

**Chapter 381-80 WAC
PROCEDURES FOR CONDITIONAL DISCHARGE--
FINAL DISCHARGE--CLEMENCY**

Reviser's note: The following chapter has not been adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was filed in the code reviser's office and was published as 91-14-029 in the Washington State Register. It is published in the Washington Administrative Code exactly as filed by the agency with history notes added by code reviser's office.

WAC

- 381-80-010 Purpose.
- 381-80-020 Authority.
- 381-80-030 Scope.
- 381-80-040 Conditional discharge from parole supervision.
- 381-80-050 Final discharge from parole supervision.
- 381-80-060 Clemency.

WAC 381-80-010 Purpose. The purpose of this chapter is to specify policies and procedures for granting conditional and final discharges from parole supervision and for matters of clemency (pardons, reprieves, commutations).

[91-14-029, § 381-80-010, filed 6/26/91, effective 7/27/91.]

WAC 381-80-020 Authority. RCW 9.95.150, 9.96.050, 10.01.120, and 9.95.009(2).

[91-14-029, § 381-80-020, filed 6/26/91, effective 7/27/91.]

WAC 381-80-030 Scope. The provisions of this chapter shall apply to adult offenders convicted of crimes in the state of Washington and sentenced under the indeterminate sentencing laws and those officials charged with the supervision of such offenders.

[91-14-029, § 381-80-030, filed 6/26/91, effective 7/27/91.]

WAC 381-80-040 Conditional discharge from parole supervision. Conditional discharge from supervision is defined as that state of parole where a parolee is no longer required to report to an officer of the department of corrections but is required to observe all laws and make an annual written report to the board. Civil rights lost at the time of conviction are not restored.

When a paroled offender has adequately performed the obligations of his or her release for such time as shall satisfy the indeterminate sentence review board, and his or her conditional discharge from supervision is compatible with the best interests of society and the welfare of the paroled individual, and upon receipt of a report from the community corrections officer, the board may grant a conditional discharge from supervision.

Individuals on active parole supervision may be granted a conditional discharge from supervision after a period of active supervision. Parolees will be required to sign and acknowledge the conditional discharge conditions before the CDFS becomes valid.

In any case where there is a parole suspension or local charges pending, no conditional discharge decision will be made until resolution of those allegations or charges.

A full board vote is required to grant a CDFS for any individual convicted of an offense that resulted in a loss of life.

[91-14-029, § 381-80-040, filed 6/26/91, effective 7/27/91.]

WAC 381-80-050 Final discharge from parole supervision. When a paroled offender has adequately performed the obligations of his or her release for such time as specified by the indeterminate sentence review board, and further, when he or she has completed a violation-free period in conditional discharge (CDFS) status and has requested a final discharge, and upon receipt of a report from the parole officer and a determination made that a final discharge from supervision is compatible with the best interests of society and the welfare of the paroled individual, the board may grant a final discharge restoring civil rights.

Final discharge restoring civil rights is governed by statute (RCW 9.96.050) which requires a minimum of one year successful conditional discharge from supervision status. Final discharge restoring civil rights for an individual on CDFS status who was convicted of a crime which resulted in a loss of life will require full board ratification.

The right to possess or control firearms is not restored.

In cases where the maximum term has expired, the board is empowered to grant a final discharge restoring civil rights upon application if it believes such action is in the best interests of society. The board is also empowered to grant restoration of civil rights to individuals convicted of federal offenses who reside in the state of Washington.

[91-14-029, § 381-80-050, filed 6/26/91, effective 7/27/91.]

WAC 381-80-060 Clemency. The governor, at his or her discretion, may refer requests for pardons, commutations, etc., to the board for a report and recommendation. The report and recommendation shall be reviewed by and voted on by all available board members prior to its submission to the governor (see RCW 9.95.260).

[91-14-029, § 381-80-060, filed 6/26/91, effective 7/27/91.]

**Title 388 WAC
SOCIAL AND HEALTH SERVICES,
DEPARTMENT OF (PUBLIC ASSISTANCE)**

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Chapter 388-11 WAC

CHILD SUPPORT--OBLIGATIONS

WAC

388-11-220 Liability for birth costs.

WAC 388-11-220 Liability for birth costs. (1) The department may assess a responsible parent's liability for a dependent child's birth costs, not covered by health insurance, if there is no superior court order assessing or

relieving the responsible parent of liability for birth costs. The department shall assess liability for birth costs based on the parent's proportionate share of the basic support obligation for the child, except as provided under subsections (4) and (5) of this section. Medical assistance provided by the department under chapter 74.09 RCW is not health insurance.

(2) The office of support enforcement (OSE) may serve an affidavit of birth costs on the responsible parent by certified mail to the parent's last known address if the actual costs of birth were not included in the notice and finding of parental responsibility.

(3) OSE may take action to collect the birth costs under chapter 26.23 and 74.20A RCW:

(a) Twenty days after service of the affidavit of birth costs or service of a notice and finding of parental responsibility stating birth costs, unless the responsible parent requests an adjudicative proceeding under subsection (4) of this section; or

(b) After the entry of a support order requiring payment of birth costs.

(4) A responsible parent may request an adjudicative proceeding seeking a reduction of, or relief from, the parent's liability for birth costs. The department shall:

(a) Assess liability for birth costs in the lesser of the following amounts:

(i) The responsible parent's proportional share of the actual birth costs the custodial parent paid based on the responsible parent's share of the combined net income of the parties; or

(ii) Twenty-five percent of the greater of the:

(A) Responsible parent's annual net income; or

(B) Approximate median net annual income for a person in the responsible parent's age group as published in the Washington state support schedule.

(b) Relieve the responsible parent from liability based on a written finding supported by evidence that the parent is unemployable and disability benefits are the parent's only source of income.

(5)(a) The department shall not establish a liability for birth costs paid by the department, except that the department shall be allowed to:

(i) Establish and collect reimbursement for blood test costs paid by the department; and

(ii) Collect reimbursement for birth costs as awarded to the department in an existing superior court order or administrative order.

(b) Nothing in this rule shall prohibit the department from:

(i) Establishing and collecting a liability for birth costs actually incurred by a recipient of nonassistance support enforcement services on behalf of that recipient; or

(ii) Seeking reimbursement for birth costs from any available health insurance coverage.

[Statutory Authority: 1990 1st ex.s. c 2. 91-10-027 (Order 3163), § 388-11-220, filed 4/23/91, effective 5/24/91; 90-20-072 (Order 3081), § 388-11-220, filed 9/28/90, effective 10/29/90.]

Chapter 388-14 WAC
SUPPORT ENFORCEMENT

WAC

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388-14-415	Notice of support owed.
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388-14-450	Debt adjustment notice.

WAC 388-14-030 Confidentiality. (1) Under RCW 26.23.120, all information and records, concerning persons who owe a support obligation or for whom the office provides support enforcement services, are private and confidential. The office shall disclose information and records only as follows:

(a) The office shall disclose information and records only to:

(i) A person or entity listed and for the specific purpose or purposes stated in federal law;

(ii) The person who is the subject of the information or records, unless the information or records are exempt under RCW 42.17.310;

(iii) Local, state, and federal government agencies for support enforcement and related purposes;

(iv) A party to a judicial proceeding or a hearing under chapter 34.05 RCW, if the presiding officer enters an order to disclose. The order shall be based on a written finding that the need for the information outweighs any reason for maintaining privacy and confidentiality;

(v) A party under contract, if disclosure will allow the party to assist in the program's management or operation;

(vi) A person or entity when necessary to the administration of the program or the performance of functions and duties in state and federal law. The office may publish information about a responsible parent for locate and enforcement purposes;

(vii) A person, representative, or entity if the person who is the subject of the information and records consents, in writing, to disclosure;

(viii) The office of administrative hearings or the office of appeals for administration of the hearing process under chapter 34.05 RCW: Provided however, that the presiding officer or review judge shall not include the address of the physical custodian in an administrative order, or disclose the physical custodian's address to the responsible parent. A support order shall state that the address is known by the Washington state support registry and inform the parties they may obtain the address by submitting a request for disclosure to the office of support enforcement (OSE) under this section.

(b) The last known address of, or employment information about, a party to a court or administrative order for, or a proceeding involving, child support may be given to another party to the order. This information may only be used to establish, enforce, or modify a support order. Disclosure of this information is subject to other limitations listed in this section;

(c) The last known address of natural or adoptive children may be given to a parent having a court order granting that parent visitation rights with, legal custody of or residential time with the parent's natural or adoptive children. This information may only be used to enforce the terms of the court order;

(d) The social security number of a dependent child may be disclosed to the absent parent to enable the parent to claim the dependency exemption as authorized by the Internal Revenue Service.

(2) The rules and procedures in chapter 388-320 WAC, relating to the process for requesting and disclosing information and records, apply to requests for disclosure under this section.

(3) The office shall take timely action on requests for disclosure. The office shall respond in writing within ten working days of receipt of the request, unless the request is for disclosure of the address of the physical custodian or the dependent children. The office shall respond to a request for an address within ten working days of the date the thirty-day notice period, provided for in subsection (5) of this section, expires, unless the physical custodian requests an adjudicative proceeding to contest the address release.

(4) The following provisions apply to a request for disclosure of the physical custodian's or a dependent child's address under subsection (1)(b) and (c) of this section:

(a) The office shall not release the address if:

(i) The department has determined, under WAC 388-24-111, that the physical custodian has good cause for refusing to cooperate;

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

(b) A person shall submit a request for disclosure in writing and in person, with satisfactory evidence of identity, at any OSE office;

(c) If the request is made by the person's attorney, the office shall waive the provisions regarding submission in person with satisfactory evidence of identity;

(d) If the person resides outside the state of Washington, the office shall waive the provision requiring submission in person if the person submits a notarized request for disclosure and complies with the requirements of subsection (4)(e) of this section;

(e) The requester shall attach the following to a request for disclosure of an address:

(i) A copy of the superior court order on which the request is based. The office shall waive this provision if the office has a true copy of the order on file;

(ii) A sworn statement by the individual that the order has not been modified;

(iii) A statement explaining the purpose of the request and how the information will be used.

(5) Prior to disclosing the physical custodian's or a child's address, the office shall mail a notice to the last

known address of the physical custodian, except as provided in subsection (7) of this section. The notice shall advise the physical custodian that:

- (a) A request for disclosure has been made;
- (b) The office will disclose the address, to a person under subsections (1)(b) and (c) of this section, after thirty days from the date of the notice, unless:
 - (i) The office receives a copy of a court order which:
 - (A) Enjoins disclosure of the address; or
 - (B) Restricts the address requesting party's right to contact or visit the other party or a child by imposing conditions to protect the physical custodian or the child from harm, including, but not limited to, temporary orders for protection under chapter 26.50 RCW; or
 - (ii) The physical custodian requests an adjudicative proceeding which ultimately results in a decision that release of the address is reasonably anticipated to result in harm to the physical custodian or a dependent child.
- (c) If the physical custodian requests an adjudicative proceeding to contest the address release, the physical custodian may participate in the proceeding by telephone, from any pre-arranged location. The location and phone number shall not be disclosed by the presiding officer.
- (6) In any adjudicative proceeding requested under subsection (5)(b)(ii) of this section:
 - (a) The parent requesting address disclosure and the physical custodian are independent parties in the adjudicative proceeding;
 - (b) The physical custodian may participate by telephone, provided the physical custodian:
 - (i) States in the request for the adjudicative proceeding that participation will be by telephone; and
 - (ii) Provides the office of appeals or the office of administrative hearings with a telephone number where the physical custodian can be reached for the hearing, at least five calendar days before the scheduled hearing.
 - (c) The presiding officer shall not disclose the location or phone number from which the physical custodian is appearing;
 - (d) The initial burden of proof is on the party requesting address disclosure, to show that the address request is for a purpose for which disclosure is specifically permitted under this section. If the party requesting address disclosure fails to meet this burden, the presiding officer shall enter an order denying the address request;
 - (e) If the party requesting address disclosure establishes that the address was requested for a purpose for which disclosure is permitted, the physical custodian must then show that it is reasonable to anticipate that physical or emotional harm to the physical custodian or a child will result from release of the address:
 - (i) The physical custodian may demonstrate reasonable anticipation of harm by any form of evidence admissible under chapter 34.05 RCW;
 - (ii) The physical custodian is not required to provide corroborative evidence required by WAC 388-24-111(7), to establish a reasonable anticipation of harm.
 - (f) If either party fails to appear, the presiding officer may enter an order on default:

(i) If the default order is based on the physical custodian's failure to appear, the order shall require OSE to release the physical custodian's address;

(ii) If the default is based on the address requesting party's failure to appear, the default order shall deny the request for address information.

