- (4) Be eighteen years of age or older;
 - (5) Provide a valid Washington state driver's license or other valid picture identification;
 - (6) Have a Social Security card or proof of authorization to work in the United States as required on the employment verification form; and
 - (7) Comply with requirements listed in WAC 388-71-06180 and other applicable requirements in chapter 388-71 WAC.
- (8) Effective January 1, 2012, be screened through the department's fingerprint-based background check, as required by RCW 74.39A.055.

NEW SECTION

WAC 388-71-06130 What information will be considered cause for denying an individual provider or prospective individual provider placement on the referral registry? An individual provider or prospective individual provider will be denied placement on the referral registry when:

- (1) A background check that reveals a disqualifying crime or negative action listed on an applicable department list of disqualifying crimes and/or negative actions;
- (2) He or she is listed on any state abuse or neglect registry;
- (3) He or she is subject to a current and valid protective order that was issued in the state of Washington barring or restricting contact with children, vulnerable adults or persons with disabilities;
- (4) The department individual provider contract is denied; or
- (5) He or she is found ineligible per WAC 388-71-0540.

NEW SECTION

WAC 388-71-06135 What information may be considered cause for denying an individual provider or prospective individual provider placement on the referral registry? The following information may be considered cause for denying an individual provider or prospective individual provider placement on the referral registry:

- (1) He or she failed to disclose pending charges, criminal convictions, or negative actions on background authorization form;
- (2) The department has a reasonable, good faith belief that he or she is unable to meet the care needs of consumers;
- (3) The background check reveals an offense or pattern of offenses, not listed on the applicable list of disqualifying crimes, that the department determines may put consumers at risk; or
- (4) Information found in WAC 388-71-0543.

NEW SECTION

WAC 388-71-06140 How does an individual provider or prospective individual provider apply to be on the referral registry? In order for an individual provider or prospective individual provider to apply to be on the registry, he or she must:

- (1) Contact their local home care referral registry operations;
- (2) Request and complete an application packet; and
- (3) Meet the qualifications specified in WAC 388-71-06120.

NEW SECTION

WAC 388-71-06160 Does an individual provider or prospective individual provider have any ongoing responsibilities in order to stay on the referral registry? (1) In order for an individual provider or prospective individual provider to stay on the registry, he or she must:

- (a) Contact the referral registry office once a month to verify that the information in the system is accurate and up-to-date; and
- (b) Successfully complete the criminal history background check process every twelve months, described in WAC 388-71-06130 and 388-71-0513.

(2) Failure to comply with ongoing responsibilities will result in placing the individual provider or prospective individual provider in an "inactive" status. The provider will not be referred to a consumer/employer when in "inactive" status.

NEW SECTION

WAC 388-71-06180 Are there any training requirements for being on the referral registry? In order for an individual provider or prospective individual provider to be listed on the referral registry, he or she must complete the "Becoming a Professional IP" training prior to being referred to a consumer, unless the person has already worked as an individual provider for more than three months under DSHS contract. All other mandatory training requirements for long-term care workers per chapter 388-71 WAC are applicable.

NEW SECTION

WAC 388-71-06200 Will an individual provider or prospective individual provider be removed from the referral registry? An individual provider or prospective individual provider will be removed from the referral registry when he or she:

- (1) Fails to meet the qualifications identified in WAC 388-71-06120 and 388-71-06180;
- (2) Committed misfeasance in the performance of his or her duties as an individual provider;
- (3) Committed malfeasance in the performance of his or her duties as an individual provider;
- (4) Requests that their name be removed from the registry;
- (5) Has his or her individual provider contract with the department terminated for cause;
- (6) Has a cause for denial, as listed in WAC 388-71-06130, exists; or
- (7) Fails to meet qualifications found in WAC 388-71-0510 and 388-71-0540.

NEW SECTION

WAC 388-71-06220 What is the procedure for removing an individual provider or prospective individual provider from the referral registry? The procedure for removing an individual provider or prospective individual provider from the referral registry is as follows:

The department and/or its designee, will review all complaints and disqualification information received and:

(1) For those complaints that fall under the legal jurisdiction of law enforcement or adult protective services (APS) or child protective services (CPS), an immediate referral will be made to the appropriate agency.

(a) The department may initiate an emergency proceeding to inactivate the individual provider or prospective individual provider on the registry pending the investigation.

(b) If APS, CPS, and/or law enforcement declines the referral, the complaint will proceed to assessment, recommendation and decision.

(c) If APS, CPS, and/or law enforcement accepts the complaint, then action beyond the emergency adjudicative process per RCW 34.05.479 will be stayed pending APS, CPS, and/or law enforcement action.

(2) For those complaints not forwarded to APS, CPS, or law enforcement, the department will conduct an internal assessment.

(a) Upon assessment, a decision will be made and notification will be sent, in writing to the individual provider or prospective individual provider.

(b) The individual provider or prospective individual provider has the right to appeal an adverse decision.

(c) The appeal must be sent in writing to the office of administrative hearings (OAH) as designated on the formal notice within twenty-eight days of the date the formal notice was mailed by the department.

(d) OAH will schedule the hearing and notify interested parties.

(e) An administrative law judge (ALJ) from OAH will act as presiding officer for the adjudicative proceeding as provided in RCW 34.05.425 (1)(c).

(f) The ALJ will render an initial decision.

(g) The initial decision will be reviewed and final agency action will be taken by the department board of appeals, either adopting, modifying, or reversing the initial decision.

(h) The final order is the final department action and will be provided to all interested parties and to the individual provider or prospective individual provider along with information regarding the right to seek judicial review in superior court when applicable.

(i) The final order will include, or incorporate by reference to the initial order, all matters required by RCW 34.05.-461(3).

NEW SECTION

WAC 388-71-06240 What is the procedure for the denial of an individual provider or prospective individual provider's application to be on the referral registry? Upon receipt of an individual provider or prospective individual provider's application to be on the referral registry, the department will utilize the following procedure to determine

whether the individual provider or prospective individual provider meets the minimum qualifications and whether he or she will be able to appropriately meet the care needs of consumers:

(1) An internal assessment will be conducted, a decision will be made and notification will be sent, in writing to the individual provider or prospective individual provider.

(2) The individual provider or prospective individual provider has the right to appeal an adverse decision.

(3) The appeal must be sent in writing to the office of administrative hearings (OAH) as designated on the formal notice within twenty-eight days of the date the formal notice was mailed by DSHS.

(4) OAH will schedule the hearing and notify interested parties.

(5) An administrative law judge from OAH will act as presiding officer for the adjudicative proceeding as provided in RCW 34.05.425 (1)(c).

(6) The ALJ will render an initial decision.

(7) The initial decision will be reviewed and final department action will be taken by the department board of appeals, either adopting, modifying, or reversing the initial decision.

(8) The final order is the final department action and will be provided to all interested parties and to the individual provider or prospective individual providers along with information regarding the right to seek judicial review in superior court when applicable.

(9) The final order will include, or incorporate by reference to the initial order, all matters required by RCW 34.05.461(3).

NEW SECTION

WAC 388-71-06260 Who must be notified if a complaint is received about an individual provider? If, in the course of carrying out its duties, the department or its designee, receives a complaint regarding the services being provided by an individual provider, the department, or its designee, must notify the relevant area agency on aging case manager or DSHS social worker regarding such concerns per RCW 74.39A.250 (1)(h).

NEW SECTION

WAC 388-71-06280 Are referral registry staff considered mandatory reporters? Any department staff, or subcontracted staff working for the referral registry are considered mandatory reporters.

NEW SECTION

WAC 388-71-06300 What is reasonable cause for mandatory reporting? RCW 74.34.035 outlines reasonable cause for mandatory reporting.

NEW SECTION

WAC 388-71-06320 Does an individual provider or prospective individual provider have the right to appeal being removed from the referral registry? The individual provider or prospective individual provider or the con-

sumer/employer, to whom the individual provider is providing services, has the right to appeal when he or she is being removed from the referral registry, as provided in RCW 74.39A.250 (1)(e) and WAC 388-71-06240.

A letter will be sent notifying the individual provider or prospective individual provider that he or she is being removed from the registry and will include information pertaining to the appeal and hearing process.

NEW SECTION

WAC 388-71-06340 How does a consumer/employer apply to use the referral registry services? In order to use the referral registry, a consumer/employer or consumer representative must complete the registration process. The registration process conducted by the local home care referral registry operations must confirm that the consumer/employer is qualified to receive personal care or respite care paid for through medicaid or state-only funds.

NEW SECTION

WAC 388-71-06360 How does a consumer/employer obtain a list of names from the referral registry? In order for a consumer/employer or consumer representative to obtain a referral list of names, he or she must complete and submit a request application to the local referral registry. The completed application may indicate the days and times an individual provider is needed, the personal care tasks that need to be performed, and any preferences the consumer/employer may have. Upon completion of the application, a registry coordinator will conduct a query that will generate a list of names that best match the consumer/employer's specific criteria. The list will be given to the consumer/employer via mail, phone, fax, or email, depending on the consumer/employer's preference, within a reasonable time.

