

WSR 24-13-001

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed June 5, 2024, 1:08 p.m., effective June 5, 2024, 1:08 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Emergency rules that temporarily remove the requirement for home care aide applicants to become certified within two years of completing training.

WAC 246-980-100 Examination and reexamination for home care aide certification, in chapter 246-980 WAC, Home care aide rules. WAC 246-980-100 (5)(c) requires that home care aide certification testing occur within two years of training. This emergency rule removes the two-year limit on the validity of training.

Lasting impacts from the coronavirus disease 2019 (COVID-19) pandemic have impacted the home care aide workforce by creating backlogs that limit access to training and testing. Continuing to require testing within two years of training would require many uncertified individuals to repeat training, delaying and possibly preventing them from becoming credentialed as a home care aide. This would negatively impact the individuals working toward a credential, the home care aide workforce, and the clients for whom they provide care.

These rules continue emergency rules initially filed on October 17, 2022, under WSR 22-21-102; and continued on February 14, 2023, under WSR 23-05-083; June 13, 2023, under WSR 23-13-068; October 12, 2023, under WSR 23-21-065, and on February 7, 2024, under WSR 24-04-095. They are being continued while permanent rule making is in progress to consider training timelines for home care aides. The standards set in this emergency rule are the same as the current emergency rule.

Citation of Rules Affected by this Order: Amending WAC 246-980-100.

Statutory Authority for Adoption: RCW 18.88B.021.

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

Reasons for this Finding: This emergency rule is necessary to avoid a critical shortage of home care aides, to support the clients who rely on home care aides, and to avoid increasing existing training and testing backlogs.

During the COVID-19 pandemic, the home care aide training, testing, and certification pipeline was severely impacted. Early 2020 closures and capacity restrictions created long-lasting backlogs, preventing individuals from becoming credentialed within statutory time frames. While certification requirements were temporarily waived by governor's proclamations, individuals working toward home care aide certification now need to meet requirements in chapter 246-980 WAC despite backlogs. If the two-year limit on the validity of training remains in place, individuals trained earlier in the pandemic will be required to repeat training. This could have negative impacts, including (1) certification delays while individuals wait for training availability and then repeat training; (2) increased training backlogs; (3) loss of potential home care aides, as individuals who repeat training may then be unable to meet certification time frames; and (4)

forcing more medically vulnerable patients to rely on other care options, such as higher-level residential care settings or hospitals.

Removing this limit by emergency rule will support the home care aide workforce and the public health by (1) removing a barrier to certification, while still requiring that home care aides receive appropriate training; (2) enabling more vulnerable individuals to receive care in their homes, rather than needing to obtain care in residential care settings; and (3) helping to create a smooth transition away from regulation through pandemic emergency measures and back to statutory time frames.

These emergency rules will be continued as permanent rule making considers how training timelines should function in the long term.

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

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

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

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

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

Date Adopted: June 5, 2024.

Kristin Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary

OTS-4130.1

AMENDATORY SECTION (Amending WSR 18-20-072, filed 9/28/18, effective 10/29/18)

WAC 246-980-100 Examination and reexamination for home care aide certification. (1) The certification examination will consist of both a written knowledge test and a skills demonstration.

(2) The certification examination will test the core competencies, including but not limited to:

- (a) Communication skills;
- (b) Worker self-care;
- (c) Problem solving;
- (d) Maintaining dignity;
- (e) Consumer directed care;
- (f) Cultural sensitivity;
- (g) Body mechanics;
- (h) Fall prevention;
- (i) Skin and body care;
- (j) Home care aide roles and boundaries;
- (k) Supporting activities of daily living; and

(1) Food preparation and handling.

(3) An applicant must apply to take the examination by completing the application for both certification and the examination and returning it to the department. The department will notify the examination contractor once an applicant meets all requirements to take the certification examination.

(4) The examination contractor will notify an applicant of the date, time, and place of the examination.

(5) The examination contractor will notify both the department and an applicant of the examination results.

(a) An applicant who does not successfully pass any portion of the examination can follow the examination contractor's procedures for review and appeal.

(b) An applicant who does not successfully pass any portion of the examination may retake that portion of the examination two times.

(i) To retake the examination, an applicant must submit an application for reexamination, along with the required reexamination fee directly to the examination contractor.

(ii) An application for reexamination may be submitted any time after an applicant receives notice of not successfully completing any portion of the certification examination.

(c) An applicant who does not successfully pass both portions of the certification examination (~~(within two years of successfully completing the required training or who does not successfully pass both portions of the certification examination)~~) after completing the certification examination three consecutive times:

(i) Must retake and successfully complete the core competencies portion of the entry-level training as required by RCW 74.39A.074 before retaking both portions of the certification examination; and

(ii) Cannot continue to provide care as a long-term care worker until the certification has been issued.

WSR 24-13-003
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-89—Filed June 5, 2024, 4:25 p.m., effective June 7, 2024]

Effective Date of Rule: June 7, 2024.

Purpose: The purpose of this emergency rule is to open recreational spring Chinook seasons in a portion of the Snake River.

Citation of Rules Affected by this Order: Amending WAC 220-312-050.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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

Reasons for this Finding: The 2024 Columbia River forecasted return of upriver spring Chinook salmon is sufficiently abundant to allow for harvest opportunity on the Snake River based on the Washington department of fish and wildlife (WDFW) Commission Policy C-3630. The *U.S. v. Oregon* (2018-2027) Management Agreement provides Endangered Species Act (ESA) coverage for this fishery.

WDFW will monitor spring Chinook returns throughout the season and may close the fishery at any time due to harvest levels, ESA impacts, in-season run adjustments, or a combination thereof.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 5, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-05000Q Freshwater exceptions to statewide rules—Eastside. Effective the day of June 7, 2024, only, the following provisions of WAC 220-312-050, regarding salmon seasons in the Snake River shall be open as follows. All other provisions of WAC 220-312-050 remain in effect unless modified by emergency rule:

Snake River (Franklin/Walla Wall Counties): From Texas Rapids boat launch (located on the south side of the river upstream of the mouth of Tucannon River) to the fishing restriction boundary below Little Goose Dam and including the rock and concrete area between the juvenile bypass return pipe and little Goose Dam along the shoreline of the facility (including the walkway area locally known as "the Wall" in front of the juvenile collection facility):

Effective June 7, 2024: Salmon:

(a) Daily limit 4 including no more than 2 adult. Release all salmon other than hatchery Chinook.

(b) Night Closure.

(c) Barbless hooks required.

(d) Salmon may not be removed from the water unless retained as part of the daily limit.

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

WSR 24-13-004
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-84—Filed June 5, 2024, 4:30 p.m., effective June 16, 2024]

Effective Date of Rule: June 16, 2024.

Purpose: The purpose of this emergency rule is to open sockeye seasons in a portion of the Skagit River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-04000H; and amending WAC 220-312-040.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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

Reasons for this Finding: This rule is necessary to open sockeye seasons in Skagit River, in accordance with agreed to seasons in the list of agreed fisheries set during the 2024 North of Falcon season setting process. Harvestable numbers of sockeye are forecast to return to the Baker system.

The sockeye harvest guideline in the river fishery will be 25 percent of the state share. The remaining 75 percent will be reserved for Baker Lake opportunity. Current river sport share is over 4,000 fish, but exact number could change with in-season run-size updates. There will be periodic closures to prevent gear conflicts during tribal fisheries. In-season closures will be announced as soon as possible.

This rule carries forward spring Chinook seasons for Cascade River and Skagit River, previously announced in WSR 24-11-142, on May 21, 2024.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 5, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000I Freshwater exceptions to statewide rules—Puget Sound. Effective June 16 through July 15, 2024, the following provisions of WAC 220-312-040 and WAC 220-220-160 regarding salmon seasons and two-pole fishing for the Skagit River and salmon seasons and all species weekly closures for Cascade River, shall be as described below. All other provisions of WAC 220-312-040 and WAC 220-220-160 not addressed herein, or unless otherwise amended, remain in effect:

(1) Cascade River (Skagit Co.); from mouth to Rockport-Cascade Rd. Bridge:

(a) Salmon, effective immediately, through July 15, 2024:

(i) Open Wednesdays through Saturdays.

(ii) Daily limit 4 including no more than 2 adults. Release all salmon other than hatchery Chinook.

(iii) Night closure and Anti-snagging rule in effect.

(b) All Species, effective immediately through July 15, 2024: Closed Sundays through Tuesdays.

(2) Skagit River (Skagit Co.):

(a) From the Hwy. 536 (Memorial Hwy. Bridge) in Mt. Vernon to the Dalles Bridge at Concrete:

Salmon, effective June 16 through July 15, 2024:

(i) Daily limit 4. Release all salmon other than sockeye.

(ii) Night Closure in effect.

(iii) Selective gear rules are not in effect for salmon.

(b) From Hwy. 530 Bridge at Rockport to Cascade River Rd. (Marblemount Bridge):

Salmon, effective, immediately through July 15, 2024:

(i) Daily limit 4 including no more than 2 adults. Release all salmon other than hatchery Chinook.

(ii) Night Closure and Anti-snagging rule in effect.

REPEALER

The following section of Washington Administrative Code is repealed, effective June 16, 2024:

WAC 220-312-04000H Puget Sound salmon—Saltwater seasons and daily limits. (24-74)

WSR 24-13-005
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-85—Filed June 5, 2024, 4:36 p.m., effective June 22, 2024]

Effective Date of Rule: June 22, 2023 [2024].

Purpose: The purpose of this emergency rule is to set 2024 coastal recreational salmon seasons.

Citation of Rules Affected by this Order: Amending WAC 220-313-075.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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

Reasons for this Finding: The purpose of this rule is to open ocean recreational salmon seasons in Marine Areas 1-4 in state waters in a manner consistent with federal salmon fishing regulations adopted by the National Marine Fisheries Service (NMFS) in response to actions taken by the Pacific Fishery Management Council (PFMC) to set annual salmon fishery harvest specifications and management measures; this action is intended to achieve regulatory consistency in federal and state waters for the ocean recreational salmon fishery, which operates in both areas. The ocean recreational salmon fishing seasons are developed and considered through the annual PFMC process, which coincides with the North of Falcon salmon season setting process and is managed under the Pacific Coast Salmon Fishery Management Plan (FMP). By managing this fishery under the FMP, it is required to be consistent with National Standard Guidelines, which ensure conservation objectives are achieved as well as long-term fishery sustainability, and that the social and economic needs of fishing communities are taken into account.

Because the ocean recreational salmon fishery occurs in Pacific Ocean waters across multiple jurisdictions (states of Washington and Oregon, tribal, and federal), developing and considering ocean recreational salmon season options through PFMC ensures that fishing regulations are developed in a comprehensive, coordinated manner. Having consistent regulations in state and federal waters also promotes compliance with and enforcement of fishing regulations, particularly as anglers often fish in both state and federal waters on the same fishing trip.

While these regulations are being adopted through an emergency rule, the seasons described in these rules were developed and considered through an extensive open public process, which began early in 2024. The process includes multiple opportunities for public engagement. Throughout the course of a three-month process, the public may: Submit written comments, provide testimony at the March and/or April PFMC meetings, attend public hearings held in each West Coast state, or provide comment through representation on the PFMC's salmon advisory subpanel.

Following the April PFMC meeting, when these seasons were adopted, PFMC formally transmitted these regulations to NMFS for consistency determination. This transmittal occurred on April 22, 2024, and

the NMFS final rule that opened this fishery was published on May 21, 2024. There was insufficient time for the Washington department of fish and wildlife to adopt consistent regulations through the permanent rule-making process.

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

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

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

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

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

Date Adopted: June 5, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-07500V Pacific Ocean salmon—Seasons—Closed areas.

Effective June 22 through September 30, 2024, the provisions of WAC 220-313-075 regarding recreational salmon seasons for Marine Areas 1 through 4 shall be as described below. All other provisions of WAC 220-313-075 not addressed herein remain in effect unless otherwise amended:

- (1) **Catch Record Card Area 1:** Open June 22 through September 30, 2024:
- (a) Daily limit of 2 salmon; no more than one may be a Chinook.
 - (b) Release wild coho.
 - (c) Chinook minimum length 22 inches.
 - (d) Coho minimum length 16 inches.
- (2) **Catch Record Card Area 2:**
- (a) Open June 30 through July 13, 2024, Sundays through Thursdays only:
 - (i) Daily limit of 2 salmon including no more one Chinook.
 - (ii) Release wild coho.
 - (iii) Chinook minimum length 22 inches.
 - (iv) Coho minimum length 16 inches.
 - (v) Grays Harbor Control Zone is open. See WAC 220-306-040 for area definition.
 - (vi) Illegal to possess salmon onboard a vessel on days when closed to salmon fishing.
 - (vii) Closed Fridays and Saturdays.
 - (b) Open July 13 through August 11, 2024:
 - (i) Daily limit of 2 salmon including no more one Chinook.
 - (ii) Release wild coho.
 - (iii) Chinook minimum length 22 inches.
 - (iv) Coho minimum length 16 inches.

- (v) Grays Harbor Control Zone is open. See WAC 220-306-040 for area definition.
- (c) Open August 12 through September 15, 2024:
 - (i) Daily limit of 2 salmon including no more one Chinook.
 - (ii) Release wild coho.
 - (iii) Chinook minimum length 22 inches.
 - (iv) Coho minimum length 16 inches.
- (v) Grays Harbor Control Zone is closed. See WAC 220-306-040 for area definition.
- (3) **Catch Record Card Area 3:**
 - (a) Open June 22 through July 31, 2024
 - (i) Daily limit of 2 salmon including no more one Chinook.
 - (ii) Release wild coho.
 - (iii) Chinook minimum length 24 inches.
 - (iv) Coho minimum length 16 inches.
 - (b) Open August 1 through September 15, 2024
 - (i) Daily limit of 2 salmon including no more one Chinook.
 - (ii) Release chum and wild coho.
 - (iii) Chinook minimum length 24 inches.
 - (iv) Coho minimum length 16 inches.
- (4) **Catch Record Card Area 4:**
 - (a) Open June 22 through July 31, 2024:
 - (i) Daily limit of 2 salmon including no more one Chinook.
 - (ii) Release wild coho.
 - (iii) Chinook minimum length 24 inches.
 - (iv) Coho minimum length 16 inches.
 - (v) Waters east of a true north-south line through Sail Rock are closed.
 - (b) Open August 1 through September 15, 2024:
 - (i) Daily limit of 2 salmon including no more one Chinook.
 - (ii) Release chum and wild coho.
 - (iii) Chinook minimum length 24 inches.
 - (iv) Coho minimum length 16 inches.
 - (v) No chinook retention allowed in waters east of the Bonilla-Tatoosh line.

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

WSR 24-13-010
EMERGENCY RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed June 6, 2024, 9:06 a.m., effective June 6, 2024, 9:06 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The child welfare division is making changes to the extended foster care (EFC) program WAC in chapter 110-90 WAC and other related rules as required by SB 5908, which takes effect June 6, 2024. These changes will reduce systemic barriers to youth who are dependent at the age of 18 and voluntarily enroll in the EFC program by eliminating the federal eligibility requirements.

Citation of Rules Affected by this Order: New WAC 110-90-0021 and 110-90-0025; repealing WAC 110-90-0100, 110-90-0110, 110-90-0120, 110-90-0130, 110-90-0140, 110-90-0150, 110-90-0160, 110-90-0170, 110-90-0180, 110-90-0190 and 110-90-0200; and amending WAC 110-90-0010, 110-90-0020, 110-90-0040, 110-90-0050, 110-90-0060, 110-90-0070, 110-90-0080, and 110-90-0090.

Statutory Authority for Adoption: SB 5908; RCW 74.13.031, 13.34.267; and 42 U.S.C. Section 671-675.

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

Reasons for this Finding: The legislative changes are necessary for the preservation of public health, safety, and general welfare by eliminating the current federal eligibility requirements for youth to participate in the EFC program and requiring the department of children, youth, and families to provide a supervised independent living payment to youth participating in the EFC program within one month of signing the voluntary placement agreement.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 8, Repealed 11.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 8, Repealed 11.

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

Date Adopted: June 6, 2024.

Brenda Villarreal
Rules Coordinator

OTS-5477.2

**Chapter 110-90 WAC
EXTENDED FOSTER CARE (EFC) PROGRAM**

LEGAL BASIS, PURPOSE, AND DEFINITIONS

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-90-0010 ~~((What is the))~~ Legal basis ~~((of))~~ for the extended foster care (EFC) program ~~((?))~~. The legal ~~((authorities))~~ basis for the department's EFC program are:

- (1) ~~((Revised Code of Washington:))~~ RCW ~~((74.13.031 and))~~ 13.34.267;
- (2) ~~((United States Code:))~~ RCW 74.13.031;
- (3) 42 U.S.C. ~~((see:))~~ § 671-675; and
- ~~((3))~~ (4) The U.S. Department of Health and Human Services (DHHS) policy guidelines for states to use in determining a ~~((child's))~~ youth's eligibility for participation in ~~((extended foster care))~~ the EFC program ~~((s))~~.

AMENDATORY SECTION (Amending WSR 19-14-066, filed 6/28/19, effective 7/29/19)

WAC 110-90-0020 ~~((What is the purpose of the extended foster care program?))~~ Purpose. The ~~((extended foster care))~~ EFC program was established to provide ~~((s))~~ an opportunity for young adults who are dependent at age ~~((eighteen))~~ 18 to voluntarily agree to continue receiving foster care services ~~((7))~~ including:

- (1) Placement ~~((services, while the youth:))~~
 - ~~((1))~~ Completes a high school or a high school equivalency program;
 - ~~((2))~~ Completes a secondary or post-secondary academic or vocational program;
 - ~~((3))~~ Participates in a program or activity designed to promote employment or remove barriers to employment;
 - ~~((4))~~ Is engaged in employment for eighty hours or more per month;
- or
- ~~((5))~~ Is unable to engage in subsections (1) through (4) of this section due to a documented medical condition) in a licensed, relative, or supervised independent living (SIL) setting;
 - (2) Assistance with meeting their basic needs;
 - (3) Independent living services;
 - (4) SIL subsidies;
 - (5) Medical assistance; and
 - (6) Mental health counseling or treatment.

NEW SECTION

WAC 110-90-0021 Definitions. The definitions in this section apply throughout this chapter.

"**Department**" or "**DCYF**" means the Washington state department of children, youth, and families.

"**Extended foster care program**" or "**EFC program**" means the same as defined in RCW 74.13.020.

"**Youth**" means the same as defined in RCW 13.34.030.

PROGRAM INFORMATION AND ELIGIBILITYNEW SECTION

WAC 110-90-0025 Information about the EFC program. (1) DCYF must provide youth age 15 and older with:

(a) Written documentation explaining the availability of the EFC program and services; and

(b) Instructions on how to access services after they have reached age 18.

(2) Youth may contact the following for further information on the EFC program:

(a) Their:

(i) Attorney;

(ii) Guardian ad litem (GAL); or

(iii) Caseworker;

(b) Local DCYF office;

(c) EFC website at www.dcyf.wa.gov; or

(d) 1-866-END-HARM.

AMENDATORY SECTION (Amending WSR 19-14-066, filed 6/28/19, effective 7/29/19)

WAC 110-90-0040 ~~((Who is eligible for extended foster care?))~~

Eligibility requirements for youth in the EFC program. (1) To be eligible for the ~~((extended foster care))~~ EFC program, a youth, on ~~((his or her eighteenth))~~ their 18th birthday must:

~~(a) Be dependent under chapter 13.34 RCW; and~~ ~~((~~

~~(a) Enrolled in school as described in WAC 110-90-0050;~~

~~(b) Have applied for, or can demonstrate intent to timely enroll in a post-secondary academic or vocational education program as described in WAC 110-90-0060;~~

~~(c) Participating in a program or activity designed to promote employment or remove barriers to employment as described in WAC 110-90-0070;~~

~~(d) Engaged in employment for eighty hours or more per month;~~

~~(e) Unable to engage in subsection (1)(a) through (d) of this section due a documented medical condition as described in WAC 110-90-0100; or~~

~~(f) Did not enroll in the extended foster care program; and~~

~~(i) Had their dependency dismissed on their eighteenth birthday;~~

~~(ii) Is requesting to enroll in the extended foster care program through a voluntary placement agreement (VPA) prior to reaching the age of twenty-one; and~~

~~(iii) Meets one of the criteria found in subsection (1)(a) through (e) of this section.~~

~~(2) A dependent youth in the custody of juvenile rehabilitation, the department of corrections, county detention, or jail who otherwise meets the eligibility criteria in subsection (1)(a) through (f) of this section may enroll in the extended foster care program.~~

~~(3) If the youth was in the extended foster care program but then unenrolled or lost their eligibility, the youth may reenroll in the extended foster care program through a VPA before the age of twenty-one. The youth must meet one of the criteria in subsection (1)(a) through (e) when requesting to reenroll in the extended foster care program.)~~

(b) Voluntarily agree to participate in the EFC program by:

(i) Signing an EFC participation agreement between the ages of 17 1/2 and 18; or

(ii) Having their dependency dismissed on their 18th birthday and signing a voluntary placement agreement (VPA) prior to reaching age 21.

(2) Youth:

(a) Whose dependency was dismissed on or after their 18th birthday remain eligible to enroll prior to their 21st birthday by:

(i) Contacting DCYF to request enrollment; and

(ii) Signing a VPA and EFC participation agreement.

(b) Who are or were in the custody of juvenile rehabilitation division, the department of corrections, county detention, or jail are eligible for enrollment in the EFC program if they meet the criteria in subsections (1) and (2)(a) of this section.

(c) Remain eligible for the EFC program regardless of the number of times they enter or exit the program as long as they:

(i) Voluntarily agree to participate in the EFC program; and

(ii) Have not reached their 21st birthday.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-90-0050 ((How does a youth demonstrate enrollment in school?)) Youths' participation requirements. ((Enrollment in school is shown by documented registration or acceptance in:

(1) ~~Secondary~~ — A high school, secondary education equivalency program, or a state accredited on-line or other approved secondary education program.