(g) The office of administrative hearings shall arrange the attendance of the parties by telephone or other procedure showing due regard for the safety of the physical custodian and the children;

(h) If the physical custodian requests an adjudicative proceeding the office will respond to the disclosure request within ten working days of the exhaustion of administrative remedies.

(7) The office will not mail a notice prior to disclosure:

(a) If the address requesting party can show the other party will likely flee and that:

(i) A court of competent jurisdiction of this state or another state has entered an order giving legal and physical custody of a child whose address is requested to the requesting party; and

(ii) The custody order has not been altered, changed, modified, superseded, or dismissed; and

(iii) A child was taken or enticed from the address requesting party's physical custody without that party's consent; and

(iv) The address requesting party has not subsequently assented to being deprived of physical custody of the children; and

(v) The address requesting party is making reasonable efforts to regain physical custody of the child; or

(b) When a child whose address is requested is receiving foster care services under chapter 74.13 RCW.

(8) If a child is receiving foster care services, the party shall contact the party's local community services office for disclosure of that child's address information.

(9) The rules of confidentiality and penalties for misuse of information and reports that apply to a department employee, also apply to a person who receives information under this section.

(10) Nothing in these rules shall be construed:

(a) To prevent the office from disclosing information and records when such disclosure is necessary to the performance of its duties and functions as provided by state and federal law;

(b) To require the office to disclose information and records obtained from a confidential source.

[Statutory Authority: RCW 74.08.090, 91-17-063 (Order 3234), § 388-14-030, filed 8/20/91, effective 9/20/91. Statutory Authority: 1988 c 275, 89-01-049 (Order 2738), § 388-14-030, filed 12/14/88. Statutory Authority: RCW 74.08.090, 88-07-012 (Order 2606), § 388-14-030, filed 3/4/88; Order 1054, § 388-14-030, filed 9/25/75.]

WAC 388-14-275 Fifty dollars disregard payment.

(1) In accordance with federal law, the department shall pay a family, receiving cash assistance under the aid to families with dependent children program or the family independence program, the first fifty dollars of each child support payment made by the responsible parent in the month when due. The department shall pay the family no more than fifty dollars for each month in

which a support payment is made. For purposes of this section, a payment is made by the responsible parent on the earliest of the following dates:

(a) The date a payment is received by the office of support enforcement;

(b) The date a payment is withheld from the responsible parent's wages; or

(c) The date received by the IV-D agency in another state or other legal entity making the collection.

(2) The department shall make a payment to the family under subsection (1) of this section based on the best information provided to the office of support enforcement with the support payment. The best information includes the earliest of the following dates:

(a) The date wages were withheld;

(b) The date an employer issues a check containing wages withheld from the responsible parent;

(c) The date received by the IV-D agency in another state or other legal entity making the collection;

(d) The date the IV-D agency in another state or other legal entity issues a check containing a child support payment from the responsible parent;

(e) The date a check is negotiable if the office of support enforcement receives a postdated check;

(f) The date process is served attaching accounts and earnings of a responsible parent, other than wages, or the date the responsible parent is entitled to receive such earnings, whichever is later; or

(g) The date the proceeds are paid from the sale of attached personal or real property.

(3) If the department subsequently receives information establishing an earlier payment date, the department shall take prompt action to make a payment required under this section or recover an erroneous payment.

(4) The office of support enforcement shall mail a notice, not less than once a quarter, to a family receiving cash assistance for whom child support was received during the reporting period. The notice shall contain the following information:

(a) The amount of the child support order;

(b) The amount of child support received;

(c) A description of how the office allocated the child support between the family and the state;

(d) The amount the department claims as reimbursement for public assistance paid; and

(e) A statement of the right to an adjudicative proceeding under chapter 34.05 RCW to contest the allocation of child support.

(5) The provisions of this section do not apply to:

(a) Child support received by the office of support enforcement by means of an income tax refund intercept authorized under 42 USC 666 (a)(1) or 666 (a)(3)(B); or

(b) Child support payments received by the office of support enforcement after the family terminates from assistance that are paid to the family under chapter 26.23 RCW and WAC 388-14-270 as current support for the month or on the support debt owed to the family.

(6) The section applies to payments made by the responsible parent on or after January 1, 1989.

[Statutory Authority: RCW 74.04.057, 91-10-026 (Order 3162), § 388-14-275, filed 4/23/91, effective 5/24/91; 89-10-070 (Order 2794), § 388-14-275, filed 5/3/89.]

WAC 388-14-385 Conference board. A conference board may inquire into, determine facts, and attempt to resolve matters in which a responsible parent, residential parent, payee under a court order, or other person feels aggrieved by an action taken by the office of support enforcement under chapters 26.23, 74.20, 74.20A RCW, or Title IV-D of the Social Security Act (Title 42 U.S.C.).

The intent and purpose of the conference board is to facilitate the informal speedy resolution of grievances.

(1)(a) The director, revenue division, or director's designee may assemble a conference board on application of an aggrieved person or on the director's own motion. The conference board shall dissolve upon issuance of a decision on the matter for which it was appointed.

(b) An applicant for a conference board shall have made a reasonable attempt and have failed to resolve the grievance before a conference board may act to attempt to resolve the issue.

(2) The conference board's jurisdiction shall include, but shall not be limited to, the following areas:

(a) A complaint as to the conduct of individual staff members while acting within the scope of their duties. The decision of the board shall be directed to the first line supervisor for action as appropriate;

(b) Review of a denial of an application for or termination of nonassistance support enforcement services;

(c) Review of an allegation of error as to the distribution of support moneys;

(d) Review of a denial to collect support arrears in nonassistance cases under RCW 74.20.040;

(e) Resolution of the amount of arrears claimed due and rate of repayments;

(f) A request to release or refund money taken under RCW 74.20A.080 or 26.23.060 to provide for the reasonable necessities of a responsible parent and minor children in the responsible parent's home;

(g) A request for deferral of support enforcement action;

(h) A request for partial or total charge-off of support arrears under RCW 74.20A.220;

(i) A request to waive interest under RCW 74.20A.190;

(j) A request to waive or defer the nonassistance support enforcement fee under RCW 74.20.040;

(k) Review of a determination that a support obligation has been satisfied or is no longer legally enforceable;

(l) A specific request for administrative review of cases submitted to the IRS for offset of a tax refund in accordance with federal statutes and regulations; and

(m) Any other matter requiring explanation of or application of policy or law to an issue in a specific case or clarification of facts in said case.

(3) When a person requests a conference board, the director or the director's designee may take such action, as deemed appropriate, and may exercise any of the authority provided for in this regulation, when the:

(a) Grievance does not involve a factual dispute; or
 (b) Disputed fact or facts even if resolved in favor of the person would not provide a basis upon which relief could be granted to the person by a conference board.

(4) When a person requests a conference board and the grievance involves an apparent factual dispute:

(a) The director or director's designee shall assemble a conference board composed of the director or director's designee, who shall serve as chairman, and two staff members, if deemed necessary;

(b) The chairman shall mail a notice of conference board to the applicant and any other person or agency who is a party in interest to the proceeding. The notice of conference board shall state that a conference board has been scheduled and inform the parties of the time and place of the conference board;

(c) Where the department is not providing public assistance to the payee under a court order, and the responsible parent timely requests a conference board to contest the debt stated in a notice of support debt, the conference board shall be scheduled for a date at least thirty days after the notice of conference board is issued, and the notice shall state that:

(i) The payee has twenty days from the date the notice of conference board was given to request that the grievance be addressed in an adjudicative proceeding under WAC 388-14-435;

(ii) If the payee does not timely request an adjudicative proceeding, the department will deem that the payee has elected to have the grievance heard in a conference board and the:

(A) Conference board decision will become the final agency position on the debt claimed under the notice of support debt; and

(B) A payee's late application for an adjudicative proceeding shall be denied unless the payee shows good cause for the late application; and

(iii) If the payee does not appear at either a conference board or an adjudicative proceeding, the resulting decision may be adverse to the payee's interest, including but not limited to, a reduction in the support debt stated in the notice of support debt.

(d) If the payee requests an adjudicative proceeding under WAC 388-14-435, OSE shall inform the:

(i) Responsible parent that the parent's request for conference board is declined, and the responsible parent must appear at the adjudicative proceeding requested by the payee to raise objections to the notice of support debt; and

(ii) Payee that the conference board previously scheduled has been declined due to the payee's application for an adjudicative proceeding.

(5) The chairman of the conference board is authorized to issue subpoenas under RCW 74.04.290 and to administer oaths, take testimony, and compel the production of such papers, books, records, and documents deemed relevant to the resolution of the grievance under consideration. Additional evidence may be taken by affidavit or other written submission when necessary or practicable together with written or oral argument. The

chairman may designate persons having specific familiarity with the matter at issue or technical expertise with the subject to advise the board.

(6)(a) The conference board chairman shall make a written decision stating the facts found, policies applied, and the board's decision.

(b) The board's decision, including a decision to deny a request for a conference board, shall be in accordance with applicable statutes, case law, department rules and regulations, published office of support enforcement manuals, support enforcement policy bulletins, and the exercise of reasonable administrative discretion.

(c) The board shall base a decision under RCW 74.20A.220 to grant partial or total charge-off of arrears owed to the department under RCW 74.20A.030, 74.20A.250, 74.20.320, 74.20.330, or 42 U.S.C. 602 (a)(26)(A) on the following considerations:

(i) Error in law or bona fide legal defects that materially diminish chances of collection; or

(ii) Substantial hardship to minor children in the household of the responsible parent or other minor children for whom the responsible parent actually provides support which hardship is to be measured against income standards for public assistance and consideration of all available income, property, and resources of the responsible parent and the necessity to apportion the income and resources of the responsible parent on an equitable basis with the children for whom the arrears accrued; or

(iii) Costs of collection action in the future that are greater than the amount to be charged off; or

(iv) Settlement from lump-sum cash payment that is beneficial to the state considering future costs of collection and likelihood of collection.

(d) If the decision is the result of a conference board, that decision shall represent the decision of a majority of the board. The director shall vacate decisions inconsistent with the standards in this section and remand them for issuance of a new decision in compliance with the standards.

(e) The board shall distribute a copy of the decision to the applicant, other parties in interest, the appropriate office of support enforcement field office for action consistent with the decision of the board, and the director.

(7) A conference board is not an adjudicative proceeding subject to review by the superior court and is not a substitute for any constitutionally or statutorily required hearing. Aggrieved parties may be represented before the board by a person of their choice. The department shall not pay any costs incurred by the aggrieved person in connection with the conference board.

[Statutory Authority: RCW 74.08.090. 91-09-018 (Order 3133), § 388-14-385, filed 4/9/91, effective 5/10/91. Statutory Authority: RCW 34.05.220 (1)(a) and 74.08.090. 90-04-077 (Order 3005), § 388-14-385, filed 2/5/90, effective 3/1/90. Statutory Authority: 1988 c 275. 89-01-049 (Order 2738), § 388-14-385, filed 12/14/88. Statutory Authority: RCW 74.08.090. 88-07-012 (Order 2606), § 388-14-385, filed 3/4/88; 86-05-009 (Order 2340), § 388-14-385, filed 2/12/86; 81-05-021 (Order 1605), § 388-14-385, filed 2/11/81; 80-01-026 (Order 1465), § 388-14-385, filed 12/14/79; 78-07-015 (Order 1305), § 388-14-385, filed 6/15/78.]

WAC 388-14-415 Notice of support owed. (1) A notice of support owed issued under RCW 26.23.110 shall state that:

(a) The office of support enforcement (OSE) is providing support enforcement services on behalf of the responsible parent's dependent children;

(b) Twenty-one days after service of the notice on the responsible parent, OSE may take action to collect the responsible parent's support obligation without further notice when the support obligation becomes due under the terms of the court order, unless the responsible parent or the payee under the order has filed a timely request to contest the notice as provided under this section. Collection action includes issuing orders to withhold and deliver and notices of payroll deduction, or taking other income withholding action;

(c) After service of the notice the responsible parent must make all support payments through the Washington state support registry;

(d) The responsible parent will not receive credit for payments made to a person or agency other than the support registry under RCW 26.23.050(7) and 74.20.101;

(e) The current monthly amount for support including medical and day care costs, under a court or administrative order and an initial finding of the current support amount due if there is no fixed dollar amount in the order, and the basis, rationale, or formula used to make the initial finding;

(f) The amount of any support debt, including medical support and day care costs, owed by the responsible parent;

(g) The responsible parent has twenty days after service of the notice to contest the current support or support debt claimed by filing:

(i) A written application for an adjudicative proceeding under chapter 34.05 RCW; or

(ii) An action in superior court.