Upon successful submission of a request application, a consumer/employer or consumer representative may request a user name and password to access the registry independently to generate a list of names.

NEW SECTION

WAC 388-71-06380 Who hires an individual provider or prospective individual provider? It is the consumer/employer or consumer representative's responsibility to interview, screen, hire, supervise, and terminate an individual provider or prospective individual provider.

NEW SECTION

WAC 388-71-06400 Does a consumer/employer that wants his or her individual provider to be paid through medicaid or public funding from DSHS need to gain approval from his/her case manager, social worker or nurse? A consumer/employer that wants his/her individual provider to be paid through medicaid or public funding from the department must be approved by his/her case manager, social worker or nurse. Pursuant to WAC 388-71-0540 through 388-71-0551, DSHS or the AAA may deny payment

to the client's choice of an individual provider or prospective individual provider when:

- (1) The individual provider or prospective individual does not meet the requirements to contract with DSHS; or
- (2) The case manager has a reasonable, good faith belief that the person will be unable to appropriately meet the consumer/employer needs.

NEW SECTION

WAC 388-71-06420 How can a consumer/employer use the referral registry to get an individual provider in an emergency or as a critical personal care back-up? In order to obtain an emergency or critical personal care back-up referral, a consumer/employer must complete an application with the referral registry office. Registry applications can be obtained by contacting the local referral registry. Although a consumer/employer must complete the application process, he/she is not required to have previously used the registry prior to requesting a back-up referral.

WSR 10-14-053

EMERGENCY RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed June 30, 2010, 8:22 a.m., effective July 1, 2010]

Effective Date of Rule: July 1, 2010.

Purpose: The department amends WAC 388-78A-3230 to implement ESSB 6444 section 206 (19)(b) requiring the current annual renewal license fee for boarding homes be increased to \$106 per bed beginning in state fiscal year 2011.

Citation of Existing Rules Affected by this Order: Amending WAC 388-78A-3230.

Statutory Authority for Adoption: Chapter 37, Laws of 2010, ESSB 6444 Biennial Appropriations Act, section 206 (19)(b), RCW 18.20.050, 43.135.055.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: See above.

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: June 23, 2010.

Katherine I. Vasquez
Rules Coordinator

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

WAC 388-78A-3230 Fees. The boarding home must:

(1) Submit an annual license fee of (~~seventy-nine~~) one hundred six dollars per bed of the licensed resident bed capacity as determined by and in accordance with RCW 18.20.050;

(2) Submit an additional one hundred fifty dollars when billed by the department for:

(a) A third on-site visit required by the boarding home's failure to adequately correct problems identified in a statement of deficiencies; and

(b) A full out-of-sequence inspection resulting from information gathered during a complaint investigation.

(3) Submit an additional late fee in the amount of ten dollars per day from the license renewal date until the date of mailing the fee, as evidenced by the postmark; and

(4) Submit to construction review services a fee for the review of the construction documents per the review fee schedule that is based on the project cost.

WSR 10-14-054

EMERGENCY RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed June 30, 2010, 8:24 a.m., effective July 1, 2010]

Effective Date of Rule: July 1, 2010.

Purpose: Beginning July 1, 2010 (fiscal year 2011), ESSB 6444 requires the department to increase the current annual renewal license fee for nursing homes from \$275 to \$327 per bed.

Citation of Existing Rules Affected by this Order: Amending WAC 388-97-4160 and 388-97-4180.

Statutory Authority for Adoption: Chapter 37, Laws of 2010; Biennial Appropriations Act section; ESSB 6444, [section] 206 (19)(a), RCW 18.51.050, 43.135.055.

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

Reasons for this Finding: See above.

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

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

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

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

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

Date Adopted: June 23, 2010.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-4160 Initial nursing home license. (1) A complete nursing home license application must be:

(a) Submitted at least sixty days prior to the proposed effective date of the license on forms designated by the department;

(b) Signed by the proposed licensee or the proposed licensee's authorized representative;

(c) Notarized; and

(d) Reviewed by the department in accordance with this chapter.

(2) All information requested on the license application must be provided. At minimum, the nursing home license application will require the following information:

(a) The name and address of the proposed licensee, and any partner, officer, director, managerial employee, or owner of five percent or more of the proposed licensee;

(b) The names of the administrator, director of nursing services, and, if applicable, the management company;

(c) The specific location and the mailing address of the facility for which a license is sought;

(d) The number of beds to be licensed; and

(e) The name and address of all nursing homes that the proposed licensee or any partner, officer, director, managerial employee, or owner of five percent or more of the proposed licensee has been affiliated with in the past ten years.

(3) The proposed licensee must be:

(a) The individual or entity responsible for the daily operation of the nursing home;

(b) Denied the license if any individual or entity named in the application is found by the department to be unqualified.

(4) For initial licensure of a new nursing home, the proposed licensee must submit the annual license fee with the initial license application. The nonrefundable nursing home license fee is (~~two hundred seventy-five~~) three hundred twenty seven dollars per bed per year.

(5) If any information submitted in the initial license application changes before the license is issued, the proposed licensee must submit a revised application containing the changed information.

(6) If a license application is pending for more than six months, the proposed licensee must submit a revised application containing current information about the proposed licensee or any other individuals or entities named in the application.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-4180 Nursing home license renewal. (1)

All nursing home licenses must be renewed annually.

(2) License renewals must be:

(a) Submitted at least thirty days prior to the license's expiration date on forms designated by the department;

(b) Signed by the current licensee; and

(c) Reviewed by the department in accordance with this chapter.

(3) The current licensee must provide all information on the license renewal form or other information requested by the department.

(4) The application for a nursing home license renewal must be made by the individual or entity currently licensed and responsible for the daily operation of the nursing home.

(5) The nursing home license renewal fee must be submitted at the time of renewal. The nonrefundable nursing home license renewal fee is ~~((two hundred seventy five))~~ three hundred twenty seven dollars per bed per year.

(6) In unusual circumstances, the department may issue an interim nursing home license for a period not to exceed three months. The current licensee must submit the prorated nursing home license fee for the period covered by the interim license. The annual date of license renewal does not change when an interim license is issued.

(7) A change of nursing home ownership does not change the date of license renewal and fee payment.

WSR 10-14-055

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed June 30, 2010, 8:26 a.m., effective July 1, 2010]

Effective Date of Rule: July 1, 2010.

Purpose: The department is amending WAC 388-106-0125 and 388-106-0130 to adjust in-home hours based on individualized CARE assessments related to:

- An elimination of the increase associated with incontinence and/or specialized diet for clients with informal support; and
- An increase that gives back some of the hours reduced July 1, 2009, to all in-home clients.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0125 and 388-106-0130.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Other Authority: 2009-2011 supplemental operating budget (ESHB [ESSB] 6444).

Under RCW 34.05.350 the agency for good cause finds that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: These adjustments are necessary to address the state's revenue shortfall as outlined in the 2009-2011 supplemental operating budget (ESHB [ESSB] 6444).

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

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

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

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

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

Date Adopted: June 23, 2010.

Katherine I. Vasquez

Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-11-050, filed 5/12/10, effective 6/12/10)

WAC 388-106-0125 If I am age twenty-one or older, how does CARE use criteria to place me in a classification group for in-home care? CARE uses the criteria of cognitive performance score as determined under WAC 388-106-0090, clinical complexity as determined under WAC 388-106-0095, mood/behavior and behavior point score as determined under WAC 388-106-0100, ADLS as determined under WAC 388-106-0105, and exceptional care as determined under WAC 388-106-0110 to place you into one of the following seventeen in-home groups. CARE classification is determined first by meeting criteria to be placed into a group, then you are further classified based on ADL score or behavior point score into a classification sub-group following a classification path of highest possible base hours to lowest qualifying base hours.

(1) If you meet the criteria for exceptional care, then CARE will place you in **Group E**. CARE then further classifies you into:

(a) **Group E High** with ~~((416))~~ 420 base hours if you have an ADL score of 26-28; or

(b) **Group E Medium** with ~~((346))~~ 349 base hours if you have an ADL score of 22-25.

(2) If you meet the criteria for clinical complexity and have cognitive performance score of 4-6 or you have cognitive performance score of 5-6, then you are classified in **Group D** regardless of your mood and behavior qualification or behavior points. CARE then further classifies you into:

(a) **Group D High** with ~~((277))~~ 279 base hours if you have an ADL score of 25-28; or

(b) **Group D Medium-High** with ~~((234))~~ 236 base hours if you have an ADL score of 18-24; or

(c) **Group D Medium** with ~~((185))~~ 187 base hours if you have an ADL score of 13-17; or

(d) **Group D Low** with ~~((138))~~ 139 base hours if you have an ADL score of 2-12.