(2) ~~Post-secondary~~ — Post-secondary academic or vocational program.) (1) Youth dependent at age 18 are eligible for EFC and must complete the following to participate in the EFC program, for youth entering:

(a) At age 18, they must voluntarily sign an EFC participation agreement; or

(b) After their minor dependency has closed between the ages of 18 and 21 they must:

(i) Sign an EFC:

(A) VPA; and

(B) Participation agreement;

(ii) Enter into a nonminor dependency action within 180 calendar days of the date they signed an EFC VPA to continue receiving EFC services as outlined in RCW 74.13.336.

(2) Youth participating in the EFC program acknowledge that DCYF has responsibility for their care and placement and the youth may authorize DCYF access to records related to their:

(a) Medical;

(b) Mental health;

(c) Substance use treatment services;

(d) Education records; and

(e) Additional records necessary to provide services.

RIGHTS AND RESPONSIBILITIES

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-90-0060 (~~(How does a youth demonstrate he/she has applied for and intends to timely enroll in a post-secondary program?)~~) **DCYF's responsibilities to youth participating in the EFC program.**

~~((1) Applied for intends to timely enroll in a post-secondary program is demonstrated by the youth:~~

~~(a) Completing and submitting an application to a post-secondary academic or vocational program; or~~

~~(b) Providing proof of Free Application for Federal Student Aid (FAFSA) submission.~~

~~(2) **Timely enroll** means participation in a post-secondary program in the next reasonably available school term.)~~ DCYF must:

(1) Have placement and care authority for EFC youth:

(a) And provide services that include, but are not limited to:

(i) Transition planning and independent living services;

(ii) Medical assistance through medicaid;

(iii) SIL subsidy, if applicable; and

(iv) Case management as defined in RCW 74.13.020;

(b) For the sole purpose of providing services to them. This does not create a legal responsibility of DCYF for the youths' actions receiving EFC services.

(2) Inform the court of the status of the youth, including:

(a) Health;

(b) Safety;

(c) Welfare; and

(d) Education status.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-90-0070 (~~((How does a youth demonstrate participation in a program or activity designed to promote employment or remove barriers to employment?))~~) Youths' rights in the EFC program. (~~((1) Actively participate in a state, federal, tribal or community program that addresses any barriers to employment that the youth may have and/or prepares or trains individuals for employment; or~~
~~(2) Involved in a self-directed program that will remove any barriers to employment and will prepare a youth for employment; or~~
~~(3) Working less than eighty hours a month.))~~) Youth who voluntarily agree to participate in the EFC program have a right to:
(1) A foster care placement;
(2) Medical assistance through medicaid;
(3) Participate in court proceedings as a party to the case;
(4) Have an attorney appointed for them upon filing a notice of intent to file a petition for dependency;
(5) Referrals to community resources, if applicable; and
(6) Enter or exit EFC at any time up to their 21st birthday.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-90-0080 (~~((What if an eligible youth does not want to participate in the extended foster care program?))~~) EFC youth and their legal rights as an adult. (~~((Participation in extended foster care is voluntary. A youth who does not agree to participate in extended foster care may request the court to dismiss his or her dependency case.))~~) The EFC youth is:
(1) A youth for the purposes of the dependency and must comply with the participation agreement requirements in WAC 110-90-0050.
(2) Responsible for their actions and has the legal status and legal rights of an adult including, but not limited to:
(a) Purchases;
(b) Driving;
(c) Traveling; and
(d) Financial obligations related to the activities they participate in.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-90-0090 (~~((What is a "documented medical condition"?)~~) Youth exiting the EFC program. (~~((A "documented medical condition" is any physical or mental health condition documented by a licensed health care provider that may be temporary or permanent, including but not limited to, a physical injury or a physical or behavioral health condition. A "documented medical condition" may include physiological, mental, or psychological conditions or disorders, including but not limited to, orthopedic, visual, speech, and hearing impairments.))~~) Youth participating in the EFC program may voluntarily exit the program at any time prior to their 21st birthday, by notifying their:

- (1) Caseworker; and
- (2) Attorney.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- | | |
|-----------------|--|
| WAC 110-90-0100 | How does a youth demonstrate the inability to participate in extended foster care (EFC) activities due to a documented medical condition? |
| WAC 110-90-0110 | How does a youth agree to participate in the extended foster care program? |
| WAC 110-90-0120 | Where do youth obtain information about how to participate in the EFC program? |
| WAC 110-90-0130 | Can an extended foster care participant continue in extended foster care under a different eligibility category? |
| WAC 110-90-0140 | If an extended foster care participant loses his or her eligibility before he or she turns twenty-one, may he or she reapply for extended foster care? |
| WAC 110-90-0150 | What are DCYF's responsibilities to a youth who is participating in EFC? |
| WAC 110-90-0160 | How does DCYF determine a youth's continuing eligibility for the EFC program? |
| WAC 110-90-0170 | What are the legal rights of a dependent youth in EFC to travel out-of-state, buy a car, or engage in other activities as an adult? |
| WAC 110-90-0180 | What are the youth's rights in the extended foster care program? |
| WAC 110-90-0190 | What must the youth do to remain in the EFC program? |
| WAC 110-90-0200 | When is a youth no longer eligible for the EFC program? |

WSR 24-13-018
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-92—Filed June 6, 2024, 1:45 p.m., effective June 8, 2024]

Effective Date of Rule: June 8, 2024.

Purpose: The purpose of this emergency rule is to rescind rules restricting anglers from fishing for salmon and steelhead from a vessel between Beacon Rock and Hamilton Island boat ramp and reopen spring Chinook from Bonneville Dam to the Oregon/Washington (OR/WA) border. This rule also carries forward Columbia River salmon and steelhead seasons previously announced in WSR 24-12-034 and 24-12-062.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000L and 220-312-06000M; and amending WAC 220-312-060.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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

Reasons for this Finding: This rule applies joint state action taken on June 6, 2024, to rescind the hand-cast only and no angling from a vessel restriction from Beacon Rock upstream to Hamilton boat ramp and reopen spring Chinook from Bonneville Dam to the OR/WA border. Additionally, summer fishery regulations developed through the 2024 North of Falcon season setting process are included and are consistent with comanager agreements. Endangered Species Act (ESA) impacts and allowable harvest allocations are available to recreational fisheries in order to access salmon and steelhead. The fishery is consistent with the *U.S. v. Oregon Management Agreement* and the associated biological opinion. Conforms Washington state rules with Oregon state rules. The general public welfare is protected with the immediate opening of recreational salmon fishing. This limited harvest allows for public use of the resource as well as the maintenance of a sustainable fish population.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River Compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon Management Agreement* (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon Management Agreement*.

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under ESA. The Washington and Oregon fish and wildlife commissions have developed policies to guide the imple-

mentation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: June 6, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000N Freshwater exceptions to statewide rules—Columbia River. Effective June 8 through July 31, 2024, the provisions of WAC 220-312-060 regarding recreational salmon and steelhead seasons from the Megler-Astoria Bridge to Priest Rapids Dam, shall be modified as described below, except in areas closed to fishing for salmon and steelhead year-round in WAC 220-312-060. All other provisions of WAC 220-312-060 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) From the Megler-Astoria Bridge upstream to a projected line from Rocky Point on the Washington bank through red buoy 44 to the red navigation marker 2 at Tongue Point on the Oregon Bank: Salmon and steelhead:

(a) Effective June 16 through June 19, 2024: Daily limit 6, no more than 2 adults may be retained of which up to 1 may be a steelhead. Release all salmon and steelhead other than hatchery Chinook, sockeye, and hatchery steelhead.

(b) Effective June 20 through July 31, 2024: Daily limit 6, no more than 2 adults may be retained of which up to 1 may be a steelhead. Release all salmon and steelhead other than hatchery jack Chinook, sockeye, and hatchery steelhead.

(2) From a projected line from Rocky Point on the Washington bank through red buoy 44 to the red navigation marker 2 at Tongue Point on the Oregon Bank upstream to Bonneville Dam: Salmon and steelhead:

(a) Effective immediately, through June 15, 2024: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.

(b) Effective June 16 through June 19, 2024: Daily limit 6, no more than 2 adults may be retained of which up to 1 may be a steelhead. Release all salmon and steelhead other than hatchery Chinook, sockeye, and hatchery steelhead.

(c) Effective June 20 through July 31, 2024: Daily limit 6, no more than 2 adults may be retained of which up to 1 may be a steelhead. Release all salmon and steelhead other than hatchery jack Chinook, sockeye, and hatchery steelhead.

(3) From Bonneville Dam upstream to Tower Island power lines (approximately 6 miles below The Dalles Dam): Salmon and steelhead:

(a) Effective immediately, through June 15, 2024: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook. Closed to angling from a floating device or by any method except hand-cast lines from shore.

(b) Effective June 16 through June 30, 2024: Daily limit 6, no more than 2 adults may be retained of which up to 1 may be a steelhead. Release all salmon and steelhead other than hatchery Chinook, sockeye, and hatchery steelhead.

(c) Effective July 1 through July 31, 2024: Daily limit 6, no more than 2 adults may be retained of which up to 1 may be a steelhead. Release all salmon and steelhead other than hatchery jack Chinook, sockeye, and hatchery steelhead.

(4) From Tower Island power lines upstream to The Dalles Dam: Salmon and steelhead:

(a) Effective immediately, through June 15, 2024: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.

(b) Effective June 16 through June 30, 2024: Daily limit 6, no more than 2 adults may be retained of which up to 1 may be a steelhead. Release all salmon and steelhead other than hatchery Chinook, sockeye, and hatchery steelhead.

(c) Effective July 1 through July 31, 2024: Daily limit 6, no more than 2 adults may be retained of which up to 1 may be a steelhead. Release all salmon and steelhead other than hatchery jack Chinook, sockeye, and hatchery steelhead.

(5) From The Dalles Dam upstream to a line starting from a fishing boundary sign on the Washington north shore located approximately 1300' upstream of The Dalles Dam and Lock boat ramp projected easterly across the Columbia River to a boundary sign on the Washington southern shore located approximately 200' above the fish ladder exit: Salmon and steelhead:

Effective immediately, until further notice: Closed to fishing for and retention of salmon and steelhead.

(6) From a line starting from a fishing boundary sign on the Washington north shore located approximately 1300' upstream of The Dalles Dam and Lock boat ramp projected easterly across the Columbia River to a boundary sign on the Washington south shore located approximately 200' above the fish ladder exit upstream to Hwy. 730 at the Washington/Oregon border: Salmon and steelhead:

(a) Effective immediately, through June 15, 2024: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.

(b) Effective June 16 through June 30, 2024: Daily limit 6, no more than 2 adults may be retained of which up to 1 may be a steelhead. Release all salmon and steelhead other than hatchery Chinook, sockeye, and hatchery steelhead.

(c) Effective July 1 through July 31, 2024: Daily limit 6, no more than 2 adults may be retained of which up to 1 may be a steelhead. Release all salmon and steelhead other than hatchery jack Chinook, sockeye, and hatchery steelhead.

(7) From Hwy. 730 at the Washington/Oregon border upstream to Hwy. 395 Bridge at Pasco: Salmon and steelhead:

(a) Effective June 16 through June 30, 2024: Daily limit 6, no more than 2 adults may be retained of which up to 1 may be a steelhead. Release all salmon and steelhead other than hatchery Chinook, sockeye, and hatchery steelhead.

(b) Effective July 1 through July 31, 2024: Daily limit 6, no more than 2 adults may be retained of which up to 1 may be a steelhead. Release all salmon and steelhead other than hatchery jack Chinook, sockeye, and hatchery steelhead.

(8) From Columbia Point (approximately 1/3 mile downstream of I-182 Bridge) upstream to I-182 Bridge: Salmon:

(a) Effective June 16 through June 30, 2024: Closed to angling from a floating device or by any method except hand-cast lines from the west shore (Richland side of the river).

(b) Effective June 16 through June 30, 2024: Daily limit 6, up to 4 adult salmon including no more than 1 Chinook may be retained. Release all salmon and steelhead other than hatchery Chinook and sockeye.

(9) From I-182 Bridge upstream to Priest Rapids Dam: Salmon:

Effective June 16 through June 30, 2024: Daily limit 6, up to 4 adult salmon including no more than 1 Chinook may be retained. Release all salmon and steelhead other than hatchery adult Chinook, jack Chinook and sockeye.

REPEALER

The following sections of Washington Administrative Code are repealed, effective June 8, 2024:

WAC 220-312-06000L Freshwater exceptions to statewide rules—Columbia. (24-81)

WAC 220-312-06000M Freshwater exceptions to statewide rules—Columbia. (24-82)

WSR 24-13-021
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-90—Filed June 6, 2024, 4:09 p.m., effective June 17, 2024]

Effective Date of Rule: June 17, 2024.

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

Citation of Rules Affected by this Order: Amending WAC 220-359-020.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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

Reasons for this Finding: This rule sets the Columbia River treaty summer season commercial fisheries for nontreaty buyers. This rule is consistent with actions of the Columbia River Compact on June 5, 2024. Conforms state rules with tribal rules. The general public welfare is protected with the immediate opening of nontreaty buyers purchasing fish from treaty fisheries. This harvest opportunity allows for the tribal use and public access to the resource as well as the maintenance of sustainable fish populations. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River Compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement.

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions

change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

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

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

Date Adopted: June 6, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-359-02000B Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H. However, those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

(1) Open Areas: SMCRA 1F, 1G, 1H (Zone 6)

(a) Season: 6:00 AM June 17 through 11:59 PM July 31, 2024.

(b) Gear: Hoop nets/bag nets, dip nets, and rod and reel with hook and line.

(c) Allowable sale: Salmon (any species), steelhead caught after 6:00 AM on June 17 may be sold or kept for subsistence. Shad, yellow perch, bass, walleye, catfish and carp may also be sold or retained for subsistence. Fish landed during the open periods are allowed to be sold after the period concludes. Sturgeon may not be sold, but sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day Pools and may be kept for subsistence purposes.

(d) Standard river mouth and dam sanctuary closures remain in place for this gear.

(2) Open Areas: SMCRA 1E (area defined in tribal/state MOUs/MOAs)

(a) Season: 6:00 AM June 17 through 11:59 PM July 31, 2024. Only during days and times opened under tribal rule.

(b) Gear: Hook and line and/or platform gear identified in tribal rules.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish and carp caught after 6:00 AM on June 17 may be sold or retained for subsistence. Sturgeon may not be retained in fisheries downstream of Bonneville Dam. Sales of fish are not authorized on COE property downstream of Bonneville Dam. Fish must be transported elsewhere for sale. Fish landed during the open periods are allowed to be sold after the period concludes.

(3) Open Areas: Wind River, Drano Lake, and Klickitat River.

(a) Season: 6:00 AM June 17, until further notice, and only during those days and hours when the areas are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

(b) Gear: Hoop Nets/Bag Nets, Dip Nets, and Rod and reel with hook and Line. Gillnets may only be used in Drano Lake.

Allowable sales: Salmon (any species), steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon from 38 to 54 inches fork length in the Bonneville Pool may be kept for subsistence.

(4) Open Areas: SMCRA 1F, 1G, 1H (Zone 6)

(a) Season:

(i) 6:00 AM June 17 through 6:00 PM June 19, 2024

(ii) 6:00 AM June 24 through 6:00 PM June 27, 2024

(b) Gear: Set and Drift Gill nets with a minimum 7-inch mesh size restriction.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish and carp may be sold or retained for subsistence. Sturgeon may not be sold, but sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day Pools and may be kept for subsistence purposes.

(d) Standard river mouth and dam closed areas applicable to gill-net gear, except the Spring Creek Hatchery sanctuary is not in effect during the summer management period.

(5) 24-hour quick reporting is required for Washington wholesale dealers for all areas as provided in WAC 220-352-315, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

(6) Fish caught during the open period may be sold after the period concludes.

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

WSR 24-13-028
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-91—Filed June 7, 2024, 1:32 p.m., effective June 7, 2024, 1:32 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule:

(1) Closes Subregion 1C and Subarea 23A-East to commercial spot shrimp harvest one hour after official sunset on Monday, June 10, 2024.

(2) Designates the commercial spot shrimp catch accounting periods and catch limits.

(3) Designates the commercial nonspot shrimp catch accounting periods and biweekly catch limit for harvest from Subregions 1B and 1C and Region 2E.

Citation of Rules Affected by this Order: Repealing WAC 220-340-52000S; and amending WAC 220-340-520.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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

Reasons for this Finding: Permanent rules regulating state commercial shrimp harvest in Puget Sound and the Strait of Juan de Fuca require the adoption of harvest seasons contained in this emergency rule. This emergency rule is necessary to prosecute state commercial shrimp pot fisheries in Puget Sound. This rule closes a quota area to commercial harvest following the projected attainment of the available harvest. This rule allows harvesters to respond to dynamic changes in market conditions and promotes full utilization of both the commercial spot and nonspot shares. These rules are in congruence with comanager agreements. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 7, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-52000T Commercial shrimp pot fishery—Puget Sound.

Notwithstanding the provisions of WAC 220-340-520, effective immediately, until further notice, it is unlawful to fish for shrimp for commercial purposes using pot gear in Puget Sound except as provided for in this section:

(1) Spot Shrimp Pot Harvest:

(a) Spot shrimp harvest is permitted as indicated in the following table opening one hour before official sunrise on the first day of the open period. Any closures take effect one hour after official sunset on the closing day of the open period.

Geographical Management Unit (WAC 220-320-140; WAC 220-320-120)	Open Period
Subregion 1A	Immediately, until further notice.
Subregion 1B	Closed.
Subregion 1C	Immediately, through June 10, 2024.
Region 2E	Closed.
Region 2W	Closed
Subarea 23A-E	Immediately, through June 10, 2024.
Subarea 23A-W	Immediately, until further notice.
Subarea 23A-C and MSFS Catch Area 23B	Immediately, until further notice.
Subarea 23A-S and MSFS Catch Area 23D	Immediately, until further notice.
MFSF Catch Area 23C	Immediately, until further notice.
MFSF Catch Area 25A, excluding the Discovery Bay Shrimp District	Immediately, until further notice.
Discovery Bay Shrimp District	Closed.
MFSF 29 (Straits - Neah Bay)	Immediately, until further notice.
Subarea 26B-1 and MFSF Catch Area 26C	Closed.
Subarea 26B-2	Closed.
Region 5	Closed.
MFSF Catch Area 26D	Closed.
MFSF Catch Areas 28A, 28B, 28C, and 28D	Closed.

(b) The first spot shrimp catch accounting period starts one hour before official sunrise on May 1, 2024, through one hour after official sunset on July 30, 2024.

(c) It is unlawful for the combined total harvest during the first spot shrimp accounting period to have exceeded 4,800 pounds of spot shrimp per license from all Puget Sound shrimp management regions combined.

(d) The second spot shrimp catch accounting period will start one hour before official sunrise on July 31, 2024, through one hour after official sunset on August 20, 2024.

(e) It is lawful to possess deactivated non-spot shrimp pots on-board a commercial vessel that is listed on a Puget Sound shrimp pot license while fishing for spot shrimp.

A deactivated pot is un-baited, has the drawstring or door fastened open, and/or is unable to be readily fished.

(2) Non-spot shrimp pot harvests:

(a) Non-spot shrimp pot harvest is permitted as indicated in the following table opening one hour before official sunrise on the first day of the open period. Any closures take effect one hour after official sunset on the closing day of the open period.

Geographical Management Unit (WAC 220-320-140; WAC 220-320-120)	Open Period
Subregion 1A	Immediately, until further notice.
Subregion 1B	Immediately, until further notice.
Subregion 1C	Immediately, until further notice.
Region 2E	Immediately, until further notice.
Region 2W	Immediately, until further notice.
Region 3, not including Discovery Bay Shrimp District	Immediately, until further notice.
Discovery Bay Shrimp District	Immediately, until further notice.
Region 4	Closed
Region 5	Closed
Region 6	Closed

(b) The non-spot shrimp catch accounting periods begin one hour before official sunrise and end one hour after official sunset on the date listed in the following table:

Period Number	Start Date	End Date
1	5/1/2024	5/14/2024
2	5/15/2024	5/28/2024
3	5/29/2024	6/11/2024
4	6/12/2024	6/25/2024
5	6/26/2024	7/9/2024
6	7/10/2024	7/23/2024
7	7/24/2024	8/6/2024
8	8/7/2024	8/20/2024
9	8/21/2024	9/3/2024
10	9/4/2024	9/17/2024
11	9/18/2024	10/1/2024
12	10/2/2024	10/15/2024

(c) It is unlawful for total harvest of non-spot shrimp to exceed 1,400 pounds per non-spot shrimp catch accounting period from subregions 1B, 1C, and Region 2E combined during catch accounting periods 1 through 12.

(d) There is no weekly harvest limit of non-spot shrimp from subregion 1A, Region 2W, Region 3, or the Discovery Bay Shrimp District.

(e) Harvest of non-spot shrimp is not permitted deeper than 175 feet in Catch Area 23A and all of its subareas (23AE, 23AW, 23AC, 23AS).

(f) Harvest of non-spot shrimp is not permitted deeper than 175 feet in subregion 1A.

(g) It is unlawful to harvest non-spot shrimp in more than one geographical management unit listed in subsection 3(a) in a single day with the following exceptions:

(i) Non-spot shrimp may be harvested from more than one subregion of Region 1 on the same day.

(ii) Non-spot shrimp may be harvested from Discovery Bay Shrimp District and Region 3 on the same day.

(h) It is lawful to possess deactivated spot shrimp pots on-board of a commercial vessel that is listed on a Puget Sound shrimp pot license while fishing for non-spot shrimp.

A deactivated pot is un-baited, has the drawstring or door fastened open, and/or is unable to be readily fished.

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

REPEALER

The following section of the Washington Administrative Code is repealed, effective immediately:

WAC 220-340-52000S Commercial shrimp pot fishery—Puget Sound. (24-62)

WSR 24-13-031
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed June 10, 2024, 7:53 a.m., effective June 14, 2024]

Effective Date of Rule: June 14, 2024.

Purpose: The developmental disabilities administration (DDA) is enacting these amendments on an emergency basis to align with SB 5252 (2023) and FBI background check requirements.

