

WSR 14-05-009
PROPOSED RULES
SPOKANE REGIONAL
CLEAN AIR AGENCY

[Filed February 6, 2014, 1:33 p.m.]

Supplemental Notice to WSR 13-23-073.

Proposal is exempt under RCW 70.94.141(1).

Title of Rule and Other Identifying Information:
 SRCAA Regulation I, Article IX - Asbestos Control Standards and SRCAA Regulation I, Article X, Section 10.09 – Asbestos Project and Demolition Notification Waiting Period and Fees.

Hearing Location(s): Spokane Regional Clean Air Agency (SRCAA), 3104 East Augusta Avenue, Spokane, WA 99207, on May 1, 2014, at 9:30 a.m.

Date of Intended Adoption: May 1, 2014.

Submit Written Comments to: Matt Holmquist, 3104 East Augusta Avenue, Spokane, WA 99207, e-mail mholmquist@spokanecleanair.org, fax (509) 477-6828, by February 6, 2014.

Assistance for Persons with Disabilities: Contact Barbara Nelson by April 18, 2014, (509) 477-4727 ext. 116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Original proposal in WSR 13-23-073 revised to address written public comments and additional staff comments.

Summary of revisions are as follows:

- Exclude reference to "debris" in Section 9.02.Z.
- Exclude proposed asbestos survey exception for contractors in Section 9.03.F.6.
- Include example of mechanical methods in Section 9.06.B.
- Maintain notification requirement for project cancellation in 9.04.B.1.
- Strike reference to Sections 9.09-9.10 in 9.07.C since not applicable.
- Clarify in Section 10.09.A that refunds are available for overpayments.

Reasons Supporting Proposal: Same as above.

Statutory Authority for Adoption: RCW 70.94.141, 70.94.380(2).

Statute Being Implemented: Chapter 70.94 RCW and 42 U.S.C. 7401 et. seq., 42 U.S.C. 7412.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: SRCAA is responsible for implementing federal laws regarding the renovation and demolition of structures that may contain asbestos. Because there is no known safe level of exposure to asbestos and because each exposure to asbestos increases a person's risk of acquiring asbestos related diseases, SRCAA administers an asbestos program under Regulation I, Article IX and Section 10.09 as a reasonable approach to controlling asbestos emissions primarily resulting from asbestos projects, renovation projects, and demolition projects.

Name of Proponent: SRCAA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Matt Holmquist, SRCAA,

3104 East Augusta Avenue, Spokane, WA 99207, (509) 477-4727.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This is a local clean air agency rule and as such, chapter 19.85 RCW does not apply.

A cost-benefit analysis is not required under RCW 34.05.328. This is a local agency rule and pursuant to RCW 70.94.141(1), RCW 34.05.328 does not apply to this rule.

February 6, 2014

Matt Holmquist
 Compliance Administrator

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 14-06 issue of the Register.

WSR 14-05-024
PROPOSED RULES
DEPARTMENT OF HEALTH
 (Dental Quality Assurance Commission)
 [Filed February 10, 2014, 10:05 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-19-084.

Title of Rule and Other Identifying Information: WAC 246-817-550 Acts that may be performed by licensed dental hygienists under general supervision, adds application of topical anesthetic agents to the list of acts that a licensed dental hygienist may perform under the general supervision of a dentist.

Hearing Location(s): Department of Health, Point Plaza East, Room 152/153, 310 Israel Road S.E., Tumwater, WA 98501, on April 18, 2014, at 8:05 a.m.

Date of Intended Adoption: April 18, 2014.

Submit Written Comments to: Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504-7852, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by April 11, 2014.

Assistance for Persons with Disabilities: Contact Jennifer Santiago by April 11, 2014, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal would enact rules to carry out HB 1330 (chapter 87, Laws of 2013), which amended RCW 18.29.050 and authorized a dentist to delegate to a dental hygienist application of topical anesthetic agents.

Reasons Supporting Proposal: WAC 246-817-550 lists the acts a dentist may allow a dental hygienist to perform under the dentist's general supervision. The proposed rule will provide a reference source for both dentists and dental hygienists regarding the application of topical anesthetic agents.

Statutory Authority for Adoption: RCW 18.32.0365 and 18.29.050.

Statute Being Implemented: RCW 18.32.0365 and 18.29.050.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state dental quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jennifer Santiago, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4893.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(c), a small business economic impact statement is not required for proposed rules that adopt or incorporate by reference - without material change - federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) exempts rules that adopt or incorporate by reference without material change federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards.

A preliminary cost-benefit analysis may be obtained by contacting Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4893, fax (360) 236-2901, e-mail jennifer.santiago@doh.wa.gov.

February 10, 2014
Trina Castle
Executive Director

AMENDATORY SECTION (Amending WSR 95-21-041, filed 10/10/95, effective 11/10/95)

WAC 246-817-550 Acts that may be performed by licensed dental hygienists under general supervision. A dentist may allow a dental hygienist licensed under the provisions of chapter 18.29 RCW to perform the following acts under the dentist's general supervision:

- (1) Oral inspection and measuring of periodontal pockets, with no diagnosis.
- (2) Patient education in oral hygiene.
- (3) Take intra-oral and extra-oral radiographs.
- (4) Apply topical preventive or prophylactic agents.
- (5) Polish and smooth restorations.
- (6) Oral prophylaxis and removal of deposits and stains from the surfaces of the teeth.
- (7) Record health histories.
- (8) Take and record blood pressure and vital signs.
- (9) Perform sub-gingival and supra-gingival scaling.
- (10) Perform root planing.
- (11) Apply sealants.
- (12) Apply topical anesthetic agents.

WSR 14-05-026
PROPOSED RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)
[Filed February 10, 2014, 12:07 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-19-096.

Title of Rule and Other Identifying Information: New section WAC 182-550-5380 Sole community hospital disproportionate share hospital (SCHDSH); and amending WAC 182-550-4900 Disproportionate share hospital (DSH) payments—General provisions.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Conference Room 626, 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at <http://maa.dshs.wa.gov/pdf/CherryStreetDirectionsNMap.pdf> or directions can be obtained by calling (360) 725-1000), on March 25, 2014, at 10:00 a.m.

Date of Intended Adoption: Not sooner than March 26, 2014.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA, 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on March 25, 2014.

Assistance for Persons with Disabilities: Contact Kelly Richters by March 18, 2104 [2014], TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To comply with 3 ESSB 5034, chapter 4, Laws of 2013, operating budget, section 213(9) line 17, page 80, HCA will establish a new disproportionate share hospital payment program for sole community hospitals.

Reasons Supporting Proposal: To comply with legislation.

Statutory Authority for Adoption: RCW 41.05.021.

Statute Being Implemented: 3ESSB 5034, chapter 4, Laws of 2013.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Jason R. P. Crabbe, Olympia, WA 98504-2716, (360) 725-1346; Implementation and Enforcement: Mary O'Hare, Olympia, WA 98504-5500, (360) 725-9820.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The joint administrative [rules] review committee has not requested the filing of a small business economic impact statement, and these rules do not impose a disproportionate cost impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

February 10, 2014
Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-20-029, filed 9/26/12, effective 10/27/12)

WAC 182-550-4900 Disproportionate share hospital (DSH) payments—General provisions. (1) As required by

Section 1902 (a)(13)(A) of the Social Security Act (42 U.S.C. 1396 (a)(13)(A)) and RCW 74.09.730, the medicaid agency makes payment adjustments to eligible hospitals that serve a disproportionate number of low-income clients with special needs. These adjustments are also known as disproportionate share hospital (DSH) payments.

(2) No hospital has a legal entitlement to any DSH payment. A hospital may receive DSH payments only if:

(a) It satisfies the requirements of 42 U.S.C. 1396r-4;

(b) It satisfies all the requirements of agency rules and policies; and

(c) The legislature appropriates sufficient funds.

(3) For purposes of eligibility for DSH payments, the following definitions apply:

(a) "Base year" means the twelve-month medicare cost report year that ended during the calendar year immediately preceding the year in which the state fiscal year (SFY) for which the DSH application is being made begins.

(b) "Case mix index (CMI)" means the average of diagnosis related group (DRG) weights for all of an individual hospital's DRG-paid medicaid claims during the SFY two years prior to the SFY for which the DSH application is being made.

(c) "Charity care" means necessary hospital care rendered to persons unable to pay for the hospital services or unable to pay the deductibles or coinsurance amounts required by a third-party payer. The charity care amount is determined in accordance with the hospital's published charity care policy.

(d) "DSH reporting data file (DRDF)" means the information submitted by hospitals to the agency which the agency uses to verify medicaid client eligibility and applicable inpatient days.

(e) "Hospital-specific DSH cap" means the maximum amount of DSH payments a hospital may receive from the agency during a SFY. If a hospital does not qualify for DSH, the agency will not calculate the hospital-specific DSH cap and the hospital will not receive DSH payments.

(f) "Inpatient medicaid days" means inpatient days attributed to clients eligible for Title XIX medicaid programs. Excluded from this count are inpatient days attributed to clients eligible for state administered programs, medicare Part A, Title XXI, the refugee program and the TAKE CHARGE program.

(g) "Low income utilization rate (LIUR)" the sum of two percentages:

(i) The ratio of payments received by the hospital for patient services provided to clients under medicaid (including managed care), plus cash subsidies received by the hospital from state and local governments for patient services, divided by total payments received by the hospital from all patient categories; plus

(ii) The ratio of inpatient charity care charges less inpatient cash subsidies received by the hospital from state and local governments, less contractual allowances and discounts, divided by total charges for inpatient services.

(h) "Medicaid inpatient utilization rate (MIPUR)" is calculated as a fraction (expressed as a percentage), the numerator of which is the hospital's number of inpatient days attributable to clients who (for such days) were eligible for medical

assistance during the base year (regardless of whether such clients received medical assistance on a fee-for-service basis or through a managed care entity), and the denominator of which is the total number of the hospital's inpatient days in that period. "Inpatient days" include each day in which a person (including a newborn) is an inpatient in the hospital, whether or not the person is in a specialized ward and whether or not the person remains in the hospital for lack of suitable placement elsewhere.

(i) "Medicare cost report year" means the twelve-month period included in the annual cost report a medicare-certified hospital or institutional provider is required by law to submit to its fiscal intermediary.

(j) "Nonrural hospital" means a hospital that:

(i) Is not participating in the "full cost" public hospital certified public expenditure (CPE) payment program as described in WAC 182-550-4650;

(ii) Is not designated as an "institution for mental diseases (IMD)" as defined in WAC 182-550-2600 (2)(d);

(iii) Is not a small rural hospital as defined in (n) of this subsection; and

(iv) Is located in the state of Washington or in a designated bordering city. For DSH purposes, the agency considers as nonrural any hospital located in a designated bordering city.

(k) "Obstetric services" means routine, nonemergency obstetric services and the delivery of babies.

(l) "Service year" means the one year period used to measure the costs and associated charges for hospital services. The service year may refer to a hospital's fiscal year or medicare cost report year, or to a state fiscal year.

(m) "Statewide disproportionate share hospital (DSH) cap" is the maximum amount per SFY that the state can distribute in DSH payments to all qualifying hospitals during a SFY.

(n) "Small rural hospital" means a hospital that:

(i) Is not participating in the "full cost" public hospital certified public expenditure (CPE) payment program as described in WAC 182-550-4650;

(ii) Is not designated as an "institution for mental diseases (IMD)" as defined in WAC 182-550-2600 (2)(d);

(iii) Has fewer than seventy-five acute beds;

(iv) Is located in the state of Washington; and

(v) Is located in a city or town with a nonstudent population of no more than seventeen thousand eight hundred six in calendar year 2008, as determined by population data reported by the Washington state office of financial management population of cities, towns and counties used for the allocation of state revenues. This nonstudent population is used for SFY 2010, which begins July 1, 2009. For each subsequent SFY, the nonstudent population is increased by two percent.

(o) "Uninsured patient" is a person without creditable coverage as defined in 45 C.F.R. 146.113. (An "insured patient," for DSH program purposes, is a person with creditable coverage, even if the insurer did not pay the full charges for the service.) To determine whether a service provided to an uninsured patient may be included for DSH application and calculation purposes, the agency considers only services

that would have been covered and paid through the agency's fee-for-service process.

(4) To be considered for a DSH payment for each SFY, a hospital must meet the criteria in this section:

(a) DSH application requirement.

(i) Only a hospital located in the state of Washington or in a designated bordering city is eligible to apply for and receive DSH payments. An institution for mental disease (IMD) owned and operated by the state of Washington is exempt from the DSH application requirement.

(ii) A hospital that meets DSH program criteria is eligible for DSH payments in any SFY only if the agency receives the hospital's DSH application by the deadline posted on the agency's web site.

(b) DSH application review and correction period.

(i) This subsection applies only to DSH applications that meet the requirements under (a) of this subsection.

(ii) The agency reviews and may verify any information provided by the hospital on a DSH application. However, each hospital has the responsibility for ensuring its DSH application is complete and accurate.

(iii) If the agency finds that a hospital's application is incomplete or contains incorrect information, the agency will notify the hospital. The hospital must resubmit a new, corrected application. The agency must receive the new DSH application from the hospital by the deadline for corrected DSH applications posted on the agency's web site.

(iv) If a hospital finds that its application is incomplete or contains incorrect information, it may choose to submit changes and/or corrections to the DSH application. The agency must receive the corrected, complete, and signed DSH application from the hospital by the deadline for corrected DSH applications posted on the agency's web site.

(c) Official DSH application.

(i) The agency considers as official the last signed DSH application submitted by the hospital as of the deadline for corrected DSH applications. A hospital cannot change its official DSH application. Only those hospitals with an official DSH application are eligible for DSH payments.

(ii) If the agency finds that a hospital's official DSH application is incomplete or contains inaccurate information that affects the hospital's LIDSH payment(s), the hospital does not qualify for, will not receive, and cannot retain, LIDSH payment(s). Refer to WAC 182-550-5000.

(5) A hospital is a disproportionate share hospital for a specific SFY if the hospital satisfies the medicaid inpatient utilization rate (MIPUR) requirement (discussed in (a) of this subsection), and the obstetric services requirement (discussed in (b) of this subsection).

(a) The hospital must have a MIPUR of one percent or more; and

(b) Unless one of the exceptions described in (i)(A) or (B) of this subsection applies, the hospital must have at least two obstetricians who have staff privileges at the hospital and who have agreed to provide obstetric services to eligible individuals.

(i) The obstetric services requirement does not apply to a hospital that:

(A) Provides inpatient services predominantly to individuals younger than age eighteen; or

(B) Did not offer nonemergency obstetric services to the general public as of December 22, 1987, when section 1923 of the Social Security Act was enacted.

(ii) For hospitals located in rural areas, "obstetrician" means any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

(6) To determine a hospital's MIPUR, the agency uses inpatient days as follows:

(a) The total inpatient days on the official DSH application if this number is greater than the total inpatient hospital days on the medicare cost report; and

(b) The MMIS medicaid days as determined by the DSH reporting data file (DRDF) process if the Washington state medicaid days on the official DSH application do not match the eligible days on the final DRDF. If the hospital did not submit a DRDF, the agency uses paid medicaid days from MMIS.

(7) The agency administers the following DSH programs (depending on legislative budget appropriations):

(a) Low income disproportionate share hospital (LIDSH);

~~(b) ((Institution for mental diseases disproportionate share hospital (IMDDSH):~~

~~(c))~~ Medical care services disproportionate share hospital (MCSDSH);

~~((d))~~ (c) Small rural disproportionate share hospital (SRDSH);

~~((e))~~ (d) Small rural indigent assistance disproportionate share hospital (SRIADSH);

~~((f))~~ (e) Nonrural indigent assistance disproportionate share hospital (NRIADSH);

~~((g))~~ (f) Public hospital disproportionate share hospital (PHDSH);

~~((h) Psychiatric indigent inpatient disproportionate share hospital (PHDSH); and~~

~~(i))~~ (g) Children's health program disproportionate share hospital (CHPDSH); and

(h) Sole community disproportionate share hospital (SCDSH).

(8) ~~((Except for IMDDSH,))~~ The agency allows a hospital to receive any one or all of the DSH payment it qualifies for, up to the individual hospital's DSH cap (see subsection (10) of this section) and provided that total DSH payments do not exceed the statewide DSH cap. ((See WAC 182-550-5130 regarding IMDDSH.)) To be eligible for payment under multiple DSH programs, a hospital must meet:

(a) The basic requirements in subsection (5) of this section; and

(b) The eligibility requirements for the particular DSH payment, as discussed in the applicable DSH program WAC.

(9) For each SFY, the agency calculates DSH payments for each DSH program for eligible hospitals using data from each hospital's base year. The agency does not use base year data for ~~((GAUDSH and PHDSH))~~ MCSDSH and CHPDSH payments, which are calculated based on specific claims data.

(10) The agency's total DSH payments to a hospital for any given SFY cannot exceed the hospital-specific DSH cap for that SFY. Except for critical access hospitals (CAHs), the agency determines a hospital's DSH cap as follows. The agency:

(a) Uses the overall ratio of costs-to-charges (RCC) to determine costs for:

(i) Medicaid services, including medicaid services provided under managed care organization (MCO) plans; and

(ii) Uninsured charges; then

(b) Subtracts all payments related to the costs derived in (a) of this subsection; then

(c) Makes any adjustments required and/or authorized by federal statute or regulation.

(11) A CAH's DSH cap is based strictly on the cost to the hospital of providing services to medicaid clients served under MCO plans, and uninsured patients. To determine a CAH's DSH cap amount, the agency:

(a) Uses the overall RCC to determine costs for:

(i) Medicaid services provided under MCO plans; and

(ii) Uninsured charges; then

(b) Subtracts the total payments made by, or on behalf of, the medicaid clients serviced under MCO plans, and uninsured patients.

(12) In any given federal fiscal year, the total of the agency's DSH payments cannot exceed the statewide DSH cap as published in the federal register.

(13) If the agency's DSH payments for any given federal fiscal year exceed the statewide DSH cap, the agency will adjust DSH payments to each hospital to account for the amount overpaid. The agency makes adjustments in the following program order:

(a) PHDSH;

(b) SRIADSH;

(c) SRDSH;

(d) SCDSH;

(e) NRIADSH;

~~((e))~~ (f) MCSDSH;

~~((f))~~ (g) CHPSH;

~~((g))~~ PHDSH;

~~((h))~~ IMDSH; and

~~((i))~~ (h) LIDSH.

(14) If the statewide DSH cap is exceeded, the agency will recoup DSH payments made under the various DSH programs, in the order of precedence described in subsection (13) of this section, starting with PHDSH, until the amount exceeding the statewide DSH cap is reduced to zero. See specific program (~~(WACs)~~ regulations in the Washington Administrative Code for description of how amounts to be recouped are determined.

(15) The total amount the agency may distribute annually under a particular DSH program is capped by legislative appropriation (~~(, except for PHDSH, GAUDSH, and PHDSH, which are not fixed amounts)~~). Any changes in payment amount to a hospital in a particular DSH program means a redistribution of payments within that DSH program. When necessary, the agency will recoup from hospitals to make additional payments to other hospitals within that DSH program.

(16) If funds in a specific DSH program need to be redistributed because of legislative, administrative, or other state action, only those hospitals eligible for that DSH program will be involved in the redistribution.

(a) If an individual hospital has been overpaid by a specified amount, the agency will recoup that overpayment

amount from the hospital and redistribute it among the other eligible hospitals in the DSH program. The additional DSH payment to be given to each of the other hospitals from the recouped amount is proportional to each hospital's share of the particular DSH program.

(b) If an individual hospital has been underpaid by a specified amount, the agency will pay that hospital the additional amount owed by recouping from the other hospitals in the DSH program. The amount to be recouped from each of the other hospitals is proportional to each hospital's share of the particular DSH program.

(17) All information related to a hospital's DSH application is subject to audit by the agency or its designee. The agency determines the extent and timing of the audits. For example, the agency or its designee may choose to do a desk review of an individual hospital's DSH application and/or supporting documentation, or audit all hospitals that qualified for a particular DSH program after payments have been distributed under that program.

(18) If a hospital's submission of incorrect information or failure to submit correct information results in DSH overpayment to that hospital, the agency will recoup the overpayment amount, in accordance with the provisions of RCW 74.09.220 and 43.20B.695.

(19) DSH calculations use fiscal year data, and DSH payments are distributed based on funding for a specific SFY. Therefore, unless otherwise specified, changes and clarifications to DSH program rules apply for the full SFY in which the rules are adopted.

NEW SECTION

WAC 182-550-5380 Payment method—Sole community disproportionate share hospital (SCDSH). (1) The medicaid agency's sole community disproportionate share hospital (SCDSH) program is a program for in-state hospitals that:

(a) Were certified by the Centers for Medicare and Medicaid Services (CMS) as sole community hospitals as of January 1, 2013;

(b) Had less than one hundred fifty acute care licensed beds in state fiscal year (SFY) 2011;

(c) Qualify under Section 1923(d) of the Social Security Act; and

(d) Are not participating in the certified public expenditure (CPE) program.

(2) The agency pays qualifying hospitals SCDSH payments from a legislatively appropriated pool. This distribution is based on the hospital's medicaid payments. To determine the hospital's SCDSH payments, the agency:

(a) Identifies the sum of the medicaid payments to the individual hospital during the SFY two years prior to the current SFY for which DSH application is being made. These medicaid payment amounts:

(i) Are based on historical data;

(ii) Include payments from the agency; and

(iii) Include payments reported on encounter data supplied by agency-contracted managed care organizations.

(b) Divides the medicaid payment amount in (a) of this subsection by the sum of the medicaid payment amounts for

all qualifying hospitals during the same period to determine the hospital's percentage; and

(c) Applies this percentage to the total dollars in the pool to determine the hospital's SCDSH payment.

(3) The SCDSH payments to a hospital eligible under this program may not exceed the hospital's DSH cap calculated according to WAC 182-550-4900(10).

(4) SCDSH payments are subject to the availability of DSH funds under the statewide DSH cap. If the statewide DSH cap is exceeded, the agency will recoup DSH payments in the order specified in WAC 182-550-4900 (13) and (14).

WSR 14-05-047

PROPOSED RULES

HEALTH CARE AUTHORITY

(Public Employees Benefits Board)

[PEBB Admin. 2014-01—Filed February 14, 2014, 9:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-01-053.

Title of Rule and Other Identifying Information: Enrollment, eligibility and appeal rules in chapters 182-08, 182-12, and 182-16 WAC.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at <http://maa.dshs.wa.gov/pdf/CherryStreetDirectionsNMap.pdf> or directions can be obtained by calling (360) 725-1000), on March 25, 2014, at 10:00 a.m.

Date of Intended Adoption: Not sooner than March 26, 2014.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360)586-9727, by 5:00 p.m. on March 25, 2014.

Assistance for Persons with Disabilities: Contact Kelly Richters by March 18, 2014, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amends existing rules and adds two new rules in Title 182 WAC specific to the PEBB program with the following effect:

1. Implements PEBB policy resolutions and 3ESSB 5034:

- Adding a definition for tobacco products;
- Adding a definition for tobacco use; and
- Adding a new section to describe the requirements regarding the premium surcharges.

2. Implements 3ESSB 5034:

- Adding a definition for premium surcharge;
- Adding a definition for premium surcharge implementation period;
- Amended when a subscriber may change health plans;
- Amended when a subscriber may make changes to their premium payment plan;

- Added a special open enrollment event for change in the cost of insurance coverage because of a premium surcharge;

- Amended employer group participation requirements to require K-12 school districts, educational service districts, and employer groups to collect from their employees the premium surcharge;

- Amended when an employee may waive or return from waiving PEBB medical coverage; and

- Amended when a subscriber may enroll or remove dependents.

3. Implements PEBB policy resolutions and Executive Order 13-06:

- Adding a new section to describe the PEBB wellness incentive program eligibility and procedural requirements.

4. In addition to these specific changes, some changes were made to improve readability.

Reasons Supporting Proposal: Compliance with state law, an executive order and PEBB policy resolutions.

Statutory Authority for Adoption: RCW 41.05.160.

Statute Being Implemented: 3ESSB 5034.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Rob Parkman, Cherry Street Plaza, 626 8th Avenue S.E., Olympia, WA, (360) 725-0883; Implementation: Barbara Scott, Cherry Street Plaza, 626 8th Avenue S.E., Olympia, WA, (360) 725-0830; and Enforcement: Mary Fliss, Cherry Street Plaza, 626 8th Avenue S.E., Olympia, WA, (360) 725-0822.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The joint administrative rules review committee has not requested the filing of a small business economic impact statement and there will be no costs to small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules [review] committee or applied voluntarily.

February 14, 2014

Kevin M. Sullivan

Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

WAC 182-08-015 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates other meaning:

"Affordable Care Act" means the federal Patient Protection and Affordable Care Act, P.L. 111-148, as amended by the federal Health Care and Education Reconciliation Act of 2010, P.L. 111-152, or federal regulations or guidance issued under the Affordable Care Act.

"Annual open enrollment" means an annual event set aside for a period of time when subscribers may make changes to their health plan enrollment and salary reduction elections for the following plan year. Subscribers may transfer from one health plan to another, enroll or remove depen-

dents from coverage, enroll in or waive enrollment in a medical plan, or employees may enroll in or change their election under the DCAP, the medical FSA, or the premium payment plan.

"Authority" or "HCA" means the health care authority.

"Benefits eligible position" means any position held by an employee who is eligible for benefits under WAC 182-12-114, with the exception of employees who establish eligibility under WAC 182-12-114 (2) or (3)(a)(ii).

"Board" means the public employees benefits board established under provisions of RCW 41.05.055.

"Comprehensive employer-sponsored medical" includes insurance coverage continued by the employee or his or her dependent under COBRA. It does not include an employer's retiree coverage, with the exception of a federal retiree plan.

"Creditable coverage" means coverage that meets the definition of "creditable coverage" under RCW 48.66.020 (13)(a) and includes payment of medical and hospital benefits.

"Defer" means to postpone enrollment or interrupt enrollment in a PEBB medical insurance by a retiree or eligible survivor.

"Dependent" means a person who meets eligibility requirements in WAC 182-12-260, except that "surviving spouses, state registered domestic partners and dependent children" of emergency service personnel who are killed in the line of duty is defined in WAC 182-12-250.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Director" means the director of the authority.

"Effective date of enrollment" means the first date when an enrollee is entitled to receive covered benefits.

"Employer group" means those employee organizations representing state civil service employees, counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, school districts, and educational service districts participating in PEBB insurance coverage under contractual agreement as described in WAC 182-08-245.

"Employing agency" means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, school district, educational service district, or other political subdivision; charter school; or a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Exchange" means the Washington health benefit exchange established in RCW 43.71.020, and any other health benefit exchange established under the Affordable Care Act.

"Exchange coverage" means coverage offered by a qualified health plan through an exchange.

"Faculty" means an academic employee of an institution of higher education whose workload is not defined by work

hours but whose appointment, workload, and duties directly serve the institution's academic mission; as determined under the authority of its enabling statutes, its governing body, and any applicable collective bargaining agreement.

"Federal retiree plan" means the Federal Employees' Health Benefits Program (FEHB) and Tricare.

"Health plan" or "plan" means a plan offering medical coverage or dental coverage, or both developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Institutions of higher education" means the state public research universities, the public regional universities, The Evergreen State College, the community and technical colleges, and the state board for community and technical colleges.

"Insurance coverage" means any health plan, life insurance, long-term care insurance, LTD insurance, or property and casualty insurance administered as a PEBB benefit.

"Layoff," for purposes of this chapter, means a change in employment status due to an employer's lack of funds or an employer's organizational change.

"LTD insurance" includes basic long-term disability insurance paid for by the employing agency and long-term disability insurance offered to employees on an optional basis.

"Life insurance" includes basic life insurance paid for by the employing agency, life insurance offered to employees on an optional basis, and retiree life insurance.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby state and public employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"PEBB" means the public employees benefits board.

"PEBB appeals committee" means the committee that considers appeals relating to the administration of PEBB benefits by the PEBB program. The director has delegated the authority to hear appeals at the level below an administrative hearing to the PEBB appeals committee.

"PEBB benefits" means one or more insurance coverages or other employee benefits administered by the PEBB program within the health care authority.

"PEBB program" means the program within the HCA which administers insurance and other benefits for eligible employees (as defined in WAC 182-12-114), eligible retired and disabled employees (as defined in WAC 182-12-171), eligible dependents (as defined in WAC 182-12-250 and 182-12-260) and others as defined in RCW 41.05.011.

"Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's premium contribution, due to an enrollee's tobacco use or a subscriber's spouse or domestic partner choosing not to enroll in his or her employer-based group medical insurance when:

• Premiums are less than ninety-five percent of Uniform Medical Plan (UMP) Classic premiums; and

• The actuarial value of benefits is at least ninety-five percent of the actuarial value of UMP Classic benefits.

"Premium surcharge implementation period" means the period from April 1 through May 15, 2014, when subscribers may change their health plan enrollment and premium payment plan election to be effective July 1, 2014. Subscribers may change health plans and enroll or remove dependents from coverage. Additionally, employees may enroll in or waive enrollment in a medical plan and enroll in or change their premium payment plan election.

"Qualified health plan" means a medical plan that is certified to be offered through an exchange.

"Salary reduction plan" means a benefit plan whereby state and public employees may agree to a reduction of salary on a pretax basis to participate in the DCAP, medical FSA, or premium payment plan as authorized in chapter 41.05 RCW.

"Seasonal employee" means an employee hired to work during a recurring, annual season with a duration of three months or more, and anticipated to return each season to perform similar work.

"Special open enrollment" means a period of time when subscribers may make changes to their health plan enrollment and salary reduction elections outside of the annual open enrollment period when specific life events occur. Subscribers may ~~((transfer from one))~~ change health plans ~~((to another))~~ and enroll or remove dependents from coverage. Additionally, employees may enroll in or waive enrollment in a medical plan, and ((employees)) may enroll in or change their election under the DCAP, medical FSA, or the premium payment plan. For special open enrollment events as they relate to specific PEBB benefits, see WAC 182-08-198, 182-08-199, 182-12-128, and 182-12-262.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government and all personnel thereof. It includes the legislature, executive branch, and agencies or courts within the judicial branch, as well as institutions of higher education and any unit of state government established by law.

"Subscriber" means the employee, retiree, COBRA beneficiary or eligible survivor who has been designated by the HCA as the individual to whom the HCA and contracted vendors will issue all notices, information, requests and premium bills on behalf of enrollees.

"Termination of the employment relationship" means that an employee resigns or an employee is terminated and the employing agency has no anticipation that the employee will be rehired.

"Tobacco products" means any product made with or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product. This includes, but is not limited to, cigars, cigarettes, chewing tobacco, snuff, and other tobacco products. It does not include United States Food and Drug Administration (FDA) approved quit aids or e-cigarettes until their tobacco related status is determined by the FDA.

"Tobacco use" means any use of tobacco products within the past two months. Tobacco use, however, does not include the religious or ceremonial use of tobacco.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

"Waive" means to interrupt an eligible employee's enrollment in a PEBB health plan because the employee is enrolled in other comprehensive group medical coverage as required under WAC 182-12-128, or is on approved educational leave and obtains comprehensive group health plan coverage as allowed under WAC 182-12-136.

NEW SECTION

WAC 182-08-185 What are the requirements regarding premium surcharges? (1) A subscriber's account will incur a premium surcharge when any enrollee engages in tobacco use.

(a) A subscriber must attest to whether any enrollee on his or her PEBB medical plan engages in tobacco use. The subscriber must attest during the following times:

(i) During the premium surcharge implementation period from April 1 through May 15, 2014;

(ii) No later than thirty-one days after an employee is newly eligible or regains eligibility for the employer contribution toward PEBB benefits as described in WAC 182-08-197;

(iii) When there is a change in the tobacco use status of any enrollee on the subscriber's PEBB medical plan; and

(iv) Whenever a dependent is enrolled in PEBB medical coverage on the subscriber's account.

Exception:

(1) A subscriber enrolled in both medicare parts A and B and in the medicare risk pool is not required to provide an attestation and no premium surcharge will be imposed on the subscriber's account.

(2) An employee who waives medical enrollment according to WAC 182-12-128 is not required to provide an attestation and no premium surcharge will be applied to his or her account until the employee enrolls in a PEBB medical plan.

(b) A subscriber's account will incur a premium surcharge when a subscriber fails to attest to the tobacco use status of all enrollees as described in subsection (1)(a) of this section.

Note: A subscriber, who failed to submit or submitted an inaccurate attestation, may submit an attestation by August 29, 2014, to seek reimbursement for tobacco use premium surcharges imposed in July and August of 2014.

(c) The PEBB program will provide a reasonable alternative for enrollees who use tobacco products so a subscriber can avoid the tobacco use premium surcharge:

(i) All enrollees have access to a free tobacco cessation program through their medical plan. A subscriber can avoid the surcharge if enrollees who use tobacco products enroll in their plan's tobacco cessation program.

(ii) The PEBB program will work with a subscriber to accommodate a physician's recommendation that addresses an enrollee's use of tobacco products.

(iii) A subscriber may contact the PEBB program for information on how to avoid the tobacco use premium surcharge.

(2) A subscriber's account will incur a premium surcharge if an enrolled spouse or domestic partner chose not to enroll in employer-based group medical insurance that has premiums less than ninety-five percent of the UMP Classic's premiums and benefits with an actuarial value of at least ninety-five percent of the actuarial value of the UMP Classic's benefits.