(h)(i) The payee under the order has twenty days from the date notice was given to contest:

(A) The support debt or current support amount stated in the notice of support owed; or

(B) A proposed agreement between OSE and the responsible parent regarding the amount of the support debt or current support.

(ii) The payee may contest the support debt, current support, or proposed agreement by filing:

(A) A written application for an adjudicative proceeding under chapter 34.05 RCW; or

(B) A action in superior court.

(i) If either party files an application for an adjudicative proceeding both parties shall be notified and allowed to participate in the proceeding as independent parties,

(2) The notice of support owed shall be served on the responsible parent like a summons in a civil action or by any form of mail requiring a return receipt.

(3) Following service upon the responsible parent, the office shall mail a copy of the notice of support owed to the payee under the order by regular mail at the payee's last known address. The office shall also mail a notice to

the payee regarding the payee's rights to contest the notice of support owed as provided under WAC 388-14-440.

(4) OSE may make the initial finding based upon:

(a) The factors stated in the order; and

(b) Any other information not contained in the order that is needed to determine the amount of the accrued debt or the current support obligation.

(5) If either the responsible parent or the payee under the order files an application for an adjudicative proceeding under this section, the department shall issue a notice of hearing.

The notice shall direct both parties to appear and show why the current support amount and/or the support debt amount is incorrect.

(6) If the responsible parent requests the hearing, the parent shall:

(a) List defenses to liability and/or state the reasons why support should not be set as stated in the notice of support owed in the request for a hearing; and

(b) Attach an office-approved financial affidavit;

(7) A payee's application for an adjudicative proceeding is governed by WAC 388-14-440.

(8)(a) If any party appears for the adjudicative proceeding and elects to proceed, absent the granting of a continuance the presiding officer shall hear the matter and enter an initial decision and order based upon the evidence presented.

(b) If neither party appears or elects to proceed, the presiding officer shall enter a decision and order declaring the amounts stated in the notice of support owed subject to collection action.

(c) When a party has advised the presiding officer that they will participate in an adjudicative proceeding by telephone, the presiding officer must attempt to contact that party, on the record, prior to beginning the proceeding or ruling on a motion.

(d) This rule does not authorize or require the presiding officer to disclose either party's telephone number.

(9) If either parent files a timely application for an adjudicative proceeding, OSE shall stay collection action pending the final adjudicative order, except as provided in subsection (10) of this section.

(10) OSE may take action to collect:

(a) Any part of the support debt that both parties fail to allege is incorrect;

(b) A fixed or minimum dollar amount for current support stated in the court order; and

(c) Any part of a support debt that has been reduced to a sum certain judgment by a proper court or agency.

(11) OSE shall collect the amounts stated in the notice without further notice to either party if neither the responsible parent nor the payee under the order:

(a) Files an application for an adjudicative proceeding under chapter 34.05 RCW; or

(b) Starts an action in superior court.

(12)(a) The following sections are incorporated by reference and made applicable to a proceeding provided for in this section: WAC 388-11-011, 388-11-015, 388-11-055, 388-11-060, 388-11-065, 388-11-100,

388-11-115, 388-11-135, 388-11-145, and 388-11-180.

(b) Hearings held under this section shall be governed by the Administrative Procedure Act (chapter 34.05 RCW), and chapters 10-08, 388-08, and 388-14 WAC. If any provision in this chapter or in a rule incorporated by reference by (12)(a) of this section conflicts with or is inconsistent with chapters 10-08 or 388-08 WAC, the provision in this chapter or a rule incorporated by reference shall govern.

(c) For the purposes of this section, if a rule incorporated by this section grants a procedural right to a responsible parent, that rule shall be interpreted to confer the same right to the payee under the court order.

(13) After evidence has been presented at a hearing, the presiding officer shall within twenty days:

(a) Find the amount of current support payable under the order;

(b) Find the amount of the support debt, including medical support and day care costs, accrued prior to the date of service of the notice;

(c) Issue findings of fact, conclusions of law, and an initial decision and order.

(14) The responsible parent or payee shall prove that the amounts stated in the notice of support owed are incorrect.

(15) The presiding officer in the initial decision, and the secretary or designee in review of the proposed decision, shall be limited to:

(a) Interpretation of the court order for support only. The presiding officer shall have no authority to change or defer the support amount owed except to:

(i) Find the amount of monthly support as a fixed dollar amount; and

(ii) Find any arrears accrued prior to service of the notice of support owed.

(b) Correct the mathematical computation of the stated debt;

(c) Review and consider superior court orders which have modified the superior court order in issue. Contempt orders and orders entered under chapter 26.21 or 26.20 RCW shall not be construed as modifications.

(16) Adjudicative orders entered under this section shall inform the parties of the right to request a yearly review of the order.

(17) The presiding officer shall file the original initial decision and order with the secretary or the secretary's designee.

(18) The presiding officer shall mail copies of the decision and order to:

(a) The office of support enforcement;

(b) The last known address of the responsible parent by certified mail; and

(c) The last known address of the person to whom support is payable under the support order.

(19) Informal disposition of any hearing is favored where possible and not precluded by law. OSE may dispose of cases by an agreed settlement or a consent order. The presiding officer shall approve any consent order unless:

(a) It is contrary to law; or

(b) The payee under the order filed a timely objection to the:

(i) Notice of support owed; or

(ii) Notice of proposed settlement.

(20) A support order issued under this section shall contain the notice and information listed in RCW 26.23.050(5).

(21) The provisions of this section regarding the payee's right to an adjudicative proceeding shall not apply if the department is providing public assistance to the payee or the child for whom support is being sought.

[Statutory Authority: RCW 74.08.090, 91-09-018 (Order 3133), § 388-14-415, filed 4/9/91, effective 5/10/91. Statutory Authority: RCW 34.05.220 (1)(a) and 74.08.090, 90-04-077 (Order 3005), § 388-14-415, filed 2/5/90, effective 3/1/90. Statutory Authority: RCW 74.08.090, 88-07-012 (Order 2606), § 388-14-415, filed 3/4/88; 86-05-009 (Order 2340), § 388-14-415, filed 2/12/86.]

WAC 388-14-435 Notice of support debt. (1) A notice of support debt issued under RCW 74.20A.040 shall state:

(a) The Office of Support Enforcement (OSE) is providing support enforcement services on behalf of the responsible parent's dependent children.

(b) The amount of any support debt, including medical support and day care costs, owed by the responsible parent.

(c) The current monthly amount for support under a court or administrative order.

(d) Twenty-one days after service of the notice of support debt OSE may take action to collect the responsible parent's support obligation without further notice, when the support obligation becomes due under the terms of the court order, unless the responsible parent or the payee under the order has filed a timely request to contest the notice of support debt as provided under this section. Collection action includes issuing orders to withhold and deliver, notices of payroll deduction, and/or taking other income withholding action.

(e) After service of the notice of support debt the responsible parent must make all support payments through the Washington state support registry.

(f) The responsible parent will not receive credit for payments made to a person or agency other than the support registry under RCW 26.23.050(7) and 74.20.101.

(g) The responsible parent has twenty days after service of the notice to contest the support debt amount by either:

(i) Making a written request for a conference board to be held under WAC 388-14-385; or

(ii) Filing an action in superior court.

(h) If the payee under the order objects to the support debt stated in the notice of support debt, or to a proposed settlement agreement between OSE and the responsible parent resulting in a reduction of the support debt, the payee may contest the action by:

(i) Filing a written application for an adjudicative proceeding under chapter 34.05 RCW; or

(ii) Filing an action in superior court.

(i) Both parties shall be notified of any adjudicative proceeding requested by the payee, or conference board

requested by the responsible parent, and both parties shall be allowed to participate as independent parties.

(2) The department shall serve the notice of support debt on the responsible parent:

- (a) Like a summons in a civil action; or
- (b) By any form of mail requiring a return receipt.

(3) Following service upon the responsible parent, the office shall mail a copy of the notice of support debt to the payee under the order, by regular mail at the payee's last known address. The office shall also mail a notice to the payee regarding the payee's rights to contest the notice of support debt as provided under WAC 388-14-440.

(4) If the responsible parent does not request a conference board or start an action in superior court and the payee under the order does not file a timely application for an adjudicative proceeding or start an action in superior court, OSE shall collect the amounts stated in the notice of support debt without further notice to either party.

(5)(a) If the responsible parent requests a conference board the department shall issue a notice of conference board. The notice shall direct the responsible parent to appear and show why the support debt is incorrect. If the conference board request was timely, action to collect the support debt stated in the notice of support debt shall be stayed, except as provided under subsection (c) of this section, pending the outcome of the conference board.

(b) A copy of the notice of conference board shall be mailed to the payee under the court order informing the payee of the payee's right to participate in the conference board.

(i) The payee shall have twenty days from the date the notice of conference board is given to request that the issues be addressed in an adjudicative proceeding under subsection (1)(h) of this section.

(A) If the payee does not file an application for an adjudicative proceeding within twenty days, the payee will be deemed to have made an election of remedies; and

(I) The conference board decision shall become the final agency position; and

(II) The payee's late application for an adjudicative proceeding shall be denied unless the payee shows good cause for the late application.

(B) If the payee files an application for an adjudicative proceeding within twenty days action to collect the support debt stated in the notice of support debt shall be stayed, except as provided under subsection (c) of this section, pending the outcome of the adjudicative proceeding.

(ii) OSE shall notify the responsible parent of the payee's application for an adjudicative proceeding as required under subsection (1)(i) of this section.

(c) OSE may take action to collect:

(i) The current monthly amount of support stated in the court order;

(ii) Any portion of the support debt that both parties fail to allege is not owed; or

(iii) Any portion of the support debt that has been reduced to a sum certain judgment by a proper court or agency.

(6)(a) In any adjudicative proceeding scheduled to contest a notice issued under this section, the following WAC provisions are incorporated by reference. WAC 388-11-011, 388-11-015, 388-11-055, 388-11-060, 388-11-065, 388-11-100, 388-11-115, 388-11-135, 388-11-145, 388-11-180, and chapters 10-08 and 388-08 WAC.

(b) If any provision in this rule or in a rule incorporated by reference in this section conflicts with, or is inconsistent with a provision in chapters 10-08 or 388-08 WAC, the provision in this section or a rule incorporated by reference in this section shall govern.

(c) For the purposes of this section, if a rule incorporated by this section grants a procedural right to a responsible parent, that rule shall be interpreted to confer the same right to the payee under the court order.

(7) After evidence has been presented at a hearing, the presiding officer shall, within twenty days:

(a) Find the amount of the support debt, including medical support and day care costs, accrued prior to the date of service of the notice;

(b) Correct the mathematical computation of the stated debt;

(c) Review and consider superior court orders which have modified the superior court order in issue. Contempt orders and orders entered under chapters 26.21 or 26.20 RCW shall not be construed as modifications; and

(d) Issue findings of fact, conclusions of law, and an initial decision and order.

(8)(a) If any party appears for the adjudicative proceeding, absent the granting of a continuance, the presiding officer shall hear the matter and enter an initial decision and order based upon the evidence presented.

(b) If neither party appears or elects to proceed the presiding officer shall enter a decision and order declaring the amounts stated in the Notice of Support Debt subject to collection.

(c) When a party has advised the presiding officer that they will participate in an adjudicative proceeding by telephone, the presiding officer must attempt to contact that party, on the record, prior to beginning the proceeding or ruling on a motion.

(d) This rule does not authorize or require the presiding officer to disclose either party's telephone number.

(9) Informal disposition of any hearing is favored where possible and not precluded by law. OSE may dispose of cases by an agreed settlement, or consent order. The presiding officer shall approve any consent order unless:

(a) It is contrary to law; or

(b) The payee under the order files a timely objection to the:

(i) Notice of support debt; or

(ii) Notice of proposed settlement.

(10) A support order issued under this section shall contain the notice and information listed in RCW 26.23.050(5).

(11) OSE is not required to serve a notice of support debt on the responsible parent prior to collection action if the order contains the requirements under RCW 74.20A.040(5).