Citation of Rules Affected by this Order: Amending WAC 388-825-335, 388-825-615, and 388-825-620.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 43.43.837 and 74.39A.056.

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

Reasons for this Finding: Enacting amendments to WAC 388-825-335 and 388-825-620 on an emergency basis is necessary to comply with FBI background check requirements and to conduct background checks necessary to receive federal funding. Enacting amendments to WAC 388-825-615 is necessary to align with amendments to SB 5252. This is the fourth emergency filing on these sections and is necessary to keep the rules in effect while DDA completes the permanent rule-making process. DDA is progressing through the permanent process. After the first public hearing, the department of social and health services determined additional changes were needed and has filed a second CR-102 under WSR 24-11-101, opened an additional comment period, and will hold a second hearing June 25, 2024.

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

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

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

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

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

Date Adopted: June 10, 2024.

Katherine I. Vasquez
Rules Coordinator

SHS-4986.6

AMENDATORY SECTION (Amending WSR 14-14-029, filed 6/24/14, effective 7/25/14)

WAC 388-825-335 Is a background check required of a long-term care worker employed by a home care agency licensed by the department of health? (1) In order to be a long-term care worker employed by a home care agency, a person must:

(a) Complete the required DSHS form authorizing a background check.

(b) Disclose any disqualifying criminal convictions and pending charges as listed in chapter 388-113 WAC, and also disclose civil adjudication proceedings and negative actions as those terms are defined in WAC (~~(388-71-0512)~~) 388-113-0030.

(c) Effective January 8, 2012, be screened through Washington state's name and date of birth background check, (Preliminary results may require a thumb print for identification purposes); and

(d) Effective January 8, 2012, be screened through the Washington state and national fingerprint-based background check, as required by RCW 74.39A.056.

(2) Results of background checks are provided to the department and the employer or potential employer for the purpose of determining whether the person:

(a) Is disqualified based on a disqualifying criminal conviction or a pending charge for a disqualifying crime (~~(as listed in)~~) under WAC 388-113-0020, civil adjudication proceeding, or negative action (~~(as defined in)~~) under WAC (~~(388-71-0512 and listed in WAC 388-71-0540)~~) 388-113-0030; or

(b) Should or should not be employed based on his or her character, competence, and/or suitability.

(3) For those providers listed in RCW 43.43.837(1), a second national fingerprint-based background check is required if they have lived out of the state of Washington since the first national fingerprint-based background check was completed.

(4) The department may require a long-term care worker to have a Washington state name and date of birth background check (~~(or a Washington state and national fingerprint-based background check, or both, at any time.)~~) if information is disclosed or found regarding new:

(a) Pending charges;

(b) Convictions; or

(c) Negative actions.

AMENDATORY SECTION (Amending WSR 23-07-130, filed 3/22/23, effective 4/22/23)

WAC 388-825-615 What type of background check is required? (1) Beginning January 7, 2012, long-term care workers, including parents and individual providers, undergoing a background check for initial hire or initial contract, must be screened through a Washington state name and date of birth check and a national fingerprint-based background check.

(2) Beginning January 1, 2016, a newly hired long-term care worker employed by a community residential service business must be screened through a Washington state name and date of birth check and a national fingerprint-based background check.

(a) For a renewal, a person who has continuously resided in Washington state for the past three consecutive years must be screened through a Washington state name and date of birth check.

(b) For a renewal, a person who has resided outside of Washington state in the past three years must be screened through a Washington state name and date of birth check and a national fingerprint-based background check.

(3) For adult family homes, refer to chapter 388-76 WAC. For assisted living facilities, refer to chapter 388-78A WAC.

(4) Beginning July ((1)) 23, 2023, a residential habilitation center applicant undergoing a background check for initial hire must be screened through a Washington state name and date of birth check and a national fingerprint-based background check.

(5) All background checks must be completed through the background check system.

AMENDATORY SECTION (Amending WSR 23-07-130, filed 3/22/23, effective 4/22/23)

WAC 388-825-620 How often must a background check be renewed?

(1) DDA requires a background check at least every three years, or more frequently if required by program rule.

(2) A background check renewal will be conducted as follows:

(a) Individuals who have continuously resided in Washington state for the past three consecutive years will be screened through a state name and date of birth background check.

(b) Individuals who have lived outside of Washington state within the past three years will be screened through a state name and date of birth check and a national fingerprint-based background check.

(c) Individuals who live outside of Washington state and provide services in Washington state will be screened through a Washington state name and date of birth check and a national fingerprint-based background check.

(3) The department may require a long-term care worker or residential habilitation center employee to have a renewed Washington state name and date of birth background check if information is disclosed or found regarding new:

(a) Pending charges;

(b) Convictions; or

(c) Negative actions.

WSR 24-13-034
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-94—Filed June 10, 2024, 9:13 a.m., effective June 10, 2024, 9:13 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to close recreational angling in May Creek.

Citation of Rules Affected by this Order: Amending WAC 220-312-04000J.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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

Reasons for this Finding: This rule is necessary to close fishing in May Creek. Limited allowable take of wild Chinook in the Snohomish system necessitates strict controls to conserve impacts for fall in-river fisheries. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 10, 2024.

Kelly Susewind
Director

[NEW SECTION]

WAC 220-312-04000J Freshwater exceptions to statewide rules—Puget Sound. Effective immediately, until further notice, provisions of WAC 220-312-040 regarding recreational fishing seasons for the May Creek shall be modified as described below. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended by emergency rule remain in effect:

May Creek (Snohomish County) (tributary of Wallace River): Effective immediately, until further notice: All species: Closed.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

WSR 24-13-035
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-93—Filed June 10, 2024, 10:51 a.m., effective June 10, 2024, 10:51 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to open recreational shrimp seasons in Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-330-07000X; and amending WAC 220-330-070.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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

Reasons for this Finding: This rule is needed to ensure an orderly fishery, manage the fishery within court-ordered sharing requirements, and meet conservation objectives. Harvestable amounts of spot shrimp are available, but recreational shares will only support a limited number of open days in the marine areas listed in this section. In addition to recreational seasons previously scheduled in WSR 24-09-024 (filed April 9, 2024) and 24-12-030 (filed May 28, 2024), this emergency rule opens all-species seasons in Marine Area 8-1, Marine Area 8-2 [on] June 13, and in a portion of Marine Area 7 South from June 13 through 15. This rule also opens the nonspot shrimp only fishery in Marine Area 7 East with a maximum depth restriction. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 7, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-330-07000Y Shrimp—Areas and seasons. Notwithstanding the provisions of WAC 220-330-070, effective immediately, until further notice, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Areas 4 (east of the Bonilla-Ta-

toosh line), 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, 13 and the Discovery Bay Shrimp District, except as provided for in this section:

(1) Marine Areas 4 (east of the Bonilla-Tatoosh line) and 5: Open daily, from 1 hour before official sunrise to 1 hour after official sunset, until further notice for all shrimp species.

(2) Marine Area 6 (excluding the Discovery Bay Shrimp District): Open from 1 hour before official sunrise to 1 hour after official sunset on June 13 through 16, June 28 through June 30, and July 12 through July 15 for all shrimp species.

(3) Marine Area 7 South: Only that portion of Marine Area 7 South that is west of a line projected due south from Point Colville on Lopez Island and east of a line projected due south from Cattle Point on San Juan Island will open from 1 hour before official sunrise to 1 hour after official sunset on June 13 through June 15 for all shrimp species. The remaining portion of 7 South will stay closed.

(4) Marine Area 7 East: Open daily through October 15 for shrimp species other than spot shrimp with a 200-foot maximum fishing depth restriction. During this time, it is unlawful to set or pull shrimp gear in waters greater than 200 feet deep. All spot shrimp caught must be immediately returned to the water unharmed.

(5) Marine Area 7 West: Open from 1 hour before official sunrise to 1 hour after official sunset on June 13 through 15, June 28 through 30, and July 12 through 14 for all shrimp species.

(6) Marine Areas 8-1 and 8-2:

(a) Open June 13 from 9:00 a.m. through 1:00 p.m. for all shrimp species.

(b) Divers may take shrimp by hand or hand-held device from 7:00 p.m. until midnight on June 13 in Marine Area 8-2.

(7) Marine Area 9: Open June 13 from 9:00 a.m. through 1:00 p.m. for all shrimp species.

(8) Marine Area 10 (inside Elliott Bay): Open June 13 from 9:00 a.m. through 1:00 p.m. for all shrimp species.

(9) Marine Area 10 (outside Elliott Bay): Open June 13 from 9:00 a.m. through 1:00 p.m. for all shrimp species.

(10) Marine Area 11: Open daily through October 15 for shrimp species other than spot shrimp with a 150-foot maximum fishing depth restriction. During this time, it is unlawful to set or pull shrimp gear in waters greater than 150 feet deep. All spot shrimp caught must be immediately returned to the water unharmed.

(11) Marine Area 12: Open June 15 from 9:00 a.m. through 1:00 p.m. for all shrimp species.

(12) Marine Area 13: Open daily through October 15 for shrimp species other than spot shrimp with a 200-foot maximum fishing depth restriction. During this time, it is unlawful to set or pull shrimp gear in waters greater than 200 feet deep. All spot shrimp caught must be immediately returned to the water unharmed.

REPEALER

The following section of Washington Administrative Code is repealed, effective immediately, 2024:

WAC 220-330-07000X Shrimp—Areas and seasons. (24-79)

WSR 24-13-045
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-98—Filed June 12, 2024, 9:59 a.m., effective June 13, 2024]

Effective Date of Rule: June 13, 2024.

Purpose: The purpose of this emergency rule is to return Kalama River salmon rules to permanent rules.

Citation of Rules Affected by this Order: Repealing WAC 220-312-03000Q; and amending WAC 220-312-030.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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

Reasons for this Finding: This emergency rule is necessary to return Kalama River to permanent rules.

The adult salmon daily limit on the Kalama River was reduced earlier in the year to help ensure the spring Chinook broodstock collection goal was achieved. Adult broodstock collection is on track and expected to be met, therefore a reduced daily limit is no longer needed.

Cowlitz River, Drano Lake, Klickitat River, Lewis River, and Wind River rules remain in place from WSR 24-06-039 and 24-12-012.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 12, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-03000T Freshwater exceptions to statewide rules—Southwest. Effective June 13, 2024, until further notice, the provisions of WAC 220-312-030 regarding Cowlitz River, Drano Lake, Kalama River, Klickitat River, Wind River salmon and steelhead seasons, and Lewis River salmon and steelhead seasons and all species rules. seasons shall be modified during times and as described below. All other

provisions of WAC 220-312-030 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) Cowlitz River (Cowlitz/Lewis Co.): From boundary markers at the mouth to the fishing boundary markers below Barrier Dam: Effective immediately, until further notice: Salmon: Daily limit 6 including no more than 1 adult. Release all salmon other than hatchery Chinook and hatchery coho.

(2) Drano Lake (Skamania Co.): Waters downstream of markers on point of land downstream and across from Little White Salmon National Fish Hatchery and upstream of the Hwy. 14 bridge: Effective immediately, until further notice: Salmon and steelhead: Daily limit 2 including no more than 1 adult salmon. Release all salmon other than hatchery Chinook. Release all wild steelhead.

(3) Klickitat River (Klickitat Co.):

(a) From the mouth (Burlington Northern Railroad Bridge) to Fisher Hill Bridge: Effective immediately, until further notice: Salmon: Closed

(b) From 400 feet upstream from #5 fishway to boundary markers below Klickitat Salmon hatchery: Effective immediately, until further notice: Salmon: Closed.

(4) Lewis River (Clark/Cowlitz Co.): From mouth to Colvin Creek: Effective immediately, through July 31, 2024: Salmon: Daily limit 6 including no more than 1 adult. Release all salmon other than hatchery Chinook.

(5) Wind River (Skamania Co.): From the mouth (line of buoy markers south of the Hwy. 14 bridge) to 800 yards downstream of Carson National Fish Hatchery: Effective immediately, until further notice: Salmon and steelhead: Daily limit 6. Up to 1 adult salmon and 1 hatchery steelhead, or up to 2 hatchery steelhead may be retained. Release all salmon other than hatchery Chinook and hatchery coho. Release wild steelhead.

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

REPEALER

The following section of Washington Administrative Code is repealed, effective June 13, 2024:

WAC 220-312-03000Q Freshwater exceptions to statewide rules—Southwest. (24-77)

WSR 24-13-046
EMERGENCY RULES
BELLEVUE COLLEGE

[Filed June 12, 2024, 11:14 a.m., effective June 12, 2024, 11:14 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Chapter 132H-142 WAC, BC Policy 6120, Use of college facilities for expressive activity, to be revised for clarity and support of rights and responsibilities around the use of college facilities.

Citation of Rules Affected by this Order: Repealing WAC 132H-142-025, 132H-142-070 and 132H-142-075; and amending WAC 132H-142-010, 132H-142-015, 132H-142-020, 132H-142-030, 132H-142-040, 132H-142-050, and 132H-142-060.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13).

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

Reasons for this Finding: Bellevue College is planning to revise its expressive activity policy to clarify rights and responsibilities and adopt chapter 132H-142 WAC as its policy. This is a timely issue due to recent events on college and university campuses across the United States that have given rise to a renewed interest in policies and procedures around expressive activities and the use of higher education facilities.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 7, Repealed 3.

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

Date Adopted: June 11, 2024.

Loreen M. Keller
Associate Director of Policies and Special Projects

OTS-5491.1

Chapter 132H-142 WAC
((~~FIRST AMENDMENT ACTIVITIES FOR COMMUNITY COLLEGE DISTRICT VIII~~)) USE
OF COLLEGE FACILITIES FOR EXPRESSIVE ACTIVITY

AMENDATORY SECTION (Amending WSR 05-07-069, filed 3/14/05, effective 4/14/05)

WAC 132H-142-010 Title. WAC 132H-142-010 through 132H-142-060 shall be known as use of (~~Community College District VIII facilities by college groups and noncollege groups for first amendment activities~~) college facilities for expressive activity.

AMENDATORY SECTION (Amending WSR 12-24-044, filed 11/29/12, effective 12/30/12)

WAC 132H-142-015 Definitions. (~~For the purposes of this policy noncollege groups shall mean individuals, or combinations of individuals, who are not currently enrolled students or current employees of Bellevue Community College or who are not officially affiliated or associated with a recognized student organization or a recognized employee group of the college.~~

~~For purposes of this policy, college groups shall mean individuals who are currently enrolled students or current employees of Bellevue Community College or who are affiliated with a recognized student organization or a recognized employee group of the college.~~

~~College facilities include all buildings, structures, grounds, office space and parking lots.)~~ (1) "College facilities" includes all owned, rented, leased, controlled, occupied, and used buildings, structures, grounds, office space, and parking lots.

(2) "College groups" means individuals or groups who are currently enrolled students or current employees of Bellevue College, or guests of Bellevue College who are sponsored by a recognized student organization, employee organization, or the administration of the college.

(3) "Expressive activity" includes, but is not necessarily limited to, informational picketing, petition circulation, the distribution of informational leaflets or pamphlets, speech-making, demonstrations, rallies, appearances of speakers in outdoor areas, protests, meetings to display group feelings or sentiments and/or other types of assemblies to share information, perspective, or viewpoints.

(4) "Limited public forum" means the college is a limited public forum for noncollege groups. ((The)) Limited public forum ((does)) locations do not include college property, buildings, or athletic fields. College buildings, rooms, and athletic fields may be rented in accordance with the college's facilities use policy.

(5) "Noncollege groups" means individuals, or combinations of individuals, who are not currently enrolled students or current employees of Bellevue College and who are not officially affiliated or associated with, or invited guests of a recognized student organization, recognized employee group, or the administration of the college.

(6) "Public use areas" means those areas of each campus that the college has chosen to open as places where noncollege groups may assemble for expressive activity protected by the first amendment, subject to reasonable time, place, or manner restrictions.

AMENDATORY SECTION (Amending WSR 12-24-044, filed 11/29/12, effective 12/30/12)

WAC 132H-142-020 Statement of purpose. Bellevue ((Community)) College District VIII is an educational institution provided and maintained by the people of the state of Washington. College facilities are reserved primarily for educational use including, but not limited to, instruction, research, public assembly of college groups, student activities and other activities directly related to the educational mission of the college. The public character of the college does not grant to individuals an unlimited license to engage in activity which limits, substantially interferes with, or otherwise disrupts the normal activities ((for and)) to which the college's ((buildings,)) facilities and grounds are dedicated ((and said buildings, facilities and grounds are not available for unrestricted use by noncollege groups. While said buildings, facilities and grounds are not available for unlimited use by college groups, it is recognized that Bellevue Community College students and employees should be accorded opportunity to utilize the facilities and grounds of the college to the fullest extent possible. The purpose of these time, place and manner regulations is to establish procedures and reasonable controls for the use of college facilities for both noncollege and college groups. It is intended to balance the college's responsibility to fulfill its mission as a state educational institution of Washington with the interests of noncollege groups or college groups who are interested in using the campus for purposes of constitutionally protected speech, assembly or expression. The college intends to open its facilities to noncollege groups to a lesser extent as set forth herein)). Accordingly, the college designates the outdoor common areas of the college as a limited public forum dedicated to the use of college groups, subject to the time, place, and manner limitations and restrictions set forth in this policy.

The purpose of the time, place, and manner regulations set forth in this policy is to establish procedures and reasonable controls for the use of college facilities. It is intended to balance the college's responsibility to fulfill its mission as a state educational institution of Washington with the interests of college groups seeking to assemble in common areas of the campus for expressive activity. Bellevue College recognizes that college groups should be accorded the opportunity to utilize the facilities and grounds of the college to the fullest extent possible.

The college designates the following area(s) as the sole limited public forum area(s) for use by noncollege groups for expressive activities on campus:

- Building C courtyard between building C and D extending out from the fountain for groups less than 30; and
- Southern courtyard, just north of Carlson Theater if over 30 participants are expected.

AMENDATORY SECTION (Amending WSR 12-24-044, filed 11/29/12, effective 12/30/12)

WAC 132H-142-030 ((Request for use of facilities.)) Time, place, and manner permissions. ((Subject to the regulations and requirements of this policy, college or noncollege groups may use the campus limi-

~~ted forums for those activities protected by the first amendment. Examples of first amendment activities would include, but not necessarily be limited to, informational picketing, petition circulation, the distribution of information leaflets or pamphlets, speech-making, demonstrations, rallies, appearances of speakers in outdoor areas, mass protests, meetings to display group feelings or sentiments and/or other types of constitutionally protected assemblies to share information, perspective or viewpoints.~~

~~Noncollege groups that intend to be on campus to engage in first amendment activities (hereinafter "the event") are encouraged to provide notice to the student programs office no later than twenty-four hours prior to the event along with the following information:~~

- ~~(1) The name, address and telephone number of the individual, group, entity or organization sponsoring the event (hereinafter "the sponsoring organization"); and~~
- ~~(2) The name, address and telephone number of a contact person for the sponsoring organization; and~~
- ~~(3) The date, time and requested location of the event; and~~
- ~~(4) The nature and purpose of the event; and~~
- ~~(5) The type of sound amplification devices to be used in connection with the event, if any; and~~
- ~~(6) The estimated number of people expected to participate in the event.~~

~~Signs shall be no larger than three feet by five feet (3' x 5') and no individual may carry more than one sign.~~

~~The use of sound amplification devices is limited to the limited public forum area as long as the sound amplification device is used at a volume which does not disrupt or disturb the normal use of classrooms, offices or laboratories or any previously scheduled college event or activity.~~

~~College groups are encouraged to notify the student programs office no later than forty-eight hours in advance of an event. However, unscheduled events are permitted so long as the event does not interfere with any other function occurring at the facility.~~

~~College group events shall not last longer than eight hours from beginning to end. Noncollege events shall not last longer than five hours from beginning to end.~~

~~There shall be no overnight camping on college facilities or grounds. Camping is defined to include sleeping, carrying on cooking activities, or storing personal belongings for personal habitation, or the erection of tents or other shelters or structures for the purposes of personal habitation.~~

~~Information may be distributed as long as it is not obscene or libelous or does not advocate or incite imminent unlawful conduct. The sponsoring organization is encouraged, but not required, to include its name and address on the distributed information. College groups may post information on bulletin boards, kiosks and other display areas designed for that purpose, and may distribute materials throughout the open areas of campus. Noncollege groups may distribute materials only at the site designated for noncollege groups. To avoid excessive littering of the campus and/or greatly increased work requirements for college physical plant employees, groups are asked to cooperate with the college in limiting the distribution of information leaflets or pamphlets to the limited public forum site.~~

~~Speech that does no more than propose a commercial transaction shall not occur in connection with the event.~~

~~College facilities may not be used for commercial sales, solicitations, advertising or promotional activities, unless:~~

- ~~• Such activities serve educational purposes of the college; and~~
- ~~• Such activities are under the sponsorship of a college department or office or officially chartered student club.~~

~~The limited public forum used by the group should be cleaned up and left in its original condition and may be subject to inspection by a representative of the college after the event. Reasonable charges may be assessed against the sponsoring organization for the costs of extraordinary clean-up or for the repair of damaged property.~~

~~All fire, safety, sanitation or special regulations specified for the event are to be obeyed.~~

~~The college cannot and will not provide utility connections or hook-ups for purposes of first amendment activities conducted pursuant to this policy.~~

~~The event must not obstruct vehicular, bicycle, pedestrian or other traffic or otherwise interfere with ingress or egress to the college, or to college buildings or facilities, or to college activities or events.~~

~~The event must not create safety hazards or pose unreasonable safety risks to college students, employees or invitees to the college.~~

~~The event must not interfere with educational activities inside or outside any college building or otherwise prevent the college from fulfilling its mission and achieving its primary purpose of providing an education to its students.~~

~~The event must not materially infringe on the rights and privileges of college students, employees or invitees to the college.~~

~~The event must also be in accordance with any other applicable college policies and regulations, regulations and policies of Bellevue Community College, local ordinances and/or state or federal laws.)~~

(1) Subject to the regulations and requirements of this policy, groups may use the campus limited forums for expressive activities between the hours of 7:00 a.m. and 10:00 p.m.