(a) A subscriber who enrolls a spouse or domestic partner must attest during the following times:

(i) During the premium surcharge implementation period from April 1 through May 15, 2014;

(ii) No later than thirty-one days after the employee is newly eligible or regains eligibility for the employer contribution towards PEBB benefits as described in WAC 182-08-197;

(iii) Whenever a spouse or domestic partner is enrolled in medical coverage on the subscriber's account;

(iv) During the annual open enrollment; or

(v) When there is a change in the spouse's or domestic partner's employer-based group medical insurance.

Exception:

- (1) A subscriber enrolled in both medicare parts A and B and in the medicare risk pool is not required to provide an attestation and no premium surcharge will be imposed on the subscriber's account.
- (2) An employee who waives medical enrollment according to WAC 182-12-128 is not required to provide an attestation and no premium surcharge will be applied to his or her account until the employee enrolls in a PEBB medical plan.
- (3) An employee who covers his or her spouse or domestic partner who has waived his or her own PEBB medical must attest, but a premium surcharge will not be applied.

(b) A premium surcharge will be applied to the account of subscribers who do not attest as described in (a) of this subsection.

Note: A subscriber, who failed to submit or submitted an inaccurate attestation, may submit an attestation by August 29, 2014, to seek reimbursement for the WAC 182-08-185(2) premium surcharges imposed in July and August of 2014.

AMENDATORY SECTION (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

WAC 182-08-198 When may a subscriber change health plans? Subscribers may change health plans at the following times:

(1) **During annual open enrollment:** Subscribers may change health plans during the annual open enrollment. The subscriber must submit the required enrollment forms to change his or her health plan no later than the end of the annual open enrollment. Enrollment in the new health plan will begin January 1st of the following year.

(2) **During a special open enrollment:** Subscribers may change health plans outside of the annual open enrollment if a special open enrollment event occurs. The change in enrollment must be allowable under Internal Revenue Code (IRC) and correspond to and be consistent with the event that cre-

ates the special open enrollment for the subscriber, the subscriber's dependent, or both. To make a health plan change, the subscriber must submit the required enrollment forms (and a completed disenrollment form, if required) no later than sixty days after the event occurs. Employees submit the enrollment forms to their employing agency. All other subscribers submit the enrollment forms to the public employees benefits board (PEBB) program. Subscribers must provide evidence of the event that created the special open enrollment. New health plan coverage will begin the first day of the month following the later of the event date or the date the form is received. If that day is the first of the month, the change in enrollment begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, health plan coverage will begin the month in which the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption occurs. Any one of the following events may create a special open enrollment:

(a) Subscriber acquires a new dependent due to:

(i) Marriage or registering a domestic partnership;

(ii) Birth, adoption or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;

(iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship; or

(iv) A child becoming eligible as a dependent with a disability;

(b) Subscriber or a subscriber's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(c) Subscriber or a subscriber's dependent has a change in employment status that affects the subscriber's or the subscriber's dependent's eligibility for their employer contribution toward group health coverage;

(d) Subscriber or a subscriber's dependent has a change in residence that affects health plan availability. If the subscriber moves and the subscriber's current health plan is not available in the new location the subscriber must select a new health plan. If the subscriber does not select a new health plan, the PEBB program may change the subscriber's health plan as described in WAC 182-08-196(2);

(e) A court order or national medical support notice (see also WAC 182-12-263) requires the subscriber or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former registered domestic partner is not an eligible dependent);

(f) Subscriber or a subscriber's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;

(g) Subscriber or a subscriber's dependent becomes eligible for state premium assistance subsidy for PEBB health plan coverage from medicaid or a state children's health insurance program (CHIP);

(h) Subscriber or a subscriber's dependent becomes entitled to coverage under medicare, or the subscriber or a sub-

scriber's dependent loses eligibility for coverage under medicare, or enrolls in or cancels enrollment in a medicare Part D plan. If the subscriber's current health plan becomes unavailable due to the subscriber's or a subscriber's dependent's entitlement to medicare, the subscriber must select a new health plan as described in WAC 182-08-196(1);

(i) Subscriber or a subscriber's dependent's current health plan becomes unavailable because the subscriber or enrolled dependent is no longer eligible for a health savings account (HSA). The health care authority (HCA) may require evidence that the subscriber or subscriber's dependent is no longer eligible for an HSA;

(j) Subscriber or a subscriber's dependent experiences a disruption of care that could function as a reduction in benefits for the subscriber or the subscriber's dependent for a specific condition or ongoing course of treatment. The subscriber may not change their health plan election if the subscriber's or dependent's physician stops participation with the subscriber's health plan unless the PEBB program determines that a continuity of care issue exists. The PEBB program will consider but not limit its consideration to the following:

(i) Active cancer treatment such as chemotherapy or radiation therapy for up to ninety days or until medically stable; or

(ii) Transplant within the last twelve months; or

(iii) Scheduled surgery within the next sixty days (elective procedures within the next sixty days do not qualify for continuity of care); or

(iv) Recent major surgery still within the postoperative period of up to eight weeks; or

(v) Third trimester of pregnancy.

If the employee is having premiums taken from payroll on a pretax basis, a plan change will not be approved if it would conflict with provisions of the salary reduction plan authorized under RCW 41.05.300.

(3) During the premium surcharge implementation period: Subscribers may change health plans during the premium surcharge implementation period from April 1 through May 15, 2014. The subscriber must submit the required enrollment forms to change his or her health plan no later than May 15, 2014. Enrollment in the new health plan will begin July 1, 2014.

AMENDATORY SECTION (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

WAC 182-08-199 **When may an employee enroll in or change his or her election under the premium payment plan, medical flexible spending arrangement (FSA) or dependent care assistance program (DCAP)?** An employee who is eligible to participate in the state's salary reduction plan as described in WAC 182-12-116 may enroll in or change his or her election under the premium payment plan, medical flexible spending arrangement (FSA), or dependent care assistance program (DCAP) at the following times:

(1) When newly eligible under WAC 182-12-114, as described in WAC 182-08-197(1).

(2) **During annual open enrollment:** An eligible employee may enroll in or change his or her election under

the state's premium payment plan, medical FSA or DCAP during the annual open enrollment. The employee must submit, in paper or online, the required enrollment form to enroll or reenroll no later than the last day of the annual open enrollment. The enrollment or new election will be effective January 1st of the following year.

(3) **During a special open enrollment:** An employee may enroll or change his or her election under the state's premium payment plan, medical FSA or DCAP outside of the annual open enrollment if a special open enrollment event occurs. The enrollment or change in (~~enrollment~~) election must be allowable under Internal Revenue Code (IRC) and correspond to and be consistent with the event that creates the special open enrollment. To make a change or enroll, the employee must submit the required enrollment forms as instructed on the forms no later than sixty days after the event occurs. The employee must provide evidence of the event that created the special open enrollment.

For purposes of this section, an eligible dependent includes any person who qualifies as a dependent of the employee for tax purposes under IRC Section 152 without regard to the income limitations of that section. It does not include a state registered domestic partner unless the domestic partner otherwise qualifies as a dependent for tax purposes under IRC Section 152.

(a) **Premium payment plan.** An employee may enroll or change his or her election under the premium payment plan when any of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or change in election will be effective the first day of the month following the later of the event date or the date the form is received. If that day is the first of the month, the enrollment or change in (~~enrollment~~) election begins on that day. If the special open enrollment is due to the birth, adoption or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) Employee acquires a new dependent due to:

- Marriage;

- Registering a domestic partnership when the dependent is a tax dependent of the subscriber;

- Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;

- A child becoming eligible as an extended dependent through legal custody or legal guardianship; or

- A child becoming eligible as a dependent with a disability;

(ii) Employee's dependent no longer meets public employees benefits board (PEBB) eligibility criteria because:

- Employee has a change in marital status;

- Employee's domestic partnership with a domestic partner who is a tax dependent is dissolved or terminated;

- An eligible dependent child turns age twenty-six or otherwise does not meet dependent child eligibility criteria;

- An eligible dependent ceases to be eligible as an extended dependent or as a dependent with a disability; or

- An eligible dependent dies.

(iii) Employee or an employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(iv) Employee or an employee's dependent has a change in employment status that affects the employee's or a dependent's eligibility for their employer contribution toward group health coverage;

(v) Employee or an employee's dependent has a change in enrollment under another employer plan during its annual open enrollment that does not align with the PEBB program's annual open enrollment;

(vi) Employee or an employee's dependent has a change in residence that affects health plan availability;

(vii) Employee's dependent has a change in residence from outside of the United States to within the United States;

(viii) A court order or national medical support notice (see also WAC 182-12-263) requires the employee or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former registered domestic partner is not an eligible dependent);

(ix) Employee or an employee's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;

(x) Employee or an employee's dependent becomes eligible for state premium assistance subsidy for PEBB health plan coverage from medicaid or a state children's health insurance program (CHIP);

(xi) Employee or an employee's dependent becomes entitled to coverage under medicare, or the employee or an employee's dependent loses eligibility for coverage under medicare, or enrolls in or cancels enrollment in a medicare Part D plan;

(xii) Employee or an employee's dependent's current health plan becomes unavailable because the employee or enrolled dependent is no longer eligible for a health savings account (HSA). The health care authority (HCA) may require evidence that the employee or employee's dependent is no longer eligible for an HSA;

(xiii) Employee has a change in the cost of insurance coverage because of a premium surcharge;

(xiv) Employee or an employee's dependent experiences a disruption of care that could function as a reduction in benefits for the employee or the employee's dependent for a specific condition or ongoing course of treatment. The employee may not change their health plan election if the employee's or dependent's physician stops participation with the employee's health plan unless the PEBB program determines that a continuity of care issue exists. The PEBB program will consider but not limit its consideration to the following:

- Active cancer treatment such as chemotherapy or radiation therapy for up to ninety days or until medically stable; or
- Transplant within the last twelve months; or
- Scheduled surgery within the next sixty days (elective procedures within the next sixty days do not qualify for continuity of care); or

- Recent major surgery still within the postoperative period of up to eight weeks; or
- Third trimester of pregnancy.

If the employee is having premiums taken from payroll on a pretax basis, a plan change will not be approved if it would conflict with provisions of the salary reduction plan authorized under RCW 41.05.300.

(b) **Flexible spending account (FSA).** An employee may enroll or change his or her election under the medical FSA when any one of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or change in election will be effective the first day of the month following approval by the FSA administrator.

(i) Employee acquires a new dependent due to:

- Marriage;
- Registering a domestic partnership if the domestic partner qualifies as a tax dependent of the subscriber;
- Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;
- A child becoming eligible as an extended dependent through legal custody or legal guardianship; or
- A child becoming eligible as a dependent with a disability.

(ii) Employee's dependent no longer meets PEBB eligibility criteria because:

- Employee has a change in marital status;
- Employee's domestic partnership with a domestic partner who qualifies as a tax dependent is dissolved or terminated;
- An eligible dependent child turns age twenty-six or otherwise does not meet dependent child eligibility criteria;
- An eligible dependent ceases to be eligible as an extended dependent or as a dependent with a disability; or
- An eligible dependent dies.

(iii) Employee or an employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(iv) Employee or an employee's dependent has a change in employment status that affects the employee's or a dependent's eligibility for the FSA;

(v) A court order or national medical support notice requires the employee or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former registered domestic partner is not an eligible dependent);

(vi) Employee or an employee's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the employee or an employee's dependent loses eligibility for coverage under medicaid or CHIP;

(vii) Employee or an employee's dependent becomes entitled to coverage under medicare.

(c) **Dependent care assistance program (DCAP).** An employee may enroll or change his or her election under the DCAP when any one of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or change in

election will be effective the first day of the month following approval by the DCAP administrator.

- (i) Employee acquires a new dependent due to:
 - Marriage;
 - Registering a domestic partnership if the domestic partner qualifies as a tax dependent of the subscriber;
 - Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;
 - A child becoming eligible as an extended dependent through legal custody or legal guardianship; or
 - A child becoming eligible as a dependent with a disability.
- (ii) Employee or an employee's dependent has a change in employment status that affects the employee's or a dependent's eligibility for DCAP;
- (iii) Employee or an employee's dependent has a change in enrollment under another employer plan during its annual open enrollment that does not align with the PEBB program's annual open enrollment;
- (iv) Employee changes dependent care provider; the change to DCAP can reflect the cost of the new provider;
- (v) Employee or the employee's spouse experiences a change in the number of qualifying individuals as defined in IRC Section 21 (b)(1);
- (vi) Employee's dependent care provider imposes a change in the cost of dependent care; employee may make a change in the DCAP to reflect the new cost if the dependent care provider is not a relative as defined in Section 152 (d)(1) through (5), incorporating the rules of Section 152 (b)(1) through (3) of the IRC.

(4) During the premium surcharge implementation period: An eligible employee may enroll in or change his or her election under the state's premium payment plan from April 1 through May 15, 2014. The employee must submit, in paper or online, the required enrollment form to enroll or change his or her election no later than May 15, 2014. The enrollment or change in election will begin July 1, 2014.

AMENDATORY SECTION (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

WAC 182-08-245 Employer group participation requirements. This section applies to an employer group as defined in WAC 182-08-015 that is approved to purchase insurance for its employees through a contract with the health care authority (HCA).

(1) Prior to enrollment of employees in public employees benefits board (PEBB) insurance coverage, the employer group must:

- (a) Remit to the authority the required start-up fee in the amount publicized by the PEBB program;
- (b) Sign a contract with the authority;
- (c) Determine employee and dependent eligibility and terms of enrollment for insurance coverage in accordance with the criteria outlined in the employer group's contract with the authority;
- (d) Determine eligibility in order to ensure the PEBB program's continued status as a governmental plan under Section 3(32) of the Employee Retirement Income Security Act

of 1974 (ERISA) as amended. This means that only employees whose services are substantially all in the performance of essential governmental functions but not in the performance of commercial activities, whether or not those activities qualify as essential governmental functions may be considered eligible by the employer group; and

(e) Ensure PEBB health plans are the only employer-sponsored health plans available to groups of employees eligible for PEBB insurance coverage under the contract.

(2) Pay premiums in accordance with its contract with the authority based on the following premium structure:

(a) The premium rate structure for K-12 school districts and educational service districts will be a composite rate equal to the rate charged to state agencies plus an amount equal to the employee premium based on health plan choice and family enrollment. Districts must collect an amount equal to the premium surcharge(s) applied to an employee's account by the authority from their employees and include the funds in their payment to the authority.

Exception: The authority will allow districts that enrolled prior to September 1, 2002, to continue participation based on a tiered rate structure. The authority may require the district to change to a composite rate structure with ninety days advance written notice.

(b) The premium rate structure for employer groups other than districts described in (a) of this subsection will be a tiered rate based on health plan choice and family enrollment. Employer groups must collect an amount equal to the premium surcharge(s) applied to an employee's account by the authority from their employees and include the funds in their payment to the authority.

Exception: The authority will allow employer groups that enrolled prior to January 1, 1996, to continue to participate based on a composite rate structure. The authority may require the employer group to change to a tiered rate structure with ninety days advance written notice.

(3) If an employer group wants to make subsequent changes to the contract, the changes must be submitted to the authority for approval.

(4) The employer group must maintain participation in PEBB insurance coverage for at least one full year. An employer group may only end participation at the end of a plan year unless the authority approves a mid-year termination. To end participation, an employer group must provide written notice to the PEBB program at least sixty days before the requested termination date.

(5) Upon approval to purchase insurance through a contract with the authority, the employer group must provide a list of employees and dependents that are enrolled in COBRA benefits and the remaining number of months available to them based on their qualifying event. These employees and dependents may enroll in PEBB medical and dental as COBRA enrollees for the remainder of the months available to them based on their qualifying event.

(6) Enrollees in PEBB insurance coverage under one of the continuation of coverage provisions allowed under chapter 182-12 WAC or retirees included in the transfer unit as allowed under WAC 182-08-237 cease to be eligible as of the last day of the contract and may not continue enrollment

beyond the end of the month in which the contract is terminated.

Exception: If an employer group, other than a school district or educational service district, ends participation, retired and disabled employees who began participation before September 15, 1991, are eligible to continue enrollment in PEBB insurance coverage if the employee continues to meet the procedural and eligibility requirements of WAC 182-12-171. Employees who enrolled after September 15, 1991, who are enrolled in PEBB retiree insurance cease to be eligible under WAC 182-12-171, but may continue health plan enrollment under COBRA (see WAC 182-12-146).

AMENDATORY SECTION (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

WAC 182-12-109 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates another meaning:

"Affordable Care Act" means the federal Patient Protection and Affordable Care Act, P.L. 111-148, as amended by the federal Health Care and Education Reconciliation Act of 2010, P.L. 111-152, or federal regulations or guidance issued under the Affordable Care Act.

"Annual open enrollment" means an annual event set aside for a period of time when subscribers may make changes to their health plan enrollment and salary reduction elections for the following plan year. Subscribers may transfer from one health plan to another, enroll or remove dependents from coverage, enroll or waive enrollment in a medical plan, or employees may enroll in or change their election under the DCAP, the medical FSA, or the premium payment plan.

"Authority" or "HCA" means the health care authority.

"Benefits eligible position" means any position held by an employee who is eligible for benefits under WAC 182-12-114, with the exception of employees who establish eligibility under WAC 182-12-114 (2) or (3)(a)(ii).

"Board" means the public employees benefits board established under provisions of RCW 41.05.055.

"Comprehensive employer-sponsored medical" includes insurance coverage continued by the employee or his or her dependent under COBRA. It does not include an employer's retiree coverage, with the exception of a federal retiree plan.

"Creditable coverage" means coverage that meets the definition of "creditable coverage" under RCW 48.66.020 (13)(a) and includes payment of medical and hospital benefits.

"Defer" means to postpone enrollment or interrupt enrollment in a PEBB medical insurance by a retiree or eligible survivor.

"Dependent" means a person who meets eligibility requirements in WAC 182-12-260, except that "surviving spouses, state registered domestic partners, and dependent children" of emergency service personnel who are killed in the line of duty is defined in WAC 182-12-250.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax

dollars as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Director" means the director of the authority.

"Effective date of enrollment" means the first date when an enrollee is entitled to receive covered benefits.

"Employer group" means those employee organizations representing state civil service employees, counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, school districts, and educational service districts participating in PEBB insurance coverage under contractual agreement as described in WAC 182-08-245.

"Employing agency" means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, school district, educational service district, or other political subdivision; charter school; or a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Exchange" means the Washington health benefit exchange established in RCW 43.71.020, and any other health benefit exchange established under the Affordable Care Act.

"Exchange coverage" means coverage offered by a qualified health plan through an exchange.

"Faculty" means an academic employee of an institution of higher education whose workload is not defined by work hours but whose appointment, workload, and duties directly serve the institution's academic mission, as determined under the authority of its enabling statutes, its governing body, and any applicable collective bargaining agreement.

"Federal Retiree Plan" means the Federal Employees Health Benefits program (FEHB) and Tricare.

"Health plan" or "plan" means a plan offering medical coverage or dental coverage, or both developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Institutions of higher education" means the state public research universities, the public regional universities, The Evergreen State College, the community and technical colleges, and the state board for community and technical colleges.

"Insurance coverage" means any health plan, life insurance, long-term care insurance, LTD insurance, or property and casualty insurance administered as a PEBB benefit.

"Layoff," for purposes of this chapter, means a change in employment status due to an employer's lack of funds or an employer's organizational change.

"Life insurance" includes basic life insurance paid for by the employing agency, life insurance offered to employees on an optional basis, and retiree life insurance.

"LTD insurance" includes basic long-term disability insurance paid for by the employing agency and long-term disability insurance offered to employees on an optional basis.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby state and public employ-

ees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"PEBB" means the public employees benefits board.

"PEBB appeals committee" means the committee that considers appeals relating to the administration of PEBB benefits by the PEBB program. The director has delegated the authority to hear appeals at the level below an administrative hearing to the PEBB appeals committee.

"PEBB benefits" means one or more insurance coverages or other employee benefits administered by the PEBB program within the health care authority.

"PEBB program" means the program within the HCA which administers insurance and other benefits for eligible employees (as defined in WAC 182-12-114), eligible retired and disabled employees (as defined in WAC 182-12-171), eligible dependents (as defined in WAC 182-12-250 and 182-12-260) and others as defined in RCW 41.05.011.

"Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's premium contribution, due to an enrollee's tobacco use or a subscriber's spouse or domestic partner choosing not to enroll in his or her employer-based group medical insurance when:

- Premiums are less than ninety-five percent of Uniform Medical Plan (UMP) Classic premiums; and
- The actuarial value of benefits is at least ninety-five percent of the actuarial value of UMP Classic benefits.

"Premium surcharge implementation period" means the period from April 1 through May 15, 2014, when subscribers may change their health plan enrollment and premium payment plan election to be effective July 1, 2014. Subscribers may change health plans and enroll or remove dependents from coverage. Additionally, employees may enroll in or waive enrollment in a medical plan and enroll in or change their premium payment plan election.

"Qualified health plan" means a medical plan that is certified to be offered through an exchange.

"Salary reduction plan" means a benefit plan whereby state and public employees may agree to a reduction of salary on a pretax basis to participate in the DCAP, medical FSA, or premium payment plan as authorized in chapter 41.05 RCW.

"Seasonal employee" means an employee hired to work during a recurring, annual season with a duration of three months or more, and anticipated to return each season to perform similar work.

"Special open enrollment" means a period of time when subscribers may make changes to their health plan enrollment and salary reduction elections outside of the annual open enrollment period when specific life events occur. Subscribers may ~~((transfer from one))~~ change health plans ~~((to another))~~ and enroll or remove dependents from coverage. Additionally, employees may enroll in or waive enrollment in a medical plan, ((or employees)) and may enroll in or change their election under the DCAP, medical FSA, or the premium payment plan. For special open enrollment events as they

relate to specific PEBB benefits, see WAC 182-08-198, 182-08-199, 182-12-128, and 182-12-262.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government and all personnel thereof. It includes the legislature, executive branch, and agencies or courts within the judicial branch, as well as institutions of higher education and any unit of state government established by law.

"Subscriber" means the employee, retiree, COBRA beneficiary or eligible survivor who has been designated by the HCA as the individual to whom the HCA and contracted vendors will issue all notices, information, requests and premium bills on behalf of enrollees.

"Termination of the employment relationship" means that an employee resigns or an employee is terminated and the employing agency has no anticipation that the employee will be rehired.

"Tobacco products" means any product made with or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product. This includes, but is not limited to, cigars, cigarettes, chewing tobacco, snuff, and other tobacco products. It does not include United States Food and Drug Administration (FDA) approved quit aids or e-cigarettes until their tobacco related status is determined by the FDA.

"Tobacco use" means any use of tobacco products within the past two months. Tobacco use, however, does not include the religious or ceremonial use of tobacco.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

"Waive" means to interrupt an eligible employee's enrollment in a PEBB health plan because the employee is enrolled in other comprehensive group medical coverage as required under WAC 182-12-128, or is on approved educational leave and obtains comprehensive group health plan coverage as allowed under WAC 182-12-136.

AMENDATORY SECTION (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

WAC 182-12-128 When may an employee waive or enroll in medical plans? Employees must enroll in dental, basic life and basic long-term disability insurance (unless the employing agency does not participate in these public employees benefits board (PEBB) insurance coverages). However, employees may waive PEBB medical if they have other comprehensive group medical coverage.

(1) Employees may waive enrollment in PEBB medical by submitting the required enrollment form to their employing agency during the following times:

(a) **When the employee becomes eligible:** Employees may waive medical when they become eligible for PEBB benefits. Employees must indicate they are waiving medical on the required enrollment form they submit to their employing agency no later than thirty-one days after the date they become eligible (see WAC 182-08-197). Medical will be

waived as of the date the employee becomes eligible for PEBB benefits.

(b) **During the annual open enrollment:** Employees may waive medical during the annual open enrollment if they submit the required enrollment form to their employing agency before the end of the annual open enrollment. Medical will be waived beginning January 1st of the following year.

(c) **During a special open enrollment:** Employees may waive medical during a special open enrollment as described in subsection (4) of this section.

(d) During the premium surcharge implementation period: Employees may waive PEBB medical coverage during the premium surcharge implementation period from April 1 through May 15, 2014. The employee must submit the required enrollment form no later than May 15, 2014. Medical coverage will be waived beginning July 1, 2014.

(2) If an employee waives medical, the employee's eligible dependents may not be enrolled in medical.

(3) Once medical is waived, enrollment is only allowed during the following times:

(a) During the annual open enrollment;

(b) During a special open enrollment created by an event that allows for enrollment outside of the annual open enrollment as described in subsection (4) of this section. In addition to the required forms, the PEBB program will require the employee to provide evidence of eligibility and evidence of the event that creates a special open enrollment;

(c) During the premium surcharge implementation period from April 1 through May 15, 2014. The employee must submit the required enrollment forms no later than May 15, 2014. Enrollment in medical will begin July 1, 2014.

(4) **Special open enrollment:** Employees may waive enrollment in medical or enroll in medical if a special open enrollment event occurs. The change in enrollment must be allowable under the Internal Revenue Code (IRC) and correspond to and be consistent with the event that creates the special open enrollment for the employee, the employee's dependent, or both. Employees must provide evidence of the event that created the special open enrollment. Any one of the following events may create a special open enrollment:

(a) Employee acquires a new dependent due to:

(i) Marriage or registering a domestic partnership;

(ii) Birth, adoption or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;

(iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship; or

(iv) A child becoming eligible as a dependent with a disability;

(b) Employee or an employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(c) Employee or an employee's dependent has a change in employment status that affects the employee's or employee's dependent's eligibility for their employer contribution toward group health coverage;

(d) Employee or an employee's dependent has a change in enrollment under another employer group plan during its

annual open enrollment that does not align with the PEBB program's annual open enrollment;

(e) Employee's dependent has a change in residence from outside of the United States to within the United States;

(f) A court order or national medical support notice (see also WAC 182-12-263) requires the employee or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former registered domestic partner is not an eligible dependent);

(g) Employee or an employee's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the employee or an employee's dependent loses eligibility for coverage under medicaid or CHIP;

(h) Employee or an employee's dependent becomes eligible for state premium assistance subsidy for PEBB health plan coverage from medicaid or a state children's health insurance program (CHIP).

To waive or enroll during a special open enrollment, the employee must submit the required forms to his or her employing agency no later than sixty days after the event that creates the special open enrollment.

Medical will be waived the end of the month following the later of the event date or the date the form is received. If the later day is the first of the month, medical will be waived the last day of the previous month. If the special open enrollment is due to the birth, adoption or assumption of legal obligation for total or partial support in anticipation of adoption of a child, medical will be waived the first of the month in which the event occurs.

Enrollment in medical will begin the first day of the month following the later of the event date or the date the form is received. If that day is the first of the month, coverage is effective on that day. If the special open enrollment is due to the birth, adoption or assumption of legal obligation for total or partial support in anticipation of adoption of a child, enrollment in medical will begin the first of the month in which the event occurs.

AMENDATORY SECTION (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

WAC 182-12-262 When may subscribers enroll or remove eligible dependents? (1) Enrolling dependents in health plan coverage. A dependent must be enrolled in the same health plan coverage as the subscriber, and the subscriber must be enrolled to enroll his or her dependent except as provided in WAC 182-12-205 (1)(c). Subscribers may enroll eligible dependents at the following times:

(a) **When the subscriber becomes eligible** and enrolls in public employees benefits board (PEBB) insurance coverage. If eligibility is verified and the dependent is enrolled, the dependent's effective date will be the same as the subscriber's effective date.

(b) **During the annual open enrollment.** PEBB health plan coverage begins January 1st of the following year.

(c) **During special open enrollment.** Subscribers may enroll dependents during a special open enrollment as described in subsection (3) of this section. The subscriber

must satisfy the enrollment requirements as described in subsection (4) of this section.

(d) During the premium surcharge implementation period. Subscribers may enroll dependents during the premium surcharge implementation period from April 1 through May 15, 2014. Employees must submit the required enrollment forms to their employing agency and all other subscribers submit the required forms to the PEBB program no later than May 15, 2014. PEBB health plan coverage will begin July 1, 2014.

(2) Removing dependents from a subscriber's health plan coverage.

(a) A dependent's eligibility for enrollment in health plan coverage ends the last day of the month the dependent meets the eligibility criteria in WAC 182-12-250 or 182-12-260. Employees must notify their employing agency. All other subscribers must notify the PEBB program. Consequences for not submitting notice within sixty days of any dependent ceasing to be eligible may include, but are not limited to:

(i) The dependent may lose eligibility to continue health plan coverage under one of the continuation coverage options described in WAC 182-12-270;

(ii) The subscriber may be billed for claims paid by the health plan for services that were rendered after the dependent lost eligibility;

(iii) The subscriber may not be able to recover subscriber-paid insurance premiums for dependents that lost their eligibility; and

(iv) The subscriber may be responsible for premiums paid by the state for the dependent's health plan coverage after the dependent lost eligibility.

(b) Employees have the opportunity to remove dependents:

(i) During the annual open enrollment. The dependent will be removed the last day of December; or

(ii) During a special open enrollment as described in subsections (3) and (4)(f) of this section; or

(iii) During the premium surcharge implementation period. Subscribers may remove dependents during the premium surcharge implementation period from April 1 through May 15, 2014. To remove a dependent the employee must submit the required form no later than May 15, 2014. The dependent will be removed June 30, 2014.

(c) Retirees, survivors, and enrollees with PEBB continuation coverage under WAC 182-12-133, 182-12-141, 182-12-142, 182-12-146, or 182-12-148 may remove dependents from their coverage outside of the annual open enrollment or a special open enrollment by providing written notice to the PEBB program. Unless otherwise approved by the PEBB program, the dependent will be removed from the subscriber's coverage prospectively.

(3) Special open enrollment. Subscribers may enroll or remove their dependents outside of the annual open enrollment if a special open enrollment event occurs. The change in enrollment must correspond to and be consistent with the event that creates the special open enrollment for the subscriber, the subscriber's dependents, or both.

• Health plan coverage will begin the first of the month following the later of the event date or the date the form is

received. If that day is the first of the month, the change in enrollment begins on that day.

• Enrollment of extended dependents or dependents with a disability will be the first day of the month following eligibility certification.

• Dependents will be removed from the subscriber's health plan coverage the last day of the month following the later of the event date or the date the form is received. If that day is the first of the month, the change in enrollment will be made the last day of the previous month.

• If the special open enrollment is due to the birth or adoption of a child, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of a child, health plan coverage will begin or end the month in which the event occurs.

Any one of the following events may create a special open enrollment:

(a) Subscriber acquires a new dependent due to:

(i) Marriage or registering a domestic partnership;

(ii) Birth, adoption, or when a subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;

(iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship; or

(iv) A child becoming eligible as a dependent with a disability;

(b) Subscriber or a subscriber's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(c) Subscriber or a subscriber's dependent has a change in employment status that affects the subscriber's or the subscriber's dependent's eligibility for their employer contribution toward group health coverage;

(d) Subscriber or a subscriber's dependent has a change in enrollment under another employer plan during its annual open enrollment that does not align with the PEBB program's annual open enrollment;

(e) Subscriber's dependent has a change in residence from outside of the United States to within the United States;

(f) A court order or national medical support notice (see also WAC 182-12-263) requires the subscriber or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former registered domestic partner is not an eligible dependent);

(g) Subscriber or a subscriber's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;

(h) Subscriber or a subscriber's dependent becomes eligible for state premium assistance subsidy for PEBB health plan coverage from medicaid or a state children's health insurance program (CHIP).

(4) Enrollment requirements. Subscribers must submit the required enrollment forms within the time frames described in this subsection. Employees submit the required forms to their employing agency. All other subscribers submit the required forms to the PEBB program. In addition to the required forms indicating dependent enrollment, the sub-

subscriber must provide the required documents as evidence of the dependent's eligibility; or as evidence of the event that created the special open enrollment.

(a) If a subscriber wants to enroll his or her eligible dependent(s) when the subscriber becomes eligible to enroll in PEBB benefits, the subscriber must include the dependent's enrollment information on the required forms that the subscriber submits within the relevant time frame described in WAC 182-08-197, 182-08-187, 182-12-171, or 182-12-250.

(b) If a subscriber wants to enroll eligible dependents during the annual open enrollment, the subscriber must submit the required forms no later than the last day of the annual open enrollment.

(c) If a subscriber wants to enroll newly eligible dependents, the subscriber must submit the required enrollment forms no later than sixty days after the dependent becomes eligible except as provided in (d) of this subsection.

(d) If a subscriber wants to enroll a newborn or child whom the subscriber has adopted or has assumed a legal obligation for total or partial support in anticipation of adoption, the subscriber should notify the PEBB program by submitting an enrollment form as soon as possible to ensure timely payment of claims. If adding the child increases the premium, the subscriber must submit the required enrollment form no later than twelve months after the date of the birth, adoption, or the date the legal obligation is assumed for total or partial support in anticipation of adoption.

(e) If the subscriber wants to enroll a child age twenty-six or older as a child with a disability, the subscriber must submit the required form(s) no later than sixty days after the last day of the month in which the child reaches age twenty-six or within the relevant time frame described in WAC 182-12-262 (4)(a), (b), and (f).

(f) If the subscriber wants to change a dependent's enrollment status during a special open enrollment, the subscriber must submit the required forms no later than sixty days after the event that creates the special open enrollment.