(3) If you meet the criteria for clinical complexity and have a CPS score of less than 4, then you are classified in **Group C** regardless of your mood and behavior qualification or behavior points. CARE then further classifies you into:

(a) **Group C High** with ~~((194))~~ 196 base hours if you have an ADL score of 25-28; or

(b) **Group C Medium-High** with ~~((174))~~ 176 base hours if you have an ADL score of 18-24; or

(c) **Group C Medium** with ~~((132))~~ 133 base hours if you have an ADL score of 9-17; or

(d) **Group C Low** with ~~((87))~~ 88 base hours if you have an ADL score of 2-8.

(4) If you meet the criteria for mood and behavior qualification and do not meet the classification for C, D, or E groups, then you are classified into **Group B**. CARE further classifies you into:

(a) **Group B High** with ~~((447))~~ 149 base hours if you have an ADL score of 15-28; or

(b) **Group B Medium** with ~~((82))~~ 83 base hours if you have an ADL score of 5-14; or

(c) **Group B Low** with ~~((47))~~ 48 base hours if you have an ADL score of 0-4; or

(5) If you meet the criteria for behavior points and have a CPS score of greater than 2 and your ADL score is greater than 1, and do not meet the classification for C, D, or E

groups, then you are classified in **Group B**. CARE further classifies you into:

(a) **Group B High** with ~~((147))~~ 149 base hours if you have a behavior point score 12 or greater; or

(b) **Group B Medium-High** with ~~((101))~~ 102 base hours if you have a behavior point score greater than 6; or

(c) **Group B Medium** with ~~((82))~~ 83 base hours if you have a behavior point score greater than 4; or

(d) **Group B Low** with ~~((47))~~ 48 base hours if you have a behavior point score greater than 1.

(6) If you are not clinically complex and your CPS score is less than 5 and you do not qualify under either mood and behavior criteria, then you are classified in **Group A**. CARE further classifies you into:

(a) **Group A High** with ~~((71))~~ 72 base hours if you have an ADL score of 10-28; or

(b) **Group A Medium** with ~~((56))~~ 57 base hours if you have an ADL score of 5-9; or

(c) **Group A Low** with ~~((26))~~ 27 base hours if you have an ADL score of 0-4.

AMENDATORY SECTION (Amending WSR 08-23-011, filed 11/6/08, effective 12/7/08)

WAC 388-106-0130 How does the department determine the number of hours I may receive for in-home care? (1) The department assigns a base number of hours to each classification group as described in WAC 388-106-0125.

(2) The department will deduct from the base hours to account for informal supports, as defined in WAC 388-106-0010, or other paid services that meet some of an individual's need for personal care services, including adult day health, as follows:

(a) The CARE tool determines the adjustment for informal supports by determining the amount of assistance available to meet your needs, assigns it a numeric percentage, and reduces the base hours assigned to the classification group by the numeric percentage. The department has assigned the following numeric values for the amount of assistance available for each ADL and IADL:

Meds	Self Performance	Status	Assistance Available	Value Percentage
Self administration of medications	Rules for all codes apply except independent is not counted	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.9
			1/4 to 1/2 time	.7
1/2 to 3/4 time	.5			
>3/4 time	.3			

Unscheduled ADLs	Self Performance	Status	Assistance Available	Value Percentage
Bed mobility, transfer, walk in room, eating, toilet use	Rules apply for all codes except: Did not occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent are not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.9
			1/4 to 1/2 time	.7
	1/2 to 3/4 time	.5		
	>3/4 time	.3		
Scheduled ADLs	Self Performance	Status	Assistance Available	Value Percentage
Dressing, personal hygiene, bathing	Rules apply for all codes except: Did not occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent are not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.75
			1/4 to 1/2 time	.55
1/2 to 3/4 time	.35			
>3/4 time	.15			
IADLs	Self Performance	Status	Assistance Available	Value Percentage
Meal preparation, Ordinary housework, Essential shopping	Rules for all codes apply except independent is not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.3
			1/4 to 1/2 time	.2
1/2 to 3/4 time	.1			
>3/4 time	.05			
IADLs	Self Performance	Status	Assistance Available	Value Percentage
Travel to medical	Rules for all codes apply except independent is not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.9
			1/4 to 1/2 time	.7
1/2 to 3/4 time	.5			
>3/4 time	.3			
Key: > means greater than < means less than				

(b) To determine the amount of reduction for informal support, the value percentages are totaled and divided by the number of qualifying ADLs and IADLs needs. The result is value A. Value A is then subtracted from one. This is value B. Value B is divided by three. This is value C. Value A and Value C are summed. This is value D. Value D is multiplied by the "base hours" assigned to your classification group and the result is the number of in-home hours reduced for informal supports.

(3) Also, the department will adjust in-home base hours when:

(a) There is more than one client receiving ADSA-paid personal care services living in the same household, the status under subsection (2)(a) of this section must be met or partially met for the following IADLs:

- (i) Meal preparation;
- (ii) Housekeeping;
- (iii) Shopping; and
- (iv) Wood supply.

(b) You are under the age of eighteen, your assessment will be coded according to age guidelines codified in WAC 388-106-0213.

~~(4)~~ ((In addition to any determination of unmet need in (2)(a) when you are not affected by (3) above, the department will score the status for meal preparation as unmet when you adhere to at least one of the following special diets:

- ~~(a) ADA (diabetes);~~
- ~~(b) Autism diet;~~
- ~~(c) Calorie reduction;~~
- ~~(d) Low sodium;~~
- ~~(e) Mechanically altered;~~
- ~~(f) Planned weight change program;~~
- ~~(g) Renal diet; or~~

~~(h) Needs to receive nutrition through tube feeding or receives greater than twenty-five percent of calories through tube or parenteral feeding.~~

~~(5) In addition to any determination of unmet need in (2)(a) when you are not affected by (3) above, the department will score the status for housework as unmet when you are incontinent of bladder or bowel, documented as:~~

- ~~(a) Incontinent all or most of the time;~~
- ~~(b) Frequently incontinent; or~~
- ~~(c) Occasionally incontinent.~~

~~(6)) After deductions are made to your base hours, as described in subsections (2) and (3), the department may add on hours based on your living environment:~~

Condition	Status	Assistance Available	Add On Hours
Offsite laundry facilities, which means the client does not have facilities in own home and the caregiver is not available to perform any other personal or household tasks while laundry is done.	N/A	N/A	8
Client is >45 minutes from essential services (which means he/she lives more than 45 minutes one-way from a full-service market).	Unmet	N/A	5
	Met	N/A	0
	Partially met	<1/4 time	5
		between 1/4 to 1/2 time	4
		between 1/2 to 3/4 time	2
>3/4 time	2		
Wood supply used as sole source of heat.	Unmet	N/A	8
	Met	N/A	0
	Declines	N/A	0
	Partially met	<1/4 time	8
		between 1/4 to 1/2 time	6
between 1/2 to 3/4 time		4	
>3/4 time	2		

~~((7))~~ (5) In the case of New Freedom consumer directed services (NFCDS), the department determines hours as described in WAC 388-106-1445.

~~((8))~~ (6) The result of actions under subsections (2), (3), and (4)~~((5) and (6))~~ is the maximum number of hours that can be used to develop your plan of care. The department must take into account cost effectiveness, client health and safety, and program limits in determining how hours can be used to meet your identified needs. In the case of New Freedom consumer directed services (NFCDS), a New Freedom spending plan (NFSP) is developed in place of a plan of care.

~~((9))~~ (7) You and your case manager will work to determine what services you choose to receive if you are eligible. The hours may be used to authorize:

- (a) Personal care services from a home care agency provider and/or an individual provider.
- (b) Home delivered meals (i.e. a half hour from the available hours for each meal authorized).
- (c) Adult day care (i.e. a half hour from the available hours for each hour of day care authorized).
- (d) A home health aide if you are eligible per WAC 388-106-0300 or 388-106-0500.
- (e) A private duty nurse (PDN) if you are eligible per WAC 388-71-0910 and 388-71-0915 or WAC 388-551-3000

(i.e. one hour from the available hours for each hour of PDN authorized).

(f) The purchase of New Freedom consumer directed services (NFCDS).

WSR 10-14-057
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Aging and Disability Services Administration)
 [Filed June 30, 2010, 8:29 a.m., effective July 1, 2010]

Effective Date of Rule: July 1, 2010.

Purpose: Effective July 1, 2010, the department will increase the boarding home licensing fee from \$79 a bed to \$106 a bed. The rates in WAC 388-105-0005 will be increased to cover the medicaid share of the license fee increase and new training needs.

Citation of Existing Rules Affected by this Order: Amending WAC 388-105-0005.

Statutory Authority for Adoption: RCW 74.39A.030 (3)(a), section 206(9), chapter 37, Laws of 2010.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: See above.

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 [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 1 [0], Amended [1], Repealed 0.