(12) The provisions of this section regarding the payee's right to an adjudicative proceeding under chapter 34.05 RCW shall not apply if the department is providing public assistance to the payee or the child for whom support is being enforced.

[Statutory Authority: RCW 74.08.090, 91-09-018 (Order 3133), § 388-14-435, filed 4/9/91, effective 5/10/91.]

WAC 388-14-440 Notice to payee. (1) The office of support enforcement (OSE) shall mail a notice to the payee under a court order for child support by first class mail to the payee's last known address when the department serves a:

(a) Notice of support debt on the responsible parent under RCW 74.20A.040; or

(b) Notice of support owed on the responsible parent under RCW 26.23.110.

(2) The notice to the payee shall state:

(a) OSE has served a notice of support debt or notice of support owed on the responsible parent;

(b) The amount of support OSE calculated is due at the time the notice is issued and the time period during which the support debt accrued; and

(c) In cases where the department is not providing public assistance to the payee or the child for whom support is being enforced, the notice to the payee shall also state:

(i) The payee under the court order has the right to contest the claimed support debt and/or current support by filing a written application for an adjudicative proceeding under chapter 34.05 RCW within twenty days of the date the notice to the payee was given;

(ii) The payee under the court order may upon request review the information used to calculate the support debt and/or current support claimed in the notice of support debt or the notice of support owed;

(iii) The responsible parent has the right to attend and participate as an independent party in any adjudicative proceeding requested by the payee;

(iv) If the responsible parent files a timely request for a conference board to contest a notice of support debt, the payee will be required to elect between resolving the amount of the debt in the conference board or in an adjudicative proceeding; and

(v) If the payee does not appear for either a conference board or an adjudicative proceeding, the resulting decision may be adverse to the payee's interest, including but not limited to a reduction:

(A) In the amount of the support debt below the amount stated in a notice of support debt; or

(B) Of the support debt and/or the current support below the amount stated in the notice of support owed.

(3) If the payee under the court order does not timely file an application for an adjudicative proceeding, OSE shall collect the amounts stated in the notice of support debt or notice of support owed without further notice to either party unless the responsible parent timely:

(a) Requests a conference board to contest the notice of support debt; or

(b) Files an application for an adjudicative proceeding to contest the notice of support owed.

[Statutory Authority: RCW 74.08.090, 91-09-018 (Order 3133), § 388-14-440, filed 4/9/91, effective 5/10/91.]

WAC 388-14-445 Notice of proposed settlement.

(1) Agreed settlements and consent orders entered between the department and the responsible parent to adjust amounts claimed under a notice of support debt or a notice of support owed shall not be final unless:

(a) Approved by the payee under the order; or

(b) The payee is given notice of and does not make a timely written objection to the proposed settlement.

(2) Agreed settlements and consent orders shall contain a statement informing the responsible parent of the conditional nature of the agreement.

(3) When the department and the responsible parent sign an agreed settlement or consent order under this section, the department shall mail a copy of the proposed agreement to the payee and inform the payee of the payee's right to object to the proposed agreement. The department shall inform the payee that:

(a) The payee may object to the agreement by filing a written application for an adjudicative proceeding under chapter 34.05 RCW with the department within twenty days of the date notice of the proposed agreement was given; and

(b) If the payee does not timely file an application for an adjudicative proceeding, the proposed agreement will become effective and shall not be subject to further administrative appeal and if the responsible parent has previously filed a timely request for a conference board or an adjudicative proceeding, the:

(i) Proposed agreement will become final; and

(ii) Scheduled hearing or conference board will be dismissed.

(c) The payee may, at any time, approve a proposed settlement by written notice to the department.

(4) The department or the office of administrative hearings shall give notice to the responsible parent of any adjudicative proceeding requested by the payee to contest a proposed agreement. The responsible parent shall be allowed to appear and participate as an independent party in the proceeding.

(5) The provisions of this section shall not apply if the department is providing public assistance to the children for whom the department enforces support.

[Statutory Authority: RCW 74.08.090, 91-09-018 (Order 3133), § 388-14-445, filed 4/9/91, effective 5/10/91.]

WAC 388-14-450 Debt adjustment notice. (1) The office of support enforcement (OSE) shall mail a debt adjustment notice to a payee under a court order within thirty days of the date OSE reduces the amount of the court-ordered support debt the department intends to collect if that reduction was due to:

(a) A mathematical error in the debt calculation;

(b) A clerical error in the stated debt;

(c) Proof the support obligation should have been suspended for all or part of the time period involved in the calculation; or

(d) Proof the responsible parent made payments that had not previously been credited against the support debt.

(2) The debt adjustment notice shall state:

(a) The amount of the reduction;

(b) The reason OSE reduced the support debt, as provided under subsection (1) of this section;

(c) The payee has the right to contest the proposed adjustment by filing a written application for an adjudicative proceeding under chapter 34.05 RCW within twenty days of the date notice to the payee was given;

(d) The name of the responsible parent and a statement that the parent may attend and participate as an independent party in an adjudicative proceeding requested by the payee; and

(e) OSE will continue to provide support enforcement services whether or not the payee objects to the notice.

(3)(a) The payee has the right to contest a reduction under subsection (1) of this section by filing a request for an adjudicative proceeding within twenty days of the date the notice to the payee was given.

(b) If the application for an adjudicative proceeding is untimely filed but is filed within one year of the date notice was given, the payee shall be entitled to an adjudicative proceeding without showing good cause for the untimely request.

(c) If the application for an adjudicative proceeding is filed beyond one year from the date notice was given, the payee must show good cause for the delay in filing the request in order to receive an adjudicative proceeding to contest the reduction.

(4) The provisions of this section shall not apply if the department is providing public assistance to the payee or the child for whom the department enforces support.

[Statutory Authority: RCW 74.08.090, 91-09-018 (Order 3133), § 388-14-450, filed 4/9/91, effective 5/10/91.]

Chapter 388-15 WAC

SOCIAL SERVICES FOR FAMILIES, CHILDREN AND ADULTS

WAC

388-15-208	Definitions.
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388-15-880	Payment and authorization.

WAC 388-15-208 Definitions. (1) "Applicant" means a person applying for chore services.

(2) "Attendant care" means the service provided to a grandparented client needing full-time care because the client:

(a) Requires personal care task assistance that cannot be scheduled, e.g., toileting, ambulation, transfer, positioning, some medication assistance; or

(b) Needs protective supervision because of confusion, forgetfulness, or lack of judgment. Protective supervision does not include responsibilities a legal guardian should assume.

(3) "Available" means accessible for use and conversion into money or its equivalent without significant depreciation in the value of the property.

(4) "Chore services" means services in performing personal care and related household assistance tasks as provided in the department's medical assistance state plan provision addressing personal care.

(5) "Client" means a person receiving chore services.

(6) "Companionship" means being with a person in the client's own home for the purpose of preventing loneliness or to accompany the client outside the home for other than basic errands, medical appointments, or laundry.

(7) "Contracted program" means that method of hourly chore service delivery where the contractor is responsible for recruiting, supervising, training, and paying the chore services provider.

(8) "Grandparented client" means a person approved for hourly household tasks or family care services before December 14, 1987, or a person approved for attendant care services before April 1, 1988 provided the person was receiving the same services as of June 30, 1989.

(9) "Hourly care" means the service provided to clients needing assistance with scheduled household or personal care tasks.

(10) "Household assistance" means assistance with travel to medical services, essential shopping, laundry, housework, or wood supply as defined under WAC 388-15-820.

(11) "Individual provider program" means a method of chore service delivery where the client employs and supervises the chore services provider. Payment is made to the client who, in turn, pays the provider.

(12) "Interim assessment" means the department's assessment form used to determine the amount and type of chore services to be provided.

(13) "Own home" means the client's present or intended place of residence, whether in a building the client rents or owns or in the home of another person.

(14) "Personal care" means assistance with personal hygiene, dressing, bathing, eating, toileting, ambulation, transfer, positioning, self-medication, body care, or meal preparation. The tasks are defined under WAC 388-15-820.

(15) "Property owned" means property over which the applicant or client has a legal interest.

(16) "Relative" means a client's spouse, father, mother, son, or daughter.

(17) "Resources" means real or personal property owned by or available to an applicant or a client which

the department may apply, either directly or after conversion into money or its equivalent toward meeting the client's financial participation for services.

(18) "Service authorization ceiling chart" means the chart indicating the maximum number of hours the department may authorize for a client's score.

(19) "Shared living arrangement" means a situation where two or more adults share expenses and reside together in one of the adult's residences with common facilities, such as living, cooking, and eating areas.

[Statutory Authority: RCW 74.08.090. 91-08-011 (Order 3152), § 388-15-208, filed 3/26/91, effective 4/26/91; 90-15-029 (Order 3041), § 388-15-208, filed 7/13/90, effective 8/13/90; 89-13-084 (Order 2815), § 388-15-208, filed 6/21/89; 88-17-064 (Order 2674), § 388-15-208, filed 8/17/88; 88-06-088 (Order 2605), § 388-15-208, filed 3/2/88; 86-12-040 (Order 2383), § 388-15-208, filed 5/30/86; 84-22-017 (Order 2165), § 388-15-208, filed 10/31/84; 83-14-029 (Order 1977), § 388-15-208, filed 6/30/83; 82-23-056 (Order 1904), § 388-15-208, filed 11/16/82; 81-18-045 (Order 1697), § 388-15-208, filed 8/28/81; 81-11-044 (Order 1652), § 388-15-208, filed 5/20/81; 81-06-063 (Order 1618), § 388-15-208, filed 3/4/81.]

WAC 388-15-209 Eligibility. The department shall consider the following eligibility criteria when determining an applicant/client's eligibility for chore services:

(1) Service eligibility:

(a) Eighteen years of age and over;

(b) At risk of placement in a long-term care facility as evidenced by the need for assistance with one or more personal care tasks listed in WAC 388-15-208(13); and

(c) Not eligible for Medicaid personal care or community options program entry system (COPEs) services.

(2) Financial eligibility, meets the financial and resource eligibility requirements established by the department;

(3) Resource eligibility:

(a) Has resources at or below ten thousand dollars for a one-person family or fifteen thousand dollars for a two-person family. Allow another one thousand dollars for each additional family member;

(b) Resources considered. The department shall consider the following resources when available to the applicant or client in determining the value of an applicant's or client's resources:

(i) Checking accounts;

(ii) Savings accounts;

(iii) Certificates of deposit;

(iv) Money markets;

(v) Negotiable stocks and bonds;

(vi) Latest assessed value of lots or property not attached to residence;

(vii) Market value of a boat or boats, recreational vehicle or vehicles, or excess automobiles;

(viii) Liquid assets: Such as cash, gold, silver, and other items of an investment and negotiable nature; and

(ix) Resources received in transfer or assignment from a spouse under WAC 388-92-043(5) are available to the applicant/client as a single-person household and subject to WAC 388-15-209 (2) and (3)(a) and (b).

(c) Resources excluded. The department shall not consider the following resources, regardless of value, in

determining the value of a client's or applicant's resources:

(i) A home and lot normal for the community where the client or applicant resides;

(ii) Used and useful household furnishings, personal clothing, and one automobile per client;

(iii) Personal property of great sentimental value;

(iv) Real or personal property used by the applicant or client to earn income or for rehabilitation;

(v) One cemetery plot for each member of the family unit;

(vi) Cash surrender value of life insurance;

(vii) Resources that cannot be converted to cash in twenty working days as long as there is a reasonable ongoing effort to convert the resource into cash;

(viii) Payments received as restitution payments under the Civil Liberties Act of 1988 and the Aleutian and Pribiloff Island Restitution Act, P.L. 100-383; or

(ix) Real estate sales contracts. The interest and principal payments from real estate sales contracts is treated as unearned income.

(4) Adult protective services. Adult protective service clients at risk of being placed in a long-term care facility shall be eligible to receive chore services without regard to income or resources if these services are an integral but subordinate part of the adult protective services plan. These services shall be provided only until the situation necessitating the services has stabilized and are limited to a maximum of ninety days during any twelve-month period; and

(5) Volunteer chore services. An applicant for chore services shall be referred to the volunteer chore service program when the applicant:

(a) Does not meet the eligibility criteria for chore services;

(b) Is eligible for five hours or less per month of chore services;

(c) Is eligible for a reduced level of chore services because income exceeds thirty percent of the state median income; or

(d) Needs help with tasks that are not available in the chore services program.