(2) Any sound amplification device may only be used at a volume which does not disrupt or disturb the normal use of classrooms, offices, or laboratories or any previously scheduled college event or activity.

(3) Groups are encouraged to notify the campus public safety department no later than 24 hours in advance of an event. However, unscheduled events are permitted so long as the event does not materially disrupt any other function occurring at the facility.

(4) All sites used for expressive activity should be cleaned up and left in their original condition and may be subject to inspection by a representative of the college after the event. Reasonable charges may be assessed against the sponsoring organization for the costs of extraordinary clean up or for the repair of damaged property.

(5) All fire, safety, sanitation, or special regulations specified for the event are to be obeyed. The college cannot and will not provide utility connections or hook-ups for purposes of expressive activity conducted pursuant to this policy.

(6) The event must not be conducted in such a manner to obstruct vehicular, bicycle, pedestrian, or other traffic or otherwise interfere with ingress or egress to the college, or to college buildings or facilities, or to college activities or events. The event must not create safety hazards or pose unreasonable safety risks to college students, employees, or invitees to the college.

(7) The event must not substantially and materially interfere with educational activities inside or outside any college building or otherwise prevent the college from fulfilling its mission and achieving its primary purpose of providing an education to its students. The event must not materially infringe on the rights and privileges of college students, employees, or invitees to the college.

(8) There shall be no overnight camping on college facilities or grounds. Camping is defined to include sleeping, carrying on cooking activities, or storing personal belongings for personal habitation, or the erection of tents or other shelters or structures used for purposes of personal habitation.

(9) College facilities may not be used for commercial sales, solicitations, advertising, or promotional activities, unless:

(a) Such activities serve educational purposes of the college; and

(b) Such activities are under the sponsorship of a college department or office or officially chartered student club.

(10) The event must also be conducted in accordance with any other applicable college policies and regulations, local ordinances, and state or federal laws.

AMENDATORY SECTION (Amending WSR 12-24-044, filed 11/29/12, effective 12/30/12)

WAC 132H-142-040 Additional requirements for noncollege groups.

The limited public forum may not be used on the same date as any previously scheduled college event or activity at the site (aside from regularly scheduled classes) where it is reasonably anticipated that more than ((five hundred)) 500 people will attend the college event or activity.

~~((College buildings, rooms, and athletic fields may be rented by noncollege groups in accordance with the college's facilities use policy. Noncollege groups may otherwise use college facilities as identified in this policy.~~

~~The college designates the following area(s) as the sole limited public forum area(s) for use by noncollege groups for first amendment activities on campus:~~

- ~~• Building C courtyard area for groups less than thirty; and~~
- ~~• Southern courtyard, just north of Carlson Theater if over thirty participants are expected.)~~ Noncollege groups may use designated public use areas identified in this policy for expressive activity between the hours of 7:00 a.m. and 10:00 p.m.

Noncollege groups that seek to engage in expressive activity on the designated public use area(s) are encouraged to provide notice to the campus public safety office no later than 24 hours prior to the event, along with the following information solely to ensure:

- (1) The area is not otherwise scheduled; and
- (2) To give the college an opportunity to assess any security needs:

(a) The name, address, and telephone number of a contact person for the individual, group, entity, or organization sponsoring the event; and

(b) The date, time, and requested location of the event; and

(c) The nature and purpose of the event; and

(d) The estimated number of people expected to participate in the event.

AMENDATORY SECTION (Amending WSR 05-07-069, filed 3/14/05, effective 4/14/05)

WAC 132H-142-050 ~~((The role of the president in first amendment decisions.))~~ **Distribution of materials.** ~~((The president of the college may authorize first amendment activities which are reasonably determined not to cause disruption of college activities despite a literal violation of this policy statement. Such determinations shall be made without consideration of the content or message of the first amendment activities.~~

The president of the college or designee may at any time, terminate, cancel or prohibit the event if it is determined, after proper inquiry, that the event does constitute or will constitute a clear and present danger to the college's orderly operation.)) College groups may post information on bulletin boards, kiosks, and other display areas designated for that purpose, and may distribute materials throughout the open areas of campus. The sponsoring organization is encouraged, but not required, to include its name and address on the distributed information. Compliance with relevant procedure(s) around posting of materials on campus is expected.

Noncollege groups may distribute materials only at the site designated for noncollege groups.

All posted materials shall be dated and posted in accordance with the manner provided at the site. Posted materials may remain posted for a duration agreed upon at time of approval, after which they will be removed. Refer to procedures for posting materials on campus for additional detail.

AMENDATORY SECTION (Amending WSR 05-07-069, filed 3/14/05, effective 4/14/05)

WAC 132H-142-060 ~~((Criminal))~~ **Trespass.** ~~((Any person determined to be violating these regulations is subject to an order from the college public safety department to leave the college campus. Persons failing to comply with such an order to leave the college campus are subject to arrest for criminal trespass.))~~ Noncollege groups who violate these rules, or whose conduct jeopardizes the health or safety of others, or whose conduct unreasonably impedes the college in pursuit of its educational mission will be advised of the specific nature of the violation, and if they persist in the violation, will be requested by the college president or designee to leave the college property. Such a request will be deemed to withdraw the license or privilege to enter onto or remain upon any portion of the college facilities of the person or group of persons requested to leave, and subject such individuals to arrest under the criminal trespass provisions of chapter 9A.52 RCW or Bellevue municipal ordinance.

When the college revokes the license or privilege of any person to be on college property, temporarily or for a stated period of time, that person may file a request for review of the decision with the vice president administrative services or designee within 10 days of

receipt of the trespass notice. The request must contain the reasons why the individual disagrees with the trespass notice. The trespass notice will remain in effect during any review period. The decision of the vice president of administrative services or designee will be the final decision of the college and should be issued within five work days.

Members of the college community (students, faculty, and staff) who do not comply with this policy as described above will be reported to the appropriate college office for action in accordance with established college policies.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 132H-142-025 First amendment activities and protection of the college mission.
- WAC 132H-142-070 Posting of a bond and hold harmless statement.
- WAC 132H-142-075 Trespass.

WSR 24-13-050
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-97—Filed June 12, 2024, 4:54 p.m., effective July 1, 2024]

Effective Date of Rule: July 1, 2024.

Purpose: Opens summer recreational crab seasons in Puget Sound.

Citation of Rules Affected by this Order: Amending WAC
 220-330-040.

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

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

Reasons for this Finding: This emergency rule opens recreational crab harvest in Marine Areas 4 east of the Bonilla-Tatoosh line, 5, 6, 7, 8-1, 8-2, 9, 10, 11, and 12 north of Ayock Point on the dates listed. This rule is necessary to achieve comanager harvest sharing objectives defined by the federal court order. Marine Area 12 south of a line projected due east from Ayock Point and Marine Area 13 will be closed. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 12, 2024.

Amy H. Windrope
 for Kelly Susewind
 Director

NEW SECTION

WAC 220-330-04000N Crab—Areas and seasons—Personal use. Notwithstanding the provisions of WAC 220-330-040, effective July 1 through September 30, 2024, it is unlawful to fish for crab for personal use in Puget Sound in all waters of Marine Areas, 4 east of the Bonilla-Tatoosh line, 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12 and 13, except as provided herein:

(1) **Marine areas 4 east of the Bonilla-Tatoosh line, 5, 6, 8-1, 8-2, and 9:** Effective July 1 through September 2, 2024, it is permis-

sible to fish for crab for personal use on Thursdays, Fridays, Saturdays, Sundays, and Mondays.

(2) **Those waters of Marine Area 7 south** and west of a line projected from Village Point, Lummi Island, through the navigation buoy just east of Matia Island, thence to the buoy at Clements Reef, thence to the easternmost point of Patos Island, thence running along the northern shore of Patos Island to the westernmost point of Patos Island, thence true west to the international boundary and south of a line that extends from Point Francis on Portage Island, through the marker just north of Inati Bay on Lummi Island to Lummi Island: Effective July 18, through September 30, 2024, it is permissible to fish for crab for personal use on Thursdays, Fridays, Saturdays, Sundays, and Mondays.

(3) **Those waters of Marine Area 7 north** and east of a line projected from Village Point, Lummi Island through the navigation buoy just east of Matia Island thence to the buoy at Clements Reef thence to the easternmost point of Patos Island, running along the northern shoreline of Patos Island and from the westernmost point of Patos Island true west to the international boundary and north of a line that extends from Point Francis on Portage Island, through the marker just north of Inati Bay on Lummi Island to Lummi Island: Effective August 15 through September 30, 2024, it is permissible to fish for crab for personal use on Thursdays, Fridays, Saturdays, Sundays, and Mondays.

(4) **Marine Area 10:** Effective July 1 through August 26, 2024, it is permissible to fish for crab for personal use on Sundays, and Mondays.

(5) **Marine Area 11:** Effective July 1 through August 26, 2024, it is permissible to fish for crab for personal use on Sundays, and Mondays.

(6) **The portion of Marine Area 12 north of a line projected due east from Ayock Point:** Effective July 1 through September 2, 2024, it is permissible to fish for crab for personal use on Thursdays, Fridays, Saturdays, Sundays, and Mondays.

(7) **The portion of Marine Area 12 south of a line projected due east from Ayock Point:** Closed until further notice.

(8) **Marine Area 13:** Closed until further notice.

WSR 24-13-067

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed June 14, 2024, 10:43 a.m., effective June 17, 2024]

Effective Date of Rule: June 17, 2024.

Purpose: The health care authority (agency) is developing rules under ESSB 5187, section 211(83), 68th legislature, 2023 regular session. This legislation directs the agency to implement a program beginning July 1, 2024, with coverage comparable to the categorically needy medicaid program for certain adults age 19 and older who: (a) Have an immigration status making them ineligible for medicaid or federal subsidies through the health benefit exchange; and (b) are not eligible for another full scope federally funded medical assistance program.

Citation of Rules Affected by this Order: New chapters 182-525, 182-525A and 182-525B WAC; and amending WAC 182-500-120, 182-501-0060, 182-503-0510, 182-503-0515, 182-509-0220, and 182-526-0005.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: ESSB 5187, section 211(83), 68th legislature, [2023] regular session.

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

Reasons for this Finding: These rules are necessary to implement the agency's apple health expansion program, as directed in ESSB 5187, to provide health care coverage starting on July 1, 2024, for adults who qualify.

The agency shared two versions of the draft rules with interested parties in February and May of this year and received substantial comments on each of the drafts. The agency plans to file the proposed rules after it finishes its review of the second set of public comments and makes any necessary rule revisions.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 30, Amended 6, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 30, Amended 6, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 14, 2024.

Wendy Barcus
Rules Coordinator

OTS-5177.3

AMENDATORY SECTION (Amending WSR 13-14-019, filed 6/24/13, effective 7/25/13)

WAC 182-500-0120 Medical assistance definitions—W. "Washington apple health" means the public health insurance programs for eligible Washington residents. Washington apple health is the name used in Washington state for medicaid, the children's health insurance program (CHIP), and state-only funded health care programs.

"Washington apple health expansion" means the state-funded health care program for individuals age 19 and older who do not meet the citizenship or immigration requirements to receive benefits under federally funded programs. Eligibility for this program is limited and is subject to available funds.

"Washington Healthplanfinder" is a marketplace for individuals, families, and small businesses in Washington state to compare and enroll in health insurance coverage and gain access to premium tax credits, reduced cost sharing, and public programs such as Washington apple health. Washington Healthplanfinder is administered by the Washington health benefit exchange.

OTS-5178.3

AMENDATORY SECTION (Amending WSR 23-07-132, filed 3/22/23, effective 4/22/23)

WAC 182-501-0060 Health care coverage—Program benefit packages—Scope of service categories. (1) This rule provides a table that lists:

(a) The following Washington apple health programs:
 (i) The alternative benefits plan (ABP) medicaid;
 (ii) Categorically needy (CN) medicaid;
 (iii) Medically needy (MN) medicaid; (~~and~~)
 (iv) Medical care services (MCS) programs (includes incapacity-based and aged, blind, and disabled medical care services), as described in WAC 182-508-0005; and

(v) Washington apple health expansion (AHE); and

(b) The benefit packages showing what service categories are included for each program.

(2) Within a service category included in a benefit package, some services may be covered and others noncovered.

(3) Services covered within each service category included in a benefit package:

(a) Are determined in accordance with WAC 182-501-0050 and 182-501-0055 when applicable.

(b) May be subject to limitations, restrictions, and eligibility requirements contained in agency rules.

(c) May require prior authorization (see WAC 182-501-0165), or expedited prior authorization when allowed by the agency.

(d) Are paid for by the agency or the agency's designee and subject to review both before and after payment is made. The agency or the client's managed care organization may deny or recover payment for such services, equipment, and supplies based on these reviews.

(4) The agency does not pay for covered services, equipment, or supplies that:

(a) Require prior authorization from the agency or the agency's designee, if prior authorization was not obtained before the service was provided;

(b) Are provided by providers who are not contracted with the agency as required under chapter 182-502 WAC;

(c) Are included in an agency or the agency's designee waiver program identified in chapter 182-515 WAC; or

(d) Are covered by a third-party payor (see WAC 182-501-0200), including medicare, if the third-party payor has not made a determination on the claim or has not been billed by the provider.

(5) Programs not addressed in the table:

(a) Medical assistance programs for noncitizens (see chapter 182-507 WAC); and

(b) Family planning only programs (see WAC 182-532-500 through 182-532-570);

(c) Postpartum and family planning extension (see WAC 182-523-0130(4) and 182-505-0115(5));

(d) Eligibility for pregnant minors (see WAC 182-505-0117); and

(e) Kidney disease program (see chapter 182-540 WAC).

(6) Scope of service categories. The following table lists the agency's categories of health care services.

(a) Under the ABP, CN, and MN headings, there are two columns. One addresses clients 20 years of age and younger, and the other addresses clients 21 years of age and older.

(b) The letter "Y" means a service category is included for that program. Services within each service category are subject to limitations and restrictions listed in the specific medical assistance program rules and agency issuances.

(c) The letter "N" means a service category is not included for that program.

(d) Refer to WAC 182-501-0065 for a description of each service category and for the specific program rules containing the limitations and restrictions to services.

Service Categories	ABP 20-	ABP 21+	CN ¹ 20-	CN 21+	MN 20-	MN 21+	MCS	AHE
Ambulance (ground and air)	Y	Y	Y	Y	Y	Y	Y	<u>Y</u>
Applied behavior analysis (ABA)	Y	Y	Y	Y	Y	Y	N	<u>Y</u>
Behavioral health services	Y	Y	Y	Y	Y	Y	Y	<u>Y</u>
Blood/blood products/related services	Y	Y	Y	Y	Y	Y	Y	<u>Y</u>
Dental services	Y	Y	Y	Y	Y	Y	Y	<u>Y</u>
Diagnostic services (lab and X-ray)	Y	Y	Y	Y	Y	Y	Y	<u>Y</u>
Early and periodic screening, diagnosis, and treatment (EPSDT) services	Y	N	Y	N	Y	N	N	<u>N</u>
Enteral nutrition program	Y	Y	Y	Y	Y	Y	Y	<u>Y</u>
Habilitative services	Y	Y	N	N	N	N	N	<u>N</u>
Health care professional services	Y	Y	Y	Y	Y	Y	Y	<u>Y</u>
Health homes	Y	Y	Y	Y	N	N	N	<u>N</u>
Hearing evaluations	Y	Y	Y	Y	Y	Y	Y	<u>Y</u>
Hearing aids	Y	Y	Y	Y	Y	Y	Y	<u>Y</u>
Home health services	Y	Y	Y	Y	Y	Y	Y	<u>Y</u>
Home infusion therapy/parenteral nutrition program	Y	Y	Y	Y	Y	Y	Y	<u>Y</u>
Hospice services	Y	Y	Y	Y	Y	Y	N	<u>Y</u>
Hospital services Inpatient/outpatient	Y	Y	Y	Y	Y	Y	Y	<u>Y</u>

Service Categories	ABP 20-	ABP 21+	CN ¹ 20-	CN 21+	MN 20-	MN 21+	MCS	AHE
Intermediate care facility/services for persons with intellectual disabilities	Y	Y	Y	Y	Y	Y	Y	<u>N</u>
Maternity care and delivery services	Y	Y	Y	Y	Y	Y	Y	<u>Y</u>
Medical equipment, supplies, and appliances	Y	Y	Y	Y	Y	Y	Y	<u>Y</u>
Medical nutrition therapy	Y	Y	Y	Y	Y	Y	Y	<u>Y</u>
Nursing facility services	Y	Y	Y	Y	Y	Y	Y	<u>Y*</u>
Organ transplants	Y	Y	Y	Y	Y	Y	Y	<u>Y</u>
Orthodontic services	Y	N	Y	N	Y	N	N	<u>Y**</u>
Out-of-state services	Y	Y	Y	Y	Y	Y	N	<u>Y</u>
Outpatient rehabilitation services (OT, PT, ST)	Y	Y	Y	Y	Y	(N) <u>Y</u>	Y	<u>Y</u>
Personal care services	Y	Y	Y	Y	N	N	N	<u>N</u>
Prescription drugs	Y	Y	Y	Y	Y	Y	Y	<u>Y</u>
Private duty nursing	Y	Y	Y	Y	Y	Y	N	<u>N</u>
Prosthetic/orthotic devices	Y	Y	Y	Y	Y	Y	Y	<u>Y</u>
Reproductive health services	Y	Y	Y	Y	Y	Y	Y	<u>Y</u>
Respiratory care (oxygen)	Y	Y	Y	Y	Y	Y	Y	<u>Y</u>
School-based medical services	Y	N	Y	N	Y	N	N	<u>Y**</u>
Vision care Exams, refractions, and fittings	Y	Y	Y	Y	Y	Y	Y	<u>Y</u>
Vision hardware Frames and lenses	Y	N	Y	N	Y	N	N	<u>Y**</u>

¹ Clients enrolled in the Washington apple health for kids and Washington apple health for kids with premium programs, which includes the children's health insurance program (CHIP), receive CN-scope of health care services.
 * Medically necessary nursing facility services are covered when the enrollee's condition meets the criteria for rehabilitative or skilled care.
 ** Only for age 20 and younger.

OTS-5179.4

AMENDATORY SECTION (Amending WSR 23-11-007, filed 5/4/23, effective 6/4/23)

WAC 182-503-0510 Washington apple health—Program summary. (1) The agency categorizes Washington apple health programs into three groups based on the income methodology used to determine eligibility:

- (a) Those that use a modified adjusted gross income (MAGI)-based methodology described in WAC 182-509-0300, called MAGI-based apple health programs;
- (b) Those that use an income methodology other than MAGI, called non-MAGI-based apple health programs, which include:
 - (i) Supplemental security income (SSI)-related apple health programs;
 - (ii) Temporary assistance for needy families (TANF)-related apple health programs; and
 - (iii) Other apple health programs not based on MAGI, SSI, or TANF methodologies.
- (c) Those that provide coverage based on a specific status or entitlement in federal rule and not on countable income, called deemed eligible apple health programs.

(2) MAGI-based apple health programs include the following:

- (a) Apple health parent and caretaker relative program described in WAC 182-505-0240;

(b) MAGI-based apple health adult medical program described in WAC 182-505-0250, for which the scope of coverage is called the alternative benefits plan (ABP) described in WAC 182-500-0010;

(c) Apple health (~~(for pregnant women program)~~) pregnancy and after-pregnancy coverage described in WAC 182-505-0115;

(d) Apple health for kids program described in WAC 182-505-0210 (3) (a);

(e) Premium-based apple health for kids described in WAC 182-505-0215;

(f) Apple health long-term care for children and adults described in chapter 182-514 WAC; (~~and~~)

(g) Apple health alien emergency medical program described in WAC 182-507-0110 through 182-507-0125 when the person is eligible based on criteria for a MAGI-based apple health program; and

(h) Washington apple health expansion program for people who are age 64 or younger as described in chapter 182-525 WAC.

(3) Non-MAGI-based apple health programs include the following:

(a) SSI-related programs which use the income methodologies of the SSI program (except where the agency has adopted more liberal rules than SSI) described in chapter 182-512 WAC to determine eligibility:

(i) Apple health for workers with disabilities (HWD) described in chapter 182-511 WAC;

(ii) Apple health SSI-related programs described in chapters 182-512 and 182-519 WAC;

(iii) Apple health long-term care and hospice programs described in chapters 182-513 and 182-515 WAC;

(iv) Apple health medicare savings programs described in chapter 182-517 WAC; and

(v) Apple health alien emergency medical (AEM) programs described in WAC 182-507-0110 and 182-507-0125 when the person meets the age, blindness or disability criteria specified in WAC 182-512-0050.

(b) TANF-related programs which use the income methodologies based on the TANF cash program described in WAC 388-450-0170 to determine eligibility, with variations as specified in WAC 182-509-0001(5) and program specific rules:

(i) Refugee medical assistance (RMA) program described in WAC 182-507-0130; and

(ii) Apple health medically needy (MN) coverage for pregnant (~~women~~) people and children who do not meet SSI-related criteria.

(c) Other programs:

(i) Breast and cervical cancer program described in WAC 182-505-0120;

(ii) Family planning only programs described in chapter 182-532 WAC;

(iii) Medical care services described in WAC 182-508-0005;

(iv) Apple health for pregnant minors described in WAC 182-505-0117;

(v) Kidney disease program described in chapter 182-540 WAC; and

(vi) Tailored supports for older adults described in WAC 182-513-1610.

(4) Deemed eligible apple health programs include:

(a) Apple health SSI medical program described in chapter 182-510 WAC, or a person who meets the medicaid eligibility criteria in 1619b of the Social Security Act;

(b) Newborn medical program described in WAC 182-505-0210(2);

(c) Foster care program described in WAC 182-505-0211;

(d) Medical extension program described in WAC 182-523-0100; and

(e) Family planning extension described in WAC 182-505-0115(5).

(5) A person is eligible for categorically needy (CN) health care coverage when the household's countable income is at or below the categorically needy income level (CNIL) for the specific program.

(6) If income is above the CNIL, a person is eligible for the MN program if the person is:

(a) A child;

(b) A pregnant ((woman)) person; or

(c) SSI-related (aged 65, blind or disabled).