Date Adopted: June 23, 2010.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-20-011, filed 9/25/09, effective 10/26/09)

WAC 388-105-0005 The daily medicaid payment rates for clients assessed using the comprehensive assessment reporting evaluation (CARE) tool and that reside in adult family homes (AFH) and boarding homes contracted to provide assisted living (AL), adult residential care (ARC), and enhanced adult residential care (EARC) services. For contracted AFH and boarding homes contracted to provide AL, ARC, and EARC services, the department pays the following daily rates for care of a medicaid resident:

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE					
KING COUNTY					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
A Low	\$((66.45)) <u>66.65</u>	\$((71.87)) <u>72.07</u>	\$((46.99)) <u>47.19</u>	\$((46.99)) <u>47.19</u>	\$46.39
A Med	\$((71.95)) <u>72.15</u>	\$((77.37)) <u>77.57</u>	\$((53.32)) <u>53.52</u>	\$((53.32)) <u>53.52</u>	\$52.64
A High	\$((80.74)) <u>80.94</u>	\$((86.16)) <u>86.36</u>	\$((58.56)) <u>58.76</u>	\$((58.56)) <u>58.76</u>	\$58.90
B Low	\$((66.45)) <u>66.65</u>	\$((71.87)) <u>72.07</u>	\$((46.99)) <u>47.19</u>	\$((46.99)) <u>47.19</u>	\$46.62
B Med	\$((74.15)) <u>74.35</u>	\$((79.57)) <u>79.77</u>	\$((59.65)) <u>59.85</u>	\$((59.65)) <u>59.85</u>	\$59.19
B Med-High	\$((83.98)) <u>84.18</u>	\$((89.40)) <u>89.60</u>	\$((63.43)) <u>63.63</u>	\$((63.43)) <u>63.63</u>	\$63.42
B High	\$((88.41)) <u>88.61</u>	\$((93.83)) <u>94.03</u>	\$((72.51)) <u>72.71</u>	\$((72.51)) <u>72.71</u>	\$72.51
C Low	\$((71.95)) <u>72.15</u>	\$((77.37)) <u>77.57</u>	\$((53.32)) <u>53.52</u>	\$((53.32)) <u>53.52</u>	\$52.64
C Med	\$((80.74)) <u>80.94</u>	\$((86.16)) <u>86.36</u>	\$((66.93)) <u>67.13</u>	\$((66.93)) <u>67.13</u>	\$67.22
C Med-High	\$((100.51)) <u>100.71</u>	\$((105.93)) <u>106.13</u>	\$((89.22)) <u>89.42</u>	\$((89.22)) <u>89.42</u>	\$88.06
C High	\$((101.51)) <u>101.71</u>	\$((106.93)) <u>107.13</u>	\$((90.07)) <u>90.27</u>	\$((90.07)) <u>90.27</u>	\$89.29
D Low	\$((74.15)) <u>74.35</u>	\$((79.57)) <u>79.77</u>	\$((72.07)) <u>72.27</u>	\$((72.07)) <u>72.27</u>	\$68.52

D Med	\$((82.39)) <u>82.59</u>	\$((87.81)) <u>88.01</u>	\$((83.50)) <u>83.70</u>	\$((83.50)) <u>83.70</u>	\$83.87
D Med-High	\$((106.54)) <u>106.74</u>	\$((111.96)) <u>112.16</u>	\$((106.19)) <u>106.39</u>	\$((106.19)) <u>106.39</u>	\$100.92
D High	\$((114.81)) <u>115.01</u>	\$((120.23)) <u>120.43</u>	\$((114.81)) <u>115.01</u>	\$((114.81)) <u>115.01</u>	\$114.90
E Med	\$((138.75)) <u>138.95</u>	\$((144.17)) <u>144.37</u>	\$((138.75)) <u>138.95</u>	\$((138.75)) <u>138.95</u>	\$138.84
E High	\$((162.69)) <u>162.89</u>	\$((168.11)) <u>168.31</u>	\$((162.69)) <u>162.89</u>	\$((162.69)) <u>162.89</u>	\$162.79

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE METROPOLITAN COUNTIES*					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
A Low	\$((60.95)) <u>61.15</u>	\$((65.87)) <u>66.07</u>	\$((46.99)) <u>47.19</u>	\$((46.99)) <u>47.19</u>	\$46.39
A Med	\$((64.26)) <u>64.46</u>	\$((69.18)) <u>69.38</u>	\$((51.21)) <u>51.41</u>	\$((51.21)) <u>51.41</u>	\$50.55
A High	\$((78.54)) <u>78.74</u>	\$((83.46)) <u>83.66</u>	\$((55.84)) <u>56.04</u>	\$((55.84)) <u>56.04</u>	\$55.76
B Low	\$((60.95)) <u>61.15</u>	\$((65.87)) <u>66.07</u>	\$((46.99)) <u>47.19</u>	\$((46.99)) <u>47.19</u>	\$46.62
B Med	\$((69.74)) <u>69.94</u>	\$((74.66)) <u>74.86</u>	\$((56.49)) <u>56.69</u>	\$((56.49)) <u>56.69</u>	\$56.04
B Med-High	\$((79.00)) <u>79.20</u>	\$((83.92)) <u>84.12</u>	\$((60.07)) <u>60.27</u>	\$((60.07)) <u>60.27</u>	\$60.10
B High	\$((86.22)) <u>86.42</u>	\$((91.14)) <u>91.34</u>	\$((70.46)) <u>70.66</u>	\$((70.46)) <u>70.66</u>	\$70.46
C Low	\$((64.26)) <u>64.46</u>	\$((69.18)) <u>69.38</u>	\$((51.42)) <u>51.62</u>	\$((51.42)) <u>51.62</u>	\$50.93
C Med	\$((78.54)) <u>78.74</u>	\$((83.46)) <u>83.66</u>	\$((66.07)) <u>66.27</u>	\$((66.07)) <u>66.27</u>	\$65.58
C Med-High	\$((97.20)) <u>97.40</u>	\$((102.12)) <u>102.32</u>	\$((82.89)) <u>83.09</u>	\$((82.89)) <u>83.09</u>	\$81.82
C High	\$((98.17)) <u>98.37</u>	\$((103.09)) <u>103.29</u>	\$((88.17)) <u>88.37</u>	\$((88.17)) <u>88.37</u>	\$86.81
D Low	\$((69.74)) <u>69.94</u>	\$((74.66)) <u>74.86</u>	\$((71.08)) <u>71.28</u>	\$((71.08)) <u>71.28</u>	\$67.01
D Med	\$((80.14)) <u>80.34</u>	\$((85.06)) <u>85.26</u>	\$((81.83)) <u>82.03</u>	\$((81.83)) <u>82.03</u>	\$81.61
D Med-High	\$((103.04)) <u>103.24</u>	\$((107.96)) <u>108.16</u>	\$((103.56)) <u>103.76</u>	\$((103.56)) <u>103.76</u>	\$97.84
D High	\$((111.65)) <u>111.85</u>	\$((116.57)) <u>116.77</u>	\$((111.65)) <u>111.85</u>	\$((111.65)) <u>111.85</u>	\$111.16

E Med	\$((134.44)) <u>134.64</u>	\$((139.36)) <u>139.56</u>	\$((134.44)) <u>134.64</u>	\$((134.44)) <u>134.64</u>	\$133.95
E High	\$((157.23)) <u>157.43</u>	\$((162.15)) <u>162.35</u>	\$((157.23)) <u>157.43</u>	\$((157.23)) <u>157.43</u>	\$156.74

*Benton, Clark, Franklin, Island, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom, and Yakima counties.