[Statutory Authority: RCW 74.08.090. 91-08-011 (Order 3152), § 388-15-209, filed 3/26/91, effective 4/26/91; 90-15-029 (Order 3041), § 388-15-209, filed 7/13/90, effective 8/13/90; 89-18-026 (Order 2852), § 388-15-209, filed 8/29/89, effective 9/29/89; 88-17-064 (Order 2674), § 388-15-209, filed 8/17/88; 88-06-088 (Order 2605), § 388-15-209, filed 3/2/88. Statutory Authority: ESHB 1221. 87-22-013 (Order 2550), § 388-15-209, filed 10/26/87. Statutory Authority: RCW 74.08.090. 86-12-040 (Order 2383), § 388-15-209, filed 5/30/86; 84-22-017 (Order 2165), § 388-15-209, filed 10/31/84; 83-21-007 (Order 2028), § 388-15-209, filed 10/6/83; 82-23-056 (Order 1904), § 388-15-209, filed 11/16/82; 81-18-045 (Order 1697), § 388-15-209, filed 8/28/81; 81-06-063 (Order 1618), § 388-15-209, filed 3/4/81.]

WAC 388-15-212 Service determination. (1) Assessment.

(a) The purpose of assessment is to determine the applicant/client's need for chore services and the authorized hours of service.

(b) Department staff shall perform the assessment.

(c) The department shall perform a separate assessment for each adult applying for chore services.

(d) The department shall document the assessment on a prescribed form.

(e) When administering the assessment, department staff shall take into account the applicant/client's:

- (i) Risk of long-term care facility placement;
- (ii) Ability to perform personal care and related household tasks;
- (iii) Living situation; and
- (iv) Availability of alternative resources providing needed assistance, including family, neighbors, friends, community programs, and volunteers.

(f) The department shall consider the chore services client the secondary client in households where community options program entry system (COPES) services or Medicaid personal care services are also authorized.

(2) Scoring.

(a) For each task listed on the assessment form, the department staff shall determine the level of assistance:

- (i) The applicant/client requires;
- (ii) Available through alternative resources; and
- (iii) Needed from the chore services program.

(b) The applicant/client's assistance needed from the chore services program is the difference between assistance required and assistance available through alternative resources. This represents the applicant/client's unmet need.

(c) The level of the applicant/client's assistance required is indicated by entering one of the following codes for each task listed on the assessment form:

- (i) O = The applicant/client is able to perform this task without help;
- (ii) M = The applicant/client requires a minimal amount of assistance to perform this task;
- (iii) S = The applicant/client requires a substantial amount of assistance to perform this task;
- (iv) T = The applicant/client requires total assistance to perform this task.

(d) The level of assistance available is indicated by entering one of the following codes for each task listed on the assessment form:

- (i) O = Alternative resources are not available for assistance;
- (ii) M = Alternative resources are available for minimal assistance;
- (iii) S = Alternative resources are available for substantial assistance; or
- (iv) T = Alternative resources are available for total assistance.

(e) The level of unmet need is indicated by entering one of the following codes for each task listed on the assessment form:

- (i) O = No unmet need; the applicant/client can perform this task without help or all assistance required is available from alternative resources;
- (ii) M = Minimal unmet need; the applicant/client cannot perform this task without help and needs a minimal amount of assistance from the chore services program in addition to assistance, if any, available from alternative resources;

(iii) S = Substantial unmet need; the applicant/client cannot perform this task without help and needs a substantial amount of assistance from the chore services program in addition to assistance, if any, available from alternative resources; or

(iv) T = Total unmet need; the applicant/client is totally unable to perform this task and no assistance from alternative resources is available. The total need of the applicant/client shall be met through the chore services program.

(f) Points are awarded for each task based on the level of unmet need. The number of points allowable for each task are listed below:

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

(g) The points awarded for each task are added together to obtain the total score for the applicant/client.

(3) Ceiling hour computation.

(a) Convert the total score into maximum allowable hours per month (ceiling hours) which may be authorized.

(b) Use the service authorization ceiling chart to convert the score to ceiling hours per month:

SCORE	CEILING HOURS	SCORE	CEILING HOURS	SCORE	CEILING HOURS
1-4	5	60-64	44	120-124	83
5-9	8	65-69	47	125-129	87
10-14	11	70-74	51	130-134	90

SCORE	CEILING		CEILING		CEILING	
	HOURS	SCORE	HOURS	SCORE	HOURS	SCORE
15-19	14	75-79	54	135-139	93	
20-24	18	80-84	57	140-144	97	
25-29	21	85-89	60	145-149	100	
30-34	24	90-94	64	150-154	103	
35-39	28	95-99	67	155-159	106	
40-44	31	100-104	70	160-164	110	
45-49	34	105-109	74	165-169	113	
50-54	37	110-114	77	170 and		
55-59	41	115-119	80	Above	116	

(4) Authorization when no reduction in hours.

(a) The department may authorize the number of ceiling hours allowable for the applicant/client's score when the applicant/client has a gross income, adjusted for family size, at or below thirty percent of the state median income.

(b) The department may authorize fewer than the allowable ceiling hours when appropriate to the applicant/client's individual circumstances.

(c) The department shall inform all applicant/clients of their right to request the department to authorize more than the allowable ceiling hours based on the applicant/client's score. The department shall grant a waiver to authorize additional hours up to the maximum of one hundred sixteen hours per month when:

(i) Circumstances of a demonstrated duration, frequency, or severity require additional chore services hours to assure the client's health or safety;

(ii) Needed additional hours are specific and clearly measurable; and

(iii) Available funds are provided under WAC 388-15-214.

(d) The department shall approve or deny requests for a waiver to exceed ceiling hours within thirty days.

(e) When a request for a waiver is denied, the department shall send the applicant/client a notice of the right to contest the department's decision under chapter 388-08 WAC.

(5) Authorization when hours are reduced.

(a) An applicant/client with a gross income, adjusted for family size, over thirty percent of the state median income, shall receive fewer than the number of ceiling hours allowable for the applicant/client's score.

(b) The department shall determine the amount of reduction to allowable ceiling hours by:

(i) Deducting one hour for each percentage point when the applicant/client's income exceeds thirty percent of the state median income; and

(ii) Deducting an additional hour for each percentage point when the applicant/client's income exceeds fifty percent of the state median income.

(c) The reduction computed under subsection (5)(b) of this section shall be subtracted from the allowable ceiling hours to obtain the maximum number of hours per month the applicant/client may be authorized.

(6) Meal allowance—IPP hourly services only. When providing meals for the chore services provider is an extra client cost, the department may authorize a payment to partially reimburse the client for the meal cost. The department shall not reimburse the costs for a spouse provider. The payment shall not exceed the department-established amount and shall be prorated by days of service.

(7) Relative providers. The department may authorize a relative to provide chore services only when the relative:

(a) Gives up paid employment of thirty hours or more per week, to give the service;

(b) Needs to take paid employment of thirty hours or more per week to meet financial needs; or

(c) Is financially eligible to receive general assistance to meet their own need.

The above criteria apply to relatives providing service to clients, including grandparented clients, in either the contracted program or the individual provider hourly program.

(8) Reassessment.

(a) The department shall reassess the eligibility of all chore service clients, except grandparented clients, at least every eighteen months or more often when deemed necessary because of a change in the client's condition or situation.

(b) The department shall continue, deny, or alter services to correspond with the client's present chore services need. The department shall notify the client of the right to contest denial or reduction of services.

(c) The eligibility rules as described under WAC 388-15-209 apply to reassessment of all clients except grandparented clients.

(d) The department shall terminate chore services for an hourly personal care client when a reassessment shows the client now needs assistance with household tasks only. This rule shall not pertain to grandparented clients receiving household tasks only.

[Statutory Authority: RCW 74.08.090. 91-08-011 (Order 3152), § 388-15-212, filed 3/26/91, effective 4/26/91; 90-15-029 (Order 3041), § 388-15-212, filed 7/13/90, effective 8/13/90; 89-13-084 (Order 2815), § 388-15-212, filed 6/21/89; 88-17-064 (Order 2674), § 388-15-212, filed 8/17/88; 88-06-088 (Order 2605), § 388-15-212, filed 3/2/88. Statutory Authority: ESHB 1221. 87-22-013 (Order 2550), § 388-15-212, filed 10/26/87. Statutory Authority: RCW 74.08.090. 86-12-040 (Order 2383), § 388-15-212, filed 5/30/86; 84-22-017 (Order 2165), § 388-15-212, filed 10/31/84; 83-21-007 (Order 2028), § 388-15-212, filed 10/6/83; 82-23-056 (Order 1904), § 388-15-212, filed 11/16/82; 81-18-045 (Order 1697), § 388-15-212, filed 8/28/81; 81-11-044 (Order 1652), § 388-15-212, filed 5/20/81; 81-06-063 (Order 1618), § 388-15-212, filed 3/4/81; 79-01-042 (Order 1361), § 388-15-212, filed 12/21/78.]

WAC 388-15-215 Program limitations. (1) The department shall not authorize chore services for:

(a) Teaching and companionship;

(b) Child care for working parents;

(c) Providing nursing care; or

(d) Developing social, behavioral, recreational, communication, or other types of skills.

(2) The department shall not provide chore services to a resident of a:

- (a) Group home;
- (b) Licensed boarding home;
- (c) Congregate care facility;
- (d) Nursing care facility;
- (e) Hospital;
- (f) Institution;
- (g) Adult family home; or
- (h) Child foster home.

Shared living arrangements are not considered group homes.

(3) Chore services shall be provided only in the client's home or surrounding property except for essential shopping, travel to medical services, and laundry when there are no laundry facilities in the client's home.

[Statutory Authority: RCW 74.08.090, 91-08-011 (Order 3152), § 388-15-215, filed 3/26/91, effective 4/26/91; 90-15-029 (Order 3041), § 388-15-215, filed 7/13/90, effective 8/13/90; 89-18-026 (Order 2852), § 388-15-215, filed 8/29/89, effective 9/29/89; 88-11-062 (Order 2625), § 388-15-215, filed 5/17/88; 85-22-021 (Order 2298), § 388-15-215, filed 10/30/85; 84-22-017 (Order 2165), § 388-15-215, filed 10/31/84; 83-21-007 (Order 2028), § 388-15-215, filed 10/6/83; 82-23-056 (Order 1904), § 388-15-215, filed 11/16/82; 81-18-045 (Order 1697), § 388-15-215, filed 8/28/81; 81-06-063 (Order 1618), § 388-15-215, filed 3/4/81; Order 1238, § 388-15-215, filed 8/31/77.]

WAC 388-15-216 Grandparented clients. (1) Continuing eligibility for hourly care chore service clients:

(a) The department may continue providing hourly chore services for clients receiving assistance with household tasks only before December 14, 1987, provided the clients were receiving the same services as of June 30, 1989.

(b) The department shall perform periodic reviews to determine continuing need and eligibility according to the rules in effect before December 14, 1987:

(i) If a review indicates a household tasks only client needs assistance with personal care, Medicaid personal care may be authorized if eligible for Medicaid funding. If not eligible for Medicaid personal care, chore services shall be authorized according to the eligibility requirements for a new client;

(ii) If more or less household task services are required, services may be authorized accordingly.

(2) Continuing eligibility for attendant care for adults.

(a) The department may continue providing chore services to clients receiving attendant care before April 1, 1988, provided the clients were receiving the same services as of June 30, 1989.

(b) The department shall perform periodic reviews to determine continuing need and eligibility according to the rules in effect before April 1, 1988:

(i) Attendant care service shall be authorized for clients receiving attendant care before April 1, 1988, who continue to need assistance with such unscheduled tasks as toileting, ambulation, and transfer or who need protective supervision;

(ii) Attendant care protective supervision shall be authorized for clients who may hurt themselves, others, or damage property if left alone, or are confused and may wander, or become easily disoriented;

(iii) The amount of service authorized shall be based on the total number of hours per day the chore services provider must be with the client. The chore services provider performs necessary household or personal care tasks during the authorized attendant care hours;

(iv) The client shall provide verification of the need for attendant care by producing a statement from the client's physician.

(c) The department shall pay a daily rate for attendant care for adults a sum not exceeding the department-established rate:

(i) The department shall add up to five dollars per day for each additional client in the household; and

(ii) The department shall reduce the amount of payment by the individual provider program hourly rate when the client's income exceeds thirty percent of the state median income.