(g) If a subscriber wants to enroll eligible dependents during the premium surcharge implementation period from April 1 through May 15, 2014, the subscriber must submit required forms no later than May 15, 2014.

NEW SECTION

WAC 182-12-300 Public employees benefits board (PEBB) wellness incentive program eligibility and procedural requirements. The public employees benefits board (PEBB) annually determines the design of the PEBB wellness incentive program.

(1) All subscribers, except PEBB subscribers who are enrolled in both medicare parts A and B, and in the medicare risk pool, are eligible to participate in the PEBB wellness incentive program.

(2) To receive a PEBB wellness incentive the following plan year, eligible subscribers must complete PEBB wellness incentive program requirements by the latest date below:

(a) June 30th; or

(b) Within sixty days after their effective date of PEBB medical, but no later than December 31st.

(3) Subscribers who do not complete the requirements of subsection (2) of this section, except as noted, within the time frame described are not eligible to receive a PEBB wellness incentive the following plan year.

Note: All eligible subscribers can earn a wellness incentive. Subscribers who cannot complete the wellness incentive program requirements may be able to earn the same incentive by different means. The PEBB program will work with enrollees (and their physician, if they wish) to define an individual wellness program that provides the opportunity to qualify for the same incentive in light of the enrollee's health status.

(4) A PEBB wellness incentive will be provided only if:

(a) The funding rate provided by the legislature is designed to provide a PEBB wellness incentive program or a PEBB wellness incentive, or both; or

(b) Specific appropriations are provided for wellness incentives.

AMENDATORY SECTION (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

WAC 182-16-020 Definitions. As used in this chapter the term:

"Authority" or "HCA" means the health care authority.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Director" means the director of the authority.

"Employer group" means those employee organizations representing state civil service employees, counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, school districts, and educational service districts participating in PEBB insurance coverage under contractual agreement as described in WAC 182-08-245.

"Employing agency" means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, school district, educational service district, or other political subdivision; charter school; or a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Health plan" or "plan" means a plan offering medical coverage or dental coverage, or both developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Institutions of higher education" means the state public research universities, the public regional universities, The Evergreen State College, the community and technical colleges, and the state board for community and technical colleges.

"Insurance coverage" means any health plan, life insurance, long-term care insurance, LTD insurance, or property and casualty insurance administered as a PEBB benefit.

"LTD insurance" includes basic long-term disability insurance paid for by the employing agency and long-term disability insurance offered to employees on an optional basis.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby state and public employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"PEBB" means the public employees benefits board.

"PEBB appeals committee" means the committee that considers appeals relating to the administration of PEBB benefits by the PEBB program. The director has delegated the authority to hear appeals at the level below an administrative hearing to the PEBB appeals committee.

"PEBB benefits" means one or more insurance coverages or other employee benefits administered by the PEBB program within the health care authority.

"PEBB program" means the program within the HCA which administers insurance and other benefits for eligible employees (as defined in WAC 182-12-114), eligible retired and disabled employees (as defined in WAC 182-12-171), eligible dependents (as defined in WAC 182-12-250 and 182-12-260), and others as defined in RCW 41.05.011.

"Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's premium contribution, due to an enrollee's tobacco use or a subscriber's spouse or domestic partner choosing not to enroll in his or her employer-based group medical insurance when:

- Premiums are less than ninety-five percent of Uniform Medical Plan (UMP) Classic premiums; and
- The actuarial value of benefits is at least ninety-five percent of the actuarial value of UMP Classic benefits.

"Salary reduction plan" means a benefit plan whereby state and public employees may agree to a reduction of salary on a pretax basis to participate in the DCAP, medical FSA, or premium payment plan as authorized in chapter 41.05 RCW.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government and all personnel thereof. It includes the legislature, executive branch, and agencies or courts within the judicial branch, as well as institutions of higher education and any unit of state government established by law.

"Subscriber" means the employee, retiree, COBRA beneficiary or eligible survivor who has been designated by the HCA as the individual to whom the HCA and contracted vendors will issue all notices, information, requests and premium bills on behalf of enrollees.

"Tobacco products" means any product made with or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product. This includes, but is not limited to, cigars, cigarettes, chewing tobacco, snuff, and other tobacco products. It does not include United States Food and Drug Admin-

istration (FDA) approved quit aids or e-cigarettes until their tobacco related status is determined by the FDA.

"Tobacco use" means any use of tobacco products within the past two months. Tobacco use, however, does not include the religious or ceremonial use of tobacco.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-16-025 Where do members appeal decisions regarding eligibility, enrollment, premium payments, premium surcharges, a PEBB wellness incentive, or the administration of benefits? (1) Any employee of a state agency or his or her dependent aggrieved by a decision made by the employing state agency with regard to public employee benefits eligibility ((☞)), enrollment, or premium surcharge may appeal that decision to the employing state agency by the process outlined in WAC 182-16-030.

Note: Eligibility decisions address whether a subscriber or a subscriber's dependent is entitled to insurance coverage, as described in public employees benefits board (PEBB) rules and policies. Enrollment decisions address the application for PEBB benefits as described in PEBB rules and policies including, but not limited to, the submission of proper documentation and meeting enrollment deadlines.

(2) Any employee of an employer group or his or her dependent who is aggrieved by a decision made by an employer group with regard to PEBB eligibility ((☞)), enrollment, premium surcharge, or a PEBB wellness incentive, may appeal that decision to the employer group through the process established by the employer group.

Exception: Appeals by an employee of an employer group or his or her dependent based on eligibility or enrollment decisions regarding life insurance or LTD insurance must be made to the PEBB appeals committee by the process described in WAC 182-16-032.

(3) Any subscriber or dependent aggrieved by a decision made by the PEBB program with regard to public employee benefits eligibility, enrollment, ((☞)) premium payments, premium surcharge, or a PEBB wellness incentive, may appeal that decision to the PEBB appeals committee by the process described in WAC 182-16-032.

(4) Any PEBB enrollee aggrieved by a decision regarding the administration of a PEBB medical plan, self-insured dental plan, insured dental plan, life insurance or LTD insurance may appeal that decision by following the appeal provisions of those plans, with the exception of eligibility, enrollment, and premium payment determinations.

(5) Any PEBB enrollee aggrieved by a decision regarding the administration of PEBB long-term care insurance or property and casualty insurance may appeal that decision by following the appeal provisions of those plans.

(6) Any PEBB enrollee aggrieved by a decision regarding the medical flexible spending arrangement (FSA) or

dependent care assistance program (DCAP) offered under the state's salary reduction plan may appeal that decision by the process described in WAC 182-16-036.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-16-030 How can an employee or an employee's dependent appeal a decision made by a state agency about eligibility, premium surcharge, or enrollment in benefits? (1) An eligibility, premium surcharge, or enrollment decision made by an employing state agency may be appealed by submitting a written request for review to the employing state agency. The employing state agency must receive the request for review within thirty days of the date of the initial denial notice. The contents of the request for review are to be provided in accordance with WAC 182-16-040.

(a) Upon receiving the request for review, the employing state agency shall make a complete review of the initial denial by one or more staff who did not take part in the initial denial. As part of the review, the employing state agency may hold a formal meeting or hearing, but is not required to do so.

(b) The employing state agency shall render a written decision within thirty days of receiving the request for review. The written decision shall be sent to the appellant.

(c) A copy of the employing state agency's written decision shall be sent to the employing state agency's administrator or designee and to the public employees benefits board (PEBB) appeals manager. The employing state agency's written decision shall become the employing state agency's final decision effective fifteen days after the date it is rendered.

(d) The employing state agency may reverse eligibility, premium surcharge, or enrollment decisions based only on circumstances that arose due to delays caused by the employing state agency or error(s) made by the employing state agency.

(2) Any employee or employee's dependent who disagrees with the employing state agency's decision in response to a request for review, as described in subsection (1) of this section, may appeal that decision by submitting a notice of appeal to the PEBB appeals committee. The PEBB appeals manager must receive the notice of appeal within thirty days of the date of the employing state agency's written decision on the request for review.

The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(a) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

(b) The PEBB appeals committee shall render a written decision to the appellant within thirty days of receiving the notice of appeal. The committee may extend the thirty-day time requirement for rendering a decision upon issuing a written finding of good cause explaining the cause for the delay.

(c) Any appellant who disagrees with the decision of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-16-032 How can a decision made by the public employees benefits board (PEBB) program regarding eligibility, enrollment, ((~~or~~)) premium payments, premium surcharge, or a PEBB wellness incentive; or a decision made by an employer group regarding life insurance or LTD insurance be appealed? (1) An eligibility, enrollment, ((~~or~~)) premium payment, premium surcharge, or a PEBB wellness incentive decision made by the public employees benefits board (PEBB) program may be appealed by submitting a notice of appeal to the PEBB appeals committee.

(2) An eligibility or enrollment decision made by an employer group regarding life insurance or LTD insurance may be appealed by submitting a notice of appeal to the PEBB appeals committee.

(3) The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(4) The notice of appeal from an employee or employee's dependent must be received by the PEBB appeals manager within thirty days of the date of the denial notice.

(5) The notice of appeal from a retiree, self-pay enrollee, or dependent of a retiree or self-pay enrollee must be received by the PEBB appeals manager within sixty days of the date of the denial notice.

(6) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

(7) The PEBB appeals committee shall render a written decision to the appellant within thirty days of receiving the notice of appeal. The committee may extend the thirty-day time requirement for rendering a decision upon issuing a written finding of good cause explaining the cause for the delay.

(8) Any appellant who disagrees with the decisions of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

WSR 14-05-052

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed February 14, 2014, 1:36 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-02-108.

Title of Rule and Other Identifying Information: The rule-making effort is to amend WAC 458-20-245, presently entitled: "Telephone business, telephone service" and to update it to present technology with the new title of "Taxation of competitive telephone service, telecommunications service, and ancillary service." This updating of the rule will also incorporate the legislative changes from chapter 8, Laws of 2013 2nd sp. sess., 63rd legislature.

Hearing Location(s): Capital Plaza Building, Fourth Floor Executive Conference Room, 1025 Union Avenue S.E., Olympia, WA 98501, on April 3, 2014, at 1:30 p.m. Copies of draft rules are available for viewing and printing on

our web site at Rules Agenda. *Call-in option can be provided upon request no later than three days before the hearing date.*

Date of Intended Adoption: April 18, 2014.

Submit Written Comments to: Mark E. Bohe, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, by April 3, 2014.

Assistance for Persons with Disabilities: Contact Mary Carol LaPalm, (360) 725-7499 or Renee Cosare, (360) 725-7514, no later than ten days before the hearing date. For hearing impaired please contact us via the Washington relay operator at (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making will identify what constitutes competitive telephone services, telecommunications services, and ancillary services; how these products are taxed; and the statutes that apply for determining if the sales of these products are subject to taxation in Washington state, including issues of sourcing and apportionment. The rule applies to tax periods commencing on or after July 1, 2008.

Reasons Supporting Proposal: This proposal will update this rule to present technology and all legislative changes, including incorporation of the most recent legislative changes from chapter 8, Laws of 2013 2nd sp. sess., 63rd legislature.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Statute Being Implemented: RCW 82.04.065 and 82.08.190.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: [Department of revenue], governmental.

Name of Agency Personnel Responsible for Drafting: Mark Bohe, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1574; Implementation: Dylan Waits, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1583; and Enforcement: Alan Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1599.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The revised rule, as proposed, does not impose performance requirements or administrative burdens on any small business not required by statute or the state and/or federal constitution.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule is not a significant legislative rule as defined by RCW 34.05.328.

February 14, 2014

Dylan Waits

Rules Coordinator

AMENDATORY SECTION (Amending WSR 83-17-099, filed 8/23/83)

WAC 458-20-245 ((Telephone business, telephone service.)) Taxation of competitive telephone service, telecommunications service, and ancillary service. ((Under the provisions of various sections of chapter 3, Laws of 1983 2nd ex. sess., the retail sales tax is extended to "telephone service." The effective date is July 1, 1983 and the tax applies to

all sales of "telephone service" billed on or after that date, whether or not such service was rendered before that date.

Persons engaged in the "telephone business" or rendering "telephone service" are taxable under the retailing of wholesaling classification of the business and occupation tax, whichever is applicable, on total gross revenues, as described herein. Such persons who are taxable under retailing must also collect retail sales tax from consumers, subject to certain exemptions explained more fully herein.

Definitions

As used herein: The term "telephone service" includes competitive telephone service and network telephone service.

The term "telephone business" means the business of providing network telephone service and includes cooperative or farmers line telephone companies or associations operating an exchange.

The term "competitive telephone service" means the providing by any person of telecommunications equipment or apparatus, or service related to that equipment or apparatus such as installation, repair, or maintenance services, if the equipment or apparatus is of a type which can be provided by persons that are not subject to regulation as telephone companies under Title 80 RCW.

The term "network telephone service" means the providing by any person of access to a local telephone network, switching service, toll service, or coin telephone services, or the providing of telephonic, video, data, or similar communication or transmission for hire, over a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. "Network telephone service" includes interstate service, including toll service, originating from or received on telecommunications equipment or apparatus in this state if the charge for the service is billed to a person in this state. "Network telephone service" does not include the providing of competitive telephone service, the providing of cable television service, nor the providing of broadcast services by radio or television stations.

The term "residential customer" means an individual subscribing to a residential class of telephone service.

The term "toll service" means the charge for services outside the local telephone network except customer access line charges for access to a toll calling network.

The term "telephone company" means a person engaged in the telephone business or rendering telephone service.

Business and Occupation Tax

Retailing and wholesaling. Persons making retail sales of telephone service to consumers are taxable upon the gross proceeds of sales under the retailing classification. Persons making sales of telephone services for resale in the regular course of business are taxable upon the gross proceeds of sales under the wholesaling classification. The tax shall apply to the gross income from all sales of competitive telephone service and network telephone service, as described more fully below.

For purposes of applying the business and occupation tax to telephone service, a sale takes place in Washington when a call originates from or is received on any telephone or other telecommunications equipment, instrument, or apparatus in Washington and the cost for the telephone service is charged

to that equipment, instrument, or apparatus, regardless of where the actual billing invoice is sent.

The business and occupation tax shall apply to the gross proceeds of sales of competitive telephone service to customers. The tax shall be measured by total gross billings to such customers. The business and occupation tax shall also apply to the gross proceeds of sales of network telephone service, other than interstate and intrastate toll service, measured by total gross billings to customers. The tax as applied to interstate and intrastate service, including toll service, shall be determined under the apportionment guidelines set forth in the following paragraph.

With respect to interstate and intrastate toll service, the business and occupation tax shall apply to the income received from the interstate or intrastate division of revenue pool. The income subject to tax shall include amounts received for expenses incurred in furnishing the interstate or intrastate services plus any amounts received as return. Persons who are not members of the interstate or intrastate division of revenue pool but who receive shared interstate or intrastate revenues through a member of the division of revenue pool, are liable for business and occupation tax on the income received.

Persons engaged in the telephone business or rendering telephone service shall report on the combined excise tax return their total gross income received from billings to customers under column 2 of the appropriate classification line on the return (wholesaling or retailing). An adjustment may be made under column 3 of the excise tax return for revenues received from providing interstate and intrastate toll service, as described in the previous paragraph. On the reverse side of the return it should be explained that such adjustment was the result of income received from the interstate or intrastate division of revenue pool. The reported gross income under column 2 shall be the same under the retailing business and occupation tax and retail sales tax classifications, with appropriate adjustments and deductions noted under column 3.

Service. Persons engaged in the telephone business or rendering telephone service are taxable under the service and other activities classification on their income from services which are not included within the definition of the terms "sale at retail" in RCW 82.04.050 or "competitive telephone service" and "network telephone service," as defined herein. Included under this classification are, among others, gross income from the sale of advertising in telephone directories; gross income from charges made for processing NSF checks; and any other miscellaneous income.

Retail Sales Tax

The retail sales tax applies to all sales of competitive telephone service provided to both residential and business (nonresidential) customers. The retail sales tax also applies to all sales of network telephone service provided to business (nonresidential) customers.

The retail sales tax applies upon sales to a telephone company of all tangible personal property used as a consumer in providing telephone service. A consumer is liable for retail sales tax on all telephone service, as described herein, in situations where the tax was not paid to a telephone company as a result of a billing or other invoice rendered by that company.

The retail sales tax must be collected and accounted for in every case where retailing business and occupation tax is due as outlined herein, except for the following. The retail sales tax shall not apply to sales of network telephone service, other than toll service, provided to residential customers nor to sales of network telephone service paid for by inserting coins in coin-operated telephones.

The retail sales tax does not apply to sales of network telephone service, other than toll service, provided to residential customers.

The retail sales tax does not apply to sales of network telephone service which is paid for by inserting coins in coin-operated telephones. However, the retail sales tax does apply if the network telephone service is provided through a coin-operated telephone, the service originates from or is received on equipment in this state, and the charge for the service is billed to a telephone or other telecommunications equipment, instrument, or apparatus which is located in Washington.

The sales tax does not apply to network telephone service which is merely billed to a telephone or other telecommunications equipment, instrument, or apparatus whose situs is in Washington if the service neither originated from nor was received on equipment in this state.

Use Tax

The use tax applies to telephone or other telecommunications equipment, instrument, or apparatus purchased at retail and upon which the sales tax has not been paid. (See WAC 458-20-178.) A telephone company is liable for use tax on all tangible personal property purchased at retail and upon which the sales tax has not been paid. A telephone company is not liable for use tax on its own use as a consumer of its own network telephone service.

Special Situations

Persons making sales of telephone service for resale in the regular course of business must follow the provisions of WAC 458-20-102 concerning resale certificates.

The local retail sales tax applies to sales of telephone services as described herein. (See WAC 458-20-145.)

Persons engaged in telephone business or rendering telephone service are not taxable under the public utility tax, except with respect to gross income from engaging in telegraph or any other public service business as defined in WAC 458-20-179.

All retail telephone services including sales of equipment are taxable at the same state retail sales tax rate of 6.5 percent, regardless that such sales may be made in a border county. (See WAC 458-20-237.)) This rule identifies what constitutes competitive telephone services, telecommunications services, and ancillary services; how these products are taxed; and the statutes that apply for determining if the sale of these products are subject to taxation in Washington (sourcing and apportionment). The rule applies to tax periods commencing on or after July 1, 2008. This rule is divided into three parts as follows:

- Part I: What are competitive telephone services, telecommunications services, and ancillary services?
- Part II: How are competitive telephone services, telecommunications services, and ancillary services taxed in Washington?

• Part III: When is the sale of competitive telephone services, telecommunications services, or ancillary services subject to taxation in Washington (sourcing and apportionment)?

Part I: What are competitive telephone services, telecommunications services, and ancillary services?

(101) **Introduction.** Washington law imposes tax on the three following distinct products: Competitive telephone service, telecommunications service, and ancillary service. Subsections (102), (103), and (104) of this section describe these three services.

(102) **What is a competitive telephone service?** A "competitive telephone service" means the providing by any person of telecommunications equipment or apparatus, or service related to that equipment or apparatus such as installation, repair, or maintenance services, if the equipment or apparatus is of a type that can be provided by persons that are not subject to regulation as telephone companies under Title 80 RCW. See RCW 82.04.065.

(103) **What is a telecommunications service?** A "telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. Telecommunications service includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value added. See RCW 82.04.065.

(a) **What services are included within the definition of telecommunications service?** Table A below provides a nonexclusive list of services considered to be telecommunications services in Washington.

Table A

<u>Type of Service</u>	<u>Description</u>
800 Service	A service that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800," "855," "866," "877," and "888" toll-free calling, and any subsequent numbers designated by the federal communications commission.
900 Service	An inbound toll service purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. "900 service" does not include the charge for: Collection services provided by the seller of the telecommunications services to the subscriber or services or products sold by the subscriber

<u>Type of Service</u>	<u>Description</u>
	to the subscriber's customer. The service is typically marketed under the name "900 service," and any subsequent numbers designated by the federal communications commission.
Fixed wireless service	A service that provides radio communication between fixed points.
Mobile telecommunications service	A commercial mobile radio service, as defined in Title 47 C.F.R., Section 20.3 as in effect on June 1, 1999.
Mobile wireless service	A service that is transmitted, conveyed, or routed regardless of the technology used, whereby the origination and/or termination points of the transmission, conveyance, or routing are not fixed including, by way of example only, telecommunications services that are provided by a commercial mobile radio service provider.
Paging service	A service that provides transmission of coded radio signals, which may include messages or sounds, for the purpose of activating specific pagers.
Private communications service	A service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which the channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of the channel or channels.
Value-added nonvoice data service	A service that otherwise meets the definition of telecommunications services in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing.
Prepaid calling service	Means the right to access exclusively telecommunications services, which must be paid for in advance and which enable the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

<u>Type of Service</u>	<u>Description</u>
<u>Prepaid tele- phone calling service</u>	<u>Means the right to purchase exclusively telecommunications services that must be paid for in advance, that enables the origination of calls using an access number, authorization code, or both, whether manually or electronically dialed, if the remaining amount of units of service that have been prepaid is known by the provider of the prepaid service on a continuous basis.</u>
<u>Prepaid wireless calling service</u>	<u>Means a service that provides the right to use mobile wireless service as well as other nontelecommunications services including the download of digital products delivered electronically, content, and ancillary services, which must be paid for in advance and that is sold in predetermined units or dollars of which the number declines with use in a known amount.</u>

(b) What services or items are excluded from the definition of telecommunications service? Table B below provides a list of services or items not considered to be telecommunications services in Washington.

Table B

<u>Item</u>	<u>Description</u>
<u>Data processing and information services</u>	<u>Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information.</u>
<u>Tangible personal property</u>	<u>Tangible personal property.</u>
<u>Advertising</u>	<u>Advertising services including, but not limited to, directory advertising.</u>
<u>Billing and collection</u>	<u>Billing and collection services provided to third parties.</u>
<u>Internet access</u>	<u>Internet access. See RCW 82.04.297.</u>
<u>Audio and video programming</u>	<u>Radio and television audio and video programming services, regardless of the medium, including furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services include, but are not limited to, cable service as defined in 47 U.S.C. Section</u>

<u>Item</u>	<u>Description</u>
	<u>522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in Title 47 C.F.R., Section 20.3.</u>
<u>Ancillary services</u>	<u>Ancillary services. See subsection (104) of this section.</u>
<u>Digital products</u>	<u>Digital products delivered electronically including, but not limited to, music, video, reading materials, or ring tones.</u>
<u>Software</u>	<u>Software delivered electronically.</u>

(104) What is an ancillary service? An ancillary service is a service associated with or incidental to the provision of a telecommunications service.

What services are considered to be ancillary services? Table C below provides a nonexclusive list of services considered to be ancillary services in Washington.

Table C

<u>Type of Ancillary Service</u>	<u>Description</u>
<u>Conference bridging</u>	<u>A service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. "Conference bridging service" does not include the telecommunications services used to reach the conference bridge.</u>
<u>Detailed telecommunications billing</u>	<u>A service of separately stating information pertaining to individual calls on a customer's billing statement.</u>
<u>Directory assistance</u>	<u>A service of providing telephone number information and/or address information.</u>
<u>Vertical service</u>	<u>A service that is offered in connection with one or more telecommunications services that offers advanced calling features allowing customers to identify callers and to manage multiple calls and call connections, including conference bridging services.</u>
<u>Voice mail</u>	<u>A service that enables the customer to store, send, or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to use the voice mail service.</u>

Part II: How are competitive telephone services, telecommunications services, and ancillary services taxed in Washington?

(201) **Introduction.** Washington law imposes tax on the three following distinct products: Competitive telephone service, telecommunications service, and ancillary service.

(202) **Are competitive telephone services, telecommunications services, and ancillary services taxable in Washington?** Yes. The sale of a competitive telephone service, telecommunications service, and ancillary service to a consumer is a retail sale. See RCW 82.04.050. A sale of these same services that is not a retail sale constitutes a wholesale sale (a sale for resale). See RCW 82.04.060. Washington imposes taxes on retail and wholesale sales of these services as follows:

(a) **Retail sales tax:** The retail sale of any of these services is subject to the retail sales tax unless an exemption applies. See RCW 82.04.050, 82.04.190, and 82.08.020. Generally, the retail sales tax is paid by the consumer and collected and remitted by the seller.

(b) **Retailing business and occupation (B&O) tax classification:** Persons making retail sales of any of these services are subject to the B&O tax on the gross proceeds of these sales under the retailing classification. See RCW 82.04.050, 82.04.190, and 82.04.250.

(c) **Wholesaling B&O tax classification:** Persons making sales of the services for resale in the regular course of business are subject to tax on the gross proceeds of these sales under the wholesaling classification. See RCW 82.04.060 and 82.04.270. See WAC 458-20-102 for information on how sales for resale are administered by the department.

(d) **Deferred retail sales tax:** If the seller does not collect retail sales tax, a buyer who is not reselling the products must pay the retail sales tax (commonly referred to as "deferred retail sales tax"), unless the specific services purchased are exempt under the law.

(e) **Local retail sales tax:** The services are subject to sales tax in local jurisdictions that impose a retail sales tax. See RCW 82.14.030.

(203) **Tangible personal property used in providing competitive telephone service, telecommunications service, and ancillary service.** The retail sales tax applies to sales to a provider of telecommunications service, competitive telephone service, or ancillary service of all tangible personal property used as a consumer in providing these services.

(204) **How are "bundled transactions" containing telecommunications or ancillary services treated for sales tax purposes?** The taxability of bundled transactions is addressed in RCW 82.08.190 and 82.08.195. This subsection (204)(a), (b), and (c) of this section briefly describe what a bundled transaction is and how these transactions are treated for sales tax purposes.

(a) **What is a "bundled transaction"?** A bundled transaction refers to the retail sale of two or more products, except real property and services to real property, if:

(i) The products are otherwise distinct and identifiable; and

(ii) The products are sold for one nonitemized price.

(b) **What is not a "bundled transaction"?** A bundled transaction does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection

by the purchaser of the products included in the transaction. There are a number of specified transactions that otherwise meet the definition of a bundled transaction, but that are not considered to be bundled transactions for Washington state tax purposes. For more information about these exclusions please see RCW 82.08.190(4).

(c) **How are "bundled transactions" taxed?** Under statute, if a transaction contains one or more products that is subject to retail sales tax, the entire bundled transaction will be subject to retail sales tax. Because both telecommunications service and ancillary service are subject to retail sales tax in Washington, a transaction that contains one of these services will generally be fully subject to retail sales tax. However, if the price of a bundled transaction includes charges for telecommunications service or ancillary service and products that are not retail sales taxable:

(i) Then the portion of the price attributable to the nontaxable products is subject to the retail sales tax;

(ii) Unless the seller can identify by reasonable and verifiable standards, the nontaxable portion from its books and records that are kept in the regular course of business for other purposes including, but not limited to, nontax purposes.

Part III: How is the sale of competitive telephone services, telecommunications services or ancillary services sourced?

(301) **Sourcing and apportionment.** This section provides references to the rules for determining if the sale of competitive telephone service, telecommunications service, or ancillary service is deemed to take place (sourced) in Washington and is subject to the retail sales tax and the rules for determining when the gross proceeds from the sale of these services is apportioned to and taxable under Washington's retailing and wholesaling B&O tax classifications.

(a) **Retail sales tax:** RCW 82.32.520 and 82.32.730 provide the rules that must be used for determining when a sale of competitive telephone services, telecommunications services, or ancillary services is sourced to and subject to retail sales tax in Washington.

(b) **Retailing and wholesaling B&O tax:** RCW 82.04.530 and 82.04.535 provide the rules for determining when gross proceeds from the sale of telecommunications service or ancillary service must be apportioned to and subject to Washington wholesaling and retailing B&O tax classifications.

(302) **Does Washington's public utility tax apply?** Persons engaged in providing competitive telephone services, telecommunications services, and ancillary services are not taxable under the public utility tax, except with respect to gross income from engaging in telegraph or any other public service business as defined in WAC 458-20-179. See RCW 82.04.310 and 82.16.020.

WSR 14-05-055
PROPOSED RULES
DEPARTMENT OF REVENUE

[Filed February 14, 2014, 1:54 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-12-077.

Title of Rule and Other Identifying Information: WAC 458-61A-208 Foreclosure—Deeds in lieu of foreclosure—Sales pursuant to court order.

Hearing Location(s): Capital Plaza Building, 4th Floor Executive Conference Room, 1025 Union Avenue S.E., Olympia, WA, on March 31, 2014, at 10:00 a.m. Copies of draft rules are available for viewing and printing on our web site at Rules Agenda. *Call-in option can be provided upon request no later than three days before the hearing date.*

Date of Intended Adoption: April 7, 2014.

Submit Written Comments to: David Hesford, P.O. Box 47453, Olympia, WA 98504-7453, e-mail DavidH@dor.wa.gov, by March 31, 2014.

Assistance for Persons with Disabilities: Contact Mary Carol LaPalm, (360) 725-7499 or Renee Cosare, (360) 725-7514, no later than ten days before the hearing date. For hearing impaired please contact us via the Washington relay operator at (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 458-61A-208 to (1) make the documentation requirements discretionary for the counties; and (2) edit certain rule language to reflect the intent of the statute.

Reasons Supporting Proposal: Amendments are needed to (1) provide guidance to counties processing affidavits; and (2) provide rule language consistent with the intent of the statute.

Statutory Authority for Adoption: RCW 82.45.150.

Statute Being Implemented: RCW 82.45.150.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: David Hesford, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1586; Implementation and Enforcement: Stuart Thronson, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1300.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule does not impose any new performance requirements or administrative burden on any small business not required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule is not a significant legislative rule as defined by RCW 34.05.328.

February 14, 2014
 Dylan Waits
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-23-093, filed 11/16/05, effective 12/17/05)

WAC 458-61A-208 Foreclosure—Deeds in lieu of foreclosure—Sales pursuant to court order. (1) **Introduction.** The real estate excise tax does not apply to any transfer or conveyance made pursuant to an order of sale by a court in any mortgage or lien foreclosure proceeding or upon execution of a judgment. Real estate excise tax affidavits which state claims for this tax exemption must cite the cause number of the foreclosure proceeding on the affidavit and the ~~((conveyance))~~ transfer document. In order to claim this exemption, a copy of the court decision must be ((attached to the department's affidavit copy by the county treasurer)) available and provided to the county treasurer or the department upon request.

(2) **Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which a transfer may or may not qualify for this exemption. These examples should be used only as a general guide. The taxability of each transaction must be determined after a review of all the facts and circumstances.

(a) Joan and Sam are friends. They decide to jointly purchase real property worth \$100,000 as tenants in common. One year later, they decide to end their co-ownership of the property. Joan and Sam cannot agree on how the property should be divided. They both obtain legal counsel and go to court to resolve the issue. The court orders that Sam will deed his interest in the real property to Joan and Sam will be paid \$65,000 for his interest in the property. No real estate excise tax is due on the transfer since the transfer is pursuant to a court ordered sale.

(b) Rather than going to trial, Joan and Sam agree to a settlement during the course of their negotiations. The attorneys draft an agreeable settlement under which Sam will get the property and Joan will be paid \$75,000. The settlement agreement is presented to the court and the judge signs off on the agreement. Tax is due on the transfer because this is not a court ordered sale.

(3) **Foreclosure and contract forfeiture.** The real estate excise tax does not apply to the following transfers where no additional consideration passes:

(a) A transfer by deed in lieu of foreclosure to satisfy a mortgage or deed of trust;

(b) A transfer from a contract purchaser to the contract holder in lieu of forfeiture of a contract of sale upon default of the underlying obligation; or

(c) A transfer occurring through the cancellation or forfeiture of a vendee's interest in a contract for the sale of real property, regardless of whether the contract contains a forfeiture clause, such as a declaration of forfeiture made under the provisions of RCW 61.30.070.

(d) **Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which a transfer may or may not qualify for this exemption. These examples should be used only as a general guide. The taxability of each transaction must be determined after a review of all the facts and circumstances.

(i) Meg sells real property to Julie on a real estate contract. The contract price is \$65,000. Julie makes payments for one year and then loses her job and can't make payments on

the contract. Julie feels that she has some equity in the property, but she and Meg disagree on how to resolve the issue. Eventually, they come to an agreement. Meg will pay Julie \$1,500; Julie will sign a deed in lieu of forfeiture and transfer the property to Meg. At the time of the deed in lieu of forfeiture, the outstanding balance of the contract was \$61,000. Even though the transfer was by a deed in lieu of forfeiture, there is additional consideration passing (the \$1,500). The transfer is subject to tax. The taxable selling price is \$62,500, which is the total of the outstanding contract balance that was canceled plus the \$1,500 paid to Julie.

(ii) Sally sells real property to Frank. Frank obtains a \$150,000 loan from Easy Bank. The bank secures the loan with a deed of trust on the real property. Frank is unable to make the payments on the loan. Frank transfers the property back to Easy Bank by deed in lieu of foreclosure to satisfy the deed of trust. No real estate excise tax is due on the transfer.

(iii) Mel sells real property to George. George obtains a \$100,000 loan from Zephyr Bank. The bank secures the loan with a deed of trust on the real property. George is unable to make the payments on the loan. George obtains a second loan of \$25,000 from Sam. Sam secures his loan with a second deed of trust on the real property. Sam's deed of trust is in junior position to Zephyr Bank's deed of trust. Later, George can't make payments to either the bank or Sam. At this time, George owes the Bank \$95,000 and Sam \$23,000. George transfers the real property to Sam by deed in lieu of foreclosure to satisfy Sam's junior deed of trust. The debt to Zephyr Bank (the senior position debt) remains unpaid on the property at the time of transfer. The transfer is partially exempt and partially taxable. The deed in lieu of the junior position debt is exempt. The senior position debt to the bank that remains outstanding on the property at the time of the transfer meets the definition of consideration and is subject to tax. Tax would be due on \$95,000.