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE NONMETROPOLITAN COUNTIES**					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
A Low	\$((59.87)) <u>60.07</u>	\$((65.11)) <u>65.31</u>	\$((46.99)) <u>47.19</u>	\$((46.99)) <u>47.19</u>	\$46.39
A Med	\$((64.26)) <u>64.46</u>	\$((69.50)) <u>69.70</u>	\$((50.16)) <u>50.36</u>	\$((50.16)) <u>50.36</u>	\$49.52
A High	\$((78.54)) <u>78.74</u>	\$((83.78)) <u>83.98</u>	\$((54.94)) <u>55.14</u>	\$((54.94)) <u>55.14</u>	\$54.73
B Low	\$((59.87)) <u>60.07</u>	\$((65.11)) <u>65.31</u>	\$((46.99)) <u>47.19</u>	\$((46.99)) <u>47.19</u>	\$46.62
B Med	\$((69.74)) <u>69.94</u>	\$((74.98)) <u>75.18</u>	\$((55.44)) <u>55.64</u>	\$((55.44)) <u>55.64</u>	\$55.00
B Med-High	\$((79.00)) <u>79.20</u>	\$((84.24)) <u>84.44</u>	\$((58.94)) <u>59.14</u>	\$((58.94)) <u>59.14</u>	\$58.92
B High	\$((86.22)) <u>86.42</u>	\$((91.46)) <u>91.66</u>	\$((66.64)) <u>66.84</u>	\$((66.64)) <u>66.84</u>	\$66.64
C Low	\$((64.26)) <u>64.46</u>	\$((69.50)) <u>69.70</u>	\$((50.16)) <u>50.36</u>	\$((50.16)) <u>50.36</u>	\$49.52
C Med	\$((78.54)) <u>78.74</u>	\$((83.78)) <u>83.98</u>	\$((62.45)) <u>62.65</u>	\$((62.45)) <u>62.65</u>	\$63.07
C Med-High	\$((97.20)) <u>97.40</u>	\$((102.44)) <u>102.64</u>	\$((79.72)) <u>79.92</u>	\$((79.72)) <u>79.92</u>	\$78.70
C High	\$((98.17)) <u>98.37</u>	\$((103.41)) <u>103.61</u>	\$((83.34)) <u>83.54</u>	\$((83.34)) <u>83.54</u>	\$82.10
D Low	\$((69.74)) <u>69.94</u>	\$((74.98)) <u>75.18</u>	\$((67.19)) <u>67.39</u>	\$((67.19)) <u>67.39</u>	\$63.37
D Med	\$((80.14)) <u>80.34</u>	\$((85.38)) <u>85.58</u>	\$((77.35)) <u>77.55</u>	\$((77.35)) <u>77.55</u>	\$77.17
D Med-High	\$((103.04)) <u>103.24</u>	\$((108.28)) <u>108.48</u>	\$((97.88)) <u>98.08</u>	\$((97.88)) <u>98.08</u>	\$92.52
D High	\$((105.53)) <u>105.73</u>	\$((110.77)) <u>110.97</u>	\$((105.53)) <u>105.73</u>	\$((105.53)) <u>105.73</u>	\$105.10
E Med	\$((127.07)) <u>127.27</u>	\$((132.31)) <u>132.51</u>	\$((127.07)) <u>127.27</u>	\$((127.07)) <u>127.27</u>	\$126.64
E High	\$((148.61)) <u>148.81</u>	\$((153.85)) <u>154.05</u>	\$((148.61)) <u>148.81</u>	\$((148.61)) <u>148.81</u>	\$148.19

** Nonmetropolitan counties: Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Orielle, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla and Whitman.

WSR 10-14-063
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
(Division of Child Support)

[Filed June 30, 2010, 10:50 a.m., effective July 1, 2010]

Effective Date of Rule: July 1, 2010.

Purpose: The division of child support (DCS) is filing this emergency rule to comply with the budget for state fiscal year 2011, which requires DCS to change its distribution rules regarding collections from federal tax refund offsets so that those collections are (1) applied only to child support arrears and (2) applied first to debt that has been assigned to the state.

Citation of Existing Rules Affected by this Order: Amending WAC 388-14A-5001, 388-14A-5002, 388-14A-5003, 388-14A-5004, 388-14A-5005, 388-14A-5006, and 388-14A-5010.

Statutory Authority for Adoption: RCW 26.23.035, 34.05.350 (1)(c).

Under RCW 34.05.350 the agency for good cause finds that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: The budget for state fiscal year 2011 requires DCS to change its distribution rules regarding collections from federal tax refund offsets so that those collections are (1) applied only to child support arrears and (2) applied first to debt that has been assigned to the state.

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 7, 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 1, Amended 7, Repealed 0.

Date Adopted: June 29, 2010.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-02-059, filed 1/5/09, effective 1/27/09)

WAC 388-14A-5001 What procedures does DCS follow to distribute support collections? (1) When distributing

support collections, the division of child support (DCS) records collections in exact amounts of dollars and cents.

(2) DCS distributes support collections within two days of the date DCS receives the collection, unless DCS is unable to distribute the collection for one or more of the following reasons:

(a) ~~((The location of))~~ DCS is unable to locate the payee ((is unknown)) and the payee has not signed up for electronic funds transfer (EFT) of disbursements;

(b) DCS does not have sufficient information to identify the accounts against which or to which it should distribute the money;

(c) An action is pending before a court or agency which has jurisdiction over the issue to determine whether child support is owed or how DCS should distribute the collection.

(d) DCS receives prepaid child support and is holding it for distribution in future months under ~~((subsection (2)(e) of this section))~~ WAC 388-14A-5008;

(e) DCS mails a notice of intent to distribute support money ~~((to the custodial parent (CP)))~~ under WAC 388-14A-5050;

(f) DCS receives federal tax refund offset collections, which are distributed according to WAC 388-14A-5005 and 388-14A-5010.

(g) DCS may hold funds and not issue a check to the family for amounts under one dollar. DCS must give credit for the collection, but may delay disbursement of that amount until a future collection is received which increases the amount of the disbursement to the family to at least one dollar. If no future collections are received which increase the disbursement to the family to at least one dollar, DCS transfers the amount to the department of revenue under RCW 63.29.130. This subsection does not apply to disbursements which can be made by ~~((electronic funds transfer (EFT)) or to refunds of federal tax refund offset collections));~~ or

~~((g))~~ (h) Other circumstances exist which make a proper and timely distribution of the collection impossible through no fault or lack of diligence of DCS.

(3) DCS distributes support collections based on the date DCS receives the collection, except as provided under WAC 388-14A-5005. DCS distributes support collections based on the date of collection. DCS considers the date of collection to be the date that DCS receives the support collection, no matter when the money was withheld from the noncustodial parent (NCP).

(4) Under state and federal law, the division of child support (DCS) disburses support collections to the:

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

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

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

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

(e) Persons or entity making the payment when DCS is unable to identify the person to whom the support is payable

after making reasonable efforts to obtain identification information.

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

(6) WAC 388-14A-5000 through 388-14A-5015 contain the rules for the distribution of support collections by DCS.

(7) DCS changes the distribution rules based on changes in federal statutes and regulations. DCS may also change the distribution rules based on the state budget, but only to the extent allowed by federal law.

AMENDATORY SECTION (Amending WSR 09-02-059, filed 1/5/09, effective 1/27/09)

WAC 388-14A-5002 How does DCS distribute support collections in a nonassistance case? (1) A nonassistance case is one where the family has never received a cash public assistance grant.

(2) Subject to the exceptions provided under WAC 388-14A-5005, the division of child support (DCS) applies support collections within each Title IV-D nonassistance case:

(a) First, to satisfy the current support obligation for the month DCS received the collection;

(b) Second, to the noncustodial parent's support debts owed to the family;

(c) Third, to prepaid support as provided for under WAC 388-14A-5008.

(3) DCS uses the fee retained under WAC 388-14A-2200 to offset the fee amount charged by the federal government for IV-D cases that meet the fee criteria in WAC 388-14A-2200(1).

AMENDATORY SECTION (Amending WSR 09-02-059, filed 1/5/09, effective 1/27/09)

WAC 388-14A-5003 How does DCS distribute support collections in an assistance case? (1) An assistance case is one where the family is currently receiving a TANF grant.

(2) Subject to the exceptions provided under WAC 388-14A-5005, the division of child support (DCS) distributes support collections within each Title IV-D assistance case:

(a) First, to satisfy the current support obligation for the month DCS received the collection;

(b) Second, to satisfy support debts which are permanently assigned to the department to reimburse the cumulative amount of assistance which has been paid to the family;

(c) Third:

(i) To satisfy support debts which are temporarily assigned to the department to reimburse the cumulative amount of assistance paid to the family; or

(ii) To satisfy support debts which are conditionally assigned to the department. Support collections distributed to conditionally assigned arrears are disbursed according to WAC 388-14A-2039.

(d) Fourth, to satisfy support debts owed to the family;

(e) Fifth, to prepaid support as provided for under WAC 388-14A-5008.

AMENDATORY SECTION (Amending WSR 09-02-059, filed 1/5/09, effective 1/27/09)

WAC 388-14A-5004 How does DCS distribute support collections in a former assistance case? (1) A former assistance case is one where the family is not currently receiving a TANF grant, but has at some time in the past.

(2) Subject to the exceptions provided under WAC 388-14A-5005, the division of child support (DCS) distributes support collections within each Title IV-D former-assistance case:

(a) First, to satisfy the current support obligation for the month DCS received the collection;

(b) Second, to satisfy support debts owed to the family;

(c) Third, to satisfy support debts which are conditionally or temporarily assigned to the department. These collections are disbursed according to WAC 388-14A-2039;

(d) Fourth, to satisfy support debts which are permanently assigned to the department to reimburse the cumulative amount of assistance which has been paid to the family; and

(e) Fifth, to prepaid support as provided for under WAC 388-14A-5008.

AMENDATORY SECTION (Amending WSR 09-02-059, filed 1/5/09, effective 1/27/09)

WAC 388-14A-5005 How does DCS distribute federal tax refund offset collections? The division of child support (DCS) distributes federal tax refund offset collections in accordance with 42 U.S.C. Sec. 657, as follows:

(1) ~~((First, to satisfy the current support obligation for the month in which DCS received the collection;~~

~~(2) Second,))~~ DCS distributes ((any amounts over current support)) federal tax refund offset collections to arrears only, and not to current support.