(d) The department shall not increase the payment in effect on June 30, 1989 except for a department-approved vendor rate increase; and

(e) The department shall not pay for services when the client is not in the home, for example, because of hospitalization; except, up to seven days during the service month may be provided to enable the client to return home.

(3) Continuing eligibility for hourly family care services.

(a) Clients receiving hourly family care services before April 1, 1988, may continue to be eligible to receive services provided they were receiving the same services as of June 30, 1989.

(b) The department shall make periodic reviews to determine continuing need and eligibility according to the rules in effect before April 1, 1988. Families may receive services when the client is the normal caretaker of the children, and:

(i) Is in the home but unable to physically care for the children; or

(ii) Is in the home and physically unable to perform the necessary household tasks; or

(iii) Is temporarily out of the home, as defined by the department; and

(iv) The division of children and family services confirms all possible resources have been explored and no one can or will provide the necessary care.

(c) The chore services provider may not act as a parent substitute or make major decisions affecting the children.

(d) For families to receive services, the total family income shall be at or below the department-established financial eligibility requirement. Minor children shall not be financially eligible in their own right. The minor children are part of the family unit.

(e) Determination of need for hourly care takes into consideration the ages, number and level of responsibility of the children and presence of a spouse. Allowable family care activities are:

(i) Family housework. The need for additional help cleaning the residence because of the presence of children;

(ii) Family tasks. The child's need for travel to medical services, laundry services, meal preparation, essential shopping, bathing and dressing, or other allowable tasks;

(iii) Supervision of children. The need for physical supervision of the children when the client is:

- (A) In the home, but unable to provide supervision; or
- (B) Temporarily out of the home.

(f) Points are awarded for family care activities as follows:

- (i) O = 0;
- (ii) M = 14;
- (iii) S = 27; and
- (iv) T = 40.

Enter the points awarded on the bottom of the assessment form and add to the client's total score.

(4) Board and room meal allowances. When providing board and room or meals for the chore services provider is an extra cost to the client, the department may authorize a payment to partially reimburse the client for this expense. The department shall not reimburse the costs for a spouse provider. The payment shall not exceed the department-established amount and shall be prorated by days of service. No client shall be authorized for both a board and room allowance and a meal allowance.

(5) Ninety-day rule. Grandparented clients terminated from chore services because of transfer to another program may be reauthorized for chore services when the:

(a) Transfer was in effect for less than ninety days; and

(b) Client becomes ineligible for the program the client is transferred to or the program the client is transferred to does not meet the client's needs.

(6) Priority levels. Priority levels for grandparented clients are:

(a) Level A: Client needs help with one of the following personal care tasks:

- (i) Eating;
- (ii) Body care;
- (iii) Bed transfer;
- (iv) Wheelchair transfer; or
- (v) Toileting.

(b) Level B: Client needs help with four or more other personal care tasks as described under WAC 388-15-208(13);

(c) Level C: Client needs help with one to three other personal care tasks;

(d) Level D: Client needs help with all five household tasks:

- (i) Travel to medical services;
- (ii) Essential shopping;
- (iii) Laundry;
- (iv) Housework; and
- (v) Wood supply.

(e) Level E: Client needs help with three or four household tasks; and

(f) Level F: Client needs help with one or two household tasks.

[Statutory Authority: RCW 74.08.090, 91-08-011 (Order 3152), § 388-15-216, filed 3/26/91, effective 4/26/91; 90-15-029 (Order

3041), § 388-15-216, filed 7/13/90, effective 8/13/90; 89-18-026 (Order 2852), § 388-15-216, filed 8/29/89, effective 9/29/89.]

WAC 388-15-820 Medicaid personal care services--Definitions. (1) "Applicant" means a person applying for Medicaid personal care services.

(2) "Client" means a person determined eligible for Medicaid personal care services.

(3) "Community residence" means:

(a) A client's own home, whether in a building owned or rented by the client;

(b) A licensed adult family home under department contract;

(c) A licensed boarding home under department contract;

(d) A licensed children's foster family home; or

(e) A licensed group care facility, as defined in WAC 388-73-014(8).

(4) "Direct personal care services" means assistance with tasks involving direct client care which are directly related to the client's medical condition. Such assistance is limited to allowable help with the tasks listed under subdivisions (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), and (l) of this subsection. The type of help allowable for each task shall not include assistance that must be provided only by a licensed health professional.

(a) "Personal hygiene" means assistance with care of hair, teeth, dentures, shaving, filing of nails, other basic personal hygiene, and grooming needs. Personal hygiene includes supervising a client when performing the tasks, assisting the client when caring for own appearance, and performing grooming tasks for the client when unable to care for own appearance.

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

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

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

(e) "Toileting" means assistance with bladder or bowel problems. Toileting includes supervising a client when able to care for own toileting needs if guided, helping the client to and from the bathroom, assisting with bedpan routines, diapering and lifting client on and off the toilet. Toileting may include performing routine peri/colostomy/catheter tasks, for the client when client is able to supervise the activities.

(f) "Ambulation" means assisting the client to move around. Ambulation includes supervising a client when walking alone or with the help of a mechanical device

such as a walker if guided, assisting with difficult parts of walking such as climbing stairs, supervising the client if the client is able to propel a wheelchair if guided, pushing the wheelchair, and providing constant physical assistance to the client if totally unable to walk alone or with a mechanical device.

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

(h) "Positioning" means assisting a client to assume a desired position. Positioning includes assistance in turning and positioning to prevent secondary disabilities, such as contractures and balance deficits.

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

(j) "Body care" means assisting a client with exercises, skin care including the application of ointments or lotions, changing dry bandages or dressings not requiring professional judgment. Body care excludes foot care beyond washing of feet and filing toenails. Body care excludes foot care for a client who is diabetic or has poor circulation. Body care excludes changing bandages or dressings when sterile procedures are required. Provision of body care tasks is limited. The client must be able to supervise the provision of these tasks.

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

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

(5) "Handicapping condition" means a medical condition which causes a functional impairment in activities of daily living.

(6) "Household assistance" means assistance with incidental household services provided as an integral, but subordinate part of the personal care furnished directly to a client. Household assistance shall be considered an integral part of personal care when such assistance is directly related to a medical condition or to a service reflected in the client's service plan and is furnished along with a direct personal care service. The department shall not authorize household assistance as a Medicaid personal care task in an adult family home, licensed boarding home, children's foster family home, or children's group care facility.

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

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

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

(d) "Wood supply" means splitting, stacking, or carrying wood for a client and used as the sole source of fuel for heating and/or cooking. This task is limited to splitting, stacking, or carrying wood the client has at own home. Using a chain saw or felling trees is not allowable.

(7) "Immediate family member" means a client's husband or wife, parent, or child.

(8) "Medicaid personal care services" means medically-oriented tasks, directed at a client or the client's immediate environment, that are necessitated by the client's handicapping condition. Such services shall be:

(a) Based on an assessment of applicant/client needs;

(b) Provided in conformance with a service plan ordered by a client's attending physician;

(c) Reviewed by a registered nurse at least every ninety days;

(d) Performed by qualified and trained personal care aides, excluding members of a client's immediate family.

(e) Services shall be provided in a clients [client's] own home when the client is present in the home.

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

(10) "Personal care aide" means a person meeting the qualification and training requirements established by the department and providing direct personal care services to a client. This person may be an employee of a qualified agency provider or may be under contract as a qualified individual provider.

(11) "Personal care provider" means a qualified agency provider or a qualified individual provider who is not a member of a clients [client's] immediate family and is under department contract to provide Medicaid personal care services.

(12) "Personal care service plan" means a plan which is:

(a) Developed by the department in cooperation with appropriate community agency staff;

(b) Written and describes the personal care services which will be provided, frequency of provision, and expected outcomes;

(c) Ordered by a client's attending physician.

(13) "Physician" means a doctor of medicine, osteopathy or podiatry, as defined under WAC 388-80-005(54), or a client's Christian Science practitioner.

(14) "Physician's order" means written approval by a client's attending physician of the specific personal services to be provided to the client.

(15) "Qualified agency provider" means a community agency which applied for licensing as a home care agency or home health agency.

(16) "Qualified individual provider" means a person meeting the individual provider qualifications established by the department.

(17) "Supervision" means being available to:

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

(b) Provide protective supervision to a client who cannot be left alone because of confusion, forgetfulness, or lack of judgment.

[Statutory Authority: RCW 74.08.090. 91-21-026 (Order 3264), § 388-15-820, filed 10/8/91, effective 11/8/91; 90-06-038 (Order 2950), § 388-15-820, filed 3/1/90, effective 4/1/90; 89-18-029 (Order 2856), § 388-15-820, filed 8/29/89, effective 9/29/89.]

WAC 388-15-840 Medicaid personal care services--Assessment--Authorization. (1) The department shall provide an assessment of an individual applying for, or being referred for, Medicaid personal care services.

(2) The department shall use the approved assessment form in an interview with an applicant documenting:

(a) The applicant's functional capability to perform personal care tasks essential to health or safety;

(b) Current and potential care contributions by formal and informal supports available to an applicant;

(c) An applicant's preference for how care is provided.

(3) When children are assessed, the assessor shall consider the personal care applicant's age in determining if the degree of personal care needed is appropriate to the child's age, or the result of the applicant's functional impairment. The need for personal care services shall only be assessed for needs exceeding the level of age appropriate personal care.

(4) Assessment and reassessment shall be performed within the department-established time frames.

(5) The department shall be responsible for authorizing Medicaid personal care services.

(6) The number of hours authorized shall be based on an applicant/client's need for assistance with Medicaid personal care tasks as determined through the assessment process. Points shall be awarded for each task according to the degree of assistance needed, and the point total shall be converted into maximum allowable hours.

(7) A client's attending physician shall review and reauthorize the client's service plan at least once every twelve months.

[Statutory Authority: RCW 74.08.090. 91-21-026 (Order 3264), § 388-15-840, filed 10/8/91, effective 11/8/91; 89-18-029 (Order 2856), § 388-15-840, filed 8/29/89, effective 9/29/89.]

WAC 388-15-850 Medicaid personal care services--Nurse oversight. (1) A registered nurse shall visit a client at least once every ninety days to:

(a) Review the client's medical and/or mental condition;

(b) Review the service plan determining if revisions are required and, if so, recommend revisions;

(c) Review the client's need for continued care;

(d) Assess the quality of personal care services received;

(e) Assess the personal care provider's need for additional training.

(2) The registered nurse shall document the result of an oversight visit on the department-prescribed form.

[Statutory Authority: RCW 74.08.090. 91-21-026 (Order 3264), § 388-15-850, filed 10/8/91, effective 11/8/91; 89-18-029 (Order 2856), § 388-15-850, filed 8/29/89, effective 9/29/89.]

WAC 388-15-860 Medicaid personal care services--Personal care aide qualifications. (1) The department shall:

(a) Define minimum qualifications for a personal care aide and require an aide meet the qualifications;

(b) Define minimum orientation and training requirements for a personal care aide and require documentation stating minimum requirements are met;

(c) Definitions for minimum qualifications and training requirements for a personal care aide shall be contained in the department's field manual for Medicaid personal care.

[Statutory Authority: RCW 74.08.090. 91-21-026 (Order 3264), § 388-15-860, filed 10/8/91, effective 11/8/91; 89-18-029 (Order 2856), § 388-15-860, filed 8/29/89, effective 9/29/89.]

WAC 388-15-870 Medicaid personal care services--Service provision system. (1) Area agencies on aging shall contract with qualified agency providers to perform Medicaid personal care services at the department-established rate.

(2) Area agencies on aging shall provide or contract for registered nurse oversight for personal care services.

(3) The department shall contract with area agencies on aging to assume the above responsibilities.

(4) The department shall contract with a qualified individual provider to perform Medicaid personal care services at the department-established rate.

(5) Agency providers shall deliver services to an adult client in the clients' own residences unless the personal care service plan exceeds eighty-five hours per month. An individual provider may deliver services to a child in the child's own residence regardless of the hours authorized. A client shall have freedom of choice in selecting a qualified agency provider.

(6) An individual provider under contract with the department shall deliver services to a client in the client's own residence when the personal care service plan exceeds eighty-five hours per month. Clients shall have freedom of choice in selecting a qualified individual provider.

(7) Adult family home (AFH) sponsors or licensed boarding home staff shall provide services to clients in an AFH or licensed boarding home. Foster parents or group care facility staff shall provide services to children in a foster family home or group care facility as defined in WAC 388-73-014(8). Clients shall have freedom of choice in selecting a licensed AFH or boarding home, provided the AFH or boarding home can meet their personal care needs.