(iv) Joe purchases a manufactured home and has it installed in a mobile home park. Joe signs a contract with the mobile home park owner to pay \$300 in monthly rent. If the rent is not paid, the contract states that the park owner has a lien against the manufactured home. Joe is injured and moves in with relatives in another state. Joe does not pay rent for six months. The park owner, takes title to the mobile home under the authority of the rent contract, and puts it up for sale to recover his interest for back rent. The park owner sells the manufactured home to Mimi. No tax is due on the transfer to the park owner, since that transfer was to satisfy a lien on the property. Real estate excise tax is due on the sale to Mimi.

(4) **Deed of trust.** The real estate excise tax does not apply to the foreclosure sale of real property by the trustee under the terms of a deed of trust, whether to the beneficiary listed on that deed or to a third party.

(5) **Assignment of indebtedness.** A transfer from a servicing agent, who has acquired real property under this section, to the actual owner of the indebtedness that was foreclosed upon is not subject to real estate excise tax. In order to claim this exemption, a copy of the assignment of the indebtedness or a copy of the trustee's deed identifying the servicing agent as an agent for the actual owner must be ((~~attached to the real estate excise tax affidavit provided to the department for exemptions claimed under this subsection~~) available and

provided to the county treasurer or the department upon request.

For example, Gil sells real property to Max. Max obtains a \$125,000 loan from Zone Finance. The finance company secures the loan with a deed of trust on real property. Zone Finance sells the loan to Federal National Mortgage Association (Fannie Mae). The finance company becomes the servicing agent for the loan. Max can't make payments on the loan. Due to nonpayment on the debt, the Trustee (under the authority of the Deed of Trust) conducts a Trustee's sale of the real property. The Trustee transfers the property to the Zone Finance via a Trustee's Deed. No real estate excise tax is due on that transfer. Zone Finance Company transfers real property to Fannie Mae, the actual owner of the debt. No real estate excise tax is due on that transfer.

(6) **Sheriff's sale.**

(a) **Introduction.** The real estate excise tax does not apply to a transfer of real property made by a county sheriff pursuant to a court decree. A real estate excise tax affidavit must be filed with the county.

(b) The real estate excise tax applies to a subsequent sale or assignment of the right of redemption and the certificate of purchase that result from the sheriff's sale. The taxable consideration includes any payment given or promised to be given. It also includes the amount of underlying encumbrance, the payment of which is necessary for the exercise of the right of redemption.

(c) **Examples.**

(i) Bill sells property to Sam on a contract. After one year, Sam stops making payments on the contract. Bill obtains a judgment against Sam for nonpayment. At the Sheriff's sale, Bill obtains a certificate of purchase. Sam obtains the right of redemption. Sam is unable to make payment to redeem the right of redemption during the redemption period. When the redemption period is over, Bill turns the certificate of purchase over to the Sheriff. The Sheriff issues a Sheriff's Deed to Bill. No real estate tax is due on the issuance of the Sheriff's deed to Bill.

(ii) Alternatively, at the Sheriff's sale, Bill obtains a certificate of purchase. Sam obtains the right of redemption. To exercise the right of redemption, the holder must remit \$50,000 to the Sheriff. Sam sells the right of redemption to Jerry for \$10,000. Real estate excise tax is due on \$60,000 for the transfer of the right of redemption from Sam to Jerry. Jerry exercises the right of redemption by paying \$50,000 to the Sheriff. The Sheriff issues a Sheriff's Deed to Jerry. No real estate tax is due on the issuance of the Sheriff's deed to Jerry.

(7) **Documentation.** In addition to the documentation requirements set forth in subsections (1) and (5) of this section, a copy of the recorded original mortgage, deed of trust, contract of sale, or lien document must be ((~~presented with the real estate excise tax affidavit~~) available and provided to the county treasurer or the department upon request.

WSR 14-05-058
WITHDRAWAL OF PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD
 (Code Reviser's Office)

[Filed February 18, 2014, 8:11 a.m.]

WAC 181-82A-215, proposed by the professional educator standards board in WSR 13-16-075, appearing in issue 13-16 of the Washington State Register, which was distributed on August 21, 2013, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
 Washington State Register

WSR 14-05-059
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(By the Code Reviser's Office)

[Filed February 18, 2014, 8:12 a.m.]

WAC 388-450-0195, proposed by the department of social and health services in WSR 13-16-099, appearing in issue 13-16 of the Washington State Register, which was distributed on August 21, 2013, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
 Washington State Register

WSR 14-05-065
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed February 18, 2014, 10:04 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-11-073.

Title of Rule and Other Identifying Information: Repeals WAC 181-77-070 and amends WAC 181-77-071 to adjust requirements for administration of career and technical education (CTE) programs based on stakeholder input.

Hearing Location(s): Trac Center, 6600 Burden Boulevard, Pasco, WA 99301, on May 15, 2014, at 8:30.

Date of Intended Adoption: May 15, 2014.

Submit Written Comments to: David Brenna, 600 Washington Street, Room 400, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by May 8, 2014.

Assistance for Persons with Disabilities: Contact David Brenna by May 8, 2014, (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Adjusts various requirements for holding the position of CTE director to match with recent practice and stakeholder feedback.

Reasons Supporting Proposal: Matches current practice.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Brenna, P.O. Box 42736 [47236], Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, 600 Washington Street, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

January 30, 2014

David Brenna

Senior Policy Analyst

NEW SECTION

WAC 181-77-071 Certification of career and technical education administrative personnel. (1) Beginning September 1, 2014, a candidate is eligible for the initial career and technical education administrator certification if meeting one of the following:

(a) Currently holds a valid continuing or professional administrator certificate; or

(b) Completion of three years of experience as a certificated career and technical education supervisor, career and technical education instructor, career and technical education counselor, or occupational information specialist.

(2) Initial certificate.

(a) The individual may apply for an initial career and technical administrator certificate upon:

(i) Completion of the state authorized career and technical education administrator internship program; or

(ii) Completion of a state approved college program for career and technical education administration.

(b) The initial career and technical education administrator certificate is valid for four years and may be renewed two times.

(3) Initial certificate renewal.

(a) In order to renew the initial career and technical education administrator certificate completion of at least six quarter hours of college credit or sixty continuing education credit hours since the initial certificate was issued or renewed is required.

(b) The initial renewal certificate is valid for three years and may be renewed one time.

(4) Continuing certificate. The continuing career and technical education administrator certificate is valid for five years.

(a) In order to receive the continuing career and technical education administrator certificate, in addition to the requirements for the initial certificate, at least fifteen quarter hours of college credit course work or one hundred fifty continuing education credit hours completed subsequent to the conferral of the initial certificate is required.

(b) Individuals shall provide as a condition for the issuance of a continuing certificate documentation of two years of career and technical administration with an authorized employer (i.e., school district(s) or skill center(s)).

(c) Individuals who hold the initial career and technical administrator certificate, but have not been employed in the role of career and technical education administrator, or cannot document two years of career and technical education administration, shall be eligible for a continuing certificate by the following:

(i) In addition to the requirements for the initial certificate at least fifteen quarter hours of college credit course work or one hundred fifty continuing education credit hours completed subsequent to the conferral of the initial certificate; and

(ii) The completion of requirements listed in subsection (2)(a)(i) or (ii) of this section since the issuance of the second initial certificate renewal and prior to the application for the continuing career and technical education administrator certificate.

(5) Continuing certificate renewal. The continuing career and technical education administrator certificate shall be renewed with the completion of fifteen quarter credits of college credit course work or the equivalent of one hundred fifty continuing education credit hours in career and technical education, or supervisory or managerial subjects, prior to the lapse date of the first issue of the continuing certificate and during each five-year period between subsequent lapse dates.

(6) Any person with a valid career and technical education administrator certificate issued prior to September 1, 2014, under previous standards of the professional educator standards board shall meet requirements of, and may apply for, the continuing career and technical education administrator certificate by the expiration date of the original certificate held. Upon issuance of the continuing career and technical education administrator certificate such person will be subject to continuing certificate renewal requirements of subsection (5) of this section.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 181-77-070 Specific standards for certification of local career and technical education administrative personnel.

WSR 14-05-066
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Financial Services Administration)
 [Filed February 18, 2014, 10:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-15-125.

Title of Rule and Other Identifying Information: The operations support and services division, background check central unit, is coordinating with children's administration (CA) and developmental disabilities administration (DDA) to repeal WAC 388-06-0115 and to amend the following sections of chapter 388-06 WAC related to background checks: WAC 388-06-0010, 388-06-0020, 388-06-0100, 388-06-0110, 388-06-0130, 388-06-0150, 388-06-0160, 388-06-0170, 388-06-0180, 388-06-0190, 388-06-0210, 388-06-0240, 388-06-0250, 388-06-0525, and 388-06-0540.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on April 22, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than April 23, 2014.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHS RPAU-RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on April 22, 2014.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by April 1, 2014, TTY (360) 664-6178 or (360) 664-6094 or by e-mail jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this coordinated rule making is to remove DDA background check requirements from chapter 388-06 WAC, WAC 388-06-0020 through 388-06-0540, and make a clarifying change to CA's background check requirements in WAC 388-06-0240. Under a separate CR-102, DDA will move the DDA background check requirements into chapter 388-825 WAC, DDA service rules, as part of a larger aging and disability services coordinated background check rule-making effort.

Reasons Supporting Proposal: This rule making is intended to resolve confusion that exists because CA and DDA programmatic background check requirements are contained in the same WAC sections.

Statutory Authority for Adoption: RCW 43.43.832.

Statute Being Implemented: RCW 74.15.030, 43.43.832, 43.43.837.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Cindy LaRose-Eatwell, FSA, Background Check Central Unit, (360) 902-8072; Implementation and Enforcement: Chris Parvin, CA, (360) 902-0770 or Shaw Seaman, DDA, (360) 725-3443.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rule revisions are part of a coordinated rule making with the division of developmental disabilities. These revisions remove DDA background check requirements from chapter 388-06 WAC: WAC 388-06-0020 through 388-06-0540. Under a separate CR-102, DDA will move the DDA background check requirements into chapter 388-825 WAC and will prepare a small business economic impact statement under that rule making.

A cost-benefit analysis is not required under RCW 34.05.328. These rule revisions are part of a coordinated rule making with the division of developmental disabilities. These revisions remove DDA background check requirements from chapter 388-06 WAC, WAC 388-06-0020 through 388-06-0540. Under a separate CR-102, DDA will move the DDA background check requirements into chapter 388-825 WAC.

January 30, 2014
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-16-083, filed 7/30/10, effective 8/30/10)

WAC 388-06-0010 What is the purpose of this chapter? (1) The purpose of ~~((this chapter))~~ is to establish rules for background checks conducted by children's administration (CA) ~~((and the division of developmental disabilities (DDD)))~~ at the department of social and health services (DSHS). The department does background checks on individuals who are licensed, certified, contracted, or authorized to care for or have unsupervised access to children ~~((and to individuals with a developmental disability))~~. Background checks are conducted to find and evaluate any history of criminal convictions or civil adjudication proceedings, including those involving abuse, abandonment, financial exploitation, or neglect of a child or vulnerable adult.

(2) ~~((This chapter also))~~ WAC 388-06-0500 through 388-06-0540 of this chapter defines when the one hundred twenty-day provisional hire is allowed by DSHS. ~~((WAC 388-06-0500 through 388-06-0540 apply to all DSHS administrations))~~.

(3) WAC 388-06-0600 through 388-06-0640 of this chapter includes the background check requirements for DSHS employees and applicants seeking, working or serving in a covered position.

(4) WAC 388-06-0700 through 388-06-0720 of this chapter describes the responsibilities of the background check central unit.

AMENDATORY SECTION (Amending WSR 12-21-053, filed 10/15/12, effective 12/25/12)

WAC 388-06-0020 What definitions apply to WAC 388-06-0100 through 388-06-0260 of this chapter? The following definitions apply to WAC 388-06-0100 through 388-06-0260 of this chapter:

"Authorized" or "authorization" means not disqualified by the department to have unsupervised access to children and individuals with a developmental disability. This

includes persons who are certified, contracted, allowed to receive payments from department funded programs, or volunteer.

"CA" means children's administration, department of social and health services. Children's administration is the cluster of programs within DSHS responsible for the provision of licensing of foster homes, group facilities/programs and child-placing agencies, child protective services, child welfare services, and other services to children and their families.

"Certification" means:

(1) Department approval of a person, home, or facility that does not legally need to be licensed, but wishes to have evidence that they met the minimum licensing requirements.

(2) Department licensing of a child-placing agency to certify and supervise foster home and group care programs.

"Children" and "youth" are used interchangeably in this chapter and refer to individuals who are under parental or department care including:

(1) Individuals under eighteen years old; or

(2) Foster children up to twenty-one years of age and enrolled in high school or a vocational school program; or

(3) Developmentally disabled individuals up to twenty-one years of age for whom there are no issues of child abuse and neglect ~~((or~~

~~((4) JRA youth up to twenty-one years of age and who are under the jurisdiction of JRA or a youthful offender under the jurisdiction of the department of corrections who is placed in a JRA facility))~~.

"Civil adjudication proceeding" is a judicial or administrative adjudicative proceeding that results in a finding of, or upholds an agency finding of, domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law, including but not limited to chapter 13.34, 26.44 or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.

~~((Community residential service businesses" include all division of developmental disabilities supported living providers with the exception of supported living providers who are also licensed as an assisted living facility or adult family home provider. Community residential service providers also include DDD companion homes, DDD alternative living and licensed residential homes for children.))~~

"DCFS" means division of children and family services and is a division within children's administration that provides child welfare, child protective services, and support services to children in need of protection and their families.

~~((DDD" means the division of developmental disabilities, department of social and health services (DSHS).))~~

"DLR" means the division of licensed resources that is a division within children's administration, the department of social and health services.

"Department" means the department of social and health services (DSHS).

"I" and "you" refers to anyone who has unsupervised access to children or to persons with developmental disabilities in a home, facility, or program. This includes, but is not limited to, persons seeking employment, a volunteer opportunity, an internship, a contract, certification, or a license for a home or facility.

~~("JRA" means the juvenile rehabilitation administration, department of social and health services.)~~

"Licensor" means an employee of DLR or of a child placing agency licensed or certified under chapter 74.15 RCW to approve and monitor licenses for homes or facilities that offer care to children. Licenses require that the homes and facilities meet the department's health and safety standards.

~~("Individual provider" as defined in RCW 74.39A.240 means a person, including a personal aide, who has contracted with the department to provide personal care or respite care services to functionally disabled persons under the medicaid personal care, community options program entry system, chore services program, or respite care program, or to provide respite care or residential services and supports to persons with developmental disabilities under chapter 71A.12 RCW, or to provide respite care as defined in RCW 74.13.270.)~~

"Individuals with a developmental disability" means individuals who meet eligibility requirements in Title 71A RCW. A developmental disability is any of the following: Intellectual disability, cerebral palsy, epilepsy, autism, or another neurological condition described in chapter 388-823 WAC; originates before the age of eighteen years; is expected to continue indefinitely; and constitutes a substantial limitation to the individual.

~~("Long term care worker" has the same meaning as defined in RCW 74.39A.009.)~~

"Spousal abuse" includes any crime of domestic violence as defined in RCW 10.99.020 when committed against a spouse, former spouse, person with whom the perpetrator has a child regardless of whether the parents have been married or lived together at any time, or an adult with whom the perpetrator is presently residing or has resided in the past.

"Unsupervised" means not in the presence of:

(1) The licensee, another employee or volunteer from the same business or organization as the applicant who has not been disqualified by the background check.

(2) Any relative or guardian of the child or developmentally disabled individual or vulnerable adult to whom the applicant has access during the course of his or her employment or involvement with the business or organization (RCW 43.43.080(9)).

"Unsupervised access" means that an individual will or may be left alone with a child or vulnerable adult (individual with developmental disability) at any time for any length of time.

"We" refers to the department, including licensors and social workers.

"WSP" refers to the Washington state patrol.

AMENDATORY SECTION (Amending WSR 01-18-025, filed 8/27/01, effective 10/1/01)

WAC 388-06-0100 Why are background checks done? The ~~((department))~~ Children's Administration does background checks to help safeguard the health, safety and well being of children ~~((and of individuals with a developmental disability))~~ in licensed homes and facilities and in day treatment programs. By doing background checks, the department reduces the risk of harm to children ~~((and individuals with a developmental disability))~~ from caregivers that have been convicted of certain crimes. The department's regulations require the evaluation of your background to determine your character, suitability and competence before you are issued a license, contract, certificate, or authorized to have unsupervised access to children ~~((or to individuals with a developmental disability))~~.

AMENDATORY SECTION (Amending WSR 12-21-053, filed 10/15/12, effective 12/25/12)

WAC 388-06-0110 Who must have background checks? (1) Per RCW 74.15.030, the department requires background checks on all providers who may have unsupervised access to children or individuals with a developmental disability. This includes licensed, certified or contracted providers, their current or prospective employees and prospective adoptive parents as defined in RCW 26.33.020.

~~(2) ~~((b))~~ As described in WAC 388-06-0115, the division of developmental disabilities requires background checks on all contracted providers, individual providers, employees of contracted providers, and any other individual who is qualified by DDD to have unsupervised access to individuals with developmental disabilities.~~

~~(3) Long term care workers as defined in chapter 74.39A RCW hired after January 7, 2012 are subject to national fingerprint based background checks. For individual providers and home care agency providers refer to WAC 388-71-0500 through 388-71-05909. For adult family homes refer to chapter 388-76 WAC, adult family home minimum licensing requirements. For assisted living facilities refer to chapter 388-78A WAC, assisted living licensing rules.~~

~~(4))~~ Per RCW 74.15.030, the department also requires background checks on other individuals who may have unsupervised access to children or to individuals with a developmental disability in department licensed or contracted homes, or facilities which provide care. The department requires background checks on the following people:

(a) A volunteer or intern with regular or unsupervised access to children;

(b) Any person who regularly has unsupervised access to a child or an individual with a developmental disability;

(c) A relative other than a parent who may be caring for a child;

(d) A person who is at least sixteen years old, is residing in a foster home, relatives home, or child care home and is not a foster child.

AMENDATORY SECTION (Amending WSR 12-21-053, filed 10/15/12, effective 12/25/12)

WAC 388-06-0130 Does the background check process apply to new and renewal licenses, certification, contracts, and authorizations to have unsupervised access to children ((or individuals with a developmental disability))? ((+)) For children's administration these regulations apply to all applications for new and renewal licenses, contracts, certifications, and authorizations to have unsupervised access to children or individuals with a developmental disability that are processed by the children's administration after the effective date of this chapter.

(((2) For the division of developmental disabilities these regulations apply to initial contracts and renewals as required by the applicable DDD background check renewal schedule and program regulations:))

AMENDATORY SECTION (Amending WSR 12-21-053, filed 10/15/12, effective 12/25/12)

WAC 388-06-0150 What does the background check cover? (1) The department must review criminal convictions and pending charges based on identifying information provided by you. The background check may include but is not limited to the following information sources:

- (a) Washington state patrol.
- (b) Washington courts.
- (c) Department of corrections.
- (d) Department of health.
- (e) Civil adjudication proceedings.
- (f) Applicant's self-disclosure.
- (g) Out-of-state law enforcement and court records.

(2) Except as required in WAC 388-06-0150 (4)(b) ((and (5))), children's administration ((and division of developmental disabilities)) will conduct a fingerprint-based background check on any individual who has lived in Washington state for less than three consecutive years.

(3) Background checks conducted for children's administration also include:

(a) A review of child protective services case files information or other applicable information system.

(b) Administrative hearing decisions related to any DSHS license that has been revoked, suspended, or denied.

(4) In addition to the requirements in subsections (1) through (3) of this section, background checks conducted by children's administration for placement of a child in out-of-home care, including foster homes, adoptive homes, relative placements, and placement with other suitable persons under chapter 13.34 RCW, include the following for each person over eighteen years of age residing in the home:

(a) Child abuse and neglect registries in each state a person has lived in the five years prior to conducting the background check.

(b) Washington state patrol (WSP) and Federal Bureau of Investigation (FBI) fingerprint-based background checks regardless of how long you have resided in Washington.

(((5) The division of developmental disabilities requires fingerprint-based background checks as described in WAC 388-06-0115. These background checks include a review of conviction records through the Washington state patrol, the

Federal Bureau of Investigation, and the national sex offender registry:))

AMENDATORY SECTION (Amending WSR 10-16-083, filed 7/30/10, effective 8/30/10)

WAC 388-06-0160 Who pays for the background check? (1) Children's administration (CA) pays the DSHS general administrative costs for background checks for foster home applicants, CA relative and other suitable caregivers, and CA adoptive home applicants.

(2) Children's administration pays the WSP and FBI-fingerprint processing fees for foster home applicants, CA relative and other suitable caregivers, CA adoptive home applicants, and other adults associated with the home who require background clearances under chapter 13.34 RCW.

(3) Children's administration does not pay WSP and FBI fingerprint processing fees or expenses for employees, contractors, or volunteers associated with facilities other than foster homes.

(((4) The division of developmental disabilities pays for background checks, including fingerprint based background checks, for individuals seeking authorization to provide services to clients of the division:))

AMENDATORY SECTION (Amending WSR 01-18-025, filed 8/27/01, effective 10/1/01)

WAC 388-06-0170 Will a criminal conviction permanently prohibit me from being licensed, contracted, or authorized to have unsupervised access to children ((or to individuals with developmental disability))? (1) There are convictions for certain crimes that will permanently prohibit you from being licensed, contracted, or authorized to have unsupervised access to children or to individuals with developmental disability. Those felony convictions are as follows:

(a) Child abuse and/or neglect;

(b) Spousal abuse;

(c) A crime against a child (including child pornography);

(d) A crime involving violence (including rape, sexual assault, or homicide but not including other physical assault); or

(e) Any federal or out-of-state conviction for an offense that under the laws of this state would disqualify you from having unsupervised access to children or individuals with developmental disabilities in any home or facility.

(2) If you are convicted of one of the crimes listed in WAC 388-06-0170 (1)(a) through (e) you will not be able to:

(a) Receive a license to provide care to children;

(b) Be approved for adoption of a child;

(c) Be a contractor;

(d) Be employed by a licensed agency or contractor, if you will have unsupervised access to children or to individuals with a developmental disability;

(e) Volunteer or participate as an intern in a home or facility that offers care to children or to individuals with a developmental disability; or

(f) Provide any type of care to children or to individuals with a developmental disability, if the care is funded by the state.

AMENDATORY SECTION (Amending WSR 10-16-083, filed 7/30/10, effective 8/30/10)

WAC 388-06-0180 Are there other criminal convictions that will prohibit me from working with children ~~((or individuals with a developmental disability))~~? The department must disqualify you from licensing, contracting, certification, or from having unsupervised access to children or to individuals with a developmental disability if it has been less than five years from a conviction for the following crimes:

- (1) Any physical assault not included in WAC 388-06-0170;
- (2) Any sex offense not included in WAC 388-06-0170;
- (3) Any felony conviction not included in WAC 388-06-0170; or
- (4) Felony violation of the following drug-related crimes:
 - (a) The Imitation Controlled Substances Act (for substances that are falsely represented as controlled substances (see chapter 69.52 RCW));
 - (b) The Legend Drug Act (prescription drugs, see chapter 69.41 RCW);
 - (c) The Precursor Drug Act (substances used in making controlled substances, see chapter 69.43 RCW);
 - (d) The Uniform Controlled Substances Act (illegal drugs or substances, see chapter 69.50 RCW); or
 - (e) Unlawfully manufacturing, delivering or possessing a controlled substance with intent to deliver, or unlawfully using a building for drug purposes.
- (5) Any federal or out-of-state conviction for an offense that under the laws of Washington state would disqualify you for no less than five years from having unsupervised access to children ~~((or individuals with a developmental disability))~~.

AMENDATORY SECTION (Amending WSR 01-18-025, filed 8/27/01, effective 10/1/01)

WAC 388-06-0190 If I have a conviction, may I ever have unsupervised access to children ~~((or individuals with a developmental disability))~~? (1) In two situations, DSHS may find a person with convictions able to have unsupervised access to children or individuals with a developmental disability:

- (a) If the conviction for any crime listed in WAC 388-06-0180 occurred more than five years ago; or
- (b) If the conviction was for a crime other than those listed in WAC 388-06-0170 or 388-06-0180.

(2) In both of these situations, DSHS must review your background to determine your character, suitability, and competence to have unsupervised access to children or individuals with a developmental disability. In this review, DSHS must consider the following factors:

- (a) The amount of time that has passed since you were convicted;
- (b) The seriousness of the crime that led to the conviction;
- (c) The number and types of other convictions in your background;
- (d) ~~((The amount of time that has passed since you were convicted;~~

- ~~((e))~~) Your age at the time of conviction;
- ~~((f))~~) ~~(e)~~ Documentation indicating you have successfully completed all court-ordered programs and restitution;
- ~~((g))~~) ~~(f)~~ Your behavior since the conviction; and
- ~~((h))~~) ~~(g)~~ The vulnerability of those that would be under your care.

AMENDATORY SECTION (Amending WSR 01-18-025, filed 8/27/01, effective 10/1/01)

WAC 388-06-0210 Will you license, contract, or authorize me to have unsupervised access to children ~~((or individuals with a developmental disability))~~ if my conviction has been expunged, or vacated from my record or I have been pardoned for a crime? If you receive a pardon or a court of law acts to expunge or vacate a conviction on your record, the crime will not be considered a conviction for the purposes of licensing, contracting, certification, or authorization for unsupervised access to children ~~((or to individuals with a developmental disability))~~.

AMENDATORY SECTION (Amending WSR 01-18-025, filed 8/27/01, effective 10/1/01)

WAC 388-06-0240 What may I do if I disagree with the department's decision to deny me a license, certification, contract, or authorization based on the results of the background check? (1) If you are seeking a license, or employment with a ~~((licensed))~~ home or facility licensed by the children's administration, you may request an administrative hearing to disagree with the department's decision process to deny authorization for unsupervised access to children ~~((or to individuals with a developmental disability))~~ (chapter 34.05 RCW). You cannot contest the conviction in the administrative hearing.

(2) Prospective volunteers~~((s))~~ or interns, contractors or their employees, or those seeking certification do not have the right to appeal the department's decision to deny authorization for unsupervised access to children ~~((and to individuals with a developmental disability))~~.

(3) The employer or prospective employer cannot contest the department's decision on your behalf.

(4) The administrative hearing will take place before an administrative law judge employed by the office of administrative hearings (chapter 34.05 RCW).

AMENDATORY SECTION (Amending WSR 10-16-083, filed 7/30/10, effective 8/30/10)

WAC 388-06-0250 Is the background check information released to my employer or prospective employer?

(1) Children's administration will share with employers or approved care providers only that:

- (a) You are disqualified; or
- (b) You have not been disqualified by the background check.

(2) ~~((Division of developmental disabilities will release the source of the disqualifying crime or negative action and WSP rap sheet to authorized requesters as allowed by state law.~~

(3)) The department will follow laws related to the release of criminal history records (chapters 10.97 and 43.43 RCW) and public disclosure (chapter 42.17 RCW) when releasing any information.

AMENDATORY SECTION (Amending WSR 12-21-053, filed 10/15/12, effective 12/25/12)

WAC 388-06-0525 When are individuals eligible for the one hundred twenty-day provisional hire? ((+)) Individuals are eligible for the one hundred twenty-day provisional hire immediately, except as provided under subsection (2) of this section and WAC 388-06-0540. The signed background check application and fingerprinting process must be completed as required by the applicable DSHS program.

~~((2) Long-term care workers as defined in chapter 74.39A RCW are eligible for the one hundred twenty-day provisional hire, pending the outcome of the fingerprint-based background check, as long as provisional hiring is allowed by the applicable DSHS program rules and the long-term care worker is not disqualified as a result of the initial name and date of birth background check.))~~

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 12-21-053, filed 10/15/12, effective 12/25/12)

WAC 388-06-0540 Are there instances when the one hundred twenty-day provisional hire is not available? The one hundred twenty-day provisional hire is not available to an agency, entity, or hiring individual requesting:

- (1) An initial license;
- (2) An initial contract;
- (3) Approval as a family child day care home provider, foster parent or adoptive parent (see 42 U.S.C. Sec 671(a)(20))~~(; or~~
- ~~(4) Any other individual listed in the assisted living facility or adult family home license application, such as an adult family home entity representative or resident manager, or an assisted living facility administrator)).~~

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-06-0115 What are the division of developmental disabilities background check requirements?

WSR 14-05-067

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed February 18, 2014, 10:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-23-103.

Title of Rule and Other Identifying Information: Amending chapter 388-106 WAC, Long-term care services, and chapter 388-440 WAC, Exception to rule.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on March 25, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than March 26, 2014.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on March 25, 2014.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by March 11, 2014, TTY (360) 664-6178 or (360) 664-6094 or by e-mail jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending WAC 388-440-0001 to include an individual's serious risk of institutionalization as a consideration in determining whether DSHS staff are authorized to request an exception to rule, and is amending WAC 388-106-1305 to place into rule the exception to rule process for in-home personal care described in DSHS Home and Community Services Management Bulletin H13-001.

Reasons Supporting Proposal: Read the purpose statement above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.520.

Rule is necessary because of state court decision, Settlement Agreement, *M.R. v. Dreyfus*, W.D.Wa. No. C10-2052-TSZ.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Rachele Ames, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2353.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not impact small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Not a significant legislative rule as defined in RCW 34.05.328 (5)(c)(iii).

February 12, 2014
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-1305 What if I disagree with the result of the CARE assessment and/or other eligibility decisions made by the department? (1) You have a right to contest the result of your CARE assessment and/or other eligibility decisions made by the department. The department will notify you in writing of the right to contest a decision and provide you with information on how to request a hearing.

(2) Additionally, if you believe that you need more in-home personal care services than the CARE assessment has authorized for you, and you believe that your situation meets the criteria in WAC 388-440-0001(1) for an exception to rule (ETR), you may request additional personal care services.

(a) Requests may be made to your case manager or local HCS, AAA or DDA field office, either verbally or in writing.

(b) Requests that are approved at the field level will be forwarded to the ETR committee located in Olympia for a final decision.

(c) If your request is denied at the field level:

(i) You will receive a written notification.

(ii) You may request a headquarters review of your request by contacting your case manager or local HCS, AAA or DDA field office or by contacting the headquarters committee directly.

(d) You will be notified in writing whether additional ETR hours are approved or if your request was denied.

AMENDATORY SECTION (Amending WSR 13-18-006, filed 8/22/13, effective 10/1/13)

WAC 388-440-0001 Exceptions to rule. (1) The secretary of the department, or designee, authorizes department staff to request an exception to a rule in the Washington Administrative Code (WAC) for individual cases when:

(a) The exception would not contradict a specific provision of federal law or state statute; and

(b) The client's situation differs from the majority; and

(c) It is in the interest of overall economy and the client's welfare; and either

(d) It increases opportunities for the client to function effectively; or

(e) A client has an impairment or limitation that significantly interferes with the usual procedures required to determine eligibility and payment and/or the client is at serious risk of institutionlization.

(2) The secretary or the secretary's designee makes the final decision on all requests for exceptions to a rule.

(3) Clients have no fair hearing rights as defined under chapter 388-02 WAC regarding exception to rule decisions by department staff.

(4) Clients who do not agree with a decision on an exception to rule may file a complaint according to chapter 388-426 WAC.

WSR 14-05-069

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed February 18, 2014, 10:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-15-126.

Title of Rule and Other Identifying Information: The department is amending chapter 388-71 WAC, Home and community services programs, and creating chapter 388-113 WAC, Disqualifying crimes and negative actions, regarding background checks.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on April 22, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than April 23, 2014.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on April 22, 2014.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by April 1, 2014, TTY (360) 664-6178 or (360) 664-6094 or by e-mail jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending chapter 388-71 WAC and creating chapter 388-113 WAC, to support the health and safety of clients, to consolidate the various DSHS secretary's lists of crimes and negative actions in the aging and long-term support administration thus providing a uniform background check standard for all caregivers, and to reduce the overall costs of processing background checks

Reasons Supporting Proposal: Read the purpose statement above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520, 74.39A.056.

Statute Being Implemented: RCW 74.08.090, 74.09.520, 74.39A.056.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Stacy Graff, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2533.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

See Reviser's note below.

A copy of the statement may be obtained by contacting Angel Sullivan, P.O. Box 45600, Olympia, WA 98504-5600,

phone (360) 725-2495, fax (360) 407-7582, e-mail angel.sullivan@dshs.wa.gov.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Angel Sullivan, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2495, fax (360) 407-7582, e-mail angel.sullivan@dshs.wa.gov.

February 13, 2014
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 14-06 issue of the Register.

WSR 14-05-070
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed February 18, 2014, 10:26 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-15-125.

Title of Rule and Other Identifying Information: Changes to some sections in chapters 388-825, 388-829A, and 388-829C WAC. Following is a complete list of WAC sections to be amended or added through this proposed rule making.