(2) DCS distributes federal tax refund offset collections within an individual case depending on the type of case to which the collection is distributed:

(a) In a never assistance case, all ~~((remaining))~~ amounts are distributed to family arrears, meaning those arrears which have never been assigned.

(b) In a former assistance case, all ~~((remaining))~~ amounts are distributed first to ~~((family))~~ permanently assigned arrears, then to ~~((permanently))~~ conditionally assigned arrears, then to ~~((conditionally assigned))~~ family arrears.

(c) In a current assistance case, all ~~((remaining))~~ amounts are distributed first to permanently assigned arrears, then to temporarily assigned arrears (if they exist), then to conditionally assigned arrears, and then to family arrears.

(3) Federal tax refund offset collections distributed to assigned support are retained by the state to reimburse the cumulative amount of assistance which has been paid to the family.

(4) DCS may distribute federal tax refund offset collections only to certified support debts ~~((and to current support obligations on cases with certified debts))~~. DCS must refund any excess to the noncustodial parent (NCP).

(5) DCS may retain the twenty-five dollar annual fee required under the federal deficit reduction act of 2005 and RCW 74.20.040 from federal tax refund offset collections distributed to nonassistance cases.

(6) When the Secretary of the Treasury, through the federal Office of Child Support Enforcement (OCSE), notifies DCS that a collection from a federal tax refund offset is from a tax refund based on a joint return, DCS follows the procedures set forth in WAC 388-14A-5010.

AMENDATORY SECTION (Amending WSR 09-02-059, filed 1/5/09, effective 1/27/09)

WAC 388-14A-5006 How does DCS distribute support collections when the paying parent has more than one case? ~~((When the NCP has more than one Title IV-D case))~~ Subject to the exceptions provided under WAC 388-14A-5005, the division of child support (DCS) distributes support collections in the following manner when the non-custodial parent (NCP) has more than one Title IV-D case:

(1) First, to the current support obligation on each Title IV-D case, in proportion to the amount of the current support order on each case; and

(2) Second, to the total of the support debts whether owed to the family or to the department for the reimbursement of public assistance on each Title IV-D case, in proportion to the amount of support debt owed by the NCP on each case; and

(3) Third, within each Title IV-D case according to WAC 388-14A-5002, 388-14A-5003, or 388-14A-5004.

AMENDATORY SECTION (Amending WSR 09-02-059, filed 1/5/09, effective 1/27/09)

WAC 388-14A-5010 How does the division of child support distribute federal tax refund offset collections from joint returns? (1) The division of child support (DCS) collects child support through the interception of federal tax refunds. This section deals with the issues that arise when the Secretary of the Treasury intercepts a tax refund based on a joint tax return filed by a noncustodial parent (NCP) and the NCP's spouse who does not owe child support.

(2) When the Secretary of the Treasury, through the federal Office of Child Support Enforcement (OCSE), notifies DCS that a collection on behalf of an NCP is from an intercepted tax refund based on a joint return, DCS may distribute fifty percent of that collection as provided in WAC 388-14A-5005 and hold the remainder for up to six months in case the NCP's spouse is entitled to a share of the federal tax refund.

(3) DCS distributes fifty percent of the collection according to WAC 388-14A-5005.

(4) DCS holds the other fifty percent of the collection in suspense until the earlier of the following:

(a) DCS is notified by OCSE or the Secretary of the Treasury whether DCS must pay back the unobligated spouse's portion of the refund; or

(b) For a period not to exceed six months from notification of the offset.

(5) After DCS holds part of a collection under subsection (4) of this section, DCS distributes the remainder of the collection to the NCP's support ~~((obligations if))~~ arrears accord-

ing to WAC 388-14A-5005, unless DCS is ~~((not))~~ required to return the unobligated spouse's portion of the refund. The CP may:

(a) Request that DCS distribute the payment to the NCP's support obligation sooner upon a showing of hardship to the CP; and

(b) Request a conference board if the CP disagrees with DCS' denial of a hardship claim.

WSR 10-14-065

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed June 30, 2010, 11:00 a.m., effective July 1, 2010]

Effective Date of Rule: July 1, 2010.

Purpose: The division of child support (DCS) is filing this fourth emergency rule in order to remove certain sections (WAC 388-14A-5002, 388-14A-5003, 388-14A-5004, 388-14A-5005, and 388-14A-5006) which are being amended by a separate emergency filing to be effective on July 1, 2010. In that filing, DCS is amending certain rules in chapter 388-14A WAC regarding the distribution of collections from federal tax refund offset, namely (WAC 388-14A-5001, 388-14A-5002, 388-14A-5003, 388-14A-5004, 388-14A-5005, 388-14A-5006, and 388-14A-5010). Other than removing those five sections listed above, there are no other changes to this rule package. DCS is still working on the adoption of final rules. **EXCEPT FOR THE REMOVAL OF WAC 388-14A-5002, 388-14A-5003, 388-14A-5004, 388-14A-5005 AND 388-14A-5006, THESE RULES ARE EXACTLY THE SAME AS THE PRIOR EMERGENCY RULES.**

This fourth set of emergency rules takes effect on July 1, 2010, and is identical in every other respect to the prior emergency rules filed as WSR 09-20-030, 10-04-037, and 10-12-039.

BASIS FOR ADOPTION OF EMERGENCY RULES: In the 2009 legislative session, the Washington state legislature adopted ESHB 1794 (chapter 84, Laws of 2009), which makes changes to chapter 26.19 RCW, the Washington state child support schedule, based on recommendations of the 2007 child support schedule workgroup which was convened under 2SHB 1009 (chapter 313, Laws of 2007) and SHB 1845 (chapter 476, Laws of 2009), regarding medical support obligations in child support orders. Both of these bills had an effective date of October 1, 2009.

DCS filed emergency rules under WSR 09-20-030 in order to implement this legislation by October 1, 2009. DCS filed the second emergency rules, identical to the first, under WSR 10-04-037 with an effective date of January 28, 2010. The third emergency was filed under WSR 10-12-039, and was effective on May 26, 2010.

DCS began the regular rule-making process by filing a CR-101, Preproposal notice of inquiry, for each of the bills: The CR-101 for ESHB 1794 was filed as WSR 09-10-046, and the CR-101 for SHB 1845 was filed as WSR 09-14-075. Because both of the bills impact the establishment of child support obligations, DCS determined that it was necessary to

adopt just one set of rules which covers both bills instead of two separate rule-making projects.

DCS has done a significant amount of redrafting and revising the rules from the form in which they were first proposed. After consulting with DCS staff, stakeholders and other partners, DCS intends to file the CR-102, Notice of proposed rule making, as soon as we can. Between the filing of the CR-102 and the public rule-making hearing, DCS will again work with DCS staff, stakeholders and other partners to incorporate more comments and feedback. While the third emergency rules are exactly the same as the first emergency rules, DCS anticipates that because of the complexity of these two bills the rules proposed in the CR-102 will differ from the emergency rules in several respects, as will the final rules. DCS hopes to have final rules adopted as soon as possible.

Citation of Existing Rules Affected by this Order:
Amending WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement?, 388-14A-2035 Do I assign my rights to support when I receive public assistance?, 388-14A-2036 What does assigning my rights to support mean?, 388-14A-3140 What can happen at a hearing on a support establishment notice?, 388-14A-3205 How does DCS calculate my income?, 388-14A-3310 The division of child support serves a notice of support owed to establish a fixed dollar amount under an existing child support order, 388-14A-3312 The division of child support serves a notice of support owed for ~~((unreimbursed))~~ medical ~~((expenses))~~ support to establish a fixed dollar amount owed under a child support order, 388-14A-3315 When DCS serves a notice of support debt ~~((or))~~, notice of support owed ~~((or))~~, notice of support owed for ~~((unreimbursed))~~ medical ~~((expenses))~~ support, we notify the other party to the child support order, 388-14A-3317 What is an annual review of a support order under RCW 26.23.110?, 388-14A-3318 What is an annual review of a notice of support owed under WAC 388-14A-3312?, 388-14A-3320 What happens at a hearing on a notice of support owed?, 388-14A-3400 Are there limitations on how much of my income is available for child support?, 388-14A-4100 How does the division of child support enforce my obligation to provide health insurance for my children?, 388-14A-4110 If my support order requires me to provide ~~((health insurance))~~ medical support for my children, what do I have to do?, 388-14A-4112 When does the division of child support enforce a custodial parent's obligation to provide ~~((health insurance coverage))~~ medical support?, 388-14A-4115 Can my support order reduce my support obligation if I pay for health insurance?, 388-14A-4120 DCS uses the National Medical Support Notice to enforce an obligation to provide health insurance coverage, 388-14A-4165 What happens when a noncustodial parent does not earn enough to pay child support plus the health insurance premium?, 388-14A-4175 ~~((Is an employer))~~ Who is required to notify the division of child support when insurance coverage for the children ends?, 388-14A-4180 When must the division of child support communicate with the DSHS health and recovery services administration?, 388-14A-5007 If the paying parent has more than one case, can DCS apply support money to only one specific case?, 388-14A-6300 Duty of the administrative law judge in a hearing to determine the amount of a support obligation and 388-14A-8130 How does DCS complete the

WSCSS worksheets when setting a joint child support obligation when the parents of a child in foster care are married and residing together?; and new section WAC 388-14A-4111 When may DCS decline a request to enforce a medical support obligation?