(7) MN health care coverage is not available to parents, caretaker relatives, or adults unless they are eligible under subsection (6) of this section.

(8) A person who is eligible for the apple health MAGI-based adult program listed in subsection (2)(b) of this section is eligible for ABP health care coverage as defined in WAC 182-500-0010. Such a person may apply for more comprehensive coverage through another apple health program at any time.

(9) For the other specific program requirements a person must meet to qualify for apple health, see chapters 182-503 through 182-527 WAC.

AMENDATORY SECTION (Amending WSR 21-19-142, filed 9/22/21, effective 10/23/21)

WAC 182-503-0515 Washington apple health—Social Security number requirements. (1) To be eligible for Washington apple health (medicaid), or tailored supports for older adults (TSOA) described in WAC 182-513-1610, you (the applicant or recipient) must provide your valid Social Security number (SSN) or proof of application for an SSN to the medicaid agency or the agency's designee, except as provided in subsections (2) and (6) of this section.

(2) An SSN is not required if you are:

(a) Not eligible to receive an SSN or may only be issued an SSN for a valid nonwork reason described in 20 C.F.R. 422.104;

(b) A household member who is not applying for apple health coverage, unless verification of that household member's resources is required to determine the eligibility of the client;

(c) Refusing to obtain an SSN for well-established religious objections as defined in 42 C.F.R. 435.910 (h)(3); or

(d) Not able to obtain or provide an SSN because you are a victim of domestic violence.

(3) If you are receiving coverage because you meet an exception under either subsection (2)(c) or (d) of this section, we (the agency) will confirm with you at your apple health renewal, consistent with WAC 182-503-0050, that you still meet the exception.

(4) If we ask for confirmation that you continue to meet an exception in subsection (2) of this section and you do not respond in accordance with subsection (3) of this section, or if you no longer meet an exception and do not provide your SSN, we will terminate your apple health coverage according to WAC 182-518-0025.

(5) If you are not able to provide your SSN, either because you do not know it or it has not been issued, you must provide:

(a) Proof from the Social Security Administration (SSA) that you turned in an application for an SSN; and

(b) The SSN when you receive it.

(i) Your apple health coverage will not be delayed, denied, or terminated while waiting for SSA to send you your SSN. If you need help applying for an SSN, assistance will be provided to you.

(ii) We will ask you every 90 days if your SSN has been issued.

(6) An SSN is not required for the following apple health programs:

(a) Refugee medical assistance program described in WAC 182-507-0130;

(b) Alien medical programs described in WAC 182-507-0115, 182-507-0120, and 182-507-0125;

(c) Newborn medical program described in WAC 182-505-0210 (2)(a);

(d) Foster care program for a child age 18 and younger as described in WAC 182-505-0211(1);

(e) Medical programs for children and pregnant women who do not meet citizenship or immigration status described in WAC 182-503-0535 (2)(e)(ii) and (iii); (~~(e)~~)

(f) Family planning only program described in WAC 182-532-510 if you do not meet citizenship or immigration status for Washington apple health or you have made an informed choice to apply for family planning services only; or

(g) Washington apple health expansion program described in chapter 182-525 WAC.

(7) If you are required to provide an SSN under this section, and you do not meet an exception under subsection (2) of this section, failure to provide your SSN may result in:

(a) Denial of your application or termination of your coverage because we cannot determine your household's eligibility; or

(b) Inability to apply the community spouse resource allocation (CSRA) or monthly maintenance needs allowance (MMNA) for a client of long-term services and supports (LTSS).

OTS-5234.2

AMENDATORY SECTION (Amending WSR 24-03-050, filed 1/10/24, effective 2/10/24)

WAC 182-509-0220 Washington apple health—How resources are considered. (1) A resource is any cash, other personal property, or real property that a person:

(a) Owns;

(b) Has the right, authority, or power to convert to cash (if not already cash); and

(c) Has the legal right to use for (~~(his or her)~~) their support and maintenance.

(2) There is no resource limit for an applicant or recipient of the following Washington apple health (medicaid) programs:

(a) Apple health for workers with disabilities (HWD) program, as described in chapter 182-511 WAC;

(b) Apple health foster care program (see WAC 182-505-0211);

(c) Medicare savings programs (see WAC 182-517-0100);

(d) All programs that are based on modified adjusted gross income (MAGI) methodologies, as described in WAC 182-503-0510. This includes the following:

(i) Apple health for parents and caretaker relatives (see WAC 182-505-0240);

(ii) Apple health pregnancy coverage (see WAC 182-505-0115);

(iii) Apple health for kids (see WAC 182-505-0210);

(iv) Premium-based apple health for kids (see WAC 182-505-0215);

(v) Apple health long-term care for children and adults (see WAC 182-514-0230);

(vi) Apple health for MAGI-based adult coverage (see WAC 182-505-0250); ~~(and)~~

(vii) Apple health MAGI-based adult alien emergency medical (see WAC 182-507-0110); and

(viii) Apple health expansion coverage for people age 64 and younger (see chapter 182-525 WAC).

(3) For all other apple health programs, the resource limits and exclusions can be found in the following chapters:

(a) Apple health SSI-related medical (see chapter 182-512 WAC) with the exception of programs listed in subsection (2) of this section;

(b) Apple health long-term care (see chapters 182-513 and 182-515 WAC);

(c) SSI-related apple health alien medical program (see chapter 182-507 WAC);

(d) Apple health for refugees (see WAC 182-507-0130); and

(e) Medical care services (see WAC 182-508-0005).

(4) The agency or its designee determines how trusts, annuities and life estates affect eligibility for apple health coverage for the programs listed in subsection (3)(a) through (e) of this section by following the rules described in chapter 182-516 WAC.

(5) Receipt of money by a member of a federally recognized tribe from exercising federally protected rights or extraction of protected resources, such as fishing, shell-fishing, or selling timber, is considered conversion of an exempt resource during the month of receipt. Any amounts remaining from the conversion of this exempt resource on the first of the month after the month of receipt will remain exempt if the funds were used to purchase another exempt resource. Any amounts remaining in the form of countable resources (such as in checking or savings accounts) on the first of the month after receipt, will be added to other countable resources for eligibility determinations when a resource determination is required by the specific apple health program. If no resource determination is required by the specific apple health program, eligibility is not affected.

OTS-5226.4

Chapter 182-525 WAC

WASHINGTON APPLE HEALTH EXPANSION—COVERAGE BENEFITS

NEW SECTION

WAC 182-525-0100 Overview. This program begins on July, 1, 2024; however, applications may be accepted prior to that date.

(1) The rules in this chapter and in chapters 182-525A and 182-525B WAC are specific to Washington apple health expansion and govern the administration of apple health expansion benefits.

(2) Apple health expansion benefits are state-funded physical and behavioral health services identified as covered in WAC 182-501-0060 and 182-525-0700.

(a) Coverage of apple health expansion services may be limited or modified based on program rules relating to apple health expansion services. Information related to noncovered or excluded services may be contained in the program rules applicable to apple health expansion.

(b) An apple health expansion enrollee may receive only those apple health expansion services that are specifically identified as a covered benefit in the apple health expansion program rules.

(c) Services administered or authorized by the department of social and health services are not covered under the apple health expansion benefit package.

(d) The exception to rule process in WAC 182-501-0160 applies only to services that are specified as part of the apple health expansion benefit package in WAC 182-501-0060 and pursuant to the rules of this chapter, and chapters 182-525A and 182-525B WAC.

(3) Health plans, as defined in WAC 182-525-0400, administer apple health expansion benefits under the apple health expansion contract based on the rules in this chapter and chapters 182-525A and 182-525B WAC.

(4) If a service is covered under the apple health expansion program but excluded from administration under the apple health expansion contract, the service is administered by the agency on a fee-for-service basis according to the agency rules for that service.

(5) In order to provide services and receive payments, an apple health expansion provider must be an enrolled provider in accordance with chapter 182-502 WAC and meet the requirements of this chapter and other applicable program rules.

(6) The agency deems that providers enrolled in apple health under chapter 182-502 WAC are enrolled providers for purposes of apple health expansion.

NEW SECTION**WAC 182-525-0200 Applying for the program and income limits.**

(1) **How to apply.** A person may apply for Washington apple health expansion coverage by following the process described in WAC 182-503-0005.

(2) **Income.** The agency follows the modified adjusted gross income (MAGI) rules in chapter 182-509 WAC to determine a person's apple health expansion eligibility.

(3) **Insurance affordability programs.** A person may apply for the insurance affordability programs offered through the agency as described in WAC 182-503-0001.

NEW SECTION

WAC 182-525-0300 Available resources exhausted. (1) Unlike the medicaid program under Title XIX of the Social Security Act and chapter 74.09 RCW, Washington apple health expansion is not an entitlement program with an open-ended right to services and benefits. The provision of services and benefits under apple health expansion is strictly limited by the funding that the legislature appropriates to the agency for the apple health expansion program.

(2) The agency does not have the legal right to spend money on apple health expansion coverage or benefits unless specifically appropriated by the legislature.

(3) The agency determines, in its sole discretion, if and when the available funding for apple health expansion has been or will be exhausted. Upon making any such determination, the agency notifies enrollees, providers, health plans, and the general public through a posting on its website or in any other manner that the agency considers appropriate. The notice will specify the date on which available funding has been or will be exhausted.

(4) A determination by the agency that available funding for apple health expansion is exhausted results in the automatic termination of any authorization, appeals process, independent review, or agency administrative hearing process related to a request to authorize a service or benefit. This is because services and benefits cannot be authorized or paid for without available funding, regardless of medical necessity.

NEW SECTION

WAC 182-525-0400 Definitions. The definitions from chapters 182-500 and 182-538 WAC apply to Washington apple health expansion, along with the following definitions:

- "Enrollment cap" - means the maximum number of people who may be enrolled in apple health expansion.
- "Health plan" - means the same as the term "managed care organization" in WAC 182-538-050.

NEW SECTION

WAC 182-525-0500 Enrollment cap for services. (1) Enrollment in Washington apple health expansion is subject to available funds, as described in this section and in WAC 182-525-0300.

(2) The agency caps apple health expansion enrollment if it determines that accepting additional enrollees would exceed funding appropriated by the legislature. Once the enrollment cap is reached, all applications for apple health expansion will be denied.

(3) If the agency denies a person apple health expansion coverage due to an enrollment cap, that person will be considered for other apple health programs. The person may be eligible for other programs if they:

- (a) Meet immigration requirements for other apple health programs;

- (b) Qualify due to pregnancy as identified in WAC 182-505-0115;
- or
- (c) Have a qualifying medical emergency for which federal funding is available.
- (4) If apple health expansion enrollment closes due to a cap on enrollment, the agency notifies applicants that their applications are denied.
- (5) Applicants who are denied based on the enrollment cap may not appeal the agency's decision to apply the enrollment cap.
- (6) (a) If the agency reopens apple health expansion enrollment because enrollment has fallen below the cap and funding is available, the agency fills the available openings as described in (b) and (c) of this subsection.
- (b) If the agency determines that additional individuals can be enrolled into apple health expansion, the agency will identify the number of openings available before the cap is reached. To fill the available number of openings, the agency selects from the following categories:
- (i) Individuals who submitted a completed application and were denied enrollment due to the cap;
- (ii) Individuals who were enrolled in the children's health program (CHP), alien emergency medical (AEM), or after-pregnancy coverage programs who met eligibility requirements for apple health expansion and whose coverage ended while the cap was in effect; and
- (iii) Individuals who are enrolled in a qualified health plan under the health benefit exchange's section 1332 waiver.
- (c) The agency randomly selects individuals from (b) of this subsection to fill the openings, striving to ensure that 90 percent of these individuals are eligible under modified adjusted gross income (MAGI) standards, and 10 percent are non-MAGI.
- (d) If the agency is unable to fill the openings available based on (b) and (c) of this subsection, the agency conducts outreach efforts to inform the public of the opportunity to apply.

NEW SECTION

- WAC 182-525-0600 Termination of enrollees based on available funds.** (1) (a) When the agency determines that available funds are exhausted as described in WAC 182-525-0300, the agency terminates Washington apple health expansion coverage of all enrollees.
- (b) The agency sends notice to enrollees in accordance with WAC 182-518-0025 (1), (2), and (3). Continued coverage of apple health expansion benefits is not available.
- (2) (a) When the agency determines that available funds are at risk of being exhausted, the agency terminates coverage of enrollees necessary to maintain funding for the program until the number of enrollees receiving coverage is sustainable based on the appropriated funds. The agency terminates apple health expansion enrollees beginning with the people most recently enrolled in apple health expansion, based on the date the agency approved a person for enrollment.
- (b) The agency sends notice to enrollees in accordance with WAC 182-518-0025 (1), (2), and (3). Continued coverage of apple health expansion benefits is not available.
- (3) Applicants who are denied based on the enrollment cap may not appeal the agency's decision to apply the enrollment cap.

(4) If the cap has been met and the agency denies enrollment due to agency error, the agency may choose not to apply the enrollment cap and enroll or provide coverage if there are available funds.

(5) If the cap has been met and the agency terminates an enrollee due to their failure to submit a completed renewal, the agency may choose not to apply the cap if:

(a) There are available funds to reinstate the enrollee's coverage; and

(b) The enrollee completes their renewal within 90 calendar days of their coverage end date as stated in WAC 182-504-0035 (2)(b).

NEW SECTION

WAC 182-525-0700 Washington apple health rules applicable to Washington apple health expansion. Agency rules applicable to other Washington apple health programs may also be applicable to Washington apple health expansion. The following agency rules apply to apple health expansion, with any modifications or exceptions as noted:

(1) Chapter 182-500 WAC;

(2) Chapter 182-501 WAC, with the following modifications:

(a) The rules relating to early and periodic screening, diagnosis, and treatment (EPSDT) services do not apply to apple health expansion.

(b) WAC 182-501-0165 applies only to the fee-for-service benefits available under apple health expansion and as noted in the apple health expansion contract.

(3) Chapter 182-502 WAC, except that WAC 182-525-1100 replaces WAC 182-502-0160;

(4) Chapter 182-502A WAC;

(5) Chapter 182-503 WAC, except that the general eligibility requirements in WAC 182-503-0505 and 182-503-0055 do not apply to apple health expansion. (See WAC 182-525-0900.)

(6) Chapter 182-504 WAC, except that WAC 182-504-0015 does not apply regarding the certification period for apple health expansion.

(7) Chapter 182-505 WAC;

(8) Chapter 182-506 WAC;

(9) Chapter 182-509 WAC;

(10) Chapter 182-518 WAC, except as otherwise noted in the apple health expansion rules;

(11) Chapter 182-520 WAC;

(12) Chapter 182-523 WAC;

(13) Chapter 182-525 WAC;

(14) Chapter 182-525A WAC;

(15) Chapter 182-525B WAC;

(16) Chapter 182-526 WAC;

(17) Chapter 182-530 WAC does not apply to apple health expansion, except for the definitions from WAC 182-530-1050 that are incorporated by reference into chapter 182-525B WAC as identified in WAC 182-525B-0300. See chapter 182-525B WAC for the apple health expansion pharmacy benefit and outpatient drug program rules; and

(18) Chapters 182-531 through 182-537 WAC and chapters 182-539 through 182-560 WAC may be applicable to apple health expansion if the services are provided on a fee-for-service basis or if incorporated by reference in the apple health expansion contract.

NEW SECTION

WAC 182-525-0800 Certification period. (1) A certification period is the length of time the agency determines a person is eligible for Washington apple health expansion coverage, which may be reduced or terminated under WAC 182-525-0600.

(2) The certification period for apple health expansion coverage is 12 months, as long as the person remains eligible according to program rules.

(3) The certification period begins on the first day of the month the person is approved and continues through the end of the 12th month.

(4) If, during a person's certification period apple health expansion funding is exhausted, as described in WAC 182-525-0300, the agency terminates enrollment for a person based on funding availability according to WAC 182-525-0600.

(5) The agency considers an enrollee's eligibility for all other Washington apple health programs, as well as qualified health plans, health insurance premium tax credits (as defined in WAC 182-500-0045), and cost sharing reductions (as defined in WAC 182-500-0020) before ending the enrollee's apple health expansion coverage.

(6) A person may be eligible for retroactive coverage through the medical assistance programs for noncitizens, as described in WAC 182-507-0110.

NEW SECTION

WAC 182-525-0900 General eligibility requirements. (1) A person must meet the following eligibility criteria for Washington apple health expansion coverage:

(a) Be age 19 or older (see WAC 182-503-0050);

(b) Reside in Washington or be a resident of Washington state (see WAC 182-503-0520 and 182-503-0525);

(c) Have net countable income that is at or below 138 percent of the federal poverty level for a household of the applicable size;

(d) Is not entitled to or enrolled in medicare benefits under Part A or B of Title XVIII of the Social Security Act; and

(e) Is not eligible for another federally funded medical assistance program.

(2) A person in a public institution, including a correctional facility, is not eligible for apple health expansion coverage until released, unless the person:

(a) Is age 21 or younger or age 65 or older and is a patient in an institution for mental disease (see WAC 182-513-1317(5)); or

(b) Receives inpatient hospital services outside of the public institution or correctional facility.

NEW SECTION

WAC 182-525-1000 Application processing times. Application processing times for Washington apple health expansion follow the application processing times described in WAC 182-503-0060.

NEW SECTION

WAC 182-525-1100 Billing an enrollee. (1) This section specifies the limited circumstances in which:

(a) Washington apple health expansion enrollees can choose to self-pay for health care services; and

(b) Providers, as defined in WAC 182-500-0085, have the authority to bill apple health expansion enrollees for health care services furnished to those enrollees.

(2) The provider is responsible for:

(a) Verifying whether a person is eligible to receive health care services on the date the services are provided;

(b) Verifying whether the person is enrolled with an agency-contracted health plan;

(c) Knowing the limitations of the services within the scope of apple health expansion coverage (see WAC 182-501-0050 (4) (a), 182-501-0060, 182-501-0065, and chapters 182-525, 182-525A, and 182-525B WAC);

(d) Informing the enrollee of those limitations;

(e) Exhausting all applicable agency or agency-contracted health plan processes necessary to obtain authorization for requested service(s);

(f) Ensuring that translation or interpretation is provided to enrollees with limited-English proficiency (LEP) who agree to be billed for services in accordance with this section; and

(g) Retaining all documentation which demonstrates compliance with this section.

(3) Unless otherwise specified in this section, providers must accept as payment in full the amount paid by the agency health plan for health care services furnished to enrollees.

(4) (a) A provider must not bill an enrollee, or anyone on the enrollee's behalf, for any services until the provider has completed all requirements of this section, including the conditions of payment described in the agency's rules, the agency's fee-for-service billing instructions, and the requirements for billing the enrollee's health plan, and until the provider has then fully informed the enrollee of their coverage options.

(b) A provider must not bill an enrollee for:

(i) Any services for which the provider failed to satisfy the conditions of payment described in the agency's rules, the agency's fee-for-service billing instructions, and the requirements for billing the enrollee's health plan;

(ii) A covered service even if the provider has not received payment from the agency or the enrollee's health plan; or

(iii) A covered service when the agency or the enrollee's health plan denies an authorization request for the service because the required information was not received from the provider or the prescriber within 30 calendar days.

(5) If the requirements of this section are satisfied, then a provider may bill an enrollee for a covered service or a noncovered service. The enrollee and provider must sign and date the HCA form 13-879, Agreement to Pay for Healthcare Services, before the service is furnished. Form 13-879, including translated versions, is available to download at https://www.hca.wa.gov/assets/billers-and-providers/13_879.pdf. The requirements for this subsection are as follows:

(a) The agreement must:

- (i) Indicate the anticipated date the service will be provided, which must be no later than 90 calendar days from the date of the signed agreement;
 - (ii) List each of the services that will be furnished;
 - (iii) List treatment alternatives that may have been covered by the agency or the enrollee's health plan;
 - (iv) Specify the total amount the enrollee must pay for the service;
 - (v) Specify what items or services are included in this amount (such as preoperative care and postoperative care). See WAC 182-501-0070(3) for payment of ancillary services for a noncovered service;
 - (vi) Indicate that the enrollee has been fully informed of all available medically appropriate treatment, including services that may be paid for by the agency or the enrollee's health plan, and that the enrollee chooses to get the specified service(s);
 - (vii) Specify that the enrollee may request an exception to rule (ETR) in accordance with WAC 182-501-0160 when the agency or the enrollee's health plan denies a request for a noncovered service and that the enrollee may choose not to do so;
 - (viii) Specify that the enrollee may request an administrative hearing in accordance with chapter 182-526 WAC to appeal the agency's denial of a request for prior authorization of a covered service and that the enrollee may choose not to do so;
 - (ix) Be completed only after the provider and the enrollee have exhausted all applicable agency or health plan processes necessary to obtain authorization of the requested service, except that the enrollee may choose not to request an ETR or an administrative hearing regarding agency or health plan denials of authorization for requested service(s); and
 - (x) Specify which reason in (b) of this subsection applies.
- (b) The provider must select on the agreement form one of the following reasons (as applicable) why the enrollee agrees to be billed for the service(s). The service(s) is:
- (i) Not covered by apple health expansion, the ETR process as described in WAC 182-501-0160 has been exhausted, and the service(s) is denied;
 - (ii) Not covered by apple health expansion and the enrollee has been informed of their right to an ETR and has chosen not to pursue an ETR as described in WAC 182-501-0160;
 - (iii) Covered by apple health expansion, requires authorization, and the provider completes all the necessary requirements; however, the agency or health plan denied the service as not medically necessary (this includes services denied as a limitation extension under WAC 182-501-0169); or
 - (iv) Covered by apple health expansion and does not require authorization, but the enrollee has requested a specific type of treatment, supply, or equipment based on personal preference which the agency or health plan does not pay for and the specific type is not medically necessary for the enrollee.
- (c) For enrollees with limited-English proficiency, the agreement must be the version translated in the enrollee's primary language and interpreted if necessary. The translator or interpreter must sign the agreement regardless of whether the agreement is translated in writing or orally interpreted;
- (d) The provider must give the enrollee a copy of the agreement and maintain the original and all documentation which supports compli-

ance with this section in the enrollee's file for six years from the date of service. The agreement must be made available to the agency for review upon request; and

(e) If the service is not provided within 90 calendar days of the signed agreement, the provider must complete a new agreement, which must be signed by both the provider and the enrollee.