SECTIONS BEING AMENDED: WAC 388-825-335 Is a background check required of a home care agency?, 388-825-375 When will the department deny payment for services of an individual or home care agency providing respite care, attendant care, or personal care services?, 388-825-380 When can the department reject the client's choice of an individual respite care, attendant care or personal care provider?, 388-825-385 When can the department terminate or summarily suspend an individual respite care, attendant care, or personal care provider's contract?, 388-829A-290 When may DDD not authorize payment or terminate a contract for alternative living services?, 388-829A-300 When must DDD deny the client's choice of an alternative living provider?, 388-829C-460 When may DDD stop the authorization for payment or terminate a contract for companion home services? and 388-829C-470 When may DDD deny the client's choice of a companion home provider?; and NEW SECTIONS: WAC 388-825-0600 What definitions apply to WAC 388-825-0600 through 388-825-0690 of this chapter?, 388-825-0605 Why are background checks done?, 388-825-0610 Who must have a Washington state and/or federal background check?, 388-825-0615 What is the process for obtaining a background check?, 388-825-0620 Who must have background check renewals?, 388-825-0625 What happens if I don't comply with the background check requirement?, 388-825-0630 What does the background check cover?, 388-825-0635 Who pays for the background check?, 388-825-0640 What criminal convictions, pending crimes or negative actions will prohibit me from being contracted or authorized to work in a capacity that

may involve unsupervised access to individuals with a developmental disability?, 388-825-0645 May an individual work in an unsupervised capacity with individuals with developmental disabilities when their background check reveals a crime or negative action that is not considered disqualifying per chapter 388-113 WAC or WAC 388-825-0640?, 388-825-0650 What does a character, competence and suitability review include?, 388-825-0655 How will I know if I have been disqualified by the background check?, 388-825-0660 May I appeal the department's decision to deny me a contract or authorization based on the results of the background check?, 388-825-0665 Is the background check information released to my employer or prospective employer?, 388-825-0670 May I receive a copy of my criminal background check results?, 388-825-0675 What is the purpose of the one hundred twenty-day provisional hire?, 388-825-0680 Who is responsible for approving the one hundred twenty-day provisional hire?, 388-825-0685 When are individuals eligible for the one hundred twenty-day provisional hire?, and 388-825-0690 When does the one hundred twenty-day provisional hire begin?

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on April 22, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than April 23, 2014.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on April 22, 2014.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by April 1, 2014, TTY (360) 664-6178 or (360) 664-6094 or by e-mail jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose for these amendments are to consolidate background check rules and implement uniform criminal history standards between the aging and long-term support administration (AL TSA) and the developmental disabilities administration (DDA), which frequently use the same settings and provider pool.

The proposed amendments to this chapter include: Aligning disqualifying criminal history standards with the AL TSA; moving all DDA background check related rules from the background check central unit (BCCU) into DDA program WAC; and creating grandfathering language for workers hired and qualified prior to implementation of new standards, for all but the most egregious crimes.

Reasons Supporting Proposal: The consolidation and standardization of background check rules across the AL TSA and DDA will result in clarity of rules, efficiency in checks, reduced training needs, improved compliance and will significantly reduce the number of duplicate background checks conducted by affected business across the state.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.120.

Statute Being Implemented: RCW 43.43.832, 43.43.837, 74.18.123.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Shaw Seaman, DDA, P.O. Box 45310, Olympia, 98504-5310, (360) 725-3443.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

See Reviser's note below.

A copy of the statement may be obtained by contacting Alan McMullen, DDA, P.O. Box 45310, Olympia, WA 98504-5310, phone (360) 725-3524, fax (360) 407-0955, mcmular@dshs.wa.gov.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Alan McMullen, DDA, P.O. Box 45310, Olympia, WA 98504-5310, phone (360) 725-3524, fax (360) 407-0955, mcmular@dshs.wa.gov.

February 13, 2014
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 14-06 issue of the Register.

WSR 14-05-071
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed February 18, 2014, 10:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-22-078.

Title of Rule and Other Identifying Information: Changes to most sections in chapter 388-823 WAC, Division of developmental disabilities intake and determination of developmental disabilities. Following is a complete list of WAC sections to be amended or added through this proposed rule making.

SECTIONS BEING AMENDED: WAC 388-823-0010 Definitions, 388-823-0020 How do I become a client of the division of developmental disabilities?, 388-823-0050 Must I be a resident of the state of Washington?, 388-823-0080 Who determines that I have a developmental disability?, 388-823-0090 How long will it take to complete a determination of my eligibility?, 388-823-0100 What is the effective date that I become an eligible client of DDD?, 388-823-0105 How will DDD notify me of the results of my eligibility determination?, 388-823-0200 What evidence do I need to substantiate "mental retardation" as an eligible condition?, 388-823-0210 If I have mental retardation, how do I meet the definition of substantial limitations in adaptive functioning?, 388-823-

0300 What evidence do I need to substantiate "cerebral palsy" as an eligible condition?, 388-823-0310 If I have cerebral palsy, how do I meet the definition of substantial limitations to adaptive functioning?, 388-823-0400 What evidence do I need to substantiate "epilepsy" as an eligible condition?, 388-823-0410 If I have epilepsy, how do I meet the definition of substantial limitations to adaptive functioning?, 388-823-0500 What evidence do I need to substantiate "autism" as an eligible condition?, 388-823-0510 If I have autism, how do I meet the definition of substantial limitations to adaptive functioning?, 388-823-0600 What evidence do I need to substantiate "another neurological condition" as an eligible condition?, 388-823-0610 If I have another neurological condition, how do I meet the definition of substantial limitations to adaptive functioning?, 388-823-0920 What sections of the ICAP does DDD or a designee contracted with DDD complete and score?, 388-823-0930 How does DDD or a designee contracted with DDD administer the ICAP?, 388-823-0940 What happens if DDD or a designee contracted with DDD cannot identify a qualified respondent?, 388-823-1000 Once I become an eligible DDD client, is there a time limit to my eligibility?, 388-823-1005 When does my eligibility as a DDD client expire?, 388-823-1010 When will DDD review my eligibility to determine if I continue to have a developmental disability?, 388-823-1015 What is the definition of "DDD paid services" in WAC 388-823-1010(3)?, 388-823-1020 Can DDD terminate my eligibility if I no longer am a resident of the state of Washington?, 388-823-1030 How will I know that my eligibility is expiring or is due for review?, 388-823-1060 How will DDD notify me of its decision?, 388-823-1070 What are my appeal rights to a department decision that I do not have a developmental disability?, 388-823-1080 If DDD decides that I do not have a developmental disability, how soon can I reapply for another decision?, 388-823-1090 If I am already eligible, how do these new rules affect me?, 388-823-1095 What are my rights as a DDD client? and 388-823-1100 How do I complain to DDD about my services or treatment?; NEW SECTIONS: WAC 388-823-0015 How does the state of Washington define developmental disability?, 388-823-0025 Who can apply for DDA eligibility determination?, 388-823-0055 Who is responsible for obtaining the documentation needed to make my eligibility determination?, 388-823-0075 What if I do not have written evidence that my disability began before my eighteenth birthday?, 388-823-0115 If I am eligible to be a client of DDA, will I receive DDA services?, 388-823-0720 What evidence do I need of my FSIQ?, 388-823-0730 If I have more than one FSIQ score, what criteria will DDA use to select the FSIQ for determining eligibility?, 388-823-0740 What evidence do I need of my adaptive skills limitations?, 388-823-0750 If I have more than one adaptive test score, what criteria will DDA use to select the adaptive test for determining eligibility?, 388-823-0760 What evidence do I need to show my need for direct physical assistance? and 388-823-0770 What evidence do I need of developmental delays?; and SECTIONS BEING REPEALED: WAC 388-823-0030 Will I receive paid services if DDD decides that I have a developmental disability?, 388-823-0040 What is a developmental disability?, 388-823-0060 How do I apply to become a client of DDD?, 388-823-0070 Who can apply for an eligibility determination?,

388-823-0110 Who is responsible for obtaining the documentation needed to make this eligibility determination?, 388-823-0120 Will my diagnosis of a developmental disability qualify me for DDD eligibility?, 388-823-0130 Can I be eligible for DDD if my disability occurs on or after my eighteenth birthday?, 388-823-0140 What if I do not have written evidence that my disability began before my eighteenth birthday?, 388-823-0150 Which rules define a developmental disability if I am a child under the age of six?, 388-823-0160 Which rules define a developmental disability if I am age six through nine?, 388-823-0170 Which rules define a developmental disability if I am age ten or older?, 388-823-0215 What evidence do I need of my FSIQ?, 388-823-0220 If am too intellectually impaired to complete a standardized IQ test, how do I meet the criteria under mental retardation?, 388-823-0230 If I have more than one FSIQ score, what criteria will DDD use to select the FSIQ score for determining eligibility?, 388-823-0320 What evidence do I need of my need for direct physical assistance with activities of daily living?, 388-823-0330 How can I document my need for direct physical assistance?, 388-823-0420 What evidence do I need to substitute adaptive functioning limitations for the eligible conditions of epilepsy, autism and other conditions similar to mental retardation?, 388-823-0515 What evidence do I need to substantiate adaptive functioning limitations for the condition of autism?, 388-823-0615 What evidence do I need to substantiate adaptive functioning limitations for another neurological condition?, 388-823-0700 How do I meet the definition for an "other condition" similar to mental retardation?, 388-823-0710 What evidence do I need to meet the definition of substantial limitations for an "other condition" similar to mental retardation?, 388-823-0800 Which eligible developmental disability conditions apply at what age?, 388-823-0810 If I am a child under age ten, what evidence do I need to meet the definition for an "other condition" similar to mental retardation?, 388-823-0820 If I am a child under age ten with an eligible condition under the medically intensive program, Down syndrome, or a diagnosed condition that is too severe for developmental testing, how do I meet the definition of substantial limitations to adaptive functioning?, 388-823-0830 If I am a child under age ten with an eligible condition based on developmental delays, how do I meet the definition of substantial limitations to adaptive functioning?, 388-823-0840 If I am a child under age ten, how many areas of developmental delays meet the definition of substantial limitations to adaptive functioning?, 388-823-0850 What developmental evaluations or assessments will be acceptable for determining developmental delay?, 388-823-0900 What are the qualifying scores for inventory of client and agency planning broad independence for each age?, 388-823-1040 What happens if I do not reapply for eligibility before my eligibility expiration date?, and 388-823-1050 What happens if I do not respond to a request for information to review my eligibility?

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on April 8, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than April 9, 2014.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on April 8, 2014.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by March 11, 2014, TTY (360) 664-6178 or (360) 664-6094 or by e-mail jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The primary purposes for these changes are to clarify rules which determine whether an individual meets the requirements for developmental disabilities administration (DDA) eligibility. Overall changes in organization and language have been made to reduce confusion for DDA applicants and DDA clients. Amendments align eligibility requirements for Autism with the Diagnostic and Statistical Manual - Fifth Edition (DSM-5). Furthermore, combining the categories of "another neurological" and "other condition" eliminate confusion between the WAC and RCW language.

Amendments to this chapter may change eligibility requirements for some individuals applying for services from DDA. In addition housekeeping changes will be made such as WAC and RCW references, division of developmental disabilities to DDA, and mental retardation to intellectual disability.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.120.

Statute Being Implemented: Chapter 71A.16 RCW, Eligibility for services.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Linda Lunsford, DDA, P.O. Box 45310, Olympia, 98504-5310, (360) 725-3440.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

See Reviser's note below.

A copy of the statement may be obtained by contacting Alan McMullen, DDA, P.O. Box 45310, Olympia, WA 98504-5310, phone (360) 725-3524, fax (360) 407-0955, mcmular@dshs.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. No cost-benefit analysis is required for these proposed changes.

February 13, 2014
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 14-07 issue of the Register.

WSR 14-05-072
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed February 18, 2014, 10:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-15-174.

Title of Rule and Other Identifying Information: The department is adding new sections and amending the following sections in chapter 388-78A WAC, Assisted living facilities: WAC 388-78A-2020, 388-78A-2462 Background checks—Who is required to have, 388-78A-2464 Background checks—Washington state name and date of birth background check, 388-78A-2464 Process—Background authorization form, 388-78A-2464 Background checks—National fingerprint background check, 388-78A-2465 Background check—Results—Inform, 388-78A-2467 Background check—Sharing by health care facilities, 388-78A-2468 Background checks—Employment—Conditional hire—Pending results of Washington state name and date of birth background check, 388-78A-2469 Background check—Disclosure statement, 388-78A-2470 Background check—Employment-disqualifying information, 388-78A-24701 Background checks—Employment—Nondisqualifying information, 388-78A-3170 Circumstances resulting in enforcement remedies, and 388-78A-3190 Denial, suspension, revocation, or nonrenewal of license statutorily required.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on April 22, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than April 23, 2014.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on April 22, 2014.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by April 1, 2014, TTY (360) 664-6178 or (360) 664-6094 or by e-mail jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending these rules to support the health and safety of residents living in residential setting, to consolidate various secretary's lists in aging and long-term support administration (AL TSA) thus providing a uniform background check standard for all caregivers and to reduce the overall costs of processing background checks.

In chapter 388-78A WAC, the disqualifying criminal convictions have been moved to a new WAC chapter, with pending charges added. This requires the amending of the assisted living facility rules to remove the disqualifying crimes from each applicable section, amend the language to support the reference to the new WAC chapter, and to clarify amendments to the negative actions.

Reasons Supporting Proposal: See above.
Statutory Authority for Adoption: RCW 74.39A.056, chapter 18.20 RCW.

Statute Being Implemented: RCW 74.39A.056, chapter 18.20 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Jeanette K. Childress, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2591; Implementation and Enforcement: Lori Melchiori, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2404.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

See Reviser's note below.

A copy of the statement may be obtained by contacting Jeanette Childress, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2591, e-mail Jeanette.childress@dshs.wa.gov.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Jeanette Childress, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2591, e-mail Jeanette.childress@dshs.wa.gov.

February 12, 2014
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 14-06 issue of the Register.

WSR 14-05-073
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed February 18, 2014, 10:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-15-172.

Title of Rule and Other Identifying Information: The department is considering adding new sections and amending the following sections in chapter 388-101 WAC, Certified community residential services and supports: WAC 388-101-1000 Definitions, 388-101-3080 The department may deny—Application, 388-101-3090 The department must deny—Application, 388-101-3245 Background check—General, 388-101-3250 Background checks—Washington state, and 388-101-3255 Background checks—Provisional hire—Pending results.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504

(public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on April 22, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than April 23, 2014.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on April 22, 2014.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by April 1, 2014, TTY (360) 664-6178 or (360) 664-6094 or by e-mail jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending these rules to support the health and safety of residents living in residential setting, to consolidate various secretary's lists in aging and long-term support administration (AL TSA) thus providing a uniform background check standard for all caregivers and to reduce the overall costs of processing background checks.

In chapter 388-101 WAC, the disqualifying criminal convictions have been moved to a new WAC chapter, with pending charges added. This requires the amending of the certified community residential care service rules to remove the disqualifying crimes from each applicable section, amend the language to support the reference to the new WAC chapter, and to clarify amendments to the negative actions.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: Chapter 71A.12 RCW.

Statute Being Implemented: Chapter 71A.12 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Jeanette K. Childress, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2591; Implementation and Enforcement: Lori Melchiori, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2404.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

SUMMARY OF PROPOSED RULES: The department of social and health services' AL TSA is proposing amendments to chapter 388-101 WAC, Certified community residential care services, chapter 388-78A WAC, Assisted living facilities, chapter 388-76 WAC, Adult family homes, and chapter 388-97 WAC, Nursing homes.

The purpose of this chapter is to: The department is amending these rules to support: (1) The health and safety of residents living in residential settings, (2) the consolidation of various secretary's lists in AL TSA into a new WAC chapter that provides a uniform background check standard for all caregivers, and (3) the reduction of overall costs to process background checks.

The disqualifying criminal convictions have been moved to a new WAC chapter, with pending charges added. This

requires the amending of the residential care services (RCS) WAC to remove the disqualifying crimes from each applicable section, amend the language to support the reference to the new WAC chapter, and to clarify amendments to the negative actions. This will result in increased clarity and decreased confusion for providers.

The proposed amendments to these chapters include:

(1) Aligning disqualifying criminal history standards with AL TSA.

(2) The disqualifying criminal convictions have been moved to a new WAC chapter, with pending charges added. This requires amending residential care facilities WAC to remove the disqualifying crimes from each applicable section, amend the language to support the reference to the new WAC chapter, and to clarify amendments to the negative actions.

(3) Creating grandfathering language for workers hired and qualified prior to implementation of new standards, for all but the most egregious crimes.

SMALL BUSINESS ECONOMIC IMPACT STATEMENT— DETERMINATION OF NEED: Chapter 19.85 RCW, the Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses. The WAC chapter changes related to background check consolidation **will not have** a disproportionate economic impact on small businesses. The department has thoroughly reviewed background check inefficiencies in place with current rules, as written including:

(1) **Duplicate background check requirements** for same staff person, driven by current rules.

(2) **Conflicting rules** in place for same provider/same setting serving clients from two divisions (e.g. home and community services and DDA).

(3) **Poor compliance** with program rules due to background check complexity, varying standards, and provider confusion.

(4) **Negative fiscal and workload impact** on both small and large business resulting from regulatory work, contradictory standards, duplicate background check requirements and training needs.

The consolidation and standardization of background check rules across the AL TSA and DDA administrations will result in clarity of rules, efficiency in checks, reduced training needs, improved compliance and will significantly reduce the number of duplicate background checks conducted by affected businesses across the state.

INDUSTRY ANALYSIS: These proposed rules impact all small businesses contracted to provide direct service to clients of RCS including: Certified community residential care services (CCRCS) (approximately one hundred fifty-three providers); adult family homes (AFH) (approximately two thousand seven hundred fifty); assisted living facilities (ALF) (approximately five hundred thirty facilities); and nursing homes (NH) (approximately two hundred thirty).

The majority of these businesses meet the definition of small business defined in RCW 19.85.020. Again, RCS has concluded any negative impact to any specific small business would be negligible and the impact on the industry as a whole will be fiscally positive, while improving the health and

safety of vulnerable populations served by two administrations.

INVOLVEMENT OF SMALL BUSINESSES: These rule changes were driven, in part, by demand from businesses. Working drafts have also been shared with stakeholders including CCRCSs, ALFs, NHs, AFHs and associations, both in person and electronically. Stakeholder input is reflected in the proposed rules.

COST OF COMPLIANCE: Under chapter 19.85 RCW, DDA and ALTSA has considered annual costs to small businesses and concluded there will be no impact of fifty dollars or more per caregiver.

General Costs: RCS analysis revealed that there are **no significant costs** imposed by the proposed amendments.

Disproportionate Economic Impact Analysis: None.

Mitigating Costs: Not applicable.

Benefits for Proposed Rules: See above.

JOBS CREATED OR LOST: Not applicable.

CONCLUSION: RCS has given careful consideration to the impact of proposed rules in chapter 388-101 WAC, Certified community residential care services; chapter 388-78A WAC, Assisted living facilities; chapter 388-76 WAC, Adult family homes; and chapter 388-97 WAC, Nursing homes on small businesses. To comply with the Regulatory Fairness Act, chapter 19.85 RCW, RCS has analyzed impacts on small businesses and proposed ways to mitigate costs considered more than minor and disproportionate, however no significant costs were identified.

RCS has concluded that the intent of these rule-making changes are to improve the health and safety of vulnerable populations served by ALTSA.

Please contact Jeanette K. Childress if you have any questions at (360) 725-2591.

A copy of the statement may be obtained by contacting Jeanette Childress, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2591, e-mail Jeanette.childress@dshs.wa.gov. Under RCW 19.85.025(3), a small business economic impact statement is not required for rules adopting or incorporating, by reference without material change, Washington state statutes or regulations.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Jeanette Childress, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2591, e-mail Jeanette.childress@dshs.wa.gov.

February 13, 2014
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-03-065, filed 1/15/10, effective 2/15/10)

WAC 388-101-3080 The department may deny—
Application. Under WAC 388-101-3090, the department is required to deny an application for initial certification or change of ownership under certain circumstances. The department may also deny ~~((the))~~ an application ~~((for initial certification or change of ownership))~~ if any person named in the application has:

(1) Shown a lack of the understanding, character, ability, or emotional stability that is necessary to meet the identified needs of vulnerable adults;

(2) Had a contract terminated or a certification or license revoked or denied by the department, or has been subjected to department enforcement actions;

(3) Had ~~((a))~~ an out-of-state contract or license involving the provision of services to children or vulnerable adults terminated, ((or a certification or license)) revoked or denied ~~((in another state;))~~ or has been ~~((subjected to))~~ the subject of an enforcement action ((in another state)) related to the out-of-state contract or license;

(4) Obtained or attempted to obtain a license or certification by fraudulent means or misrepresentation;

(5) Relinquished or been denied a license or license renewal to operate a home or facility that was licensed for the care of children or vulnerable adults;

(6) Refused to permit authorized department representatives to interview clients or to have access to client records;

(7) Been convicted of a drug-related conviction within the past five years without evidence of rehabilitation, unless denial is required under WAC ~~((388-06-0180(4)))~~ 388-101-3090; or

(8) Been convicted of an alcohol-related conviction within the past five years without evidence of rehabilitation~~((:))~~; or

(9) Been convicted of any felony that the department determines is reasonably related to the competency of the person to be involved in the ownership or operation of the service provider.

AMENDATORY SECTION (Amending WSR 10-03-065, filed 1/15/10, effective 2/15/10)

WAC 388-101-3090 The department must deny—
Application. (1) The department must deny an application for initial certification or change of ownership if any person named in the application has:

~~((a))~~ ((a)) ~~Been convicted of a crime listed under WAC 388-06-0170(1);~~

~~((b))~~ ((b)) ~~Been convicted of a disqualifying crime under WAC 388-06-0180;~~

~~((c))~~ ((c)) ~~Been found by a court in a criminal proceeding, a protection proceeding, or a civil damages lawsuit under chapter 74.34 RCW, to have abused, neglected, abandoned, or financially exploited a vulnerable adult;~~

~~((d))~~ ((d)) ~~Been found to have abused, neglected, financially exploited, or abandoned a minor or vulnerable adult by a court of law or a disciplining authority, including the department of health. Examples of legal proceedings in which such findings could be made include juvenile court proceedings under chapter 13.34 RCW, domestic relations proceedings under Title 26 RCW, and vulnerable adult protection proceedings under chapter 74.34 RCW;~~

~~((e))~~ ((e)) ~~A substantiated finding of abuse or neglect of a child that is:~~

~~((i))~~ ((i)) ~~Listed on the department's background check central unit (BCCU) report; or~~

~~((ii))~~ ((ii)) ~~Disclosed by the individual, except for findings made before December 1998; or~~

~~(f) A substantiated finding of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult that is:~~

~~(i) Listed on any registry, including the department's registry;~~

~~(ii) Listed on the department's background check central unit (BCCU) report; or~~

~~(iii) Disclosed by the individual, except for adult protective services findings made before October 2003.~~

~~(2) The department must deny an application for initial certification or change of ownership if any person named in the application has a pending charge for a crime that is disqualifying under this section.) A disqualifying criminal conviction or pending criminal charge under chapter 388-113 WAC.~~

~~(b) Been convicted of a crime in any federal or state court, and the department determines that the conviction is equivalent to a disqualifying conviction under chapter 388-113 WAC.~~

~~(2) The department must also deny an application for initial certification or change of ownership if any person named in the application has a disqualifying negative action. The following are considered to be disqualifying negative actions:~~

~~(a) A court has issued a permanent restraining order or order of protection, either active or expired, against the person that was based upon abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult;~~

~~(b) The person is a registered sex offender;~~

~~(c) The person is on a registry based upon a final finding of abuse, neglect or financial exploitation of a vulnerable adult, unless the finding was made by adult protective services prior to October 2003;~~

~~(d) A founded finding of abuse or neglect of a child was made against the person, unless the finding was made by child protective services prior to October 1, 1998;~~

~~(e) The individual was found in any dependency action to have sexually assaulted or exploited any child or to have physically abused any child;~~

~~(f) The individual was found by a court in a domestic relations proceeding under Title 26 RCW, or under any comparable state or federal law, to have sexually abused or exploited any child or to have physically abused any child;~~

~~(g) The person has had a contract or license denied, terminated, revoked, or suspended due to abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult; or~~

~~(h) The person has relinquished a license or terminated a contract because an agency was taking an action against the individual related to alleged abuse, neglect, financial exploitation or mistreatment of a child or vulnerable adult.~~

AMENDATORY SECTION (Amending WSR 12-02-048, filed 12/30/11, effective 1/30/12)

WAC 388-101-3245 Background check—General.

(1) The department is authorized to conduct background checks under the background check requirements of this chapter and of chapter 388-113 WAC. Background checks (~~(conducted by the department and required in this chapter)~~) include but are not limited to (~~(Washington state background checks including)~~) an inquiry into any of the following:

(a) Department and department of health findings; ~~((and))~~

(b) ~~((Criminal))~~ Administrative actions taken by the department or by other agencies;

(c) Washington state criminal background check information from the Washington state patrol;

(d) National fingerprint-based background check information from the Federal Bureau of Investigation, when required; and

(e) Information from Washington state courts.

(2) Nothing in this chapter should be interpreted as requiring the employment of a person against the better judgment of the service provider. In addition to chapter 71A.12 RCW, these rules are authorized by RCW 43.20A.710, RCW 43.43.830 through 43.43.842 and RCW 74.39A.056.

AMENDATORY SECTION (Amending WSR 12-02-048, filed 12/30/11, effective 1/30/12)

WAC 388-101-3250 Background checks—~~((Washington state))~~ Requirements for service providers.

(1) Service providers must follow the background check requirements described in chapter ~~((388-06))~~ 388-113 WAC and in this chapter. In the event of an inconsistency, this chapter applies.

(2) The service provider must obtain background checks from the department for all administrators, employees, volunteers, students, and subcontractors who may have unsupervised access to clients.

(3) The service provider must not allow the following persons to have unsupervised access to clients until the service provider receives the department's background check results (~~(, verifying that the person does not have any convictions, pending criminal charges, or findings described in WAC 388-101-3090))~~):

(a) Administrators;

(b) Employees;

(c) Volunteers or students; and

(d) Subcontractors.

(4) If the department's background check results show that ~~((the individual has a conviction, pending criminal charge, or finding that is not disqualifying under WAC 388-101-3090))~~ an administrator, employee, volunteer, student, or subcontractor has any of the following, then the service provider must ~~((conduct a character, suitability, and competence review as described in WAC 388-06-0190.))~~ prevent that person from having unsupervised access to clients:

(a) A disqualifying conviction or pending criminal charge under chapter 388-113 WAC; or

(b) A disqualifying negative action under WAC 388-101-3090.

(5) ~~((The))~~ If the background check results show any of the following, then the service provider must conduct a character, suitability, and competence review before allowing the person unsupervised access to clients:

(a) The person has a conviction or pending criminal charge, but the conviction or criminal charge is not disqualifying under WAC 388-113-0020;

(b) The person has a conviction or pending criminal charge that meets one of the exceptions listed in WAC 388-113-0040; or

(c) Any of the circumstances described in WAC 388-101-3080 apply to the individual.

(6) When a service provider receives the results of a person's background check, the service provider must:

(a) Inform the person of the results of the background check;

(b) Inform the person that they may request a copy in writing of the results of the background check. If requested, a copy of the background check results must be provided within ten working days of the request; and

(c) Notify the department and other appropriate licensing or certification agency of any person resigning or terminated as a result of having a conviction record.

~~((6))~~ (7) The service provider must renew the Washington state background check for each administrator, employee, volunteer, student, or subcontractor of a service provider. The service provider must at least every thirty-six months ((and)) keep current background check results for each administrator, employee, volunteer, student, or subcontractor of a service provider.

~~((7))~~ (8) Licensed ((boarding homes)) assisted living facilities or adult family homes must adhere to the current regulations in this chapter and in the applicable licensing laws.

~~((8) Service providers must prevent unsupervised access to clients by any administrator, employee, subcontractor, student, or volunteer who has a disqualifying conviction, pending criminal charge, or finding described in WAC 388-101-3090.)~~

(9) All applicants for certification must have a background check.

AMENDATORY SECTION (Amending WSR 12-02-048, filed 12/30/11, effective 1/30/12)

WAC 388-101-3255 Background checks—Provisional hire—Pending results. Persons identified in WAC ~~((388-101-3250(2)))~~ 388-101-3250 and who have lived in Washington state less than three years, or who are otherwise required to complete a national fingerprint-based background check, may be hired for a one hundred twenty-day provisional period when:

(1) The person is not disqualified based on the initial results of the background check from the department; and

(2) A national fingerprint-based background check is pending.

WSR 14-05-074

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed February 18, 2014, 10:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-15-170.

Title of Rule and Other Identifying Information: The department is adding new sections and amending the following sections in chapter 388-97 WAC, Nursing homes: WAC 388-97-0001 Definitions, 388-97-1790 Background checks-General (new section), 388-97-1800 Criminal history disclosure and background inquiries, 388-97-1820 Disqualification from nursing home employment, and 388-97-4220 Reasons for denial, suspension, modification, revocation of, or refusal to renew a nursing home license.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on April 22, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than April 23, 2014.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on April 22, 2014.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by April 1, 2014, TTY (360) 664-6178 or (360) 664-6094 or by e-mail jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending these rules to support the health and safety of residents living in residential settings, to consolidate various secretary's lists in the aging and long-term support administration (AL TSA) thus providing a uniform background check standard for all caregivers, and to reduce the overall costs of processing background checks.

In chapter 388-97 WAC, the disqualifying criminal convictions have been moved to a new chapter, with pending charges added. This requires the amending of the nursing home rules to remove the disqualifying crimes from each applicable section, amend the language to support the reference to the new chapter, and to clarify amendments to the negative actions.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.39A.056, chapters 18.51 and 74.42 RCW.

Statute Being Implemented: RCW 74.39A.056, chapters 18.51 and 74.42 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Jeanette K. Childress, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2591; Implementation and Enforcement: Lori Melchiori, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2404.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

See Reviser's note below.

A copy of the statement may be obtained by contacting Jeanette Childress, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2591, e-mail Jeanette.childress@dshs.wa.gov. Under RCW 19.85.025(3), a small business economic impact statement is not required for rules adopting or incorporating, by reference without material change, Washington state statutes or regulations.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Jeanette Childress, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2591, e-mail Jeanette.childress@dshs.wa.gov.

February 13, 2014
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 14-06 issue of the Register.

WSR 14-05-075
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed February 18, 2014, 10:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-15-173.

Title of Rule and Other Identifying Information: The department is adding new sections and amending the following sections in chapter 388-76 WAC, Adult family homes: WAC 388-76-10000 Definitions, 388-76-10120 License—Must be denied, 388-76-10125 License—May be denied, 388-76-10130 Qualifications—Provider, entity representative and resident manager, 388-76-10135 Qualifications—Caregiver, 388-76-10145 Qualifications—Licensed nurse as provider, entity representative or resident manager, 388-76-10150 Assessor, 388-76-10161 Background checks—Who is required to have, 388-76-10163 Background checks—Process—Background authorization form, 388-76-101631 Background checks—Washington state name and date of birth background check, 388-76-101632 Background checks—National fingerprint background check, 388-76-10164 Background checks—Results, 388-76-10166 Background checks—Household members, noncaregiving and unpaid staff—Unsupervised access, 388-76-10174 Background check—Disclosure of information—Sharing of background information by health care facilities, 388-76-10175 Background checks—Employment—Conditional hire—Pending results of Washington state name and date of birth background check, 388-76-10180 Background checks—Employment—Disqualifying information, 388-76-10181 Background checks—Employment—Nondisqualifying information, and 388-76-10955 Remedies—Department must impose remedies.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504

(public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on April 22, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than April 23, 2014.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU.RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on April 22, 2014.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by April 1, 2014, TTY (360) 664-6178 or (360) 664-6094 or by e-mail jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending these rules to support the health and safety of residents living in residential setting, to consolidate various secretary's lists in aging and long-term support administration (AL TSA) thus providing a uniform background check standard for all caregivers and to reduce the overall costs of processing background checks.

In chapter 388-76 WAC, the disqualifying criminal convictions have been moved to a new WAC chapter, with pending charges added. This requires the amending of the adult family homes rules to remove the disqualifying crimes from each applicable section, amend the language to support the reference to the new WAC chapter, and to clarify amendments to the negative actions.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.39A.056, chapters 18.20 and 74.34 RCW.

Statute Being Implemented: RCW 74.39A.056, chapters 18.20 and 74.34 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Jeanette K. Childress, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2591; Implementation and Enforcement: Lori Melchiori, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2404.

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See Reviser's note below.

A copy of the statement may be obtained by contacting Jeanette Childress, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2591, e-mail Jeanette.childress@dshs.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Jeanette Childress, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2591, e-mail Jeanette.childress@dshs.wa.gov.

February 12, 2014
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 14-06 issue of the Register.

WSR 14-05-078
PROPOSED RULES
GAMBLING COMMISSION

[Filed February 18, 2014, 12:42 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-05-082.

Title of Rule and Other Identifying Information: Amending WAC 230-06-050 Review of electronic or mechanical gambling equipment and new WAC 230-06-054 Notification of electronic or mechanical gambling equipment malfunctions.