Statutory Authority for Adoption: RCW 26.09.105(17), 26.18.170(19), 26.23.050(8), 26.23.110(14), 34.05.020, 34.05.060, 34.05.220, 74.08.090, 74.20.040, and 74.20A.055 (9) and (11).

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

Reasons for this Finding: ESHB 1794 (chapter 84, Laws of 2009) and SHB 1845 (chapter 476, Laws of 2009) both had an effective date of October 1, 2009. Although DCS has begun the regular rule-making process to adopt rules under this bill, we were unable to complete the adoption process by the effective date. DCS continues the regular rule-making process and will adopt final rules as soon as possible.

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 23, 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 23, 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 23, Repealed 0.

Date Adopted: June 29, 1020 [2010].

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 10-16 issue of the Register.

WSR 10-14-067

EMERGENCY RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2010-05—Filed June 30, 2010, 2:42 p.m., effective July 3, 2010]

Effective Date of Rule: July 3, 2010.

Purpose: The rule amends WAC 284-23-806(5) deleting "additional" and inserting "alternative."

Citation of Existing Rules Affected by this Order:
Amending WAC 284-23-806.

Statutory Authority for Adoption: RCW 48.02.060 (3)(a).

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

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

Reasons for this Finding: WAC 284-23-806 was filed for permanent adoption on June 2, 2010. After the rule was filed for adoption an interested party wrote pointing out that WAC 284-23-806(5) contained a potential ambiguity which makes it difficult to implement. Regular rule making will follow this emergency rule making to ensure that the permanent rule is adopted prior to the expiration of the emergency rule.

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

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

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

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

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

Date Adopted: June 30, 2010.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2009-05, filed 6/2/10, effective 7/3/10)

WAC 284-23-806 Required procedures and standards for sale of juvenile life insurance policies. Beginning July 1, 2009, an insurer must comply with the following procedures and standards when underwriting juvenile life insurance policies:

(1) An insurer may refuse an applicant's request for life insurance when the combined life insurance-in-force exceeds the issuing insurer's maximum for juveniles.

(2) Life insurance upon a juvenile must not be made or take effect unless at the time the contract is made, the applicant is a person having an insurable interest in the life of the juvenile. The insurer must obtain and keep documentation sufficient to demonstrate that the applicant for the policy has an insurable interest in the life of the juvenile.

(3) In addition to the signature of the applicant, the consent of the parent or legal guardian with whom the juvenile resides, as evidenced by signature, must be obtained before submitting the application for underwriting. Any juvenile age fifteen or older must sign the application for insurance on the juvenile's life.

(4) An insurer must have underwriting standards and procedures justifying the issuance of a life insurance policy on the life of a juvenile. The insurer must provide the insurance commissioner with documentation from its records and

files to support its underwriting justification upon request. The justification must address the following elements:

(a) The issued policy must conform to the insurer's established standards and practices for underwriting juvenile life insurance or explain any variance.

(b) As part of its underwriting practice, the insurer must identify the amount, if any, of other life insurance contracts on the life of the juvenile which are in force or applied for at the time of application.

(c) The insurer must confirm that the policy death benefit is grossly proportional to the value of life insurance or accidental death benefits issued for other siblings or immediate family members, and if not, justify why proportionality or equivalency was not required.

(d) The commissioner must be able to determine that the insurer had good cause to underwrite when the overall amount of insurance on the juvenile exceeds the annual household income, and if it does so, justify why such an amount was approved. The extent to which the beneficiary or applicant is dependent on the juvenile for income or other support is an example of such a justification.

(5) If an application on the life of a juvenile is fifty thousand dollars or less and issued without underwriting, the insurer must meet the following (~~additional~~) alternative requirements:

(a) In addition to asking the applicant, take reasonable steps to determine the total amount of insurance in-force on the life of the juvenile at the date of application including, but not limited to, checking any national data base for in-force insurance information;

(b) Document the steps taken to determine the total amount of insurance in-force on a particular application and make the documentation available to the insurance commissioner upon request; and

(c) File an amended application or endorsement for use in Washington including the following statement: "This policy may be void or reduced when a claim is submitted if the total amount of life insurance in-force from all sources exceeds the underwriting limits established for issuance of this policy on the life of a juvenile." This statement must be printed in bold face type of at least twelve-point font.

(6) For each application for juvenile life insurance rejected by an insurer, each insurer must maintain at its home or principal office a complete file containing the original signed application, underwriting analysis, correspondence with the applicant and any other documents pertinent to the decision to reject the applicant as an insured, for a period of not less than ten years from the date the application was signed by the applicant. Such file shall be subject to inspection by the insurance commissioner.

**WSR 10-14-069
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 10-170—Filed June 30, 2010, 4:20 p.m., effective July 6, 2010]

Effective Date of Rule: July 6, 2010.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900Z; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The closure of the selective chinook sport fishery on the Skykomish River is necessary in order to fulfill brood stock collection requirements. If the brood stock collection goal is met prior to July 31, the Skykomish River selective chinook sport fishery may resume.

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

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

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

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

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

Date Adopted: June 30, 2010.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900Z Exceptions to statewide rules—Skykomish River. Notwithstanding the provisions of WAC 232-28-619, effective July 6 through July 31, 2010, it is unlawful to retain Chinook salmon in waters of the Skykomish River from the mouth upstream to the Wallace River.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 1, 2010:

WAC 232-28-61900Z Exceptions to statewide rules—Skykomish River.

WSR 10-14-070

EMERGENCY RULES

DEPARTMENT OF FISH AND WILDLIFE

[Order 10-171—Filed June 30, 2010, 4:20 p.m., effective July 1, 2010]

Effective Date of Rule: July 1, 2010.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900B; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Due to an unseasonably cool spring, all juvenile steelhead are not expected to exit the pond until approximately mid-July. Consequently, trout will not be stocked, and the pond will remain closed to fishing until July 15, 2010. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 30, 2010.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900B Exceptions to statewide rules—Blackbird Island Pond (Chelan Co.) Notwithstanding the provisions of WAC 232-28-619, effective July 1 through July 14, 2010, it is unlawful to fish in waters of Blackbird Island Pond.

REPEALER

The following section of the Washington Administrative Code is repealed effective July 15, 2010:

WAC 232-28-61900B Exceptions to statewide rules—Blackbird Island Pond (Chelan Co.)

WSR 10-14-071
EMERGENCY RULES
OFFICE OF
INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2010-06—Filed July 1, 2010, 7:17 a.m., effective July 3, 2010]

Effective Date of Rule: July 3, 2010.

Purpose: Explain to insurers the requirements for complying with RCW 48.05.190.

Citation of Existing Rules Affected by this Order: Amending WAC 284-30-670.

Statutory Authority for Adoption: RCW 48.02.060.

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

Reasons for this Finding: WAC 284-30-670 was filed for permanent adoption on June 2, 2010. After the rule was filed multiple impacted parties wrote to the commissioner indicating difficulty in implementing the new rule.

Regular rule making will follow this emergency rule making to ensure that the permanent rule is adopted prior to the expiration of the emergency rule.

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

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

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

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

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

Date Adopted: July 1, 2010.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2008-11, filed 6/2/10, effective 7/3/10)

WAC 284-30-670 Insurers must transact business in their legal name. (1) The commissioner is adopting this regulation as an unfair practice for the following reasons:

(a) Many insurers fail or periodically fail to comply with the legal name requirement of RCW 48.05.190(1) when transacting insurance business.

(b) When a consumer seeks assistance from the commissioner, the legal name of the company must be determined. When the consumer is unable to provide the information, the commissioner's staff must research it, which unnecessarily wastes the commissioner's resources and delays the inquiry and resolution, posing a risk of harm to the consumer.

(c) ~~((Insurers will not accept a lawsuit from their insured))~~ ((i) If ((the)) lawsuit paperwork does not identify the insurer correctly the lawsuit may be dismissed on that technicality rather than on the merits.

(2) The following definitions apply to this section:

(a) "Legal name" of the insurer means the name displayed on the Washington state certificate of authority issued by the commissioner.

~~(b) ("Contracted entity" means an entity with which an insurer contracts to transact any aspect of the business of insurance, such as adjudicating claims, determining eligibility, or underwriting or marketing products on behalf of an insurer, and includes such entities as insurance producers, claims administrators, and managing general agents as defined in RCW 48.98.005(3).~~

~~(e) "Transacting business" includes)~~ "Transaction" means activities associated with an insurance transaction, as defined in RCW 48.01.060.