[Statutory Authority: RCW 74.08.090. 91-21-026 (Order 3264), § 388-15-870, filed 10/8/91, effective 11/8/91; 90-06-038 (Order 2950), § 388-15-870, filed 3/1/90, effective 4/1/90; 89-18-029 (Order 2856), § 388-15-870, filed 8/29/89, effective 9/29/89.]

WAC 388-15-880 Payment and authorization. Payment and authorization.

(1) In the individual provider program, the department pays an hourly rate directly to the service provider. No in-home personal care service plans shall authorize services by an individual provider unless the service need exceeds eighty-five hours per month.

(2) In the contracted program, the department pays the contractor who pays the service provider.

(3) Rates paid for the provision of Medicaid personal care shall be established by the department. Current maximum rates shall be contained in the departments social service payment system appendices A, E, and C.

(4) No contractor shall pay service providers performing Medicaid personal care services less than five dollars and fifteen cents per hour.

(5) Authorizations for Medicaid personal care in an adult family home shall not exceed sixty hours of service per month.

(6) Authorizations for Medicaid personal care in a licensed boarding home under department contract shall not exceed thirty hours per month.

(7) Payment shall not be made for services provided exceeding the department's authorization.

[Statutory Authority: RCW 74.08.090. 91-21-026 (Order 3264), § 388-15-880, filed 10/8/91, effective 11/8/91; 90-06-038 (Order 2950), § 388-15-880, filed 3/1/90, effective 4/1/90; 89-18-029 (Order 2856), § 388-15-880, filed 8/29/89, effective 9/29/89.]

Chapter 388-24 WAC

AID TO FAMILIES WITH DEPENDENT CHILDREN--ELIGIBILITY

WAC

388-24-050	Aid to families with dependent children--Assistance unit.
388-24-070	Aid to families with dependent children--regular--Deprivation due to continued absence from home.
388-24-074	Aid to families with dependent children--employable--Deprivation due to unemployment of a parent.

WAC 388-24-050 Aid to families with dependent children--Assistance unit. (1) Except as specified in subsection (3) of this section, the department shall include, in a single assistance unit, the following persons living together:

(a) A woman in her third trimester of pregnancy who has no other child; or

(b) The child(ren), including all full, half, or adopted brothers and sisters of such a child(ren); and

(c) The parent(s), adoptive parent(s), or stepparent(s) with whom the child(ren) lives; and

(d) A minor parent's parent who claims to be the needy caretaker relative of:

(i) The minor parent;

(ii) The minor parent's child; or

(iii) The minor parent's full or half brother or half sister.

(2) Except as specified in subsection (3) of this section, the department may include in the assistance unit at the option of the family:

(a) One needy relative caretaker of specified degree whose eligibility depends solely on caring for the child(ren), if a parent does not reside in the family home;

(b) The stepbrothers or stepsisters of a child included in the assistance unit, except as required in subsection (1) of this section;

(c) Needy eligible nonsibling children.

(3) The department shall exclude from the assistance unit those persons ineligible due to factors not related to need. Exclusions include, but are not limited to:

(a) A recipient of SSI benefits;

(b) An alien not meeting the citizenship and alienage requirements (see WAC 388-26-120);

(c) Adopted children receiving Title IVE, state or local adoption assistance if inclusion of such children and their income will result in a decrease in benefits to the assistance unit;

(d) Children who receive Title IVE, state and local foster care maintenance payments; and

(e) A person under sanction for noncooperation with:

(i) The Job Opportunities Basic Skills Training (JOBS) program (see WAC 388-24-107); or

(ii) The department's office of support enforcement (see WAC 388-24-108 and 388-24-109).

[Statutory Authority: RCW 74.08.090. 91-12-044 (Order 3188), § 388-24-050, filed 6/4/91, effective 7/5/91; 88-24-009 (Order 2731), § 388-24-050, filed 11/30/88; 88-09-039 (Order 2621), § 388-24-050, filed 4/15/88; 85-18-041 (Order 2275A), § 388-24-050, filed 8/30/85; 83-22-066 (Order 2033), § 388-24-050, filed 11/2/83; 81-10-012 (Order 1644), § 388-24-050, filed 4/27/81. Statutory Authority: RCW 43.20A.550. 79-11-081 (Order 1444), § 388-24-050, filed 10/23/79. Statutory Authority: RCW 74.08.090. 78-12-027 (Order 1357), § 388-24-050, filed 11/15/78. Statutory Authority: RCW 78.08.090. 78-06-074 (Order 1297), § 388-24-050, filed 5/31/78, effective 7/1/78; Order 1235, § 388-24-050, filed 8/31/77; Order 1199, § 388-24-050, filed 3/18/77; Order 978, § 388-24-050, filed 10/28/74.]

WAC 388-24-070 Aid to families with dependent children--regular--Deprivation due to continued absence from home. (1) The department shall determine whether

a child is deprived of parental support or care due to the absence of a child's parent.

(2) The department shall determine that deprivation due to the continued absence of a parent exists, regardless of legal marital status, when:

(a) The parent is living out of the home in which the child resides; and

(b) The absence interrupts or terminates the parent's functioning as a provider of:

(i) Maintenance at least equal to the child's prorated share of the monthly need standard for the number of persons in the child's assistance unit as specified under WAC 388-29-100; or

(ii) Physical care; or

(iii) Guidance for the child; and

(c) The known or indefinite duration of the absence precludes counting on the parent's performance of the function of planning for the present support or care of the child.

(3) When the parent is living out of the home in which the child resides, the assumption that parental functioning is interrupted can be rebutted only if the absent parent routinely visits the child, and continuously provides all elements of parental functioning as specified under subsection (2)(b) of this section.

(4) The department shall document reduction of one or more of the elements of parental care to establish deprivation. The following definitions shall apply:

(a) "Maintenance" means the financial support and in-kind contributions paid directly to the child's household, including:

(i) Child support;

(ii) Food;

(iii) Clothing; and

(iv) Other necessities.

(b) "Physical care" means continuous care of the child on a day-to-day basis by performing tasks, depending upon the age of the child, required in the child's daily life including, but not limited to:

(i) Providing clean clothing and dressing the child;

(ii) Preparing meals and feeding;

(iii) Supervising bedtime; and

(iv) Assisting with other personal care needs.

(c) "Guidance" means day-to-day parental participation in and responsibility for the child's physical, emotional, and intellectual development including, but not limited to:

(i) Accompanying to doctor visits;

(ii) Attending school conferences;

(iii) Disciplining; and

(iv) Participating in decisions concerning the child's well-being and extracurricular activities.

(5) The department shall not establish deprivation due to absence if:

(a) The reason for the parent's absence is due solely to serving on active duty in the uniformed military services of the United States; or

(b) For applicants, the department's best estimate based on available evidence is that an absent parent will return to reside in the home at any time within the

month of initial grant authorization. However, if the department's best estimate is that the absent parent will return to the home within the month following the month of initial grant authorization, deprivation may exist for the initial month of grant authorization, but not for the month following; or

(c) For recipients, after the first two months of eligibility, the department determines an absent parent will return to the home. Deprivation due to absence ceases the end of the month in which the parent returns to the home.

(6) Deprivation due to continued absence exists when a parent convicted of an offense is permitted to reside in the family home, but is required by the court to perform unpaid work or unpaid community service. In this situation, the department shall:

(a) Not include the needs of the convicted parent in the determination of eligibility or the payment of financial assistance; and

(b) Allocate income earned by the convicted parent outside of the hours of sentenced unpaid work or community service in accordance with WAC 388-28-500.

(7) The department shall assume that abandonment exists, and shall apply policies outlined under WAC 388-24-200 when:

(a) A nonresponsible relative applies on behalf of a child who was not placed in custody through a court order; and

(b) The child's parent, though able, has failed to support the child.

[Statutory Authority: RCW 74.08.090. 91-16-062 (Order 3223), § 388-24-070, filed 8/1/91, effective 9/1/91. Statutory Authority: RCW 74.04.050. 90-16-081 (Order 3046), § 388-24-070, filed 7/31/90, effective 8/31/90. Statutory Authority: RCW 74.08.090. 88-24-009 (Order 2731), § 388-24-070, filed 11/30/88; 85-18-041 (Order 2275A), § 388-24-070, filed 8/30/85; 83-22-066 (Order 2033), § 388-24-070, filed 11/2/83; 82-23-059 (Order 1907), § 388-24-070, filed 11/17/82; 82-11-093 (Order 1813), § 388-24-070, filed 5/19/82; 81-06-058 (Order 1619), § 388-24-070, filed 3/4/81; 78-10-036 (Order 1338), § 388-24-070, filed 9/18/78; Order 987, § 388-24-070, filed 12/16/74; Order 854, § 388-24-070, filed 9/13/73; Order 730, § 388-24-070, filed 10/27/72; Order 663, § 388-24-070, filed 3/23/72; Order 597, § 388-24-070, filed 9/1/71; Order 530, § 388-24-070, filed 3/31/71, effective 5/1/71; Regulation 6.2213, filed 8/29/66; Regulation 6.2213, filed 12/31/65.]

WAC 388-24-074 Aid to families with dependent children—employable—Deprivation due to unemployment of a parent. (1) The department shall consider a child deprived of parental care and support due to the unemployment of a parent when the child lives with two parents, one of which meets all the requirements in this section.

(2) The department shall designate the qualifying parent as that parent earning the greater amount of income in the twenty-four-calendar-month period immediately preceding the month the application for assistance is filed. The department shall:

(a) Designate the qualifying parent using the best evidence available;

(b) Consider the earnings of both parents regardless of when the relationship began;

(c) Continue the designation for each consecutive month the family remains on assistance based on the current application; and

(d) Designate the qualifying parent if both parents earned an identical amount of income.

(3) The department shall consider the qualifying parent unemployed when the qualifying parent:

(a) Is employed less than one hundred hours a month;

(b) Exceeds this standard for a particular month if the excess is of a temporary nature evidenced by being under the one hundred hour standard for the two prior months and is expected to be under the standard during the next month; or

(c) Participates in institutional and work experience training under the JOBS program and is not otherwise employed over one hundred hours.

(4) The qualifying parent shall be unemployed as defined in subsection (3) of this section for thirty days or more before the date AFDC-E is authorized except when:

(a) AFDC-E is terminated due to employment of the qualifying parent;

(b) The full-time employment ends within thirty days of termination; and

(c) The qualifying parent reapplies and is found otherwise eligible for AFDC-E.

(5) During the same thirty-day period, or subsequently, the qualifying parent shall not have:

(a) Refused a bona fide offer of employment;

(b) Refused training for employment;

(c) Voluntarily left a job without good cause; or

(d) If eligible, refused to apply for or accept unemployment compensation.

(6) The qualifying parent shall participate, as required in the JOBS program.

(7) The qualifying parent shall have one of the following:

(a) Six or more quarters of work within any thirteen calendar quarter period ending within one year before the application for assistance.

(i) A "quarter of work" means a calendar quarter in which the parent received earned income of fifty dollars or more, or participated in the OPPORTUNITIES program; FIP related education, training or employment services; or JOBS program.

(ii) A "calendar quarter" means three consecutive months ending March 31st, June 30th, September 30th, or December 31st.

(b) Within one year before the application, received, or had such a work history to be eligible to receive, unemployment compensation.

[Statutory Authority: RCW 74.08.090. 91-16-058 (Order 3219), § 388-24-074, filed 8/1/91, effective 9/1/91; 90-21-123 (Order 3087), § 388-24-074, filed 10/23/90, effective 11/23/90; 89-12-079 (Order 2808), § 388-24-074, filed 6/7/89; 88-24-009 (Order 2731), § 388-24-074, filed 11/30/88. Statutory Authority: Chapter 74.04. RCW. 88-06-084 and 88-07-056 (Orders 2601 and 2601A), § 388-24-074, filed 3/2/88 and 3/14/88. Statutory Authority: RCW 74.08.090. 85-18-041 (Order 2275A), § 388-24-074, filed 8/30/85; 83-22-066 (Order 2033), § 388-24-074, filed 11/2/83.]

Chapter 388-28 WAC

AID TO FAMILIES WITH DEPENDENT CHILDREN AND CONTINUING GENERAL ASSISTANCE--ELIGIBILITY NEED

WAC

- 388-28-435 Effect of resources on financial need--Personal property exemptions--Ceiling values--AFDC and RA.
- 388-28-482 Effect of newly acquired income and property on continuing need.
- 388-28-575 Disregard of income and resources.