(6) The following are the limited circumstances in which a provider may bill an enrollee without executing form 13-879, Agreement to Pay for Healthcare Services, as specified in subsection (5) of this section:

(a) The enrollee, the enrollee's legal guardian, or the enrollee's legal representative:

(i) Was reimbursed for the service directly by a third party (see WAC 182-501-0200); or

(ii) Refused to complete and sign insurance forms, billing documents, or other forms necessary for the provider to bill the third-party insurance carrier for the service.

(b) The person represented that they were paying privately and not enrolled in apple health expansion when they were already enrolled in and receiving benefits under apple health expansion. In this circumstance, the provider must:

(i) Keep documentation of the enrollee's declaration of medical coverage. The declaration must be signed and dated by the enrollee, the enrollee's legal guardian, or the enrollee's legal representative; and

(ii) Give a copy of the document to the enrollee and maintain the original for six years from the date of service, for agency review upon request.

(c) The enrollee is placed in the agency's or a health plan's patient review and coordination (PRC) program and obtains nonemergency services from a nonpharmacy provider that is not an assigned or appropriately referred provider as described in WAC 182-501-0135;

(d) The service is within a service category excluded from the enrollee's benefits package. See WAC 182-501-0060;

(e) The services were noncovered ambulance services (see WAC 182-546-0250(2));

(f) An enrollee chooses to receive nonemergency services from a provider who is not contracted with the agency after being informed by the provider that they are not contracted with the agency and that the services offered will not be paid by apple health expansion; and

(g) An enrollee chooses to receive nonemergency services from providers outside of the health plan's network without authorization from the health plan, i.e., a nonparticipating provider.

(7) There are situations in which a provider must refund the full amount of a payment previously received from or on behalf of an enrollee and then bill the agency for the covered service that had been furnished. This occurs when the enrollee becomes eligible for a covered service that was already furnished. Providers must then accept as payment in full the amount paid by the agency or the enrollee's health plan for medical services furnished to enrollees. These situations include, but are not limited to, the following:

(a) The person was not enrolled in apple health expansion on the day the service was furnished. The person applies for apple health expansion later in the same month in which the service was provided and the agency makes the person eligible for apple health expansion from the first day of that month;

(b) The enrollee receives a delayed certification for apple health expansion as defined in WAC 182-500-0025; or

(c) The enrollee receives apple health expansion certification for a retroactive period as defined in WAC 182-500-0095.

(8) Regardless of any written and signed agreement to pay, a provider may not bill, demand, collect, or accept payment or a deposit from an enrollee, anyone on the enrollee's behalf, or the agency for:

(a) Copying, printing, or otherwise transferring health care information, as the term health care information is defined in chapter 70.02 RCW, to another health care provider. This includes, but is not limited to:

(i) Medical/dental charts;

(ii) Radiological or imaging films; and

(iii) Laboratory or other diagnostic test results.

(b) Missed, canceled, or late appointments;

(c) Shipping and/or postage charges;

(d) "Boutique," "concierge," or enhanced service packages (e.g., newsletters, 24/7 access to provider, health seminars) as a condition for access to care; or

(e) The price differential between an authorized service or item and an "upgraded" service or item (e.g., a wheelchair with more features; brand name versus generic drugs).

OTS-5227.4

Chapter 182-525A WAC

WASHINGTON APPLE HEALTH EXPANSION—HEALTH PLAN ADMINISTRATION OF BENEFITS

NEW SECTION

WAC 182-525A-0100 Health plan rules—General. The rules in this chapter govern the administration of benefits under Washington apple health expansion by health plans, as defined in WAC 182-525-0400. Chapter 182-538 WAC is not applicable to apple health expansion, except for the definitions found in WAC 182-538-050, which are incorporated by reference into this chapter.

NEW SECTION

WAC 182-525A-0200 Health plan choice and assignment. The agency requires people enrolled in Washington apple health expansion to enroll in a health plan.

(1) To enroll with a health plan, a person may:

(a) Enroll online via the Washington Healthplanfinder at <https://www.wahealthplanfinder.org>;

(b) Call the agency's toll-free enrollment line at 800-562-3022;

(c) Go to the ProviderOne client portal at <https://www.waproviderone.org> and follow the instructions; or

(d) For those age 65 or older, access resources available at the department of social and health services to apply for apple health expansion.

(2) A person enrolled in apple health expansion must enroll with a health plan available in the regional service area where the person resides.

(3) All family members must be enrolled with the same health plan if contracted to serve apple health expansion enrollees. However, family members of an apple health expansion enrollee placed in the patient review and coordination (PRC) program under WAC 182-501-0135 need not enroll in the same health plan as the family member placed in the PRC program.

(4) An apple health expansion enrollee may be placed into the PRC program by the health plan or the agency. An enrollee placed in the PRC program must follow the enrollment requirements of the program as stated in WAC 182-501-0135.

(5) When a person requests enrollment with a health plan, the agency enrolls them with the earliest possible effective date, based on the requirements of the agency's enrollment system.

(6) The agency assigns a person who does not choose a health plan as follows:

(a) If the person was enrolled with a health plan within the previous six months, the person is reenrolled with the same health plan if:

(i) The agency identifies the prior health plan and the program is available; and

(ii) The person does not have a family member enrolled with a health plan;

(b) If (a) of this subsection does not apply and the person has a family member enrolled with a health plan, the person is enrolled with that health plan;

(c) If the person has a break in eligibility of less than two months, that person will be automatically reenrolled with their previous health plan and no notice will be sent;

(d) If the person cannot be assigned according to (a), (b), or (c) of this subsection, the agency:

(i) Assigns the person based on agency policy, or this rule, or both;

(ii) Does not assign people to any health plan that has a total statewide market share of 40 percent or more of people who are enrolled in apple health expansion coverage. On a quarterly basis, the agency reviews enrollment data to determine each health plan's statewide market share in apple health expansion coverage; and

(iii) Applies performance measures associated with increasing or reducing assignment consistent with this rule and agency policy and its contracts with health plans; or

(e) If the person cannot be assigned to a health plan under (a), (b), or (c) of this subsection, the agency assigns the person as follows:

(i) If a person does not choose a health plan, the agency assigns the person to a health plan available in the regional service area where the person resides. The health plan is responsible for primary care provider (PCP) choice and assignment.

(ii) For people who are newly eligible or who have had a break in eligibility of more than six months, the agency sends a written notice

to each household of one or more people who are assigned to a health plan. The assigned person has 10 calendar days to contact the agency, if desired, to change the health plan assignment before enrollment is effective. The notice includes the:

- (A) Agency's toll-free number;
 - (B) Toll-free number and name of the health plan to which each person has been assigned;
 - (C) Effective date of enrollment; and
 - (D) Date by which the person must respond to change the assignment.
- (7) An apple health expansion enrollee's selection of a PCP or assignment to a PCP occurs as follows:
- (a) An apple health expansion enrollee may choose:
 - (i) A PCP or clinic that is in the enrollee's health plan and accepting new enrollees; and
 - (ii) A different PCP or clinic participating with the enrollee's health plan for different family members.
 - (b) If the enrollee does not choose a PCP or clinic, the health plan assigns a PCP or clinic that meets the access standards in the health plan contract.
 - (c) An apple health expansion enrollee may change from one PCP or clinic to a different PCP or clinic participating in the enrollee's health plan for any reason, with the change taking effect no later than the beginning of the month following the enrollee's request.
 - (d) An apple health expansion enrollee may file a grievance with the health plan if the health plan does not approve an enrollee's request to change PCPs or clinics.
 - (e) Apple health expansion enrollees required to participate in the agency's PRC program may be limited in their right to change PCPs. (See WAC 182-501-0135.)

NEW SECTION

WAC 182-525A-0300 Qualifications to become an agency-contracted health plan for Washington apple health expansion coverage. (1) To provide services under the Washington apple health expansion contract, a health plan must:

- (a) Contract with the agency; and
 - (b) Contract with an agency-contracted behavioral health administrative service organization (BH-ASO) that maintains an adequate provider network to deliver services to enrollees in the apple health expansion regional service areas.
- (2) A health plan must meet the following qualifications to be eligible to contract with the agency:
- (a) Have a certificate of registration from the Washington state office of the insurance commissioner (OIC) that allows the health plan to provide health care services under a risk-based contract;
 - (b) Accept the terms and conditions of the agency's apple health expansion contract;
 - (c) Meet the network and quality standards established by the agency; and
 - (d) Pass a readiness review, including an on-site visit conducted by the agency.

(3) The agency may periodically conduct a procurement for new apple health expansion health plans or to reduce or expand the use of existing apple health expansion health plans.

(a) The agency may conduct a procurement when the agency determines in its sole discretion there is a need to:

- (i) Expand or reduce current health plan contracts;
- (ii) Enhance current health plan provider networks;
- (iii) Establish new contracts for apple health expansion coverage in one or more regional services areas; or
- (iv) Adjust the program to ensure adherence to state and federal law.

(b) The agency gives significant weight to the following factors in any procurement process:

- (i) Demonstrated commitment to, and experience in, serving low-income populations;
- (ii) Demonstrated commitment to, and experience in, serving people who have mental illness, substance use disorders, or co-occurring disorders;
- (iii) Demonstrated commitment to, and experience in, serving immigrant populations and populations with limited-English proficiency;
- (iv) Demonstrated commitment to, and experience with, partnerships with county and municipal criminal justice systems, housing services, and other critical support services necessary to achieve the outcomes established in RCW 70.320.020, 71.24.435, and 71.36.025;
- (v) Recognition that meeting apple health expansion enrollees' physical and behavioral health care needs is a shared responsibility of contracted behavioral health administrative services organizations, health plans, service providers, the state, and communities;
- (vi) Consideration of past and current performance and participation in other state or federal behavioral health programs as a contractor;
- (vii) Quality of services provided to enrollees under previous contracts with the state of Washington or other states;
- (viii) Accessibility, including appropriate utilization, of services offered to enrollees;
- (ix) Demonstrated capability to perform contracted services, including the ability to supply an adequate provider network; and
- (x) The ability to meet any other requirements established by the agency.

(c) The agency may define and consider additional factors as part of any procurement including, but not limited to:

- (i) Timely processing of, and payments to, providers in the health plan networks, including reconciliation of outstanding payments; and
- (ii) The optimal number of health plans per regional services area, based on population and in the manner that the agency determines most beneficial for the program, enrollees, and providers.

(4) The agency reserves the right not to contract with any otherwise qualified health plan.

NEW SECTION

WAC 182-525A-0400 Health plan payments, corrective action, and sanctions. (1) The agency pays Washington apple health expansion health plans monthly capitated premiums that:

(a) Were developed using generally accepted actuarial principles and practices;

(b) Are appropriate for the covered populations and the services to be furnished under the apple health expansion contract;

(c) Are certified by actuaries who meet the qualification standards established by the American Academy of Actuaries and follow the practice standards established by the Actuarial Standards Board;

(d) Are based on analysis of historical cost, rate information, or both; and

(e) Are paid based on legislative allocations.

(2) Health plans are solely responsible for payment of apple health expansion-contracted health care services. The agency does not pay for a service that is the health plan's responsibility, even if the health plan has not paid the provider for the service.

(3) The agency pays health plans a service-based enhancement rate for wraparound with intensive services (WISE) administered by a certified WISE provider who holds a current behavioral health agency license issued by the department of health under chapter 246-341 WAC.

(4) For crisis services, the health plan must determine whether the person receiving the services is eligible for apple health expansion or if the person has other insurance coverage.

(5) The agency may require corrective action for:

(a) Substandard rates of clinical performance measures;

(b) Deficiencies found in audits and on-site visits; or

(c) Findings of noncompliance with any contractual, state, or federal requirements.

(6) The agency may:

(a) Impose sanctions for a health plan's noncompliance with any contractual or state requirement; and

(b) Apply a monthly penalty assessment associated with poor performance on selected behavioral health performance measures.

(7) If a health plan fails to meet any material obligation under the apple health expansion contract, the agency may impose the maximum allowable sanction on a per-occurrence, per-day basis until the agency determines the health plan has:

(a) Corrected the violation; and

(b) Remedied any harm caused by the noncompliance.

NEW SECTION

WAC 182-525A-0500 Scope of care. (1) A person enrolled in Washington apple health expansion is eligible only for the scope of services identified in WAC 182-501-0060, which may be modified by other agency rules pertinent to apple health expansion.

(2) The agency does not require the health plan to cover any services outside the scope of covered services in the agency's health plan contract. At its discretion, a health plan may cover services not required under the apple health expansion contract.

(3) Some services included in apple health expansion coverage may be provided on a fee-for-service basis rather than through a health plan.

(4) The health plan is not required to authorize or pay for covered services if services:

- (a) Are determined not to be medically necessary, as defined in WAC 182-500-0070, in accordance with the apple health expansion contract;
- (b) Are excluded from coverage under the apple health expansion contract;
- (c) Are received in a hospital emergency department for nonemergency medical conditions, except for a screening exam;
- (d) Are received from a participating provider that require prior authorization from the health plan; or
- (e) Are nonemergency services covered under the apple health expansion contract and received from nonparticipating providers that were not prior authorized by the health plan.

NEW SECTION

WAC 182-525A-0600 Health plan administration requirements. For covered services administered through the Washington apple health expansion contracts:

- (1) Health plans must subcontract with enough providers to deliver the scope of contracted services in a timely manner.
- (2) Health plans must provide new enrollees with written information about how enrollees may obtain covered services.
- (3) Health plans must provide covered services to enrollees through their participating providers unless an exception applies. A health plan covers services from a nonparticipating provider when an apple health expansion enrollee obtains:
 - (a) Emergency services; or
 - (b) Authorization from the health plan to receive services from a nonparticipating provider.
- (4) For nonemergency services, health plans may require:
 - (a) The enrollee to obtain a referral from the enrollee's primary care provider (PCP); or
 - (b) The provider to obtain authorization from the enrollee's health plan.
- (5) Health plans and their contracted providers must determine whether a requested service is medically necessary, as described in WAC 182-500-0070, given the enrollee's condition, according to the requirements included in the apple health expansion contract.
- (6) The health plan must coordinate benefits with other insurers in a manner that does not reduce benefits to the enrollee or result in costs to the enrollee.
- (7) A health plan enrollee does not need a PCP referral to receive reproductive health services, as described in chapter 182-532 WAC, from any reproductive health care provider participating with the health plan. Any covered services ordered or prescribed by a reproductive health care provider must meet the health plan's service authorization requirements for the specific service.
- (8) For enrollees outside their health plan service area, the health plan must cover enrollees for emergency care and medically necessary covered benefits that cannot wait until the enrollees return to their health plan service area.
- (9) A health plan enrollee may obtain specific services described in the apple health expansion contract from either a health plan-contracted provider or a provider with a separate agreement with the agency without a referral from the PCP or health plan.

(10) Health plans must provide new enrollees with written information about covered services. Additionally, the agency sends each enrollee written information about covered services when there is a change in covered services.

(11) An apple health expansion enrollee is entitled to timely access to covered services that are medically necessary as defined in WAC 182-500-0070.

(12) All nonemergency services covered under the apple health expansion contract and received from nonparticipating providers require prior authorization from the health plan.

(13) A provider may bill an apple health expansion enrollee for services only if the requirements of WAC 182-525-1100 are met.

NEW SECTION

WAC 182-525A-0700 Telemedicine and store and forward technology.

The agency's rules related to the authorized use of telemedicine and store and forward technology are found in WAC 182-501-0300 and are applicable to Washington apple health expansion benefits, including those administered by the health plan.

NEW SECTION

WAC 182-525A-0800 The grievance and appeal system and agency administrative hearings. (1) **Introduction.** This section contains information about the grievance and appeal system and the right to an agency administrative hearing for Washington apple health expansion health plan enrollees.

(2) **Statutory basis and framework.**

(a) Each health plan must have a grievance and appeal system in place for enrollees.

(b) Once a health plan enrollee has completed the health plan appeals process, the enrollee has the option of requesting an agency administrative hearing regarding any adverse benefit determination (as defined in WAC 182-538-050) upheld by the health plan. See chapter 182-526 WAC.

(3) **Health plan grievance and appeal system - General requirements.**

(a) The health plan grievance and appeal system must include:

(i) A process for addressing complaints about any matter that is not an adverse benefit determination, which is a grievance;

(ii) An appeal process to address enrollee requests for review of a health plan's adverse benefit determination; and

(iii) Access to the agency's administrative hearing process for review of a health plan's resolution of an appeal.

(b) Health plans must provide information describing the health plan's grievance and appeal system to all providers and subcontractors.

(c) A health plan must have agency approval for written materials sent to enrollees regarding the grievance and appeal system and the agency's administrative hearing process under chapter 182-526 WAC.

(d) Health plans must inform enrollees in writing within 15 calendar days of enrollment about enrollees' rights with instructions on

how to use the health plan's grievance and appeal system and the agency's administrative hearing process.

(e) A health plan must give enrollees any reasonable assistance in completing forms and other procedural steps for grievances and appeals (e.g., interpreter services and toll-free numbers).

(f) A health plan must allow enrollees and their authorized representatives to file grievances and appeals orally as well as in writing.

(g) Methods to file either a grievance or appeal include, but are not limited to, U.S. mail, commercial delivery services, hand delivery, fax, telephone, and email.

(h) Health plans may not require enrollees to provide written follow-up for a grievance the health plan received orally.

(i) The health plan must resolve each grievance and appeal and provide notice of the resolution as expeditiously as the enrollee's health condition requires and within the time frames identified in this section.

(j) The health plan must ensure that the people who make decisions on grievances and appeals:

(i) Were neither involved in any previous level of review or decision making nor a subordinate of any person who was so involved;

(ii) Are health care professionals with appropriate clinical expertise in treating the enrollee's condition or disease if deciding any of the following:

(A) An appeal of an adverse benefit determination concerning medical necessity;

(B) A grievance concerning denial of an expedited resolution of an appeal; or

(C) A grievance or appeal that involves any clinical issues; and

(iii) Consider all comments, documents, records, and other information submitted by the enrollee or the enrollee's representative without regard to whether the information was submitted or considered in the initial adverse benefit determination.

(4) The health plan grievance process.

(a) Only an enrollee or enrollee's authorized representative may file a grievance with the health plan. A provider may not file a grievance on behalf of an enrollee without the enrollee's written consent.

(b) The health plan must acknowledge receipt of each grievance within two business days. Acknowledgment may be orally or in writing.

(c) The health plan must complete the resolution of a grievance and provide notice to the affected parties as expeditiously as the enrollee's health condition requires, but no later than 45 calendar days after receiving the grievance.

(d) The health plan must notify enrollees of the resolution of grievances within five business days of determination.

(i) Notices of resolution of grievances not involving clinical issues can be oral or in writing.

(ii) Notices of resolution of grievances for clinical issues must be in writing.

(e) Enrollees do not have a right to an agency administrative hearing to dispute the resolution of a grievance unless the health plan fails to adhere to the notice and timing requirements for grievances.

(f) If the health plan fails to adhere to the notice and timing requirements for grievances, the enrollee is deemed to have completed

the health plan's appeals process and may initiate an agency administrative hearing.

(5) **Health plans' notice of adverse benefit determination.**

(a) **Language and format requirements.** The notice of adverse benefit determination must be in writing in the enrollee's primary language and in an easily understood format.

(b) **Content of notice.** The notice of health plan adverse benefit determination must explain:

(i) The adverse benefit determination the health plan has made or intends to make, and any pertinent effective date;

(ii) The reasons for the adverse benefit determination, including citation to legal authority and the health plan criteria that were the basis of the decision;

(iii) The enrollee's right to receive upon request, free of charge, reasonable access to and copies of all documents, records, and other information relevant to the adverse benefit determination, including medical necessity criteria and any processes, strategies, or evidentiary standards used in setting coverage limits;

(iv) The enrollee's right to file an appeal of the adverse benefit determination, including information on the health plan appeal process and the right to request an agency administrative hearing;

(v) The procedures for exercising the enrollee's rights;

(vi) The circumstances under which an appeal can be expedited and how to request it; and

(vii) The enrollee's right to have benefits continued pending resolution of an appeal, how to request that benefits be continued, and the circumstances under which the enrollee may be required to pay the costs of these services.

(c) **Timing of notice.** The health plan must mail the notice of adverse benefit determination within the following time frames:

(i) For termination, suspension, or reduction of previously authorized services, at least 10 calendar days prior to the effective date of the adverse benefit determination. This notice must be mailed by a method that certifies receipt and assures delivery within three calendar days.

(ii) For denial of payment, at the time of any adverse benefit determination affecting the claim. This applies only when the enrollee can be held liable for the costs associated with the adverse benefit determination.

(iii) For standard service authorization decisions that deny or limit services, as expeditiously as the enrollee's health condition requires, but not to exceed 14 calendar days following receipt of the request for service. An extension of up to 14 additional calendar days may be allowed if:

(A) The enrollee or enrollee's provider requests the extension.

(B) The health plan determines, and justifies to the agency upon request, a need for additional information and that the extension is in the enrollee's interest.

(iv) If the health plan extends the time frame for standard service authorization decisions, the health plan must:

(A) Give the enrollee written notice of the reason for the decision to extend and inform the enrollee of the right to file a grievance if the enrollee disagrees with that decision; and

(B) Issue and carry out its determination as expeditiously as the enrollee's health condition requires and no later than the date the extension expires.

(v) For expedited authorization decisions:

(A) In cases involving mental health drug authorization decisions, or where the provider indicates or the health plan determines that following the standard time frame could seriously jeopardize the enrollee's life or health or ability to attain, maintain, or regain maximum function, the health plan must make an expedited authorization decision and provide notice no later than 72 hours after receipt of the request for service.

(B) The health plan may extend the 72-hour time frame up to 14 calendar days if:

(I) The enrollee requests the extension; or

(II) The health plan determines and justifies to the agency, upon request, there is a need for additional information and it is in the enrollee's interest.