~~(3) ((An insurer must identify itself by its legal name when:~~

~~(a) Transacting business with a consumer, insured, potential insured or claimant as defined in WAC 284-30-320(2); and)~~ Insurers must make a reasonable effort to ensure that consumers are aware of the legal name of the insurance company with which they hold a policy or contract or are doing business. While not every written document must include the legal name to satisfy this requirement, documents material to accomplishing the transaction must include the legal name and home office or principal office of the insurer.

(a) When a policy or contract is issued and at renewal, insurers must provide the legal name of the insuring company to the insured on the declarations page or other required policy or contract summary.

(b) When an insurer communicates with other persons or companies on behalf of an insured, the insurer must provide its legal name at appropriate points in the transaction. The preferred first point is the first instance of written communication. For example, a written acknowledgement or notice of assignment of a claim must include the legal name of the insurer.

(c) At some point before the policy or contract is issued, the insurer or their producer must inform the consumer of the legal name of the company that will issue the policy or contract.

(d) If the commissioner receives a complaint in whole or in part that involves an insurer not using its legal name when transacting business, the insurer must demonstrate to the commissioner's satisfaction that reasonable efforts were made to inform the complainant of its legal name.

~~((b))~~ (4) The commissioner must be able to identify the legal name of the insurer when conducting ~~((Communicating orally, electronically, or in writing with the commissioner regarding))~~ an investigation, inquiry, enforcement matter or examination. Written communication with the commissioner must ~~((also))~~ include the insurer's NAIC code.

~~((4))~~ (5) Direct mail or electronic mail ~~((A))~~ advertisements directed to ~~((insureds or potential insureds))~~ consumers must clearly display the insurer's legal name and the location of its home office or principal office, as required by RCW 48.30.050.

(a) An advertisement by an insurance producer, licensee, or other marketing entity advertising an insurance product common to multiple insurers does not need to include the legal name of the insurer. The advertisement must include the insurance producer, licensee, or other marketing entity's name and address.

(b) Advertisements directed solely to insurance producers, providers, or other marketing entities, but not directed to insureds or potential insureds, are exempt from this subsection.

~~((5))~~ (6) Each single violation of this section by an insurer or its contracted entity may subject the insurer to all applicable provisions of Title 48 RCW ~~((, including, but not limited to, RCW 48.05.140 and 48.05.185))~~.

~~((6))~~ (7) This regulation does not bar the use of trade names, group names, logos or trademarks. ~~((To be in compliance with RCW 48.05.190(1), when an insurer uses a trade name, group name, logo or trademark when conducting its business, the insurer must also identify itself by its legal name as required by this section.))~~

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

WSR 10-14-081

EMERGENCY RULES

DEPARTMENT OF LICENSING

[Filed July 1, 2010, 3:42 p.m., effective July 1, 2010, 3:42 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend WAC 308-330-464, in the model traffic ordinance (MTO), to include violations of RCW 46.61.-667 Using a wireless communications device while driving and 46.61.668 Sending, reading, or writing a text message while driving.

Citation of Existing Rules Affected by this Order: Amending WAC 308-330-464.

Statutory Authority for Adoption: RCW 46.90.010.

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

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

Reasons for this Finding: Avoiding the delay resulting from permanent rule adoption will enable local law enforcement to hold drivers accountable for the public safety hazard presented in using cell phones or text messaging while driving by enabling them to cite the MTO which has been adopted by many local authorities, rather than state statute, since many are accustomed to cite to the MTO. The proposal for a permanent rule, with an opportunity for comment, is forthcoming.

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

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

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

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

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

Date Adopted: July 1, 2010.

Alan Haight
Deputy Director

AMENDATORY SECTION (Amending WSR 04-18-061, filed 8/27/04)

WAC 308-330-464 RCW sections adopted—Operation and restrictions. The following sections of the Revised Code of Washington (RCW) pertaining to the operation of vehicles and the restriction of certain acts and practices of vehicle operators and passengers as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.61.600, 46.61.605, 46.61.606, 46.61.608, 46.61.610, 46.61.611, 46.61.612, 46.61.614, 46.61.615, 46.61.620, 46.61.625, 46.61.630, 46.61.635, 46.61.640, 46.61.645, 46.61.655, 46.61.660, 46.61.665, 46.61.667, 46.61.668, 46.61.670, 46.61.675, 46.61.680, 46.61.685, 46.61.687, 46.61.688, 46.61.690, 46.61.700, 46.61.710, 46.61.720, 46.61.725, 46.61.730, and 46.61.740.

WSR 10-14-083

EMERGENCY RULES

DEPARTMENT OF AGRICULTURE

[Filed July 1, 2010, 4:38 p.m., effective July 1, 2010, 4:38 p.m.]

Effective Date of Rule: Immediately.

Purpose: Chapter 68, Laws of 2010, transferred the authority to administer state emergency food programs from the department of general administration and the department of commerce to the department of agriculture (WSDA) effec-

tive July 1, 2010. Chapter 365-140 WAC contains the rules governing these programs. WAC 365-140-060(4) prohibited the department of commerce from using its funds to defray the costs of distributing United States Department of Agriculture (USDA) commodities, a program that commerce did not administer. Because WSDA now will administer the USDA commodities program, this rule must be amended to allow the department to use funds to defray costs of distributing USDA commodities.

Citation of Existing Rules Affected by this Order: Amending WAC 365-140-060.

Statutory Authority for Adoption: Chapter 68, Laws of 2010.

Other Authority: Chapter 34.05 RCW.

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

Reasons for this Finding: Chapter 68, Laws of 2010, transferred the authority to administer state emergency food programs from the department of general administration and the department of commerce to WSDA effective July 1, 2010. The new law also continued the effectiveness of the department of commerce's emergency food program rules (chapter 365-140 WAC) and authorized WSDA to act on them. The general administration program includes the distribution of USDA commodities, which now will be accomplished by WSDA. WAC 365-140-060(4) must be amended to allow the department to use funds to defray costs of distributing USDA commodities under the commodity program. This change is necessary to provide for the preservation of the public health and general welfare.

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

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

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

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

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

Date Adopted: July 1, 2010.

Dan Newhouse
Director

AMENDATORY SECTION (Amending WSR 99-15-062, filed 7/16/99, effective 8/16/99)

WAC 365-140-060 Financial support application process. (1) Potential applicants will be notified by the department that in order to be considered for state emergency

food financial assistance, an application must be submitted to the department.

(2) An applicant must make formal application using forms issued and procedures established by the department. Such application shall be for the period indicated on the contract face sheet. Failure of an applicant to make application in a timely manner, as specified by the department, may result in denial of the funding request.

(3) Department funds may not supplant other existing funding sources.

~~(4) (Department funds may not be used to defray costs of distributing USDA commodities under the commodity program.~~

~~(5))~~ (5) The department shall notify successful applicants and shall provide to each of them a contract for signature. This contract must be signed by an official with authority to bind the applicant and must be returned to the department prior to the award of any funds under this program.

~~((6))~~ (6) Applicants that receive food bank or food distribution funds are subject to the following fiscal requirements:

(a) The total funds from the department received by a nontribal lead agency contractor or a food distribution sub-contractor must be equally matched by funds from other sources during the fiscal year. No more than fifty percent of that match may be documented in-kind contributions. Non-tribal participating food banks receiving funds from the department have two options for matching funds: They may equally match the EFAP funds, with no more than fifty percent being documented in-kind contributions; if they do not have at least one-half of their minimum match as cash, they may match their department funds by at least two hundred percent in in-kind contributions from other sources.

(b) Administrative costs for food bank and food distributor subcontractors under this program are limited to ten percent of their total contract award. Administrative costs for a lead agency contractor who also provides direct emergency food assistance services as a participating food bank and/or services as a food distributor are limited to ten percent of the contractor's allocation for providing direct services, ~~((ten percent of the contractor's allocation for providing direct services,))~~ ten percent of the contractor's allocation for providing food distributor services, and ten percent of the total contract award as food bank lead agency; total administrative costs, however, may not exceed fifteen percent of the total contract award. Administrative costs for agencies who are lead agency contractors only are limited to ten percent of their total contract award.

~~((7))~~ (7) Tribal applicants are subject to the following fiscal requirements:

(a) Tribal contractors and subcontractors must match thirty-five percent of the funds received by the department for the emergency food assistance program. No more than fifty percent of that match may be documented in-kind contributions.

(b) Of a contract award allocated to the tribal food voucher program, tribal contractors may not spend more than ten percent on administrative costs, and five percent on operational expenditures. The balance of funds is to be used for food vouchers issued to clients. Of funds allocated to the

food bank program, tribal contractors are subject to the same spending requirements as nontribal food bank contractors as per WAC 365-140-060 (~~(6)~~) (5)(b).