Hearing Location(s): Vancouver Heathman Lodge, 7801 N.E. Greenwood Drive, Vancouver, WA 98662, (360) 254-3100, on April 10 or 11, 2014, at 9:00 a.m. or 1:00 p.m. NOTE: Meeting dates and times are tentative. Visit our web site at www.wsgc.wa.gov and select public meeting about ten days before the meeting to confirm meeting date/location/start time.

Date of Intended Adoption: April 10 or 11, 2014.

Submit Written Comments to: Susan Newer, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susan.Newer@wsgc.wa.gov, fax (360) 486-3625, by April 1, 2014.

Assistance for Persons with Disabilities: Contact Michelle Rancour by April 1, 2014, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes to WAC 230-06-050 will codify our current practice of:

- Requiring all costs associated with the review of gambling equipment to be paid in full at the completion of the review.
- Requiring the version of gambling equipment/software submitted for review to be identical or substantially similar to what is to be marketed and used in Washington state.
- Including any security and surveillance requirements in our approval letter that must be met to operate the equipment.

It also clarifies that gambling equipment must be approved and the business licensed before selling or leasing may begin in Washington state.

The proposed new rule, WAC 230-06-054, will require licensees to notify us within seventy-two hours of identifying or becoming aware of an electronic or mechanical gambling equipment malfunction. Staff has created a form for licensees to use to report the equipment malfunctions.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Newer, Lacey, (360) 486-3466; Implementation: David Trujillo, Director, Lacey, (360) 486-3512; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared because the changes to WAC 230-06-050 do not change the existing costs to licensees to have their equipment reviewed and the changes to WAC 230-06-054 do not add costs to licensees when reporting electronic or mechanical gambling equipment malfunctions on the form provided by staff.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

February 18, 2014

Susan Newer

Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-21-116, filed 10/22/07, effective 1/1/08)

WAC 230-06-050 Review of electronic or mechanical gambling equipment. ~~((1) Persons who wish to submit gambling equipment, supplies, services, or games for our review to verify compliance with chapter 9.46 RCW and Title 230 WAC must pay the application deposit before we perform the review. They must also reimburse us for any additional costs of the review.~~

~~(2) We may require manufacturers to submit certain electronic or mechanical gambling equipment for review. The equipment must meet technical standards for compliance, accuracy, security, and integrity. To allow for continued testing and training, staff may keep any equipment submitted for review for as long as the equipment remains in play in Washington. The manufacturers must reimburse us for any costs of the review. The commissioners and commission staff are not liable for any damage to equipment while in our possession.~~

~~(3) Licensees must operate equipment identical to the version the director or director's designee approved.~~

~~(4) If persons submitting equipment do not agree with the director or director's designee's decision, they may file a petition for declaratory order with the commission to be heard as a full review (de novo) by an administrative law judge, according to RCW 34.05.240 and chapter 230-17 WAC.)~~

(1) When you submit gambling equipment, supplies, services, or games for our review to verify compliance with chapter 9.46 RCW and Title 230 WAC, you must pay the application deposit before we perform the review. You must also reimburse us for any additional costs of the review. All costs must be paid in full prior to the completion of the review.

(2) The gambling equipment submitted for review must be identical or substantially similar to what will be marketed, distributed, and deployed in Washington. If the equipment is

not sufficient for testing and review, we may require additional equipment or information.

(3) If your application is incomplete or we request additional information, you must provide us with the required items within thirty days of notification or we may administratively close your application.

(4) You can begin selling or leasing the gambling equipment when you are licensed and the gambling equipment has been approved by the director or director's designee.

(5) We may include security or surveillance requirements as part of gambling equipment approval.

(6) Gambling equipment must operate as approved by the director or director's designee.

(7) We may keep equipment submitted for review to allow for continued testing and training as long as the equipment remains in play in Washington. We are not liable for any damage to equipment while in our possession.

(8) If you do not agree with the director or director's designee's decision, you may file a petition for declaratory order with the commission according to RCW 34.05.240 and chapter 230-17 WAC.

NEW SECTION

WAC 230-06-054 Notification of electronic or mechanical gambling equipment malfunctions. Licensees must notify us, in the format we require, within seventy-two hours of identifying or becoming aware of an electronic or mechanical gambling equipment malfunction.

WSR 14-05-080
PROPOSED RULES
GAMBLING COMMISSION
[Filed February 18, 2014, 12:46 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-24-055.

Title of Rule and Other Identifying Information: WAC 230-17-170 Petition and hearing for stay of the summary suspension.

Hearing Location(s): Vancouver Heathman Lodge, 7801 N.E. Greenwood Drive, Vancouver, WA 98662, (360) 254-3100, on April 10 or 11, 2014, at 9:00 a.m. or 1:00 p.m. NOTE: Meeting dates and times are tentative. Visit our web site at www.wsgc.wa.gov and select public meeting about ten days before the meeting to confirm meeting date/location/start time.

Date of Intended Adoption: April 10 or 11, 2014.

Submit Written Comments to: Susan Newer, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susan.Newer@wsgc.wa.gov, fax (360) 486-3625, by April 1, 2014.

Assistance for Persons with Disabilities: Contact Michelle Rancour by April 1, 2014, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The current rule requires the agency to hold a stay hearing within seven days after we receive a request from a licensee or permittee. The

proposed change increases the length of time to hold a stay hearing from seven to fourteen days. The proposed change also clarifies stay hearings must be conducted as brief adjudicative proceedings as required by WAC 230-17-150.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Newer, Lacey, (360) 486-3466; Implementation: David Trujillo, Director, Lacey, (360) 486-3512; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared because it is not required under RCW 19.85.025 as it is a rule related to a procedure, practice, or requirement relating to agency hearings (RCW 34.05.310 (4)(g)(i)).

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

February 18, 2014
Susan Newer
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-21-156, filed 10/24/07, effective 1/1/08)

WAC 230-17-170 Petition and hearing for stay of the summary suspension. (1) When the director summarily suspends a license or permit, the affected licensee or permittee may petition for a "stay of suspension" as explained in RCW 34.05.467 and 34.05.550(1).

(2) We must receive the petition in writing within fifteen days of service of the summary suspension.

(3) Within ~~((seven))~~ fourteen days of receipt of the petition, the presiding officer holds a hearing. If an administrative law judge is not available, the chairperson of the commission designates a commissioner to be the presiding officer. If the parties agree, they may have a continuance of the seven-day period.

(4) The stay hearing must use brief adjudicative proceedings as set out in WAC 230-17-150. At the hearing, the only issues are whether the presiding officer:

(a) Should grant a stay; or

(b) Modify the terms of the suspension.

(5) Our argument at the hearing consists of the information we used to issue the summary suspension and we may add any information we find after we order the suspension.

(6) At the hearing, the licensee or permittee has the burden of demonstrating by clear and convincing evidence all of the following:

(a) The licensee or permittee is likely to prevail upon the merits of the evidence at hearing; and

(b) Without relief, the licensee or permittee will suffer irreparable injury. For purposes of this section, elimination of

income from licensed activities must not be deemed irreparable injury; and

(c) The grant of relief will not substantially harm other parties to the proceedings; and

(d) The threat to the public safety or welfare is not sufficiently serious to justify continuation of the suspension, or that modification of the terms of the suspension will adequately protect the public interest.

(7) The initial stay of the summary suspension order whether given orally or in writing takes effect immediately unless stated otherwise.

WSR 14-05-081

PROPOSED RULES

GAMBLING COMMISSION

[Filed February 18, 2014, 12:52 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-02-008.

Title of Rule and Other Identifying Information: New WAC 230-03-061 Fingerprinting persons holding an interest in the building of house-banked card room licensees or charitable or nonprofit licensees in regulatory groups III, IV, or V.

Hearing Location(s): Vancouver Heathman Lodge, 7801 N.E. Greenwood Drive, Vancouver, WA 98662, (360) 254-3100, on April 10 or 11, 2014, at 9:00 a.m. or 1:00 p.m. NOTE: Meeting dates and times are tentative. Visit our web site at www.wsgc.wa.gov and select public meeting about ten days before the meeting to confirm meeting date/location/start time.

Date of Intended Adoption: April 10 or 11, 2014.

Submit Written Comments to: Susan Newer, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susan.Newer@wsgc.wa.gov, fax (360) 486-3625, by April 1, 2014.

Assistance for Persons with Disabilities: Contact Michelle Rancour by April 1, 2014, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 9.46.070(7) states in pertinent part that "Provided further, That the commission **shall require fingerprinting and national criminal history background checks** on any person seeking licenses, certifications, or permits under this chapter or of **any person holding an interest** in any gambling activity, **building**, or equipment to be used therefore, or of any person participating as an employee in the operation of any gambling activity... **The commission must establish rules to delineate which persons named on the application are subject to national criminal history background checks.**" (emphasis added).

This new rule ensures the WAC is consistent with RCW 9.46.070(7) by requiring persons holding an "interest" in a building used for a gambling activity to undergo background checks. The rule describes an interest in a building used for a gambling activity as at least fifty-one percent, or less than fifty-one percent interest in a building when there is actual or potential influence or control of the operation of a house-

banked card room or a charitable or nonprofit in regulatory groups III, IV, or V.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Newer, Lacey, (360) 486-3466; Implementation: David Trujillo, Director, Lacey, (360) 486-3512; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared because this proposed rule change will not impose additional costs.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

February 18, 2014

Susan Newer

Rules Coordinator

NEW SECTION

WAC 230-03-061 Fingerprinting persons holding an interest in the building of house-banked card room licensees or charitable or nonprofit licensees in regulatory groups III, IV, or V. (1) This rule only applies to house-banked card room licensees or charitable or nonprofit licensees in regulatory groups III, IV, or V licensed after July 1, 2014.

(2) Persons holding an "interest" in the building of these licensees must undergo a national criminal history background check, including fingerprinting.

(3) An "interest" means:

(a) Having fifty percent or more ownership in the building used for the gambling activity; or

(b) Having less than fifty percent ownership in the building used for the gambling activity and having actual or potential influence over the gambling activity.

(4) For house-banked card room licensees or charitable or nonprofit licensees in regulatory groups III, IV, or V licensed before July 1, 2014, this requirement applies when there is a change in:

(a) Persons holding an interest in the building; or

(b) Location of the house-banked card room; or

(c) Location of the charitable or nonprofit licensee's gambling activity.

WSR 14-05-084

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed February 18, 2014, 4:00 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: WAC 246-282-005 Minimum performance standards, 246-282-006 Washington state *Vibrio parahaemolyticus* control plan and 246-282-010 Definitions; clarify references to the United States Food and Drug Administration, National Shellfish Sanitation Program, Guide for the Control of Molluscan Shellfish.

Hearing Location(s): Washington State Department of Health, Town Center 3, Room 229, 243 Israel Road S.E., Tumwater, WA 98511, on March 25, 2014, at 10:00 a.m.

Date of Intended Adoption: March 26, 2014.

Submit Written Comments to: Vicki M. Bouvier, P.O. Box 47820, Olympia, WA 98504-7820, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360)-236-2250, by March 25, 2014.

Assistance for Persons with Disabilities: Contact Vicki M. Bouvier by March 8, 2014, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rules is to clarify references within the chapter to the United States Food and Drug Administration, National Shellfish Sanitation Program, Guide for the Control of Molluscan Shellfish (model ordinance) as adopted in WAC 246-282-005 Minimum performance standards.

Reasons Supporting Proposal: During the most recent revision of WAC 246-282-005, the department received a comment that not all references to the model ordinance were consistent throughout the chapter. To address this comment and provide clarity in the rules, this proposed revision makes all references consistent and includes a definition of model ordinance. All proposed changes to the rules are editorial and clarify the language without changing the effect.

Statutory Authority for Adoption: RCW 60.30.030 [69.30.030].

Statute Being Implemented: RCW 69.30.030.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Vicki M. Bouvier, 111 Israel Road S.E., Tumwater, WA 98511, (360) 236-3011.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(d), a small business economic impact statement is not required for proposed rules that only correct typographical errors, make address or name changes, or clarify the language of a rule without changing its effect.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iv) exempts rules that only correct typographical errors, make address or name changes or clarify the language of a rule without changing its effect.

February 18, 2014
John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 14-01-002, filed 12/4/13, effective 1/4/14)

WAC 246-282-005 Minimum performance standards. (1) Any person engaged in a shellfish operation or possessing a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must comply with and is subject to:

(a) The requirements of the ((2014)) U.S. Food and Drug Administration National Shellfish Sanitation Program (NSSP), Guide for the Control of Molluscan Shellfish (~~(published by the United States Department of Health and Human Services, Public Health Service, Food and Drug Administration)~~) (2011) (copies available through the U.S. Food and Drug Administration, Shellfish Sanitation Branch, and the Washington state department of health, office of shellfish and water protection);

(b) The provisions of 21 Code of Federal Regulations (C.F.R.), Part 123 - Fish and Fishery Products, adopted December 18, 1995, by the United States Food and Drug Administration, regarding Hazard Analysis Critical Control Point (HACCP) plans (copies available through the U.S. Food and Drug Administration, Office of Seafood, and the Washington state department of health, office of food safety and shellfish programs); and

(c) All other provisions of this chapter.

(2) If a requirement of the NSSP (~~(Guide for the Control of Molluscan Shellfish)~~) Model Ordinance or a provision of 21 C.F.R., Part 123, is inconsistent with a provision otherwise established under this chapter or other state law or rule, then the more stringent provision, as determined by the department, will apply.

AMENDATORY SECTION (Amending WSR 09-08-122, filed 4/1/09, effective 5/2/09)

WAC 246-282-006 Washington state *Vibrio parahaemolyticus* control plan. (1) The Washington state *Vibrio parahaemolyticus* control plan, also known as the control plan, establishes harvest, temperature control, and transportation requirements for oysters intended for raw consumption during the months of May through September. This section does not apply to shucked oyster meats labeled "for cooking only." The requirements of this section are in addition to (~~Chapter VIII of~~) the ((2007 National Shellfish Sanitation Program)) NSSP Model Ordinance ((NSSP), Requirements for Harvesters, -03 Shellfish Temperature, Control Option 2;) and consist((s)) of:

(a) Time of harvest to temperature control based on the growing area and month of the year;
(b) Harvest record requirements;
(c) *Vibrio* illness response requirements;
(d) Training requirements; and
(e) Hazard Analysis Critical Control Point (HACCP) plan and harvest checklist requirements.

(2) All Puget Sound growing areas, including the Strait of Juan de Fuca, are subject to the requirements of this section. Growing areas in Grays Harbor and Willapa Bay where oysters have been epidemiologically associated as the source of any *Vibrio parahaemolyticus* illness are also subject to the requirements of this section.

(3) The department may grant an annual exemption to the control plan for Puget Sound growing areas, including the Strait of Juan de Fuca, where there has been no epidemiologically associated *Vibrio parahaemolyticus* illness after review and approval of a written exemption request.

(a) The written exemption request must include the following information:

- (i) Name of the growing area;
- (ii) Description of the harvesting methods;
- (iii) Description of the temperature control methods; and
- (iv) Description of the transportation methods.

(b) The department shall review the exemption request within five business days of submittal.

(c) If approved, the licensed harvester or dealer shall comply with the department-approved exemption.

(d) The department-approved exemption expires October 1 of the calendar year for which it is approved. If the growing area is epidemiologically associated as the source of a *Vibrio parahaemolyticus* illness at any time after approval of the exemption, the department shall issue an order revoking the exemption.

(4) Time of harvest to temperature controls are:

**Table 1
Puget Sound Growing Areas
(including the Strait of Juan de Fuca):**

Months of Control	Time of harvest to Temperature Control
May	Twelve hours
June and September	Five hours
July and August	Four hours

**Table 2
Coastal Growing Areas:**

Months of Control	Time of harvest to Temperature Control
July and August	Ten hours

(5) Licensed dealers and harvesters shall maintain harvest records showing the time of harvest and the time oysters are placed under temperature control to demonstrate compliance with the control plan. If ownership of oysters is transferred prior to the time that time of harvest to temperature control requirements must be met, the licensed dealer or harvester shall include in the harvest record date, time, and person or entity to whom the oysters were transferred. If the new owner is a licensed dealer, the dealer shall meet the time of harvest to temperature control requirements established in this section. The harvest times begin as follows:

(a) Intertidal (exposed) time of harvest begins after the first oysters to be harvested are exposed to the air by the receding tide.

(b) Submerged time of harvest begins after the first oysters harvested are exposed to the air and have been placed onto a conveyance, such as a barge or boat. Submerged harvest includes dredge harvesting or retrieval of harvest tubs, bags, baskets, or other containers of oysters previously filled

which have been under water for a minimum of one hour for coastal areas and four hours for Puget Sound growing areas.

(c) Temperature control is achieved when harvested oysters are placed in a controlled environment with an ambient temperature of 45°F (7.2°C) or less.

(6) All licensed harvesters and dealers in a growing area shall reduce the time of harvest to temperature control as defined in Table 1 or 2 of subsection (4) of this section by one hour if oysters from the growing area:

(a) Are epidemiologically associated as the probable source of two sporadic *Vibrio parahaemolyticus* illnesses; and

(b) Were harvested within thirty days of each other.

(7) A growing area shall be closed to harvest and shipment of oysters intended for raw consumption throughout the remainder of the control months for the calendar year when the following conditions are met:

(a) Oysters from the growing area are epidemiologically associated as the probable source of two additional sporadic *Vibrio parahaemolyticus* illnesses;

(b) Oysters from the growing area were harvested in compliance with the reduced time of harvest to temperature control provisions of subsection (6) of this section; and

(c) Oysters from the growing area were harvested within thirty days of the previous illnesses.

(8) If the two additional *Vibrio parahaemolyticus* illnesses specified in subsection (7) of this section are attributed to the same licensed harvester or dealer as the first two illnesses, the department shall conduct an investigation in accordance with the requirements as stated in the ((2007)) NSSP(~~Chapter II, Risk Assessment and Risk Management~~) Model Ordinance to determine if the illnesses are the result of harvester or dealer practices or are linked to the growing area as the probable source. If the harvester or dealer practices are reasonably likely to have caused the illnesses:

(a) The harvester or dealer shall retake the training identified in subsection (12) of this section prior to renewal of their next year's license;

(b) The department may take disciplinary action against the harvester or dealer license; and

(c) The department will evaluate whether to associate the illnesses with the growing area.

(9)(a) The department may grant an exemption to closure identified in subsection (7) of this section if the licensed harvester or dealer can demonstrate in a written exemption request that an additional one hour reduction in the time of harvest to temperature control as identified in subsection (6) of this section can be successfully implemented. The written exemption request must include the following information:

- (i) Name of the growing area;
- (ii) Description of the harvesting methods;
- (iii) Description of the temperature control methods; and
- (iv) Description of the transportation methods.

(b) The department shall review the request within five business days of submittal.

(c) If approved, the licensed harvester or dealer shall comply with the requirements of the department-approved exemption throughout the remainder of the applicable control months for the particular growing area.

(10)(a) If the required time of harvest to temperature control period is not met, the licensed harvester or dealer shall either:

- (i) Destroy the oysters; or
- (ii) Remove all oysters from containers, disperse them within the original growing area, and allow a minimum of twenty-four hours for purging before reharvesting.

(b) If the required time of harvest to temperature control period is not met, the licensed harvester or dealer shall record the disposition of the oysters on the harvest record.

(11) In the event of a *Vibrio parahaemolyticus* illness outbreak where oysters from a growing area are epidemiologically associated as the source, the requirements as stated in the ((2007)) NSSP(~~(Chapter II, Risk Assessment and Risk Management,))~~ Model Ordinance shall apply.

(12) All licensed harvesters and dealers shall complete an initial department-approved training specific to the requirements of this section prior to harvesting or shipping oysters intended for raw consumption during the months of May through September. All licensed harvesters and dealers shall complete department-approved refresher training following any revision of this section considered significant under RCW 34.05.328. Licensed harvesters and dealers who complete the training shall provide the training to those responsible for the on-site management of harvest activities for their operation, and document the training for responsible employees in their operational records.

(13) Following completion of the training required in subsection (12) of this section:

(a) All licensed harvesters planning to harvest oysters intended for raw consumption from May through September shall develop a harvest plan that describes the harvest, temperature control, and transportation methods that meet the requirements of subsections (4) and (6) of this section. Licensed harvesters shall obtain department approval of the harvest plan prior to harvesting oysters for raw consumption.

(b) All licensed dealers planning to harvest oysters intended for raw consumption from May through September shall amend their Hazard Analysis Critical Control Point (HACCP) plans to define the harvest, temperature control, and transportation methods that meet the requirements of subsections (4) and (6) of this section. Licensed dealers shall obtain department approval of the amended HACCP plan prior to harvesting oysters for raw consumption.

AMENDATORY SECTION (Amending WSR 01-04-054, filed 2/5/01, effective 3/8/01)

WAC 246-282-010 Definitions. The following definitions, as well as those in the NSSP Model Ordinance, apply in the interpretation and the implementation of these rules and regulations.

(1) "Abatement" means an action or series of actions to eliminate a public health hazard or reduce it to a level acceptable to the secretary.

(2) "Approved" means acceptable to the secretary based on the department's determination as to conformance with appropriate standards and good public health practice.

(3) "Approved laboratory" means a laboratory that is in conformance with requirements of the NSSP Model Ordinance.

(4) "Certificate of approval" means a license issued by the department.

(5) "Civil penalty" means a monetary penalty administratively issued by the secretary. It does not include any criminal penalty; damage assessment; wages, premiums, or taxes owed; or interest or late fees on any existing obligation.

(6) "Commercial quantity" means any quantity exceeding:

- (a) Forty pounds of mussels;
- (b) One hundred oysters;
- (c) Fourteen horse clams;
- (d) Six geoducks; or
- (e) Fifty pounds of other hard or soft shell clams; or
- (f) Fifty pounds of scallops.

(7) "Cultch" means any material, other than live shellfish, used for the attachment of seed shellfish.

(8) "Department" means the state department of health.

(9) "Export certificate" means a certificate issued by the department to a licensed shucker-packer or shellstock shipper for use in the foreign export of a lot or shipment of shellfish.

(10) "Harvest" means the act of removing shellstock from a harvest site and its placement on or in a container for transport.

(11) "Harvester" means a shellfish operation with activities limited to growing shellstock, placing shellstock in a container, harvesting shellstock, transporting shellstock within Washington state, and delivering shellstock to a shellfish dealer licensed by the department within four hours of landing it. A harvester does not process shellfish, ship shellfish outside of Washington state, sell shellfish to retail outlets, shuck shellfish, repack shellfish, or store shellfish in any location outside of the approved growing area from where the shellfish is harvested.

(12) "Harvest site" means an area of intertidal or subtidal property within a commercial shellfish growing area, that is described by a unique county parcel number, department of fish and wildlife tract number, department of fish and wildlife catch area number, tribal identification number, or other government identification.

(13) "Harvest site certificate" means a type of certificate of approval that designates one or more harvest sites approved for the harvesting of shellfish.

(14) "Hatchery" means an operation where shellfish larvae are produced and grown to the first sessile stage of life.

(15) "Notice of correction" means a document issued by the department that describes a condition or conduct that is not in compliance with chapter 69.30 RCW, this chapter, or the NSSP Model Ordinance and is not subject to civil penalties as provided for in RCW 43.05.110. It is not a formal enforcement action and is not subject to appeal. It is a public record.

(16) "NSSP Model Ordinance" means the U.S. Food and Drug Administration National Shellfish Sanitation Program (NSSP), Guide for the Control of Molluscan Shellfish, as adopted in WAC 246-282-005.

(17) "Nursery" means an operation where shellfish are grown from an early sessile stage of life up to a maximum size meeting the definition of shellfish seed.

~~((17))~~ (18) "Number of previous violations" means the number of prior violations of the same or a similar nature for which the department has taken a license action or assessed a civil penalty.

~~((18))~~ (19) "Person" means any individual, firm, corporation, partnership, company, association, or joint stock association, and the legal successor thereof.

~~((19))~~ (20) "Person in charge" means an individual responsible for the supervision of employees and the management of any shellfish operation.

~~((20))~~ (21) "Public health threat" is either:

(a) "Low," which means a violation that poses a minor possibility of direct or indirect hazard to public health;

(b) "Intermediate," which means a violation that poses a moderate possibility of direct or indirect hazard to public health; or

(c) "High," which means a violation that poses a known significant hazard or possibility of significant direct or indirect hazard to public health.

~~((21))~~ (22) "Sale" means to sell; offer for sale; barter; trade; deliver; consign; hold for sale, consignment, barter, trade, or delivery; and/or possess with intent to sell or dispose of in a commercial manner.

~~((22))~~ (23) "Secretary" means the secretary of the department of health or the secretary's authorized representative.

~~((23))~~ (24) "Seed" means shellfish that are less than market size for human consumption and have a maximum shell length of:

(a) Thirteen millimeters (1/2 inch) for mussels;

(b) Twenty-five millimeters (1 inch) for scallops;

(c) Nineteen millimeters (3/4 inch) for Olympia oysters;

(d) Nineteen millimeters (3/4 inch) for Kumomoto oysters;

(e) Fifty-one millimeters (2 inches) for other oyster species;

(f) Thirty-eight millimeters (1 and 1/2 inch) for geoducks; and

(g) Thirteen millimeters (1/2 inch) for other clam species.

~~((24))~~ (25) "Shellfish" means all varieties of fresh or fresh-frozen oysters, clams, scallops or mussels, either shucked or in the shell, and all fresh or fresh-frozen edible products thereof.

~~((25))~~ (26) "Shellfish dealer" means a person with a shellstock shipper or shucker-packer license.

~~((26))~~ (27) "Shellfish growing area" means the lands and waters in and upon which shellfish are grown for harvesting in commercial quantities or for sale for human consumption.

~~((27))~~ (28) "Shellfish operation" means growing, placing in a container, harvesting, transporting, processing, culling, shucking, packing, and repacking, storing, shipping, or reshipping of shellfish in commercial quantities or for sale for human consumption.

~~((28))~~ (29) "Shellfish operation license" means a type of certificate of approval applying to the overall activities of a shellfish operation.

~~((29))~~ (30) "Shellstock shipper" means a shellfish operation that does not shuck shellfish or repack shucked shellfish.

~~((30))~~ (31) "Shucker-packer" means a shellfish operation that may shuck and pack shellfish.

~~((31))~~ (32) "Technical assistance" means information provided by the department to a person regarding chapter 69.30 RCW; this chapter; technologies or other methods to achieve compliance with these rules; assistance in applying for a departmental license or permit required by these rules; or the goals and objectives of these rules. This is not intended to modify the definition of "technical assistance" as provided in RCW 43.05.010(3).

~~((32))~~ (33) "Violation" means the commission of an act or acts prohibited by the provisions of chapter 69.30 RCW, these rules, or the NSSP Model Ordinance.

~~((33))~~ (34) "Wet storage" means the temporary storage of shellstock in containers or floats in natural bodies of water or in tanks containing natural or synthetic seawater.

~~((34))~~ (35) "Wild seed" means naturally set seed shellfish.

WSR 14-05-091
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed February 19, 2014, 8:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-01-087.

Title of Rule and Other Identifying Information: Medical aid rules—Conversion factors and maximum daily fees, WAC 296-20-135, 296-23-220, and 296-23-230.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., Room S117, Tumwater, WA 98501, on March 25, 2014, at 1:00 p.m.

Date of Intended Adoption: April 22, 2014.

Submit Written Comments to: Tom Davis, P.O. Box 44322, Olympia, WA 98504-4322, e-mail Thomas.Davis@LNI.wa.gov, fax (360) 902-4249, by 5 p.m. on April 1, 2014.

Assistance for Persons with Disabilities: Contact Tom Davis by April 1, 2014, TTY (360) 902-6687 or fax (360) 902-4249.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: (1) Changing the conversion factor used to calculate payment levels for services payable through the resource based relative value scale (RBRVS) fee schedule; (2) changing the conversion factor used to calculate payment for anesthesia services; and (3) increasing the maximum daily payment for physical and occupational therapy.

WAC 296-20-135(3), increase the RBRVS conversion factor from \$55.34 to \$58.58. Increase the anesthesia conversion factor from \$3.25 to \$3.31.

WAC 296-23-220 and 296-23-230, increase the maximum daily rate for physical and occupational therapy services from \$119.96 to \$122.00.

Reasons Supporting Proposal: This rule will provide medical aid updates regarding rate setting for most professional health care services for injured workers.

Statutory Authority for Adoption: RCW 51.04.020(1) and 51.04.030.

Statute Being Implemented: RCW 51.36.080.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: (1) Increasing the conversion factor used to calculate maximum payment for RBRVS and anesthesia services; and (2) increasing the maximum daily payment for physical and occupational therapy services.

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Tom Davis, Tumwater, Washington, (360) 902-6687; Implementation and Enforcement: Vickie Kennedy, Assistant Director, Tumwater, Washington, (360) 902-4997.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule adoption is exempt under RCW 34.05.328 (5)(b)(vi) and 19.85.025(3).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply because the content of this rule is explicitly dictated by statute and fits within the exceptions listed in RCW 34.05.328 (5)(b)(vi).

February 18, 2014
Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 13-11-020, filed 5/7/13, effective 7/1/13)

WAC 296-20-135 Conversion factors. (1) Conversion factors are used to calculate payment levels for services reimbursed under the Washington resource based relative value scale (RBRVS), and for anesthesia services payable with base and time units.

(2) **Washington RBRVS** services have a conversion factor of ~~\$(55.34)~~ 58.58. The fee schedules list the reimbursement levels for these services.

(3) **Anesthesia services** that are paid with base and time units have a conversion factor of ~~\$(3.25)~~ 3.31 per minute, which is equivalent to ~~\$(48.75)~~ 49.65 per 15 minutes. The base units and payment policies can be found in the fee schedules.

AMENDATORY SECTION (Amending WSR 13-11-020, filed 5/7/13, effective 7/1/13)

WAC 296-23-220 Physical therapy rules. Practitioners should refer to WAC 296-20-010 through 296-20-125 for general information and rules pertaining to the care of workers.

Refer to WAC 296-20-132 and 296-20-135 regarding the use of conversion factors.

All supplies and materials must be billed using HCPCS Level II codes. Refer to chapter 296-21 WAC for additional information. HCPCS codes are listed in the fee schedules.

Refer to chapter 296-20 WAC (WAC 296-20-125) and to the department's billing instructions for additional information.

Physical therapy treatment will be reimbursed only when ordered by the worker's attending doctor and rendered by a licensed physical therapist or a physical therapist assistant serving under the direction of a licensed physical therapist. In addition, physician assistants may order physical therapy under these rules for the attending doctor. Doctors rendering physical therapy should refer to WAC 296-21-290.

The department or self-insurer will review the quality and medical necessity of physical therapy services provided to workers. Practitioners should refer to WAC 296-20-01002 for the department's rules regarding medical necessity and to WAC 296-20-024 for the department's rules regarding utilization review and quality assurance.

The department or self-insurer will pay for a maximum of one physical therapy visit per day. When multiple treatments (different billing codes) are performed on one day, the department or self-insurer will pay either the sum of the individual fee maximums, the provider's usual and customary charge, or ~~\$(49.96)~~ 122.00 whichever is less. These limits will not apply to physical therapy that is rendered as part of a physical capacities evaluation, work hardening program, or pain management program, provided a qualified representative of the department or self-insurer has authorized the service.

The department will publish specific billing instructions, utilization review guidelines, and reporting requirements for physical therapists who render care to workers.

Use of diapulse or similar machines on workers is not authorized. See WAC 296-20-03002 for further information.

A physical therapy progress report must be submitted to the attending doctor and the department or the self-insurer following twelve treatment visits or one month, whichever occurs first. Physical therapy treatment beyond initial twelve treatments will be authorized only upon substantiation of improvement in the worker's condition. An outline of the proposed treatment program, the expected restoration goals, and the expected length of treatment will be required.

Physical therapy services rendered in the home and/or places other than the practitioner's usual and customary office, clinic, or business facilities will be allowed only upon prior authorization by the department or self-insurer.

No inpatient physical therapy treatment will be allowed when such treatment constitutes the only or major treatment received by the worker. See WAC 296-20-030 for further information.

The department may discount maximum fees for treatment performed on a group basis in cases where the treatment provided consists of a nonindividualized course of therapy (e.g., pool therapy; group aerobics; and back classes).

Biofeedback treatment may be rendered on doctor's orders only. The extent of biofeedback treatment is limited to those procedures allowed within the scope of practice of a licensed physical therapist. See chapter 296-21 WAC for

rules pertaining to conditions authorized and report requirements.

Billing codes and reimbursement levels are listed in the fee schedules.

AMENDATORY SECTION (Amending WSR 13-11-020, filed 5/7/13, effective 7/1/13)

WAC 296-23-230 Occupational therapy rules. Practitioners should refer to WAC 296-20-010 through 296-20-125 for general information and rules pertaining to the care of workers.

Refer to WAC 296-20-132 and 296-20-135 for information regarding the conversion factors.

All supplies and materials must be billed using HCPCS Level II codes, refer to the department's billing instructions for additional information.

Occupational therapy treatment will be reimbursed only when ordered by the worker's attending doctor and rendered by a licensed occupational therapist or an occupational therapist assistant serving under the direction of a licensed occupational therapist. In addition, physician assistants may order occupational therapy under these rules for the attending doctor. Vocational counselors assigned to injured workers by the department or self-insurer may request an occupational therapy evaluation. However, occupational therapy treatment must be ordered by the worker's attending doctor or by the physician assistant.