(6) **The health plan appeal process.**

(a) **Authority to appeal.** An enrollee, the enrollee's authorized representative, or the provider acting with the enrollee's written consent may appeal an adverse benefit determination from the health plan.

(b) **Oral appeals.** A health plan must treat oral inquiries about appealing an adverse benefit determination as an appeal to establish the earliest possible filing date for the appeal.

(c) **Acknowledgment letter.** The health plan must acknowledge in writing receipt of each appeal to both the enrollee and the requesting provider within five calendar days of receiving the appeal request. The appeal acknowledgment letter sent by the health plan serves as written confirmation of an appeal filed orally by an enrollee.

(d) **Standard service authorization - 60-day deadline.** For appeals involving standard service authorization decisions, an enrollee must file an appeal within 60 calendar days of the date on the health plan's notice of adverse benefit determination. This time frame also applies to a request for an expedited appeal.

(e) **Previously authorized service - 10-day deadline.** For appeals of adverse benefit determinations involving termination, suspension, or reduction of a previously authorized service, and when the enrollee is requesting continuation of the service, the enrollee must file an appeal within 10 calendar days of the health plan mailing notice of the adverse benefit determination.

(f) **Untimely service authorization decisions.** When the health plan does not make a service authorization decision within required time frames, it is considered a denial. In this case, the health plan sends a formal notice of adverse benefit determination, including the enrollee's right to an appeal.

(g) **Appeal process requirements.** The health plan appeal process must:

(i) Provide the enrollee a reasonable opportunity to present evidence and allegations of fact or law, in person, by telephone, or in writing. The health plan must inform the enrollee of the limited time available for this in the case of expedited resolution;

(ii) Provide the enrollee and the enrollee's representative the opportunity before and during the appeal process to examine the enrollee's case file, including medical records, other relevant documents and records, and any new or additional evidence considered, relied upon, or generated by the health plan (or at health plan's direction) in connection with the appeal of the adverse benefit determination. This information must be provided free of charge and sufficiently in advance of the resolution time frame for appeals as specified in this section; and

(iii) Include as parties to the appeal:

(A) The enrollee and the enrollee's representative; or

(B) The legal representative of the deceased enrollee's estate.

(h) **Level of appeal.** There is only one level of review in the health plan's appeals process.

(i) **Time frames for resolution of appeals and notice to the enrollee.** Health plans must resolve each appeal and provide notice as expeditiously as the enrollee's health condition requires, and within the following time frames:

(i) For standard resolution of appeals, including notice to the affected parties, no longer than 30 calendar days from the day the health plan receives the appeal. This includes appeals involving termination, suspension, or reduction of previously authorized services.

(ii) For expedited resolution of appeals, including notice to the affected parties, no longer than 72 hours after the health plan receives the appeal. The health plan may extend the 72-hour time frame up to 14 calendar days if:

(A) The enrollee requests the extension; or

(B) The health plan determines and shows to the satisfaction of the agency, upon request, there is a need for additional information and it is in the enrollee's interest.

(iii) If the health plan fails to adhere to the notice and timing requirements for appeals, the enrollee is deemed to have completed the health plan's appeals process and may request an agency administrative hearing.

(j) **Language and format requirements - Notice of resolution of appeal.**

(i) The notice of the resolution of the appeal must be in writing in the enrollee's primary language and in an easily understood format.

(ii) The notice of the resolution of the appeal must be sent to the enrollee and the requesting provider.

(iii) For notice of an expedited resolution, the health plan must also make reasonable efforts to provide oral notice.

(k) **Content of resolution of appeal.**

(i) The notice of resolution must include the results of the resolution process and the date it was completed.

(ii) For appeals not resolved wholly in favor of the enrollee, the notice of resolution must include:

(A) The right to request an agency administrative hearing under chapter 182-526 WAC, and how to request the hearing;

(B) The right to request and receive benefits while an agency administrative hearing is pending, and how to make the request in accordance with subsection (9) of this section and the agency's administrative hearing rules in chapter 182-526 WAC; and

(C) That the enrollee may be held liable for the cost of those benefits received for the first 60 calendar days after the agency or the office of administrative hearings (OAH) receives an agency administrative hearing request if the hearing decision upholds the health plan's adverse benefit determination.

(7) **Health plan expedited appeal process.**

(a) Each health plan must establish and maintain an expedited appeal process when the health plan determines or the provider indicates that taking the time for a standard resolution of an appeal could seriously jeopardize the enrollee's life, physical or behavioral health, or ability to attain, maintain, or regain maximum function.

(b) The enrollee may file an expedited appeal either orally, according to WAC 182-526-0095, or in writing. No additional follow-up is required of the enrollee.

(c) The health plan must make a decision on the enrollee's request for expedited appeal and provide written notice as expeditiously as the enrollee's health condition requires but no later than two calendar days after the health plan receives the appeal. The health plan must also make reasonable efforts to orally notify the enrollee of the decision.

(d) The health plan may extend the time frame for decision on the enrollee's request for an expedited appeal up to 14 calendar days if:

(i) The enrollee requests the extension; or

(ii) The health plan determines and shows to the satisfaction of the agency, upon its request, that there is a need for additional information and the delay is in the enrollee's interest.

(e) The health plan must make reasonable efforts to provide the enrollee prompt verbal notice and provide written notice for any extension not requested by the enrollee with the reason for the delay.

(f) If the health plan grants an expedited appeal, the health plan must issue a decision as expeditiously as the enrollee's physical or behavioral health condition requires, but not later than 72 hours after receiving the appeal. The health plan may extend the time frame for a decision and to provide notice to the enrollee for an expedited appeal, up to 14 days, if:

(i) The enrollee requests the extension; or

(ii) The health plan determines and shows to the satisfaction of the agency, upon its request, that there is a need for additional information and the delay is in the enrollee's interest.

(g) The health plan must provide written notice for any extension not requested by the enrollee within two calendar days of the decision and inform the enrollee of the reason for the delay and the enrollee's right to file a grievance.

(h) If the health plan denies a request for expedited resolution of an appeal, it must:

(i) Process the appeal based on the time frame for standard resolution;

(ii) Make reasonable efforts to give the enrollee prompt oral notice of the denial; and

(iii) Provide written notice within two calendar days.

(i) The health plan must ensure that punitive action is not taken against a provider who requests an expedited resolution or supports an enrollee's appeal.

(8) The right to an agency administrative hearing for health plan enrollees.

(a) **Authority to file.** Only an enrollee, the enrollee's authorized representative, or a provider with the enrollee's or authorized representative's written consent may request an administrative hearing. See WAC 182-526-0095 and 182-526-0155.

(b) **Right to agency administrative hearing.** If an enrollee has completed the health plan appeal process and does not agree with the health plan's resolution of the appeal, the enrollee may file a request for an agency administrative hearing based on the rules in this section and in chapter 182-526 WAC.

(c) **Deadline - 120 days.** An enrollee's request for an agency administrative hearing must be filed no later than 120 calendar days from the date of the written notice of resolution of appeal from the health plan.

(d) **Independent party.** The health plan is an independent party and responsible for its own representation in any agency administrative hearing, appeal to the board of appeals, and any subsequent judicial proceedings.

(e) **Applicable rules.** The agency's administrative hearing rules in chapter 182-526 WAC apply to agency administrative hearings requested by enrollees to review the resolution of an enrollee appeal of a health plan adverse benefit determination.

(9) **Continuation of previously authorized services.**

(a) The health plan must continue the enrollee's services if all of the following apply:

(i) The enrollee, or enrollee's authorized representative, or provider with written consent files the appeal on or before the later of the following:

(A) Within 10 calendar days of the health plan mailing the notice of adverse benefit determination; or

(B) The intended effective date of the health plan's proposed adverse benefit determination;

(ii) The appeal involves the termination, suspension, or reduction of previously authorized services;

(iii) The services were ordered by an authorized provider; and

(iv) The original period covered by the original authorization has not expired.

(b) If the health plan continues or reinstates the enrollee's services while the appeal is pending at the enrollee's request, the services must be continued until one of the following occurs:

(i) The enrollee withdraws the health plan appeal;

(ii) The enrollee fails to request an agency administrative hearing within 10 calendar days after the health plan sends the notice of an adverse resolution to the enrollee's appeal;

(iii) The enrollee withdraws the request for an agency administrative hearing; or

(iv) The office of administrative hearings (OAH) issues a hearing decision adverse to the enrollee.

(c) If the final resolution of the appeal upholds the health plan's adverse benefit determination, the health plan may recover from the enrollee the amount paid for the services provided to the enrollee for the first 60 calendar days after the agency or the office of administrative hearings (OAH) received a request for an agency administrative hearing, to the extent that services were provided solely because of the requirement for continuation of services.

(d) Expenditures for continued enrollee services under this section are subject to legislative funding provided specifically for apple health expansion coverage and the health plan's obligation to continue the services will terminate when available funding for apple health expansion is exhausted.

(10) **Effect of reversed resolutions of appeals.**

(a) **Services not furnished while an appeal is pending.** If the health plan or a final order entered by the agency's board of appeals, as defined in chapter 182-526 WAC, or an independent review organization (IRO) reverses a decision to deny, limit, or delay services that were not provided while the appeal was pending, the health plan must authorize or provide the disputed services promptly, and as expeditiously as the enrollee's health condition requires, but not later than 72 hours from the date it receives notice reversing the determination.

(b) **Services furnished while the appeal is pending.** If the health plan reverses a decision to deny authorization of services or the denial is reversed through an IRO or a final order of OAH or the board of appeals and the enrollee received the disputed services while the appeal was pending, the health plan must pay for those services.

(11) **Available resources exhausted.** Any appeals, independent review, or agency administrative hearing process related to a request to authorize or pay for a service will terminate when the available funding for apple health expansion coverage is exhausted, since services cannot be authorized or paid for without funding, regardless of medical necessity.

NEW SECTION

WAC 182-525A-0900 Enrollee request for a second medical opinion.

(1) A health plan enrollee has the right to a timely referral for a second opinion upon request when:

(a) The enrollee needs more information about treatment recommended by the provider or health plan; or

(b) The enrollee believes the health plan is not authorizing medically necessary care.

(2) A health plan enrollee has a right to a second opinion from a participating provider. At the health plan's discretion, a clinically appropriate nonparticipating provider who is agreed upon by the health plan and the enrollee may provide the second opinion.

NEW SECTION

WAC 182-525A-1000 Quality of care. To assure that health plan enrollees receive quality health care services, the agency requires health plans to comply with quality improvement standards detailed in the agency's health plan contract. Health plans must:

(1) Have a clearly defined quality organizational structure and operation, including a fully operational quality assessment, measurement, and improvement program;

(2) Have effective means to detect overutilization and underutilization of services;

(3) Maintain a system for provider and practitioner credentialing and recredentialing;

(4) Ensure that health plan subcontracts and the delegation of health plan responsibilities align with agency standards;

(5) Ensure health plan oversight of delegated entities responsible for any delegated activity to include:

(a) A delegation agreement with each entity describing the responsibilities of the health plan and the entity;

(b) Evaluation of the entity before delegation;

(c) An annual evaluation of the entity; and

(d) Evaluation or regular reports and follow-up on issues that are not compliant with the delegation agreement or the agency's health plan contract specifications;

(6) Cooperate with an agency-contracted, qualified independent external quality review organization (EQRO) conducting review activities;

- (7) Have an effective mechanism to assess the quality and appropriateness of care furnished to enrollees with special health care needs;
- (8) Assess and develop individualized treatment plans for enrollees with special health care needs which ensure integration of clinical and nonclinical disciplines and services in the overall plan of care;
- (9) Submit annual reports to the agency on performance measures as specified by the agency;
- (10) Maintain a health information system that:
- (a) Collects, analyzes, integrates, and reports data as requested by the agency;
 - (b) Provides information on utilization, grievances and appeals, and other areas as defined by the agency;
 - (c) Retains enrollee grievance and appeal records for a period of no less than 10 years;
 - (d) Collects data on enrollees, providers, and services provided to enrollees through an encounter data system, in a standardized format as specified by the agency; and
 - (e) Ensures data received from providers is adequate and complete by verifying the accuracy and timeliness of reported data and screening the data for completeness, logic, and consistency.
- (11) Conduct performance improvement projects designed to achieve significant improvement, sustained over time, in clinical care outcomes and services, and that involve the following:
- (a) Measuring performance using objective quality indicators;
 - (b) Implementing system changes to achieve improvement in service quality;
 - (c) Evaluating the effectiveness of system changes;
 - (d) Planning and initiating activities for increasing or sustaining performance improvement;
 - (e) Reporting each project status and the results as requested by the agency; and
 - (f) Completing each performance improvement project timely so as to generally allow aggregate information to produce new quality of care information every year;
- (12) Ensure enrollee access to health care services;
- (13) Ensure continuity and coordination of enrollee care; and
- (14) Maintain and monitor availability of health care services for enrollees.

NEW SECTION

WAC 182-525A-1100 Notice requirements. The notice requirements in chapter 182-518 WAC apply to Washington apple health expansion. However, when available funds are exhausted, benefits are terminated, and the agency sends notice to enrollees in accordance with WAC 182-518-0025 (1), (2), and (3). Continued coverage of apple health expansion benefits is not available.

NEW SECTION

WAC 182-525A-1200 Enrollee rights. Washington apple health expansion enrollees have the rights described in WAC 182-503-0100, as applicable, and WAC 182-538-180, as applicable.

OTS-5228.3

Chapter 182-525B WAC
WASHINGTON APPLE HEALTH EXPANSION OUTPATIENT DRUG PROGRAM

NEW SECTION

WAC 182-525B-0100 Introduction. The rules in this chapter are applicable to the Washington apple health expansion outpatient drug program. Chapter 182-530 WAC is not applicable to apple health expansion, except for the definitions from WAC 182-530-1050 that are incorporated by reference into this chapter as identified in WAC 182-525B-0300.

NEW SECTION

WAC 182-525B-0200 Overview. (1) The Washington apple health expansion outpatient drug program provides medically necessary outpatient drugs, drug-related supplies, and devices to apple health expansion enrollees based on agency rules.

(2) The agency determines the outpatient drugs, vitamins, minerals, drug-related supplies, and devices that are covered under apple health expansion.

(3) The apple health expansion outpatient drug program covers outpatient drugs, vitamins, minerals, drug-related supplies, and devices when:

(a) The items are designated as covered for apple health expansion on the agency's apple health expansion preferred drug list. For covered outpatient drugs, vitamins, minerals, drug-related supplies, and devices, refer to WAC 182-525B-0500. For noncovered outpatient drugs, vitamins, minerals, drug-related supplies, and devices, refer to WAC 182-525B-0600; or

(b) The items are prescribed by a practitioner with prescriptive authority (also known as "prescriber," as defined in WAC 182-525B-0300), unless covered without a prescription as described in WAC 182-525B-0500 for family planning and emergency contraception; and

(c) When the prescriber is a provider:

(i) With an approved core provider agreement;

(ii) Who is enrolled as a servicing provider on an approved core provider agreement; or

(iii) Who is enrolled as a nonbilling provider.

NEW SECTION

WAC 182-525B-0300 Definitions. In addition to the definitions and abbreviations found in chapter 182-500 WAC, the following definitions apply to this chapter:

"Apple health expansion preferred drug list (PDL)" - The list of all drugs in drug classes and each drug's preferred or nonpreferred status as approved by the agency director or designee.

"Compendia of drug information" - See WAC 182-530-1050.

"Drug-related supplies and devices" - See WAC 182-530-1050.

"Medically accepted indication" - See WAC 182-530-1050.

"National drug code (NDC)" - See WAC 182-530-1050.

"Nonpreferred drug" - A drug within a therapeutic class of drugs on the apple health expansion PDL that has not been selected as a preferred drug.

"Obsolete NDC" - See WAC 182-530-1050.

"Outpatient drug" - A prescription or OTC drug, vitamin, mineral, enzyme, or supplement. Covered outpatient drugs will be listed on the apple health expansion PDL.

"Over-the-counter (OTC) drugs" - Outpatient drugs that do not by any applicable federal or state law or regulation require a prescription before they can be sold or dispensed.

"Pharmacist" - See WAC 182-530-1050.

"Pharmacy" - See WAC 182-530-1050.

"Practice of pharmacy" - The practice of and responsibility for:

- (a) Accurately interpreting prescription orders;
- (b) Compounding drugs;
- (c) Dispensing, labeling, administering, and distributing drugs and devices;
- (d) Providing drug information to the enrollee that includes, but is not limited to, the advising of therapeutic values, hazards, and the uses of drugs and devices;
- (e) Monitoring of drug therapy and use;
- (f) Proper and safe storage of drugs and devices;
- (g) Documenting and maintaining records;
- (h) Initiating or modifying drug therapy in accordance with written guidelines or protocols previously established and approved for a pharmacist's practice by a practitioner authorized to prescribe drugs; and
- (i) Participating in drug use reviews and drug product selection.

"Practitioner" - See WAC 182-530-1050.

"Preferred drug" - A drug within a therapeutic class of drugs on the apple health expansion PDL that has been selected as a preferred drug.

"Prescriber" - A physician, osteopathic physician/surgeon, dentist, nurse, physician assistant, optometrist, pharmacist, or other person authorized by law or rule to prescribe drugs. See WAC 246-945-350 for pharmacists' prescriptive authority.

"Prescription" - An order for drugs, vitamins, minerals, enzymes or devices issued by a prescriber, in the course of the prescriber's professional practice, for a legitimate medical purpose.

"Prescription drugs" - Drugs, vitamins, minerals, or enzymes required by any applicable federal or state law or regulation to be dispensed by prescription only or that are restricted to use by practitioners only.

"Terminated NDC" - See WAC 182-530-1050.

NEW SECTION

WAC 182-525B-0400 Requirements for prescribing and dispensing controlled substances—Prescription monitoring program (PMP). This section identifies the steps prescribers must take before prescribing a controlled substance. This includes the steps pharmacists must take when dispensing a controlled substance from an outpatient pharmacy to check a Washington apple health expansion enrollee's prescription drug history in the prescription monitoring program (PMP) described in chapter 246-470 WAC.

(1) **PMP review required.** Except as identified in subsection (4) of this section, a prescriber, before prescribing, and a pharmacist, when dispensing, must check all the apple health expansion enrollee's current prescriptions in the PMP, including any prescriptions not paid for under apple health expansion.

(2) **Retrieval by delegates allowed.** A prescriber or pharmacist may delegate the retrieval of the apple health expansion enrollee's PMP information to anyone in their practice setting with authorization to access the PMP, so long as the prescriber or pharmacist reviews all the enrollee's current prescriptions in the PMP before prescribing or when dispensing a controlled substance.

(3) **Documentation.** The prescriber and pharmacist must document in the apple health expansion enrollee's record the date and time of the:

(a) Retrieval of information from the PMP; and

(b) Review of information from the PMP.

(4) **Good faith effort exception.**

(a) If a prescriber, pharmacist, or their delegate is unable to access the apple health expansion enrollee's record in the PMP after a good faith effort, that attempt must be documented in the enrollee's record.

(b) A prescriber or pharmacist must document the reason or reasons they were unable to conduct the check in the apple health expansion enrollee's medical record.

NEW SECTION

WAC 182-525B-0500 Covered drugs, drug-related supplies, and devices. (1) The Washington apple health expansion outpatient drug program covers:

(a) Prescription and over-the-counter (OTC) drugs, vitamins, and minerals as defined in WAC 182-525B-0300, subject to the limitations and requirements in this chapter, when:

(i) The item is approved by the Food and Drug Administration (FDA);

(ii) The item is for a medically accepted indication as defined in WAC 182-525B-0300;

(iii) The manufacturer has a signed drug rebate agreement with the federal Department of Health and Human Services (DHHS) or the agency has exempted the drug from the rebate requirement based on a determination that the nonrebateable product is medically necessary and essential to the health of the enrollees; and

(iv) The item is not excluded from coverage under WAC 182-525B-0600.

(b) Drugs and drug-related supplies and devices used for family planning per chapter 182-532 WAC are as follows:

(i) OTC drugs, devices, and drug-related supplies used for family planning without a prescription when the agency determines it necessary for enrollee access and safety;

(ii) Contraceptive patches, contraceptive rings, and oral contraceptives, excluding emergency contraception, when dispensed in no less than a one-year supply, unless:

(A) A smaller supply is directed by the prescriber;

(B) A smaller supply is requested by the enrollee; or

(C) The pharmacy does not have adequate stock.

(iii) Family planning drugs that do not meet the federal drug rebate requirement in (a)(iii) of this subsection, on a case-by-case basis.

(c) Prescription or OTC vitamins, minerals, and enzymes listed as preferred on the apple health expansion preferred drug list (PDL) that are:

(i) Prenatal vitamins, iron replacement, or folic acid, when prescribed and dispensed to a pregnant person;

(ii) Recommended by the United States Preventive Services Task Force with an A or B rating;

(iii) Fluoride for enrollees under age 21; or

(iv) Taken for a clinically documented medical condition that causes vitamin, mineral, or enzyme deficiencies, and the deficiency cannot be treated through other dietary interventions.

(d) OTC drugs listed on the apple health expansion PDL that the agency determines to be the least costly therapeutic alternative for a medically accepted indication;

(e) Drug-related supplies and devices that are:

(i) Essential for the administration of an outpatient drug;

(ii) Not excluded from coverage under WAC 182-525B-0600; and

(iii) Medical equipment and supplies covered under chapter 182-543 WAC and available at retail pharmacies, when published on the apple health expansion PDL.

(f) Preservatives, flavoring, or coloring agents, only when used as a suspending agent in a compound;

(g) Prescription drugs and OTC drugs listed as preferred on the apple health expansion PDL to promote tobacco/nicotine cessation; and

(h) Drugs approved by the FDA under an emergency use authorization during a public health emergency.

(2) Apple health expansion does not cover or pay for any drug, vitamin, mineral, enzyme, or drug-related supply or device not meeting the coverage requirements under this section.

NEW SECTION

WAC 182-525B-0600 Noncovered outpatient drugs, drug-related supplies, and devices. (1) The agency does not cover a drug that is:

(a) Not approved by the Food and Drug Administration (FDA);

(b) Prescribed for a condition that is not a medically accepted indication, including a dose or dosage schedule that is not FDA-approved or supported in the Compendia;

(c) Prescribed for:

(i) Weight loss or gain;

(ii) Infertility, frigidity, or impotency;

- (iii) Cosmetic purposes or hair growth; or
- (iv) Sexual or erectile dysfunction, unless such drugs are used to treat a condition other than sexual or erectile dysfunction and approved by the FDA.
- (d) Designated by the FDA as a less-than-effective drug;
- (e) An outpatient drug for which the manufacturer requires as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or manufacturer's designee;
- (f) An outpatient drug, drug-related supply, or device:
- (i) With an obsolete National Drug Code (NDC) for more than two years;
- (ii) With a terminated NDC;
- (iii) Whose shelf life has expired; or
- (iv) Which does not have a valid NDC approved by the FDA.
- (g) A prescription or OTC drug, vitamin, mineral, or enzyme except as allowed under WAC 182-525B-0500 (1)(h);
- (h) A drug regularly supplied by other public agencies as an integral part of program activity (e.g., immunization vaccines for children);
- (i) Listed as not covered on the Washington apple health expansion preferred drug list (PDL); or
- (j) A free pharmaceutical sample.
- (2) A noncovered drug may be requested through the exception to rule process as described in WAC 182-501-0160.

NEW SECTION

- WAC 182-525B-0700 Washington apple health expansion preferred drug list (PDL).** (1) Outpatient drugs in a drug class on the Washington apple health expansion preferred drug list (PDL) may be designated as preferred, nonpreferred, or not covered drugs.
- (2) The agency director or designee makes the final selection of drugs or drug classes included on the apple health expansion PDL.
- (3) The agency determines the preferred, nonpreferred, and not covered status of outpatient drugs on the apple health expansion PDL.
- (4) A nonpreferred drug may:
- (a) Require trial and failure of one or more preferred drugs before the nonpreferred drug will be considered for authorization; or
 - (b) Require authorization for medical necessity as established by the agency or health plan criteria for the nonpreferred drug instead of the preferred drug.
- (5) Drugs in a drug class on the apple health expansion PDL may require authorization regardless of preferred or nonpreferred status.
- (6) When a preferred innovator drug or biological product on the apple health expansion PDL loses its patent, the agency may:
- (a) Designate an available, equally effective, generic equivalent, or biosimilar biological product as a preferred drug; and
 - (b) Make the innovator drug or biological product nonpreferred.

OTS-5180.3

AMENDATORY SECTION (Amending WSR 21-11-039, filed 5/12/21, effective 6/12/21)

WAC 182-526-0005 Purpose and scope. (1) This chapter:

(a) Describes the general hearing rules and procedures that apply to ~~((~~

~~(i))~~ the resolution of disputes between an appellant and the health care authority (HCA), an agency designee, or an HCA-contracted managed care organization (MCO) or health plan, or a dispute involving an assessed overpayment by HCA against an HCA-contracted MCO or health plan, involving:

(i) Medical services programs established under chapter 74.09 RCW including, but not limited to, Washington apple health fee-for-service, integrated managed care ((in)) (see chapters 182-538((~~7~~ 182-538A,)) and 182-538B WAC), and crisis and noncrisis services ((in)) (see chapter 182-538C WAC); ((and))

(ii) ((The resolution of disputes between an appellant and the health care authority (HCA) arising from)) Washington apple health expansion (see chapters 182-525, 182-525A, and 182-525B WAC); and

(iii) The prescription drug pricing transparency program in chapter 182-51 WAC and the all payer health care claims database rules in chapter 182-70 WAC.

(b) Supplements the Administrative Procedure Act (APA), chapter 34.05 RCW, and the model rules, chapter 10-08 WAC, adopted by the office of administrative hearings (OAH).

(c) Establishes rules encouraging informal dispute resolution between HCA, its authorized agents, or an HCA-contracted ~~((managed care organization ((MCO ((or health plan, and people or entities who disagree with its actions.~~

~~((d))~~ (2) Unless specifically excluded by this chapter or program rules, this chapter regulates all hearings involving:

(a) Medical services programs established under chapter 74.09 RCW including, but not limited to, apple health fee-for-service, managed care in chapters 182-538((~~7~~ 182-538A,)) and 182-538B WAC((~~7~~)) and crisis and noncrisis services in chapter 182-538C WAC((~~7~~, unless specifically excluded by this chapter or program rules));

(b) Apple health expansion eligibility or services as described in chapters 182-525, 182-525A, and 182-525B WAC; and

(c) Prescription drug pricing transparency program in chapter 182-51 WAC and the all payer health care claims database rules in chapter 182-70 WAC.

~~((2))~~ (3) Nothing in this chapter is intended to affect the constitutional rights of any person or to limit or change additional requirements imposed by statute or other rule. Other laws or rules determine if a hearing right exists, including the APA and program rules or laws.

~~((3))~~ (4) If there is a conflict between this chapter and specific program rules, the specific program rules prevail. HCA's hearing rules and program rules prevail over the model hearing rules in chapter 10-08 WAC.

~~((4))~~ (5) The hearing rules in this chapter do not apply to the public employees benefits board or the school employees benefits board programs (see chapters 182-16 and 182-32 WAC).

WSR 24-13-068
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-95—Filed June 14, 2024, 11:49 a.m., effective June 16, 2024]

Effective Date of Rule: June 16, 2024.

Purpose: The purpose of this rule is to close fox trapping within the exterior boundaries of the Mount Baker-Snoqualmie, Okanogan, Wenatchee, and Gifford Pinchot National Forests to prevent accidental take of state endangered Cascade red fox.

Citation of Rules Affected by this Order: Amending WAC 220-417-010.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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

Reasons for this Finding: This rule is necessary to protect Cascade red fox population, which is listed as an endangered species in Washington state. There is insufficient time to adopt permanent rules; however, the agency has started the rule-making process and the rule publication (CR-102) will occur on or before July 3, 2024.

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

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

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

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

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

Date Adopted: June 14, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-417-01000B Trapping seasons and regulations. Effective immediately, through March 31, 2024, the provisions of WAC 220-417-010 regarding trapping seasons for fox shall be modified as described below. All other provisions of WAC 220-417-010 not addressed herein remain in effect unless otherwise amended by emergency rule:

Fox trapping is CLOSED within the exterior boundaries of the Mount Baker-Snoqualmie, Okanogan, Wenatchee, and Gifford Pinchot National forests. Effective immediately.

WSR 24-13-073
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-96—Filed June 14, 2024, 3:52 p.m., effective June 22, 2024]

Effective Date of Rule: June 22, 2024.

Purpose: The purpose of this emergency rule is to clarify that salmon may not be possessed onboard a vessel in Catch Record Card Area 2 on days when closed to salmon in Area 2 but open in other coastal areas, including June 22 through June 29.

Citation of Rules Affected by this Order: Repealing WAC 220-313-07500V; and amending WAC 220-313-075.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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

Reasons for this Finding: The purpose of this rule is to clarify that salmon may not be possessed onboard a vessel in Catch Record Card Area 2 on days closed to salmon in that area, but open in other coastal areas. This rule will maintain recreational salmon seasons in Areas 1 through 4 previously announced in WSR 24-13-005 (filed June 5, 2024).

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

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

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

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

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

Date Adopted: June 14, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-07500W Pacific Ocean salmon—Seasons—Closed areas. Effective June 22 through September 30, 2024, the provisions of WAC 220-313-075 regarding recreational salmon seasons for Marine Areas 1 through 4 shall be as described below. All other provisions of WAC 220-313-075 not addressed herein remain in effect unless otherwise amended:

(1) **Catch Record Card Area 1:** Open June 22 through September 30, 2024:

- (a) Daily limit of 2 salmon including no more than one Chinook.
- (b) Release wild coho.
- (c) Chinook minimum length 22 inches.
- (d) Coho minimum length 16 inches.

(2) **Catch Record Card Area 2:**

(a) Effective June 22 through June 29: It is unlawful to possess salmon onboard a vessel, including in transit.

(b) Open June 30 through July 13, 2024, Sundays through Thursdays only:

- (i) Daily limit of 2 salmon including no more than one Chinook.
- (ii) Release wild coho.
- (iii) Chinook minimum length 22 inches.
- (iv) Coho minimum length 16 inches.
- (v) Grays Harbor Control Zone is open. See WAC 220-306-040 for area definition.
- (vi) It is unlawful to possess salmon onboard a vessel on days when closed to salmon fishing, including in transit.
- (vii) Closed Fridays and Saturdays.

(c) Open July 13 through August 11, 2024:

- (i) Daily limit of 2 salmon including no more than one Chinook.
- (ii) Release wild coho.
- (iii) Chinook minimum length 22 inches.
- (iv) Coho minimum length 16 inches.
- (v) Grays Harbor Control Zone is open. See WAC 220-306-040 for area definition.

(d) Open August 12 through September 15, 2024:

- (i) Daily limit of 2 salmon including no more than one Chinook.
- (ii) Release wild coho.
- (iii) Chinook minimum length 22 inches.
- (iv) Coho minimum length 16 inches.
- (v) Grays Harbor Control Zone is closed. See WAC 220-306-040 for area definition.

(3) **Catch Record Card Area 3:**

(a) Open June 22 through July 31, 2024

- (i) Daily limit of 2 salmon including no more than one Chinook.
- (ii) Release wild coho.
- (iii) Chinook minimum length 24 inches.
- (iv) Coho minimum length 16 inches.

(b) Open August 1 through September 15, 2024

- (i) Daily limit of 2 salmon including no more than one Chinook.
- (ii) Release chum and wild coho.
- (iii) Chinook minimum length 24 inches.
- (iv) Coho minimum length 16 inches.

(4) **Catch Record Card Area 4:**

(a) Open June 22 through July 31, 2024:

- (i) Daily limit of 2 salmon including no more than one Chinook.
- (ii) Release wild coho.
- (iii) Chinook minimum length 24 inches.
- (iv) Coho minimum length 16 inches.
- (v) Waters east of a true north-south line through Sail Rock are closed.

(b) Open August 1 through September 15, 2024:

- (i) Daily limit of 2 salmon including no more than one Chinook.
- (ii) Release chum and wild coho.
- (iii) Chinook minimum length 24 inches.
- (iv) Coho minimum length 16 inches.

(v) No chinook retention allowed in waters east of the Bonilla-Tatoosh line.

REPEALER

The following section of Washington Administrative Code is repealed, effective immediately:

WAC 220-313-07500V Pacific Ocean salmon—Seasons—Closed areas. (24-85)

WSR 24-13-085
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-99—Filed June 17, 2024, 4:17 p.m., effective June 19, 2024]

Effective Date of Rule: June 19, 2024.

Purpose: The purpose of this emergency rule is to open commercial razor clam seasons.

Citation of Rules Affected by this Order: Repealing WAC 220-340-12000M; and amending WAC 220-340-120.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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

Reasons for this Finding: The Washington department of health has confirmed biotoxin levels have decreased to safe levels to allow the harvest of razor clams on the Willapa Spits. Based on historical catches and on-site inspection, there are adequate clams to support the reopening of the commercial razor clam season. This emergency rule is needed to open the commercial razor clam season in Razor Clam Area 2. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 17, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-12000M Commercial razor clams. Notwithstanding the provisions of WAC 220-340-120, effective June 19 through July 11, 2024, a person may dig for and possess razor clams for commercial purposes only in those waters and detached beaches of Razor Clam Area 2 lying south of the Willapa Bay Ship Channel, west of Ellen Sands, and north of the tip of Leadbetter Point. Digging is prohibited on the west side of Leadbetter Point south of 46°40.245'N. Access to Razor Clam Area 2 is by boat only.

REPEALER

The following section of the Washington Administrative Code is repealed effective, July 12, 2024:

WAC 220-340-12000M Commercial razor clams.

WSR 24-13-086
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-100—Filed June 17, 2024, 4:22 p.m., effective June 17, 2024, 4:22 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule is needed to place selective gear rules in a portion of Skykomish River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-04000F; and amending WAC 220-312-040.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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

Reasons for this Finding: This rule is needed to impose selective gear rules in a portion of the Skykomish River. This gear restriction was agreed to during the North of Falcon season setting process; permanent rule making has been initiated. There is insufficient time to adopt permanent rules.

This rule also carries forward closures in the Snohomish system, previously announced in WSR 24-11-072.

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

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

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

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

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

Date Adopted: June 17, 2024.

Kelly Susewind
Director

[NEW SECTION]

WAC 220-312-04000K Freshwater exceptions to statewide rules—Pugget Sound. Effective immediately, until further notice, provisions of WAC 220-312-040 regarding recreational fishing seasons for the Snohomish River system shall be modified as described below. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended by emergency rule remain in effect:

(1) The following waters are closed to all fishing immediately, until further notice:

(a) **Cherry Creek**, from mouth upstream

- (b) **Raging River**, from mouth upstream
- (c) **Skykomish River**, from mouth to Hwy. 2 Bridge
- (d) **Skykomish River, North Fork**, from mouth upstream to Bear Creek Falls
- (e) **Skykomish River, South Fork**, from mouth to 600' downstream of Sunset Falls Fishway
- (f) **Snohomish River**, from mouth to confluence of Skykomish and Snoqualmie rivers
- (g) **Snoqualmie River**, from mouth to Snoqualmie Falls
- (h) **Sultan River**, from mouth upstream
- (i) **Tolt River**, from mouth to confluence of North and South forks
- (j) **Wallace River**, from mouth to 200' upstream of water intake of salmon hatchery

(2) Effective immediately, through July 10, 2024, until further notice:

Skykomish River, from Hwy. 2 Bridge to confluence of North and South forks: Selective gear rules in effect.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

REPEALER

The following section of Washington Administrative Code is repealed, effective immediately:

WAC 220-312-04000F Freshwater exceptions to statewide rules—Puget Sound. (24-70)

WSR 24-13-104
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-101—Filed June 18, 2024, 4:01 p.m., effective June 19, 2024, 11:59 p.m.]

Effective Date of Rule: June 19, 2024, 11:59 p.m.

Purpose: The purpose of this emergency rule is to close commercial coastal salmon troll seasons.

Citation of Rules Affected by this Order: Repealing WAC 220-354-30000C.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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

Reasons for this Finding: Total catch in the troll fishery is approaching its quota for the May-June portion of the fishery. Closure of the fishery is necessary to determine total catch for the season and to assess whether an additional opening is possible without exceeding the remaining quota. This closure is adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with preseason fishing plans, and has been adopted for federal waters by the National Oceanic and Atmospheric Administration.

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

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

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

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

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

Date Adopted: June 18, 2024.

Kelly Susewind
Director

[REPEALER]

The following section of Washington Administrative Code is repealed, effective 11:59 p.m., June 19, 2024:

WAC 220-354-30000C Coastal salmon troll seasons—
Commercial. (24-101)

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

WSR 24-13-105
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-102—Filed June 18, 2024, 4:03 p.m., effective June 18, 2024, 4:03 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule will allow nontreaty commercial fishing opportunities in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Rules Affected by this Order: Repealing WAC 220-358-03000C; and amending WAC 220-358-030.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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

Reasons for this Finding: Modifies previously adopted 2024 summer period select area commercial seasons for Tongue Point, South Channel, Blind Slough, and Knappa Slough. These modifications allow for additional fishing time per previously adopted periods to access late-returning spring Chinook destined to select area locations. Impacts to nonlocal stocks are expected to be minimal and local Chinook stocks reared for the select area sites are available for harvest. This modification is also expected remain within the commercial allocation of upper Columbia summer Chinook. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of February 13, April 4, and June 18, 2024. The general public welfare is protected with the immediate opening of nontreaty select area fisheries. This harvest opportunity allows for public access to the resource as well as the maintenance of sustainable fish populations. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River Compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are

listed as threatened or endangered under ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 U.S. v. Oregon Management Agreement.

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the ESA. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

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

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

Date Adopted: June 18, 2024.

Kelly Susewind
Director

[NEW SECTION]

WAC 220-358-03000D Columbia River seasons below Bonneville.

Notwithstanding the provisions of WAC 220-358-030, WAC 220-358-040, and WAC 220-335-050, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

(1) Tongue Point and South Channel areas:

Open Dates	Open Days	Open Time	Open Duration
Immediately - Jul 19	Mon, Wed, Thu (nights)	6:00 pm - 9:00 am	14 nights

(a) Area definitions: Effective immediately, through July 19, 2024:

(i) Tongue Point: Area as described in OAR 635-042-0170 (1)(a) and WAC 220-301-010 (11)(c). If the marker on the eastern shore of Tongue Point is not in place, the downstream boundary is defined by a line projecting from a point (46°12'31.1"N latitude 123°45'34.0"W lon-

gitude) on the eastern shore of Tongue Point to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island.

(ii) South Channel: Defined as waters of the Columbia River bounded by a line from a regulatory marker on the Oregon shore at John Day Point projecting northeasterly to a regulatory marker on the southwest shore of Lois Island, and a line from a regulatory marker on Settler Point projecting northwesterly to the flashing red USCG light "10" then projecting westerly to the eastern tip of Burnside Island.

(b) Gear: Gillnets: Immediately, through July 19, 2024:

(i) 9 3/4-inch maximum mesh size.

(ii) Maximum net length is 1,500 feet (250 fathoms)

(iii) In the Tongue Point Area, the lead line weight may not exceed two pounds per any one fathom.

(iv) In the South Channel Area: there is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted.

(2) Blind Slough and Knappa Slough areas:

Open Dates	Open Days	Open Time	Open Duration
Immediately - Jul 19	Mon, Wed, Thu (nights)	6:00 pm - 9:00 am	14 nights

(a) Areas:

(i) The Blind Slough Select Area is defined as waters of Blind Slough and Gnat Creek from a north-south line represented by regulatory markers at the mouth of Blind Slough upstream to a regulatory marker in Gnat Creek located approximately 0.5 miles southeasterly (upstream) of the Barendse Road Bridge.

(ii) The Knappa slough Select Area is defined as waters of Knappa Slough, Calendar Slough, and Big Creek Slough bounded to the north (upstream) by a line projecting from a regulatory marker on the eastern shore of Karlson Island to the northernmost regulatory marker at the mouth of Blind Slough and bounded to the west (downstream) by a line projecting southerly from a regulatory marker on the southwestern tip of Karlson Island through regulatory markers on the western tips of Minaker Island to a marker on the Oregon shore.

The waters of Knappa Slough within a 100-foot radius of the railroad bridge crossing Big Creek are closed.

(b) Gear: Gillnets:

(i) 9 3/4-inch maximum mesh size.

(ii) Maximum net length is 600 feet (100 fathoms)

(iii) There is no lead line weight limit and attachment of additional weight or anchors directly to the lead line is permitted.

(c) Miscellaneous: Permanent transportation rules in effect.

(3) Allowable sales: Salmon (except Chum) and shad.

(4) 24-hour quick reporting: 24-hour quick reporting is in effect for Washington buyers (WAC 220-352-315). Permanent transportation rules in effect. Oregon buyers are required to submit fish receiving tickets electronically pursuant to OAR 635-006-0210. Unique catch reporting codes have been established for Blind Slough and Knappa Slough to facilitate separation of landings and sampling for winter/spring fisheries. Blind Slough and Knappa Slough have unique catch reporting codes to facilitate separation of landings and sampling for winter/spring fisheries.

(5) Multi-net rule: Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions

of rope with a diameter of 3/8 (0.375) inches or greater (WAC 220-358-030(2)).

(6) Lighted buoys: Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

REPEALER

The following section of Washington Administrative Code is repealed, effective immediately:

WAC 220-358-03000C Columbia River seasons below
Bonneville. (24-72)

WSR 24-13-110
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed June 20, 2024, 8:06 a.m., effective June 22, 2024]

Effective Date of Rule: June 22, 2024.

Purpose: The department of social and health services is adopting emergency amendments to WAC 388-449-0080 Sequential evaluation process step IV—How does the department evaluate if I am able to perform relevant past work? These amendments are necessary to align aged, blind, or disabled (ABD) program rules with Social Security Administration's (SSA) revision of the definition of "past relevant work" by reducing the relevant work period from 15 years to five years.

Citation of Rules Affected by this Order: Amending WAC 388-449-0080.

Statutory Authority for Adoption: RCW 41.05.021, 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.770, 74.08.090, 74.08A.100, 74.09.035, 74.09.530, and 74.62.030.

Other Authority: C.F.R. §§ 404.1560 and 416.965.

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

Reasons for this Finding: Emergency adoption of these rules is necessary to align ABD program rules with SSA federal regulations. Effective June 22, 2024, SSA is revising the definition of "past relevant work" by reducing the relevant work period from 15 years to five years.

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

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

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

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

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

Date Adopted: June 20, 2024.

Katherine I. Vasquez
Rules Coordinator

SHS-5038.1

AMENDATORY SECTION (Amending WSR 15-03-031, filed 1/12/15, effective 2/12/15)

WAC 388-449-0080 Sequential evaluation process step IV—How does the department evaluate if I am able to perform relevant past work?

(1) If we neither deny disability at Step 1 or 2 nor approve it at Step 3, we consider our assessment of your physical and/or mental functional capacity, per WAC 388-449-0020 and 388-449-0030, to determine if you can do work you have done in the past.

(2) We evaluate your work experience to determine if you have relevant past work and transferable skills. "Relevant past work" means work:

(a) Defined as substantial gainful activity per WAC 388-449-0005;

(b) You have performed in the past (~~fifteen~~) five years; and

(c) You performed long enough to acquire the knowledge and skills necessary to continue performing the job. You must meet the specific vocational preparation level as defined in Appendix C of the Dictionary of Occupational Titles.

(3) For each relevant past work situation, we compare:

(a) The exertional, nonexertional, and skill requirements of the job based on the Appendix C of the Dictionary of Occupational Titles; and

(b) Current cognitive, social, exertional, and nonexertional factors that significantly limit your ability to perform past work.

(4) We deny disability when we determine that you are able to perform any of your relevant past work.

(5) We approve disability when you are fifty-five years of age or older and don't have the physical, cognitive, or social ability to perform past work.