An occupational therapy progress report must be submitted to the attending doctor and the department or self-insurer following twelve treatment visits or one month, whichever occurs first. Occupational therapy treatment beyond the initial twelve treatments will be authorized only upon substantiation of improvement in the worker's condition. An outline of the proposed treatment program, the expected restoration goals, and the expected length of treatment will be required.

The department or self-insurer will review the quality and medical necessity of occupational therapy services. Practitioners should refer to WAC 296-20-01002 for the department's definition of medically necessary and to WAC 296-20-024 for the department's rules regarding utilization review and quality assurance.

The department will pay for a maximum of one occupational therapy visit per day. When multiple treatments (different billing codes) are performed on one day, the department or self-insurer will pay either the sum of the individual fee maximums, the provider's usual and customary charge, or \$((~~119.96~~)) 122.00 whichever is less. These limits will not apply to occupational therapy which is rendered as part of a physical capacities evaluation, work hardening program, or pain management program, provided a qualified representative of the department or self-insurer has authorized the service.

The department will publish specific billing instructions, utilization review guidelines, and reporting requirements for occupational therapists who render care to workers.

Occupational therapy services rendered in the worker's home and/or places other than the practitioner's usual and customary office, clinic, or business facility will be allowed

only upon prior authorization by the department or self-insurer.

No inpatient occupational therapy treatment will be allowed when such treatment constitutes the only or major treatment received by the worker. See WAC 296-20-030 for further information.

The department may discount maximum fees for treatment performed on a group basis in cases where the treatment provided consists of a nonindividualized course of therapy (e.g., pool therapy; group aerobics; and back classes).

Billing codes, reimbursement levels, and supporting policies for occupational therapy services are listed in the fee schedules.

WSR 14-05-092

PROPOSED RULES

DEPARTMENT OF

NATURAL RESOURCES

[Filed February 19, 2014, 8:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-15-103.

Title of Rule and Other Identifying Information: Vessel inspection requirements for ownership transfer, after July 1, 2014, owners of vessels more than sixty-five feet in length and more than forty years old must obtain a vessel inspection prior to transferring such vessels. Owners must provide a copy of the vessel inspection documentation to the transferee and the Washington state department of natural resources prior to the ownership transfer. Owners who comply will avoid secondary liability if the vessel is later abandoned by the transferee or becomes derelict prior to a subsequent ownership transfer.

Hearing Location(s): Mount Vernon City Council Chambers, 1805 Continental Place, Mount Vernon, WA 98273, on Tuesday, March 25, 2014, at 6:00 p.m.; at the Vancouver Community Library, 901 C Street, Vancouver, WA 98660, on Wednesday, March 26, 2014, at 6:00 p.m.; and at the Seattle Public Library, Beacon Hill Branch, 2821 Beacon Avenue South, Seattle, WA 98144, on Thursday, March 27, 2014, at 6:00 p.m.

Date of Intended Adoption: May 6, 2014.

Submit Written Comments to: Lisa M. Randlette, Department of Natural Resources, Mailstop 47027, Olympia, WA 98504-7027, e-mail lisa.randlette@dnr.wa.gov, fax (360) 902-1786, by March 28, 2014.

Assistance for Persons with Disabilities: Contact Ms. Megan McKay by March 21, 2014, TTY (360) 902-1125.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule specifies financial liability for prior and current owners of commercial and recreational vessels that are greater than sixty-five feet in length and more than forty years old. This rule specifies how sellers/transferrers of such vessels will be released from potential, future secondary liability for subsequent abandonment or dereliction of the vessel, by providing inspection

reports to the prospective buyer and the Washington state department of natural resources.

Reasons Supporting Proposal: Compliance with this rule will provide sellers/transferrers potential, future protection from secondary liability for subsequent abandonment or dereliction of the vessel.

Statutory Authority for Adoption: RCW 34.05.328.

Statute Being Implemented: RCW 79.100.150.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state department of natural resources, governmental.

Name of Agency Personnel Responsible for Drafting: Lisa M. Randlette, 1111 Washington Street S.E., Olympia, WA 98504-7027, (360) 902-1085; Implementation and Enforcement: Melissa Ferris, 1111 Washington Street S.E., Olympia, WA 98504-7027, (360) 902-1100.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Overall the impact on small business is minimal and no formal small business economic impact statement is required. Vessel inspections by either the buyer or seller are considered normal business costs as part of negotiating a sale price, so the rule will not change buyer or seller behavior in most cases. There will be a small subset of cases where the inspection will be an additional cost, however because this will be a small subset, it is expected that the impact on small business overall will be minimal. There also may be minor costs associated with transmitting inspection documentation if a small business proposes to sell a vessel that is forty years or older, and sixty-five feet or longer.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Lisa M. Randlette, Aquatic Resources Division, Department of Natural Resources, Mailstop 47027, Olympia, WA 98504-7027, phone (360) 902-1085, fax (360) 902-1786, e-mail lisa.randlette@dnr.wa.gov.

February 18, 2014

Megan Duffy

Deputy Supervisor

Aquatics and

Environmental Protection

AMENDATORY SECTION (Amending WSR 12-19-035, filed 9/12/12, effective 10/13/12)

WAC 332-08-101 Applicability to department actions under the Derelict and Abandoned Vessel Act, chapter 79.100 RCW. When is this chapter applicable to department actions relating to the Derelict and Abandoned Vessel Act? This chapter applies when the owner or lien holder of an abandoned or derelict vessel files a challenge to ~~(the)~~ a decision or action of ~~(a state agency)~~ the department acting as an authorized public entity ~~(is filed)~~ with the pollution control hearings board under the Derelict and Abandoned Vessel Act as provided in RCW 79.100.120 ~~((2)(a))~~.

AMENDATORY SECTION (Amending WSR 12-19-035, filed 9/12/12, effective 10/13/12)

WAC 332-08-111 Derelict and abandoned vessel—Appeal deadline. When must ~~((my))~~ I file my appeal ~~((be filed))~~? The owner or lien holder of an abandoned or derelict vessel may file a notice of appeal regarding ~~((an agency))~~ a decision or action of the department under chapter 79.100 RCW ~~((may be filed))~~ with the pollution control hearings board ~~((upon receipt of the department's notice of intent to take custody of a vessel, but the notice of appeal must be filed no later than thirty days after the date the authorized public entity took custody of the vessel, or if the vessel was redeemed before the authorized public entity took custody, no later than thirty days after the date of redemption))~~. A written request for a hearing related to the decision or action must be filed with the pollution control hearings board and served on the department in accordance with RCW 43.21B.230 (2) and (3) within thirty days of the date the department acquires custody of the vessel under RCW 79.100.040, or if the vessel is redeemed before the department acquires custody, no later than thirty days after the date of redemption.

AMENDATORY SECTION (Amending WSR 12-19-035, filed 9/12/12, effective 10/13/12)

WAC 332-08-121 Derelict and abandoned vessel—Filing location. Where must ~~((my))~~ I file my appeal ~~((be filed))~~? ~~((A))~~ The owner or lien holder of an abandoned or derelict vessel must file any notice of appeal concerning a decision to take temporary possession or custody of a vessel or the amount owed to ~~((an authorized public entity))~~ the department under chapter 79.100 RCW ~~((must be filed))~~ with the pollution control hearings board and ~~((served))~~ must serve a copy of the appeal on the department at the following addresses:

Pollution Control Hearings Board

Physical Address:

1111 Israel Road S.W., Suite 301
Tumwater, WA 98501

Mailing Address:

~~((P.O. Box))~~ MS 40903
Olympia, WA 98504-0903

Department of Natural Resources

Aquatic Resources Division

Derelict Vessel Removal Program

~~((P.O. Box 47027))~~ Physical Address:

1111 Washington St. S.E.

Olympia, WA ~~((98504-7027))~~ 98501

Mailing Address:

MS 47027

Olympia, WA 98504-7027

NEW SECTION

WAC 332-08-122 Derelict and abandoned vessel—Transfer of certain vessels—Vessel inspection required—Secondary liability. When is this chapter applicable to the

department's derelict vessel removal actions? As directed by RCW 79.100.150, a qualifying vessel owner must provide vessel inspection disclosure documentation specified in WAC 332-30-123 to the department before transferring ownership of a vessel that is:

- (1) More than sixty-five feet in length and more than forty years old; and
- (2) Either:
 - (a) Is registered or required to be registered under chapter 88.02 RCW; or
 - (b) Is listed or required to be registered under chapter 94.40 RCW.

After July 1, 2014, this chapter applies when the department seeks financial reimbursement from any person or entity the department determines has incurred secondary liability under RCW 79.100.150 for all reasonable and auditable costs associated with the removal and disposal of derelict or abandoned vessels. The department may pursue secondary liability if the prior owner(s) did not provide the department copies of a vessel inspection disclosure report, as specified in WAC 332-30-123, before transferring ownership of the vessel.

NEW SECTION

WAC 332-08-123 Derelict and abandoned vessel—Minimum criteria for vessel inspection. (1) **What is the minimum criteria for a vessel inspection?** Current U.S. Coast Guard certificates of inspection are acceptable forms of vessel condition determination. Other vessel inspection disclosure reports must document the condition, valuation, and suitability of the vessel for service. The vessel inspection disclosure report may be prepared for either the owner, lien holder, buyer/transferee, vessel broker, or associated financial and insurance provider(s) for the vessel. Vessel inspections must be prepared by a professional marine surveyor who is a third party to the transaction. The vessel inspection must be completed within six months prior to the seller transferring ownership of the vessel. Before transferring ownership of the vessel, the owner must provide the department a hard copy of the vessel inspection disclosure report and department-issued Acknowledgement Form with original, notarized signatures of the vessel owner and the buyer/transferee acknowledging receipt of the vessel inspection disclosure report.

(2) The vessel inspection disclosure report must include the following information, at a minimum if applicable to the vessel:

- (a) Cover page describing:
 - (i) Report title identifying type of survey;
 - (ii) Date report issued;
 - (iii) Contact information for surveyor;
 - (iv) Current photograph of vessel, date and location; and
 - (v) Official vessel number.
- (b) Vessel description:
 - (i) General description;
 - (ii) Vessel name;
 - (iii) Current legal owner;
 - (iv) Intended use of vessel;
 - (v) Design; and

- (vi) Type of construction.
- (c) Vessel particulars:
 - (i) Builder;
 - (ii) Displacement;
 - (iii) Length;
 - (iv) Breadth;
 - (v) Draught; and
 - (vi) Fuel system.
- (d) Surveyor's notes and condition rating;
- (e) Systems evaluation:
 - (i) Type of propulsion;
 - (ii) Auxiliary engines; and
 - (iii) Electrical systems.
- (f) Conditions:
 - (i) Overall appearance; and
 - (ii) Hull and superstructure condition.
- (g) Surveyor recommendations;
- (h) Appraisal of market value;
- (i) Replacement value; and
- (j) Suitability for service including an estimate of anticipated cost of repairs necessary to return the vessel to seaworthiness.

NEW SECTION

WAC 332-08-124 Derelict and abandoned vessel—Procedure for vessel inspection documentation. (1) **Where must I file my vessel inspection documentation?** The vessel owner must file a hard copy vessel inspection disclosure report and supporting documentation at the following address:

Department of Natural Resources
 Aquatic Resources Division
 Derelict Vessel Removal Program
 MS 47027
 Olympia, WA 98504-7027

(2) **What is the department's procedure for confirming receipt of vessel inspection disclosure documentation?** The department will accept hard copies of a vessel inspection disclosure report and completed Acknowledgement Form from qualifying vessel owners.

(a) The department will transmit a hard copy or electronic notice of receipt to the vessel owner within ten business days of receiving the vessel inspection disclosure documentation.

(b) Such department-issued notice of receipt does not constitute concurrence that the vessel inspection disclosure documentation meets the minimum criteria for a vessel inspection disclosure report, specified in WAC 332-30-123 or that the documentation was received prior to ownership transfer of the vessel.

(c) The department will maintain records of vessel inspection disclosure documentation for future determination of potential secondary liability.

(3) **What is the department's procedure for determining and asserting secondary liability?**

(a) The department will notify a prior owner of a vessel, determined to be derelict or abandoned, that they have secondary liability when cost recovery is sought, if:

- (i) An authorized public entity has taken, or is in the process of taking, custody of the derelict or abandoned vessel;
 - (ii) The current owner cannot be identified or is financially insolvent;
 - (iii) The department does not have vessel inspection disclosure documentation on record for the derelict or abandoned vessel; and
 - (iv) The vessel was transferred after July 1, 2014.
- (b) The department may provide such notice of secondary liability concurrently with a vessel custody action or after an authorized public entity has obtained custody of the vessel.

WSR 14-05-095
PROPOSED RULES
DEPARTMENT OF LICENSING
 [Filed February 19, 2014, 9:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-02-066.

Title of Rule and Other Identifying Information: WAC 308-93-087 Disclosure of names and addresses of individual vessel owners, 308-93-088 Disclosure violations, penalties, and 308-93-089 Lists of registered and legal owners of vessels—Furnished for certain purposes—Penalty for unauthorized use.

Hearing Location(s): Highways-Licenses Building, Conference Room 413, 1125 Washington Street S.E., Olympia, WA 98507 (check in at counter on first floor), on March 26, 2014, at 3:00 p.m.

Date of Intended Adoption: March 27, 2014.

Submit Written Comments to: Ben Shomshor, P.O. Box 2957, Olympia, WA 98507-2957, e-mail Bshomshor@dol.wa.gov, by March 25, 2014.

Assistance for Persons with Disabilities: Contact Ben Shomshor by March 20, 2014, TTY (360) 664-0116 or (360) 902-3928.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: We are proposing the repeal of WAC 308-93-087, 308-93-088 and 308-93-089 for improved administrative efficiency while enhancing access to public records of vessel ownership. Repealing these rules will:

1. Eliminate exemptions on public disclosure of vessel owner information. We will release the records on individual request limited only by exemptions in the Public Records Act, chapter 42.56 RCW, or other applicable federal and state statutes. In practical terms since the rules was [were] established we have only released the information to businesses for a business purpose. The requester had to present a business license. Individuals will now be able to request the information; they will not need to give a reason for the request. (We also released to government agencies but that will not change.)

2. Allow the release of lists of owners, together with their names and addresses, hull numbers, etc., while PROHIBITING release of the information if it is going to be used for commercial purposes.

3. Eliminate penalties for the misuse of information, other than those civil penalties for using lists of individuals for commercial purposes.

4. Eliminate the requirement to notify vessel owners if their information is released to a private investigator or attorney.

Reasons Supporting Proposal: Administrative efficiency and openness of government records. Also supports state and county efforts to better address problems caused by derelict vessels.

Statutory Authority for Adoption: RCW 46.01.110.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Ben Shomshor, Highways-Licenses Building, Olympia, Washington, (360) 902-3928.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable. This is for rules repeal only.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable. This is for rules repeal only.

February 19, 2014
 Damon Monroe
 Rules Coordinator

REPEALER

The following sections of the Washington Administrative Code are repealed:

- | | |
|----------------|--|
| WAC 308-93-087 | Disclosure of names and addresses of individual vessel owners. |
| WAC 308-93-088 | Disclosure violations, penalties. |
| WAC 308-93-089 | Lists of registered and legal owners of vessels—Furnished for certain purposes—Penalty for unauthorized use. |

WSR 14-05-099
PROPOSED RULES
WASHINGTON STATE UNIVERSITY
 [Filed February 19, 2014, 9:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-02-117.

Title of Rule and Other Identifying Information: Chapter 504-15 WAC, Campus parking and traffic regulations.

Hearing Location(s): Lighty 401, WSU Pullman, Pullman, Washington, on March 27, 2014, at 4:00 p.m.

Date of Intended Adoption: May 9, 2014.

Submit Written Comments to: Ralph Jenks, Rules Coordinator, P.O. Box 641225, Pullman, WA 99164-1225, e-mail prf.forms@wsu.edu, fax (509) 335-3969, by March 27, 2014.

Assistance for Persons with Disabilities: Contact Deborah Bartlett, (509) 335-2005, by March 25, 2014.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The university is updating the campus parking and traffic rules and expanding rules regarding bicycles.

Statutory Authority for Adoption: RCW 28B.30.150.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington State University, public.

Name of Agency Personnel Responsible for Drafting: Christopher Boyan, Assistant Director of Operations, Transportation Services, Parking Services 101a, Pullman, WA 99164-5500, (509) 335-2950; Implementation and Enforcement: Bridgette Brady, Director, Transportation Services, Parking Services 114, Pullman, WA 99164-5500, (509) 335-7275.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule has no impact on small business.

A cost-benefit analysis is not required under RCW 34.05.328. The university does not consider this rule to be a significant legislative rule.

February 19, 2014

Ralph T. Jenks, Director
Procedures, Records, and Forms
University Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-11-083, filed 5/17/10, effective 7/1/10)

WAC 504-15-100 Definitions. The definitions in this section are applicable within the context of this chapter.

(1) Campus. Describes all property owned, leased, and/or controlled by the university Pullman campus which is or may hereafter be dedicated mainly to the educational, research, housing, recreational, parking, or other activities of the university.

(2) Commuter student. Any student who does not live in a university residence hall (dormitory). All students living in fraternities, sororities, university-owned housing (other than residence halls), and private housing are considered to be commuter students.

(3) Day. Unless otherwise specified, the term "day" refers to a calendar day.

(4) Disability parking. See persons with disability.

(5) Disability zone. A parking zone designated for exclusive use by persons with disability and identified with a sign bearing the associated international symbol.

(6) Electric-assisted bicycle. As defined under RCW 46.04.169.

(7) Fire zone. An area needed for emergency access to buildings, fire hydrants, or fire equipment. Such areas include, but are not limited to, areas with adjacent curbs or rails painted red.

(8) Gate card. A plastic card that activates the gates controlling access to certain parking areas.

(9) Holiday. See university holiday.

(10) Illegal use of permit. A parking violation in which a parking ticket is issued under the following circumstances:

(a) Use of a parking permit or indicator on a vehicle other than the specified vehicle identified by a license plate number on the permit.

(b) Use of a parking permit or indicator obtained under false pretenses.

(c) Use of a modified parking permit or indicator.

(d) Use and/or retention of a parking permit or indicator by person(s) ineligible, or no longer eligible, for such a permit as described and authorized in this chapter.

(11) Impound. To take and hold a vehicle in legal custody by use of a wheel lock and/or towing.

(12) Indicator. A decal or hanger displayed adjacent to a parking permit which defines additional parking areas available to a permit holder.

(13) Loading zone. A loading dock, or an area signed "loading zone" adjacent to a facility, in a parking area, or near a residence hall. Such an area is intended for loading and unloading bulky or voluminous material. Loading zones are restricted at all times unless signed otherwise.

(14) Moped. As defined under RCW 46.04.304.

(15) Motorcycle. As defined under RCW 46.04.330.

(16) Motorized foot scooter. As defined under RCW 46.04.336.

(17) Motor vehicle. As defined under RCW 46.04.320.

(18) No parking zone. Any area not specifically marked and/or signed for parking. Such areas include, but are not limited to, areas with adjacent curbs or rails painted yellow.

(19) Officer. Any parking or police official employed by the university who is designated by the parking administrator or chief of police to issue parking tickets, to place and remove wheel locks, or to cause vehicles to be towed under this chapter.

(20) Owner. The person registered with any state as the present owner of a vehicle in the most current registration records available to the university, the owner's expressed representative, or any transferee not designated in such records, provided that the parking administrator or chief of police has received actual written notice of the transfer.

(21) Park/parking. This refers to the placement or standing of a vehicle, with or without a driver in attendance, and with or without the engine running.

(22) Parking administrator. The ~~((manager))~~ director in charge of the parking department or designee.

(23) Parking appeals committee. Any person or persons appointed to consider parking violations and the application of fees, fines, and sanctions. Said person or persons are appointed by the vice-president whose responsibilities include supervision of the parking department or designee.

(24) Parking department. The university department which is charged with the responsibility of managing, operating, planning, and maintaining parking facilities; enforcing the parking regulations; and coordinating commute trip reduction efforts for the Pullman campus.

(25) Parking meter. A single fixed device that typically requires payment and limits the amount of time a vehicle can park in a single space. Also referred to as "meter" in this chapter. A parking meter is not a parking payment device.

(26) Parking payment device. A machine that requires payment and vends a parking permit and/or a paid receipt. Parking payment devices may be located in various places on the campus. A parking payment device is not a parking meter.

(27) Parking permit. A vinyl, plastic, paper, or other instrument sanctioned by the parking department that is displayed from a vehicle, and authorizes parking in specified areas. Some parking permits may be purchased online and may be virtual in nature, and identified by other means such as by license plate. Also referred to as "permit" in this chapter.

(28) Parking ticket. The first notice of a parking violation which is usually placed in a visible location on a motor vehicle.

(29) Pay parking facility. A location where parking is provided and payment is made on-site via a parking payment device, cashier, or other means other than a parking meter.

(30) Pedestrian mall. A space that is designed primarily for pedestrian use, but with limited authorized use of motor vehicle and other motorized and nonmotorized conveyances. These restricted areas are depicted on the Pullman campus map and/or with signing at the entrances to the pedestrian mall areas.

(31) Persons with disability. For the purpose of this chapter, persons with disability shall refer to a person or persons with disability or disabilities who qualify for a state-issued persons with disability parking identification and permit.

(32) Resident priority zone. A parking area close to a residence hall (i.e., crimson zone or gray zone) that is typically limited to use by resident students.

(33) Resident student. A student with a current, valid residence hall contract, who lives in a residence hall.

(34) Residence hall. Residence hall units (dormitories) that are owned by the university but are not included as university-owned housing apartments. Occupants of residence halls are considered resident students and are eligible for parking permits in resident priority zones.

(35) Service vehicle. A vehicle used to provide a service for the university or a tenant or contractor of the university (e.g., a university owned vehicle or a privately owned vehicle with a valid service vehicle authorization displayed).

(36) Service zone. Parking spaces or area designated for the use of service vehicles, other government-owned vehicles, and vehicles displaying a service indicator or commercial permit. Authorized vehicles may park in these zones on an occasional basis for a maximum of fifteen minutes, except for vehicles that display a commercial permit, or a service indicator issued for an extended time. Service zones are restricted at all times unless signed otherwise.

(37) Staff. For the purposes of these regulations, "staff" includes all nonstudent employees of the university and the nonstudent employees of other entities located on, or regularly doing business on campus. Teaching assistants, research assistants, and other students employed by the university, or other entities located on, or regularly doing business on campus, are not "staff." They are considered to be students for the purpose of these regulations.

(38) Standing. "Standing" is the stopping of a vehicle with the driver remaining in it.

(39) Storage of a vehicle. Impounded vehicles are held in storage until released. During such time they are subject to storage fees.

(40) Student. The term "student" includes all persons who are not staff who are taking courses at the university, enrolled full-time or part-time, pursuing undergraduate, graduate, professional studies, or auditing one or more classes.

(41) Summer session. The summer session includes all summer sessions beginning on the first day of the earliest session, and ending on the last day of the latest session.

(42) University. Refers to Washington State University.

(43) University holiday. A day regarded by the university as an official university holiday.

(44) University-owned housing. Housing units or apartments, and their respective parking areas, that are owned by the university, but are not included as residence halls. Occupants of university-owned housing are eligible for housing parking permits issued by the university.

(45) Unpaid. A full or partial outstanding balance due. This definition includes parking tickets which are pending appeal.

(46) Vacation. A period of time when classes or final exams are not in session. Except for holidays that fall within this period, the business offices of the university are open during this time.

(47) Visitors. Persons who are not staff or students and who only visit the campus on an occasional basis.

(48) Wheel lock. A device used to temporarily immobilize a motor vehicle. Wheel locked vehicles are considered to be impounded in place and subject to storage fees.

(49) Wheel lock-eligible list. The current list of wheel lock-eligible vehicles as maintained by the parking department. A vehicle remains on the wheel lock-eligible list until all fines and fees related to parking tickets are paid in full or otherwise resolved to include the payment of fines and fees related to parking tickets not yet eligible for late fees.

(50) Wheel lock-eligible vehicle. Any vehicle on which three or more parking tickets more than thirty days old are unpaid and which parking tickets were issued during the time the vehicle was registered to or otherwise held by the owner. The vehicle remains wheel lock-eligible until all fines and fees related to parking tickets are paid in full or otherwise resolved to include the payment of fines and fees related to parking tickets not yet eligible for late fees.

AMENDATORY SECTION (Amending WSR 10-11-083, filed 5/17/10, effective 7/1/10)

WAC 504-15-210 Times of enforcement. Parking regulations are subject to enforcement at all times.

(1) Parking permit areas. All parking permit zones are limited to authorized permit holders during specific hours. These hours are posted in each parking area at the entrance to parking areas, or along roadways where parking is marked.

(2) Restricted spaces. These spaces are restricted for their designated purpose at all times unless signed otherwise:

- (a) Disability zones.
- (b) Load/unload.
- (c) Service.
- (d) Reserved.

(e) Reserved (bagged) parking meters.

(f) Pedestrian mall.

(g) Areas which are specially signed or physically set apart by barricades, traffic cones, tape, or other traffic devices.

(3) Parking metered spaces. Parking meters are in effect during the times posted on each meter. During these times the meter must be paid the posted amount. Additional time cannot be purchased beyond the meter's posted maximum time limit (e.g., a two-hour meter allows a maximum of two hours to be purchased at one time). A motor vehicle which is parked at an expired meter is considered in violation initially, and after each period equal to the maximum time posted for the meter. In such case a parking ticket may be issued for each violation. For example, a vehicle parked at a meter with a two-hour maximum time limit for six hours and five minutes of ~~((CONTINUOUS))~~ continuous unpaid parking at the same meter would be eligible for up to three parking tickets.

(4) Special conditions. The parking regulations are enforced every day, twenty-four hours a day. During certain times the following special conditions exist, and the regulations are modified.

(a) Crimson permit zones.

(i) ~~((Permits are not required in crimson zones at the start of each semester from the Monday of the week prior to the first day of class through the third day of class.))~~ Crimson permits are required at all times except during university holidays.

(ii) Crimson, orange, and green permits are valid in crimson zones during summer session~~(-)~~ and vacation periods~~(- and between semesters))~~.

(b) Gray permit zones.

(i) ~~((Permits are not required in gray zones at the start of each semester from the Monday of the week prior to the first day of class through the third day of class, during vacation periods, and between semesters.))~~ Gray permits are required at all times except during university holidays.

(ii) ~~((During summer session, gray zones are open to all valid university parking permits, except blue permits and housing parking permits.))~~

~~(e) Blue permit zones. Permits are not required in blue zones at the start of each semester from the Monday of the week prior to the first day of class through the third day of class, during finals week, vacation periods, and between semesters.~~

~~((d))~~ Gray, crimson, orange, green, yellow, and red permits are valid in gray zones during summer session and vacation periods.

~~(c) University-owned housing areas. Permits are not required in university-owned housing areas at the start of each semester from the Monday of the week prior to the first day of class through the third day of class~~(- and during finals week.~~~~

~~(e) Summer business hours. During the period when the university is on official summer business hours, all metered spaces and permit areas which are not restricted are open parking after 4:00 p.m. Official summer business hours are posted on the human resource services department web site throughout the summer).~~

~~((f))~~ (d) The parking department may select and designate portions of permit zones as temporary ~~((one-hour parking))~~ loading zones at the start of each semester to accommodate moving into and out of residence halls and during finals week.

(5) Pay parking facilities. Some parking areas provide parking on an hourly basis. Hours of operation and a schedule of fees are posted at the facility entrance and at the point of payment. Parking tickets are issued to vehicles that are parked over the duration of time that was paid and for non-payment. Parking areas with parking meters are not considered pay parking facilities.

AMENDATORY SECTION (Amending WSR 08-08-050, filed 3/27/08, effective 7/1/08)

WAC 504-15-350 Use of areas for emergency, maintenance, events, construction, or special needs. The university reserves the right to ~~((close))~~ restrict access to any campus parking area, roadway, or sidewalk at any time it is deemed necessary for maintenance, safety, events, construction, emergencies, or to meet special needs. The parking department provides notice to users when possible.

Public safety and maintenance personnel performing official duties may deviate from these regulations as required to conduct emergency procedures.

AMENDATORY SECTION (Amending WSR 10-11-083, filed 5/17/10, effective 7/1/10)

WAC 504-15-540 Zone parking permits—Availability and use. The management and assignment of parking zones is designed to provide a parking space to each permit holder. However, uncontrolled access to parking areas and unexpected parking demand make it impossible to guarantee a parking space in a permit holder's assigned zone. Every effort is made via surveys and limits on permit sales, to ensure that permit holders are not displaced from their assigned zones. ~~((The only exception to this is that the sale of blue permits is not limited.))~~

Staff and students are generally assigned to specific parking areas, referred to as zones. Parking zones are color-coded with respect to their price and numbered with respect to the specific parking zone assignment of each permit holder. Permit holders may park in their assigned zone as reflected by the combination of color and number on their permit and corresponding sign, or they may park in other zones as described below.

(1) Orange permits. Orange permit holders may park in their numerically assigned orange zone, or in any green, yellow, red, or blue zone. These permits may be made available on a daily basis.

(2) Green permits. Green permit holders may park in their numerically assigned green zone, or in any yellow, red, or blue zone. These permits may be made available on a daily basis.

(3) Yellow permits. Yellow permit holders may park in their numerically assigned yellow zone, or in any red or blue zone. These permits may be made available on a daily basis.

(4) Red permits. Red permit holders may park in their numerically assigned red zone or in any blue zone. These permits may be made available on a daily basis.

(5) Crimson permits. Crimson permit holders may park in their numerically assigned crimson zone, or in the numerically corresponding gray zone (e.g., a crimson 1 permit is valid in the gray 1 zone, but not in the gray 2 zone), or in any blue zone. Crimson permit holders must turn in their crimson permit for a refund or credit toward another permit, if applicable, immediately upon moving out of the residence hall. Only resident students are eligible for crimson permits with the exception of the crimson 3 zone, which is available to all students. Resident students are eligible for crimson, gray, or blue permits only.

(6) Gray permits. Gray permit holders may park in their numerically assigned gray zone, or in any blue zone. These permits may be made available on a daily basis. Gray permit holders must turn in their gray permit for refund or credit toward another permit, if applicable, immediately upon moving out of a residence hall. Only resident students are eligible for gray permits. Resident students are eligible for crimson, gray, or blue permits only.

(7) Blue permits. Blue permit holders may park in any blue zone. These permits may be made available on a daily basis.

AMENDATORY SECTION (Amending WSR 10-11-083, filed 5/17/10, effective 7/1/10)

WAC 504-15-560 Other parking permits—Availability and use. (1) Visitor permits. ~~(Visitor permits are available on an annual or daily basis to visitors of the university. Visitor permits may be used only by bona fide visitors as defined by this chapter. Use by any other person constitutes illegal use of a parking permit. Annual visitor permits are valid in green, yellow, red and blue zones, and parking spaces signed for visitor permits only. Daily visitor permits may be assigned to specific zones on a space-available basis. If a parking zone is not specified on the permit, it is valid in the same parking areas as an annual visitor permit. Visitor permits are not valid in pay parking facilities, parking meters, or restricted spaces.)~~ For information about visitor parking, refer to the parking department's web site.

(2) Golden cougar permits. Golden cougar permits are special visitor permits that are issued to retired staff in recognition of their service without additional cost. They are issued on an annual basis and are valid in green, yellow, red, blue zones, and visitor-permit-only parking spaces. Staff who are employed by the university or by other entities located on campus after formal retirement are not eligible to use a golden cougar permit in lieu of a regular paid zone permit.

(3) ~~((Conference))~~ Event permits. ~~((Conference))~~ Event permits are available to ~~((visitors))~~ patrons who participate in ~~((conferences))~~ events held on the university campus. They are available on a daily basis only. ~~((Conference))~~ Event permits ~~((may be))~~ are assigned to specific zones on a space-available basis. ~~((Conference))~~ Event permits are not valid in ~~((orange zones, pay parking facilities, parking meters, or))~~ restricted spaces.

(4) Motorcycle permits. Motorcycle permits are valid within boundaries of areas specifically posted and/or marked for motorcycle permits. Motorcycle permits are available on an annual and daily basis.

(5) Moped permits. Moped permits are valid within boundaries of areas specifically posted and/or marked for moped permits. Moped permits are available on an annual and daily basis.

(6) Commercial permits. Commercial permits are issued to vendors, suppliers, and service representatives of outside companies performing a service for the university. Commercial permits are available on an annual or daily basis. Annual commercial permits are valid in service zones, parking meters, and green, yellow, red and blue zones, and visitor-permit-only parking spaces. Daily commercial permits may be assigned to specific zones on a space-available basis. Commercial permits are not valid in orange zones or pay parking facilities.

(7) Construction permits. A construction permit is issued to personnel who are working on a construction site on campus. Construction permits are available on an annual or daily basis and are assigned to a specific parking area.

(8) Housing permits. A housing permit is issued to eligible residents of university-owned housing. Housing permits are valid only in specific housing parking areas.

(9) Carpool. Upon application, a bona fide carpool as defined by the campus policies and procedures is given preference in the assignment of parking zones, and issued a permit that facilitates the carpool. Obtaining or using a carpool permit under false pretenses constitutes the illegal use of a permit.

(10) Departmental permits. Departmental parking permits are available for use by department employees who need to use their personal vehicles for university business. Departmental permits are available in different forms and are valid at parking meters; service zones; orange, green, yellow, red, blue, crimson, and gray permit zones; and pay parking facilities. Departmental permits are not valid in reserved spaces. The use of departmental permits for anything other than official departmental business is prohibited by the State Ethics Act.

AMENDATORY SECTION (Amending WSR 10-11-083, filed 5/17/10, effective 7/1/10)

WAC 504-15-810 Violations, fines, and sanctions. (1) Violations and fines. Parking violations are processed by the university. Fines must be paid at the parking department or at other authorized locations, by mail, or from the parking department's web site. Schedules for parking violations, fines, and sanctions are posted in the public area of the parking department office and on the parking department's web site.

(2) Reduction of fines. ~~((a) The fine for "meter violation" and the fine for "overtime in a timed zone" violation are reduced by one half if paid within twenty-four hours of time of issuance. Eligible violations received on Friday or Saturday can be paid on the following Monday to satisfy the twenty-four hour requirement. Mailed payment of fines must~~

~~be postmarked within twenty-four hours to receive the one-half reduction.~~

~~(b)) Internal policies regarding disposition of parking tickets may be established on approval of the vice-president or designee whose responsibilities include supervision of the parking department ((under the advisement of the university's internal auditor)).~~

(3) Payment of parking fines.

~~(a) All parking fines and fees are due upon issuance ((of a parking ticket)). Thirty days after date of issuance ((of a parking ticket)), a late fee shall be added to all unpaid parking fines. For example, a parking ticket issued on May 1 would be assessed a late fee on May 31. ((Failure to pay the fine))~~

~~(b) Parking fines and fees assessed for any violation results in referral to the university controller's office for collection. The controller or designee may, if other collection efforts fail, withhold the amount of the outstanding fines and fees from damage deposits or other funds held for any student in order to secure payment. Where collection efforts are unsuccessful, the controller or designee may notify the registrar to refrain from issuing student transcripts or to withhold permission to reenroll for a subsequent term until outstanding fines and fees are paid. The procedures discussed above are not exclusive, however, and failure by anyone to pay fines and fees may also lead to towing or use of the wheel lock device described in these regulations. Nor are the procedures discussed above a precondition to towing or use of the wheel lock.~~

(4) Failure to pay fines. Failure to pay a fine or comply with other penalties assessed pursuant to these regulations, and exhausting or failing to exercise appeals provided for in these regulations, may result in the inability to renew a vehicle license through the state pursuant to RCW 46.16.216.

AMENDATORY SECTION (Amending WSR 08-08-050, filed 3/27/08, effective 7/1/08)

WAC 504-15-860 Appeal procedures. The parking ticket represents a determination that a parking violation has been committed and the determination is final unless otherwise provided or appealed as provided in this chapter.

(1) Purpose. The parking appeals process serves three primary functions:

- (a) To hear parking ticket appeals;
- (b) To hear appeals of wheel lock eligibility determinations; and
- (c) To hear appeals of impoundments.

(2) Procedure. Any person who has received a parking ticket may appeal the alleged parking violation. Appeal of wheel lock eligibility determinations and impoundments are described in WAC 504-15-865 and 504-15-870.

(3) Written parking ticket appeals. The appeal must be in writing and received at the parking department within ten calendar days of issuance of the parking ticket. Paper and online forms for this purpose are available from the parking department. The parking appeals committee makes an initial decision regarding the appeal within twenty calendar days during the academic year and within thirty calendar days during the summer months after receipt of the appeal. The committee

provides a brief statement of the reason(s) for its decision to the appellant within ten calendar days of the decision.

(4) Review hearing of initial decision. If the appellant is dissatisfied with the initial decision, the appellant may request a hearing before a hearing officer or the parking appeals committee. Such request must be made within ten calendar days of the date of the initial parking appeals committee decision. If no such request is received, the initial decision shall be final. During the hearing the appellant and representatives of the parking department may present and cross-examine witnesses. The hearing officer or appeals committee shall render a decision in writing and provide appellant with the decision within ten calendar days after the hearing.

(5) Appeal to district court. RCW 28B.10.560 provides that a person who is not satisfied with the final decision of the university may appeal to district court. The application for appeal to district court shall be in writing and must be filed at the parking department office within ten calendar days after the date of the review hearing. The parking department forwards the documents relating to the appeal to the district court.

AMENDATORY SECTION (Amending WSR 10-11-083, filed 5/17/10, effective 7/1/10)

WAC 504-15-930 Bicycles, skateboards, scooters, and roller skates. (1) ~~((The riding and use of skateboards, scooters, and roller skates is prohibited from the Terrell Pedestrian Mall and Library Pedestrian Mall.~~

~~(2))~~ The riding and use of bicycles, skateboards, scooters, and roller skates is prohibited on all building plazas, all pedestrian overpasses, interior building spaces, parking structures, parking structure ramps, all stairways, steps, ledges, benches, planting areas, and any other fixtures.

~~((3))~~ (2) Bicycles, skateboards, scooters, and roller skates may be ridden and used on sidewalks outside the prohibited areas when a bike path is not provided.

~~((4))~~ (3) Electric-assisted bicycles must be used in a human propulsion only mode on pedestrian malls and sidewalks.

~~((5))~~ (4) Motorized foot scooters must be used in a human propulsion only mode on sidewalks.

~~((6))~~ (5) Operators must move at a safe speed and yield to pedestrians at all times. Reckless or negligent operation of bicycles, skateboards, scooters, and roller skates on any part of campus is prohibited.

~~((7))~~ (6) Bicyclists must obey all traffic laws applying to persons riding bicycles when operating bicycles on roadways.

~~((8))~~ (7) Bicycles may be secured only at university-provided bicycle racks and bicycle storage facilities designed for such purpose.

(8) Bicycles that are not secured at university-provided bicycle racks or bicycle storage facilities may be impounded at the owner's expense.

(9) Abandoned and inoperable bicycles. Internal policies regarding abandoned and inoperable bicycles, including the impoundment of bicycles at the WSU Pullman campus, may be established upon approval by the vice-president or designee.

nee whose responsibilities include supervision of the parking department.

WSR 14-05-102
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed February 19, 2014, 10:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-02-113 on December 31, 2013.

Title of Rule and Other Identifying Information: WAC 220-47-307 Closed areas—Puget Sound salmon, 220-47-311 Purse seine—Open periods, 220-47-401 Reef net—Open periods, 220-47-411 Gillnet—Open periods, and 220-47-428 Beach seine—Open periods.

Hearing Location(s): Natural Resources Building, Room 635, 1111 Washington Street S.E., Olympia, WA 98504, on Friday, April 4, 2014, at 10 a.m. to 11 a.m.

Date of Intended Adoption: On or after Monday, April 21, 2014.

Submit Written Comments to: Joanna Eide, Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Joanna.eide@dfw.wa.gov, fax (360) 902-2155, by April 3, 2014.

Assistance for Persons with Disabilities: Contact Tami Linger by April 3, 2014, (360) 902-2207 or TTY 1-800-833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules will incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable fish in commercial salmon fisheries in Puget Sound while protecting species of fish listed as endangered.

Reasons Supporting Proposal: To protect species of fish listed as endangered while supporting commercial salmon fishing in Puget Sound.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Kendall Henry, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2717; Implementation: Jim Scott, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2651; and Enforcement: Steve Crown, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2373.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

1. Description of the Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule:

These rules will incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable salmon in Puget Sound while protecting species of fish, marine mammals, and sea birds listed as endangered. The rules include legal gear requirements, area restrictions, and open periods for commercial salmon fisheries occurring in Puget Sound.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements: These rule changes clarify dates for anticipated open periods and areas for full-fleet and limited-participation salmon fisheries, and legal gear requirements for those fisheries. There are no anticipated professional services required to comply.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: The proposed rules adjust opening and closing dates. The proposed rules do not require any additional equipment, supplies, labor, or administrative costs. Therefore, there is no additional cost to comply with the proposed rules.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? The proposed rules do not affect the harvestable numbers of salmon available to nontreaty fleets. Therefore, the proposed rules should not cause any businesses to lose sales or revenue.

5. Cost of Compliance for Small Businesses Compared with the Cost of Compliance for the Ten Percent of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules Using One or More of the Following as a Basis for Comparing Costs:

1. Cost per employee;
2. Cost per hour of labor; or
3. Cost per one hundred dollars of sales;

None - The proposed rules do not require any additional equipment, supplies, labor, or administrative costs.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses, or Reasonable Justification for Not Doing So: Most businesses affected by these rules are small businesses. As indicated above, all of the gear restrictions proposed by the rules are identical to gear restrictions the Washington department of fish and wildlife (WDFW) has required in past salmon fishery seasons. Therefore, the gear restrictions will not impose new costs on small businesses.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: As in previous years, WDFW interacts with and receives input from affected businesses through the North of Falcon process, which is a series of public meetings occurring from February through April each year. These meetings allow small businesses to participate in formulating these rules.

8. A List of Industries That Will Be Required to Comply With the Rule: All licensed fishers attempting to harvest salmon in the all-citizen commercial salmon fisheries occurring in Puget Sound will be required to comply with these rules.

9. An Estimate of the Number of Jobs That Will Be Created Or Lost as a Result of Compliance With the Proposed Rule: As explained above, these rules impose similar

requirements to those used in the previous years' commercial salmon fisheries. Compliance with the rules will not result in the creation or loss of jobs.

A copy of the statement may be obtained by contacting Joanna Eide, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2930, fax (360) 902-2155, e-mail Joanna.eide@dfw.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. These proposals do not affect hydraulics.

February 19, 2014
Joanna M. Eide
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-15-148, filed 7/23/13, effective 8/23/13)

WAC 220-47-307 Closed areas—Puget Sound salmon. It is unlawful at any time, unless otherwise provided, to take, fish for, or possess salmon taken for commercial purposes with any type of gear from the following portions of Puget Sound Salmon Management and Catch Reporting Areas, except that closures listed in this section do not apply to reef net fishing areas listed in RCW 77.50.050:

Areas 4B, 5, 6, 6B, and 6C - The Strait of Juan de Fuca Preserve as defined in WAC 220-47-266.

Area 6D - That portion within 1/4-mile of each mouth of the Dungeness River.

Area 7 - (1) The San Juan Island Preserve as defined in WAC 220-47-262.

(2) Those waters within 1,500 feet of shore on Orcas Island from Deer Point northeasterly to Lawrence Point, thence west to a point intercepting a line projected from the northernmost point of Jones Island, thence 90° true to Orcas Island.

(3) Those waters within 1,500 feet of the shore of Cypress Island from Cypress Head to the northernmost point of Cypress Island.

(4) Those waters easterly of a line projected from Iceberg Point to Iceberg Island, to the easternmost point of Charles Island, then true north from the northernmost point of Charles Island to the shore of Lopez Island.

(5) Those waters northerly of a line projected from the southernmost point of land at Aleck Bay to the westernmost point of Colville Island, thence from the easternmost point of Colville Island to Point Colville.

(6) Those waters easterly of a line projected from Biz Point on Fidalgo Island to the Williamson Rocks Light, thence to the Dennis Shoal Light, thence to the light on the westernmost point of Burrows Island, thence to the southwestern-most point of Fidalgo Head, and including those waters within 1,500 feet of the western shore of Allan Island, those waters within 1,500 feet of the western shore of Burrows Island, and those waters within 1,500 feet of the shore of Fidalgo Island from the southwestern-most point of Fidalgo Head northerly to Shannon Point.

(7) Additional Fraser sockeye and pink seasonal closure: Those waters within 1,500 feet of the shore of Fidalgo Island from the Initiative 77 marker northerly to Biz Point.

(8) Those waters within 1,500 feet of the eastern shore of Lopez Island from Point Colville northerly to Lopez Pass, and those waters within 1,500 feet of the eastern shore of Decatur Island from the southernmost point of land northerly to Fauntleroy Point, and including those waters within 1,500 feet of the shore of James Island.

Area 7A - The Drayton Harbor Preserve as defined in WAC 220-47-252.

Area 7B - (1) That portion south and east of a line from William Point on Samish Island to Saddlebag Island to the southeastern tip of Guemes Island, and that portion northerly of the railroad trestle in Chuckanut Bay.

(2) That portion of Bellingham Bay and Portage Bay adjacent to Lummi Indian Reservation is closed north and west of a line from the intersection of Marine Drive and Hoff Road (48°46'59"N, 122°34'25"W) projected 180° true for 2.75 nautical miles (nm) to a point at 48°45'11"N, 122°34'25"W, then 250° true for 1.4 nm to a point at 48°44'50"N, 122°35'42"W, then 270° true for 1.4 nm to 48°44'50"N, 122°37'08"W, then 230° true for 1.3 nm to 48°44'24"N, 122°37'52"W, then 200° true for 1 nm to 48°43'45"N, 122°38'12"W, then 90° true for 1 nm to a point just northeast of Portage Island (48°43'45"N, 122°37'14"W), then 160° true for 1.4 nm to a point just east of Portage Island (48°42'52"N, 122°36'37"W).

~~((3) Additional coho seasonal closure: September 1 through September 21, closed to gillnets in the waters of Area 7B west of a line from Point Francis (48°41'46"N, 122°36'32"W) to the red and green buoy southeast of Point Francis (48°40'27"N, 122°35'24"W), then to the northernmost tip of Eliza Island (48°39'38"N, 122°35'14"W), then along the eastern shore of the island to its southernmost tip (48°38'40"N, 122°34'57"W) and then north of a line from the southernmost tip of Eliza Island to Carter Point (48°38'24"N, 122°36'31"W). Nontreaty purse seiners fishing September 1-21 in this area must release coho.))~~

Area 7C - That portion southeasterly of a line projected from the mouth of Oyster Creek 237° true to a fishing boundary marker on Samish Island.

Area 8 - (1) That portion of Skagit Bay easterly of a line projected from Brown Point on Camano Island to a white monument on the easterly point of Ika Island, thence across the Skagit River to the terminus of the jetty with McGlenn Island.

(2) Those waters within 1,500 feet of the western shore of Camano Island south of a line projected true west from Rocky Point.

Area 8A - (1) Those waters easterly of a line projected from Mission Point to Buoy C1, excluding the waters of Area 8D, thence through the green light at the entrance jetty of the Snohomish River and across the mouth of the Snohomish River to landfall on the eastern shore, and those waters northerly of a line from Camano Head to the northern boundary of Area 8D, except when open for pink fisheries.

(2) Additional coho seasonal closure prior to October 3: Those waters southerly of a line projected from the Clinton ferry dock to the Mukilteo ferry dock.

~~((3) Adjusted pink seasonal closure: Those waters easterly of a line projected from the southernmost point of Area 8D, the point of which begins from a line projected 225° from~~

the pilings at Old Bower's Resort to a point 2,000 feet off shore, thence through the green light at the entrance jetty of the Snohomish River and across the mouth of the Snohomish River to landfall on the eastern shore, and those waters northerly of a line from Camano Head to the northern boundary of Area 8D, and waters southerly of a line projected from the Clinton ferry dock to the Mukilteo ferry dock-))

Area 8D - Those waters easterly of a line projected from Mission Point to Hermosa Point.

Area 9 - Those waters lying inside and westerly of a line projected from the Point No Point light to Sierra Echo buoy, thence to Forbes Landing wharf east of Hansville.

Area 10 - (1) Those waters easterly of a line projected from Meadow Point to West Point.

(2) Those waters of Port Madison westerly of a line projected from Point Jefferson to the northernmost portion of Point Monroe.

(3) Additional pink seasonal closure: The area east inside of the line originating from West Point and extending west to the closest midchannel buoy, thence true through Point Wells until reaching latitude 47°44'500"N, thence extending directly east to the shoreline.

(4) Additional purse seine pink seasonal closure: The area within 500 feet of the eastern shore in Area 10 is closed to purse seines north of latitude 47°44'500"N.

(5) Additional coho (~~and chum~~) seasonal closure: Those waters of Elliott Bay east of a line from Alki Point to the light at Fourmile Rock, and those waters northerly of a line projected from Point Wells to "SF" Buoy, then west to President's Point.

Area 10E - Those waters of Liberty Bay north of a line projected due east from the southernmost Keyport dock, those waters of Dyes Inlet north of the Manette Bridge, and those waters of Sinclair Inlet southwest of a line projected true east from the Bremerton ferry terminal.

Area 11 - (1) Those waters northerly of a line projected true west from the light at the mouth of Gig Harbor, and those waters south of a line from Browns Point to the northernmost point of land on Point Defiance.

(2) Additional coho seasonal closure: Those waters south of a line projected from the light at the mouth of Gig Harbor to the Tahlequah ferry dock, then south to the Point Defiance ferry dock, and those waters south of a line projected from the Point Defiance ferry dock to Dash Point.

Area 12 - Those waters inside and easterly of a line projected from Lone Rock to the navigation light off Big Beef Creek, thence southerly to the tip of the outermost northern headland of Little Beef Creek.

Area 12A - Those waters north of a line projected due east from Broad Spit.

Area 12B - Those waters within 1/4-mile of the mouths of the Dosewallips, Duckabush, and Hamma Hamma rivers and Anderson Creek.

Areas 12, 12A, and 12B - (1) Those waters within 1,000 feet of the mouth of the Quilcene River.

(2) Additional Chinook seasonal closure: Those waters north and east of a line projected from Tekiu Point to Triton Head.

Areas 12, 12B and 12C - Those waters within 1,000 feet of the eastern shore.

Area 12C - (1) Those waters within 2,000 feet of the western shore between the dock at Glen Ayr R.V. Park and the Hoodsport marina dock.

(2) Those waters south of a line projected from the Cushman Powerhouse to the public boat ramp at Union.

(3) Those waters within 1/4-mile of the mouth of the Dewatto River.

Areas 12 and 12D - Additional coho and chum seasonal closure: Those waters of Area 12 south and west of a line projected 94 degrees true from Hazel Point to the light on the opposite shore, bounded on the west by the Area 12/12B boundary line, and those waters of Area 12D.

Area 13A - Those waters of Burley Lagoon north of State Route 302; those waters within 1,000 feet of the outer oyster stakes off Minter Creek Bay, including all waters of Minter Creek Bay; those waters westerly of a line drawn due north from Thompson Spit at the mouth of Glen Cove; and those waters within 1/4-mile of Green Point.

AMENDATORY SECTION (Amending WSR 13-15-148, filed 7/23/13, effective 8/23/13)

WAC 220-47-311 Purse seine—Open periods. It is unlawful to take, fish for, or possess salmon taken with purse seine gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas and during the periods provided for in each respective Management and Catch Reporting Area:

AREA	TIME	DATE
7, 7A:	7AM - 6PM	- <u>10/10, 10/11, 10/12, 10/13, 10/14, 10/15, 10/16, 10/17, 10/18, 10/19, 10/20, 10/21, 10/22, 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29, 10/30, 10/31, 11/1((+1/2))</u>
	7AM - 5PM	- <u>11/2, 11/3, 11/4, 11/5, 11/6, 11/7, 11/8((-1/9))</u>
Note: In Areas 7 and 7A, it is unlawful to fail to brail when fishing with purse seine gear. Any time brailing is required, purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).		
7B, 7C:	6AM - 9PM	- <u>((8/44)) 8/13</u>
7B, 7C:	6AM - 8PM	- <u>((8/21, 8/28, 9/4)) 8/20, 8/27, 9/3</u>
7B:	7AM - 8PM	- <u>((9/9, 9/11, 9/13)) 9/8, 9/10, 9/12</u>
	7AM - 7PM	- <u>((9/16, 9/18, 9/20)) 9/15, 9/17, 9/19</u>
	7AM ((9/22))	- 6PM ((+0/26)) <u>10/25</u>
	<u>9/21</u>	
	7AM ((+0/28))	- 4PM ((+1/1)) <u>10/31</u>
	<u>10/27</u>	
	7AM ((+1/4))	- 4PM ((+1/8)) <u>11/7</u>
	<u>11/3</u>	

AREA	TIME	DATE
	7AM - 7PM	4PM ((11/15)) <u>11/14</u>
	7AM - 7PM	4PM ((11/22)) <u>11/21</u>
	7AM - 7PM	4PM ((11/29)) <u>11/28</u>

AREA	TIME	DATE
10, 11:	7AM - 6PM	((10/22)) <u>10/20</u> , 10/28, 10/30
12, 12B:	7AM - 6PM	((11/5)) <u>11/3</u> , 11/11, 11/13, ((11/19, 11/26)) <u>11/17, 11/25</u>
12C:	7AM - 5PM	11/11, 11/13, ((11/19, 11/26)) <u>11/17, 11/25</u>

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squilicum Harbor is open to purse seines beginning at 12:01 a.m. on the last Monday in October and until 4:00 p.m. on the first Friday in December.

Note: In Area 10 during any open period occurring in August or September, it is unlawful to fail to brail or use a brailing bunt when fishing with purse seine gear. Any time brailing is required, purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f). ((~~During limited participation fisheries it is unlawful for vessels to take or fish for salmon without department observers on board.~~))

8A:	6AM - 7PM	8/21, 8/22, 8/26, 8/27, 9/4)
8D:	7AM - 7PM	Limited participation - Two boats ((9/23, 9/30)) <u>9/15, 9/22</u>
	7AM - 6PM	((9/23, 9/30)) <u>9/22, 9/29, 10/6</u>
	7AM - 6PM	((10/14, 10/21)) <u>10/13, 10/20, 10/28, 10/30</u>
	7AM - 5PM	((11/4, 11/11, 11/13, 11/18)) <u>11/3, 11/11, 11/13, 11/17, 11/25</u>
10:	7AM - 7PM	Limited participation - 5 boats <u>8/15, 8/21, 8/22, 8/27</u>)

It is unlawful to retain the following salmon species taken with purse seine gear within the following areas during the following periods:

- Chinook salmon - At all times in Areas 7, 7A, 8, 8A, 8D, 10, 11, 12, 12B, and 12C, and after October 20 in Area 7B.
- Coho salmon - At all times in Areas 7((~~;~~)) and 7A((~~7-10, and 11,~~)) and prior to September 1 in Area 7B.
- Chum salmon - Prior to October 1 in Areas 7 and 7A, and at all times in 8A.

All other saltwater and freshwater areas - Closed.

AMENDATORY SECTION (Amending WSR 13-15-148, filed 7/23/13, effective 8/23/13)

WAC 220-47-411 Gillnet—Open periods. It is unlawful to take, fish for, or possess salmon taken with gillnet gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the periods provided for in each respective fishing area:

AREA	TIME	DATE(S)	MINIMUM MESH
6D: Skiff gillnet only, definition WAC 220-16-046 and lawful gear description WAC 220-47-302.	7AM - 7PM	((9/21)) <u>9/22, 9/23, 9/24, 9/25, 9/26, 9/27</u>) <u>9/29, 9/30, 10/1, 10/2, 10/3, 10/6, 10/7, 10/8, 10/9, 10/10, 10/13, 10/14, 10/15, 10/16, 10/17, 10/20, 10/21, 10/22, 10/23, 10/24</u> ((10/25))	5"

Note: In Area 6D, it is unlawful to use other than 5-inch minimum mesh in the skiff gillnet fishery. It is unlawful to retain Chinook taken in Area 6D at any time, or any chum salmon taken in Area 6D prior to October 16. In Area 6D, any Chinook or chum salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

7, 7A:	7AM - Midnight	Midnight; use of recovery box required	<u>10/10, 10/11, 10/12, 10/13, 10/14, 10/15, 10/16, 10/17, 10/18</u> ((10/19))	6 1/4"
	7AM - Midnight	Midnight	<u>10/19, 10/20, 10/21, 10/22, 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29, 10/30, 10/31, 11/1, 11/2, 11/3, 11/4, 11/5, 11/6, 11/7, 11/8</u> ((11/9))	6 1/4"

Note: In Areas 7 and 7A after October 9 but prior to October ((~~20~~)) 19, coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than 45 minutes. Net soak time is defined as the time elapsed from when the first of the gillnet web enters the water, until the gillnet is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC 220-47-302 (5)(a) through (f) when coho and Chinook release is required.

7B, 7C:	7PM - 8AM	NIGHTLY ((8/11)) <u>8/10, 8/12, 8/13, 8/17, 8/18, 8/19, 8/20, 8/24, 8/25, 8/26, 8/27</u> ((8/28))	7"
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AREA	TIME	DATE(S)	MINIMUM MESH
7B, 7C:	7AM ((9/4)) <u>8/31</u>	- 7AM ((9/6)) <u>9/5</u>	5"
7B:	7AM ((9/8)) <u>9/7</u>	- 7AM 9/12	
	7AM ((9/15)) <u>9/14</u>	- 7AM 9/19	5"
	7AM ((9/22)) <u>9/21</u>	- Midnight ((10/26)) <u>10/25</u>	5"
	7AM ((10/28)) <u>10/27</u>	- 4PM ((11/1)) <u>10/31</u>	6 1/4"
	6AM ((11/4)) <u>11/3</u>	- 4PM ((11/8)) <u>11/7</u>	6 1/4"
	6AM ((11/11)) <u>11/10</u>	- 4PM ((11/15)) <u>11/14</u>	6 1/4"
	6 AM ((11/18)) <u>11/17</u>	- 4PM ((11/22)) <u>11/21</u>	6 1/4"
	7 AM ((11/25)) <u>11/24</u>	- 4PM ((11/29)) <u>11/28</u>	6 1/4"

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor is open to gillnets using 6 1/4-inch minimum mesh beginning 12:01 AM on the last day in October and until 4:00 PM on the first Friday in December.

8:	((5AM	- 10PM	8/19, 8/20, 8/28, 8/29	5" minimum and 5 1/2" maximum
	6AM	- 10PM	9/3	5" minimum and 5 1/2" maximum))

Note: In Area 8 it is unlawful to take or fish for pink salmon with drift gillnets greater than 60-mesh maximum depth. Fishers must also use minimum 5" and maximum 5 1/2" mesh during pink salmon management periods.

8A:	((5AM	- 10PM	8/21, 8/22, 8/26, 8/27	5" minimum and 5 1/2" maximum
	6AM	- 10PM	9/4	5" minimum and 5 1/2" maximum))
	6PM	- 8AM	Limited participation; 2 boats only ((9/24)) <u>9/17</u>	5"
	6PM	- 8AM	NIGHTLY ((10/1, 10/2)) <u>9/23, 9/24</u>	5"

Note: In Area 8A fishers must use minimum 5" and maximum 5 1/2" mesh during pink salmon management periods.

8D:	6PM	- 8AM	NIGHTLY ((9/22, 9/26, 9/29, 10/3, 10/6, 10/10)) <u>9/21, 9/25, 9/28, 10/2, 10/5, 10/9</u>	5"
	6PM ((9/23)) <u>9/22</u>	- 8AM ((9/26)) <u>9/25</u>		5"
	6PM ((9/30)) <u>9/29</u>	- 8AM ((10/3)) <u>10/2</u>		5"
	6PM ((10/7)) <u>10/6</u>	- 8AM ((10/10)) <u>10/9</u>		5"
	5PM	- 8AM	((10/13, 10/17)) <u>10/12, 10/16</u>	5"
	5PM ((10/14)) <u>10/13</u>	- 8AM ((10/17)) <u>10/16</u>		5"
	5PM	- 9AM	((10/20, 10/24, 10/27, 10/31, 11/3, 11/7)) <u>10/19, 10/23, 10/26, 10/30</u>	5"
	5PM ((10/21)) <u>10/20</u>	- 9AM ((10/24)) <u>10/23</u>		5"
	5PM ((10/28)) <u>10/27</u>	- 9AM ((10/31)) <u>10/30</u>		5"
	((5PM 11/4)) <u>4PM</u>	- ((9AM 11/7)) <u>8AM</u>	<u>11/2, 11/6</u>	5"
	<u>4PM 11/3</u>	= <u>8AM 11/6</u>		5"
	6AM	- 6PM	<u>11/12, 11/13, ((11/14)) 11/19, 11/20((11/21, 11/27, 11/28))</u>	6 1/4"

AREA	TIME	DATE(S)	MINIMUM MESH
	6AM - 4PM	((11/15, 11/22, 11/29)) 11/14, 11/21	6 1/4"
	<u>7AM</u> - <u>6PM</u>	<u>11/26, 11/27</u>	<u>6 1/4"</u>
	<u>7AM</u> - <u>4PM</u>	<u>11/28</u>	<u>6 1/4"</u>
9A: Skiff gillnet only, definition WAC 220-16-046 and lawful gear description WAC 220-47-302.	7AM ((8/25)) - 7PM ((11/2))	<u>8/24</u> <u>11/1</u>	5"

Note: It is unlawful to retain chum salmon taken in Area 9A prior to October 1, and it is unlawful to retain Chinook salmon at any time. Any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

10:	((7PM)) - 7AM	Limited participation—5 boats 8/14, 8/19, 8/20, 8/27	4 1/2" minimum and 5 1/2" maximum
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Note: In Area 10 fishers must use minimum 4 1/2" and maximum 5 1/2" mesh during pink salmon management periods. Also, during August or September openings, coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than 90 minutes. Net soak time is defined as the time elapsed from when the first of the gillnet web enters the water, until the gillnet is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC 220-47-302 (5)(a) through (f). During all limited participation fisheries, it is unlawful for vessels to take or fish for salmon without department observers on board.

10, 11:	5PM - 9AM	NIGHTLY ((10/20, 10/23, 11/3, 11/6)) 10/21, 10/26	6 1/4"
	<u>5PM</u> - <u>8AM</u>	<u>NIGHTLY 10/29</u>	<u>6 1/4"</u>
	((5PM)) <u>4PM</u> - 8AM	((10/29)) <u>11/4, 11/9, 11/12, 11/17, 11/23</u>	<u>6 1/4"</u>
	((4PM)) - 9AM	NIGHTLY <u>11/12, 11/17, 11/24</u>	<u>6 1/4"</u>
	4PM - Midnight	((NIGHTLY 10/31, 11/14, 11/20, 11/27)) <u>10/22, 11/5, 11/19, 11/26</u>	<u>6 1/4"</u>

12A: Skiff gillnet only, definition WAC 220-16-046 and lawful gear description WAC 220-47-302.	7AM - 7PM	Dates determined per agreement with tribal co-managers in-season if Summer Chum Salmon Conservation Initiative goals are met allowing for openings of gillnet gear.	5"
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Note: In Area 12A, it is unlawful to use other than 5-inch minimum mesh in the skiff gillnet fishery. It is unlawful to retain Chinook or chum salmon taken in Area 12A at any time, and any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

12, 12B:	7AM - 8PM	10/21, 10/23, <u>10/27</u> , 10/29((10/31, 11/4, 11/6))	6 1/4"
	6AM - 6PM	<u>11/4, 11/6, 11/10, 11/12, ((11/14,))</u> 11/18, 11/20	6 1/4"
12C:	6AM - 6PM	<u>11/10, 11/12, ((11/14,))</u> 11/18, 11/20, 11/24, ((11/25)) <u>11/26</u>	6 1/4"

All other saltwater and freshwater areas - Closed.
 Nightly openings refer to the start date.
 Within an area or areas, a mesh size restriction remains in effect from the first date indicated until a mesh size change is shown, and the new mesh size restriction remains in effect until changed.

AMENDATORY SECTION (Amending WSR 12-15-034, filed 7/12/12, effective 8/12/12)

WAC 220-47-401 Reef net open periods. (1) It is unlawful to take, fish for, or possess salmon taken with reef net gear for commercial purposes in Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas, during the periods provided for in each respective area:

AREA	TIME	DATE(S)
7, 7A	5AM - 9PM Daily	((9/30-11/10)) <u>9/21 - 11/8</u>

(2) It is unlawful at all times to retain wild Chinook salmon taken with reef net gear, and it is unlawful prior to October 1 to retain chum or wild coho salmon taken with reef net gear.

(3) It is unlawful to retain marked Chinook after September 30.

(a) It is unlawful to retain marked Chinook with reef net gear if the fisher does not have in his or her immediate possession a department-issued Puget Sound Reef Net Logbook with all retained Chinook accounted for in the logbook. Marked Chinook are those with a clipped adipose fin and a healed scar at the site of the clipped fin.

(b) Completed logs must be submitted and received within six working days to: Puget Sound Commercial Salmon Manager, Department of Fish & Wildlife, 600 Capitol Way N, Olympia, WA 98501-1091.

(4) All other saltwater and freshwater areas - Closed.

AMENDATORY SECTION (Amending WSR 13-15-148, filed 7/23/13, effective 8/23/13)

WAC 220-47-428 Beach seine—Open periods. It is unlawful to take, fish for, or possess salmon taken with beach seine gear for commercial purposes from Puget Sound except

in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the periods provided hereinafter in each respective Management and Catch Reporting Area:

All areas:

AREA	TIME	DATE(S)
12A:	7AM - 7PM	8/21, 8/22, ((8/23)) 8/25, 8/26, 8/27, 8/28, 8/29, ((8/30)) 9/1, 9/2, 9/3, 9/4, 9/5, ((9/6)) 9/8, 9/9, 9/10, 9/11, 9/12, ((9/13)) 9/15, 9/16, 9/17, 9/18, 9/19, ((9/20)) 9/22, 9/23, 9/24, 9/25, 9/26(-9/27)
12H:	7AM - 7PM	November (dates determined per agreement with tribal co-managers in-season if harvestable surplus of salmon remain).

It is unlawful to retain Chinook taken with beach seine gear in all areas, and it is unlawful to retain chum from Area 12A.