WAC 388-28-435 Effect of resources on financial need--Personal property exemptions--Ceiling values--AFDC and RA. (1) Resources shall not exceed one thousand dollars per household regardless of size. The department shall consider cash, marketable securities, cash discount value of real estate or chattel mortgages, sales contracts, cash surrender value of life insurance, excess equity value of vehicles, value of nonexempt property, and any other resources not specifically exempt.

(2) Regardless of value, the department shall exempt household furnishings and personal clothing essential for daily living. The department shall not exempt household furnishings and personal clothing in storage without evidence that these items are essential for daily living.

(3) The department shall exempt term or burial insurance up to an equity value of one thousand five hundred dollars per household member.

(4) The department shall exempt one cemetery plot for each assistance household member.

(5) The department shall exempt one used and useful vehicle with an equity value of one thousand five hundred dollars or less.

(6) The department shall consider an income tax refund a resource in the month received. "Income tax refund" means a payment received from a state or from the United States Internal Revenue Service (IRS) representing a refund of taxes previously paid. The earned income tax credit portion of the refund is considered a resource in the second month following the month of receipt.

[Statutory Authority: RCW 74.04.055. 91-13-082 (Order 3193), § 388-28-435, filed 6/18/91, effective 7/19/91; 88-05-013 (Order 2598), § 388-28-435, filed 2/10/88. Statutory Authority: RCW 74.08.090. 86-23-020 (Order 2441), § 388-28-435, filed 11/10/86; 85-18-042 (Order 2276), § 388-28-435, filed 8/30/85; 85-04-024 (Order 2200), § 388-28-435, filed 1/30/85; 84-07-019 (Order 2087), § 388-28-435, filed 3/14/84.]

WAC 388-28-482 Effect of newly acquired income and property on continuing need. (1) "Newly acquired income" means any previously unreported or undiscovered income a public assistance recipient possesses or controls in whole or in part.

(2) Unless otherwise specified in this section, the department shall deduct newly acquired income from the payment level plus authorized additional requirements to determine grant amount. The amount deducted shall equal the following:

(a) The net amount of the income if in cash or its equivalent; and

(b) At least the recipient's equity in the quick sale value of property other than cash.

(3) The department shall apply WAC 388-28-400(7) when the property is only potentially available to meet the recipient's requirements.

(4) The department shall allow recipients who own property listed below to retain the property without having it affect their eligibility or need:

(a) A home used as a residence - see WAC 388-28-420;

(b) Useful and needed clothing, household equipment, food, fuel, and other items included in the requirement standards;

(c) An automobile within the ceiling values in WAC 388-28-430(2);

(d) An income tax refund within the resource ceiling values in WAC 388-28-430. An intercepted income tax refund is not available to meet need until it is actually received. The earned income tax credit portion of the refund shall be considered a resource in the second month following the month of receipt; and

(e) Income from the department to correct a previous underpayment of assistance under WAC 388-33-195.

(5) The department shall modify the rule in subsection (2) of this section for a recipient of AFDC or continuing general assistance as follows:

(a) Earned income retained by a child, under WAC 388-28-535(3), is the personal property of the family and subject to the ceilings in WAC 388-28-430(2);

(b) The possession of any amount of funds from sources listed in subsection (5)(a) of this section in a cash reserve or savings account does not affect the eligibility of a general assistance recipient. However, if such exempted income is converted into other types of property, WAC 388-28-410 through 388-28-455 apply;

(c) Income from interest on exempt savings, dividends from exempt stocks, increase in life insurance cash surrender value, livestock births, etc., affect eligibility only to the extent the amount causes the total value of the resource possessed to exceed the ceiling values of the resource. The excess is considered available; and

(d) Exempt funds representing another person's share of household costs are exempt provided such payments are not legally obligated child support except as provided in WAC 388-28-484 (7)(b).

[Statutory Authority: RCW 74.08.090, 91-13-083 (Order 3190), § 388-28-482, filed 6/18/91, effective 7/19/91; 89-18-057 (Order 2865), § 388-28-482, filed 9/1/89, effective 10/2/89; 88-19-068 (Order 2697), § 388-28-482, filed 9/16/88; 88-07-117 (Order 2613), § 388-28-482, filed 3/23/88; 86-08-008 (Order 2352), § 388-28-482, filed 3/21/86; 85-04-024 (Order 2200), § 388-28-482, filed 1/30/85; 83-04-033 (Order 1940), § 388-28-482, filed 1/28/83, effective 3/1/83; 82-09-034 (Order 1792), § 388-28-482, filed 4/14/82; 82-01-009 (Order 1728), § 388-28-482, filed 12/4/81; 80-14-061 (Order 1547), § 388-28-482, filed 10/1/80; Order 1241, § 388-28-482, filed 9/23/77.]

WAC 388-28-575 Disregard of income and resources. (1) For aid to families with dependent children (AFDC), the department shall disregard as income and as a resource the following payments:

(a) The income of a Supplemental Security Income recipient;

(b) The monthly child support incentive payment from the office of support enforcement;

(c) AFDC benefits resulting from a court order modifying a department policy;

(d) Wages earned during the 1990 Federal Census Demonstration Project by a temporary census worker eligible for the exclusion;

(e) Title IV-E, state and/or local foster care maintenance payments; and

(f) Adoption support payments if the adopted child is excluded from the assistance unit.

(2) For AFDC and general assistance (GA), the department shall disregard as income and as a resource the following payments:

(a) Loans specified in WAC 388-28-480(4);

(b) Grants, loans, or work study to a student under Title IV-A of the Higher Education Amendments or Bureau of Indian Affairs for attendance costs as identified by the institution. For a student attending school:

(i) At least half-time, attendance costs include tuition, fees, books, supplies, transportation, and miscellaneous personal expenses; or

(ii) Less than half-time, attendance costs include tuition and fees.

(c) Grants or loans to an undergraduate student insured by the commissioner of education;

(d) Any remaining grants, work study, scholarships, or fellowships as allowed under WAC 388-28-578;

(e) Apply the earned income disregards in WAC 388-28-570(6) to any work study earnings received and not excluded in subsection (2)(b), (c), and (d) of this section;

(f) Payment under Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(g) The food coupon allotment under Food Stamp Act of 1977;

(h) Compensation to volunteers in ACTION programs established by Titles I, II, and III of P.L. 93-113;

(i) Benefits under women, infants and children program (WIC);

(j) Food service program for children under the National School Lunch Act;

(k) Energy assistance payments;

(l) Per capita judgment funds under Public Law (P.L.) 92-254 to members of the:

(i) Blackfoot Tribe of the Blackfoot Indian Reservation, Montana; and

(ii) Gros Ventre Tribe of the Fort Belknap Reservation, Montana.

(m) Indian claim settlement per capita funds or funds held in trust under P.L. 93-134 or P.L. 94-114;

(n) Two thousand dollars per individual per calendar year received under the Alaska Native Claims Settlement Act or under P.L. 98-64;

(o) Veterans' Administration educational assistance for the student's educational expenses and child care necessary for school attendance;

(p) Housing and Urban Development (HUD) community development block grant funds that preclude use for current living costs;

(q) Restitution payments made under the Wartime Relocation of Civilians Act, P.L. 100-383. The department shall disregard income and resources derived from restitution payments;

(r) A previous underpayment of assistance under WAC 388-33-195;

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

(i) Real or personal property purchased directly with funds from the annuity fund payment up to the amount of the funds from the annuity fund payment hereafter referred to as the initial investments.

(ii) Income derived either from the annuity fund payment or the initial investments shall be treated as newly acquired income per WAC 388-28-482 and 388-28-484.

(iii) When the initial investments are nonexempt resources, appreciation in value shall be applied to the resource ceiling value as specified for the applicable program in WAC 388-28-430 (2)(a) or WAC 388-28-435(1). When appreciation is in excess of the applicable ceiling value, the department shall apply WAC 388-28-438(2) for AFDC and WAC 388-28-450(2) for GA-U. The department shall determine appreciation in value at the time of eligibility review.

(iv) Proceeds from the transfer of the initial investments are treated according to WAC 388-28-471. After sixty days, if funds are in excess of the applicable ceiling value, the department shall apply WAC 388-28-438(2) for AFDC and WAC 388-28-440 (3) and (4) for GA-U.

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

(u) Payments made from the Agent Orange Settlement Fund or any other funds established to settle Agent Orange liability claims. Under P.L. 101-201, the effective date of the disregard is retroactive to January 1, 1989;

(v) Payments made under the federal major disaster and emergency assistance program provided to persons and families under P.L. 93-288, The Robert T. Stafford Disaster Relief and Emergency Assistance Act. This includes assistance under the individual and family grant (IFG), temporary (emergency) housing assistance, and disaster unemployment (DUA) programs;

(w) Payments from the Radiation Exposure Compensation ACT (P.L. 101-426) made to an injured person, surviving spouse, children, grandchildren, or grandparents.

[Statutory Authority: RCW 74.08.090. 91-13-080 (Order 3191), § 388-28-575, filed 6/18/91, effective 7/19/91; 91-06-007 (Order 3144), § 388-28-575, filed 2/21/91, effective 3/24/91; 90-11-003 (Order 2975), § 388-28-575, filed 5/3/90, effective 6/3/90; 89-17-031 (Order 2848), § 388-28-575, filed 8/8/89, effective 9/8/89; 88-22-036 (Order 2718), § 388-28-575, filed 10/27/88; 88-01-045 (Order 2572), § 388-28-575, filed 12/11/87; 85-18-042 (Order 2276), § 388-28-575, filed 8/30/85; 85-04-024 (Order 2200), § 388-28-575, filed 1/30/85; 83-23-058 (Order 2049), § 388-28-575, filed 11/16/83; 82-11-094 (Order 1812), § 388-28-575, filed 5/19/82;

81-10-035 (Order 1651), § 388-28-575, filed 4/29/81; 79-06-027 (Order 1399), § 388-28-575, filed 5/16/79; 78-09-038 (Order 1324), § 388-28-575, filed 8/17/78; 78-05-019 (Order 1287), § 388-28-575, filed 4/13/78; Order 1229, § 388-28-575, filed 8/23/77; Order 1183, § 388-28-575, filed 1/5/77; Order 1054, § 388-28-575, filed 9/25/75; Order 943, § 388-28-575, filed 6/28/74; Order 926, § 388-28-575, filed 4/15/74; Order 891, § 388-28-575, filed 12/27/73.]

Chapter 388-29 WAC

STANDARDS--ELIGIBILITY

WAC

388-29-100	Standards of assistance--Basic requirements.
388-29-125	Standards of assistance--Persons in medical institutions.
388-29-150	Standards of assistance--Additional requirements.
388-29-180	Additional requirements--Home-delivered meals (meals-on-wheels).

WAC 388-29-100 Standards of assistance--Basic requirements. (1) The statewide monthly need standard for basic requirements shall be:

(a) A household with an obligation to pay shelter costs effective September 1, 1991.

Treat a household residing in a lower income housing project, assisted under the United States Housing Act of 1937 or Section 236 of the National Housing Act, as a renter if the household member makes a utility payment in lieu of a rental payment.

This need standard includes recipients owning, purchasing, or renting their home.

Effective April 23, 1990, this need standard includes a homeless family or person:

(i) Lacking a fixed, regular, and adequate nighttime residence;

(ii) Residing in a public or privately operated shelter designed to provide temporary living accommodations; or

(iii) Provided temporary lodging through a public or privately funded emergency shelter program.

Recipients in Household	Need Standard
1	\$ 648
2	820
3	1,014
4	1,194
5	1,375
6	1,560
7	1,802
8	1,995
9	2,190
10 or more	2,380

(b) A household with shelter provided at no cost effective September 1, 1991, except as described under subsection (1)(a) of this section.

The monthly standard for a client with shelter provided at no cost includes requirements for food, clothing, personal maintenance and necessary incidentals, household maintenance, and transportation.

Recipients in Household	Need Standard
1	\$ 395
2	500
3	618
4	728
5	838
6	951
7	1,099
8	1,216
9	1,335
10 or more	1,451

(2) One hundred eighty-five percent of the statewide monthly need standard for basic requirements is:

(a) A household with shelter costs effective September 1, 1991.

Recipients in Household	185% of Need Standard
1	\$ 1,198
2	1,517
3	1,875
4	2,208
5	2,543
6	2,886
7	3,333
8	3,690
9	4,051
10 or more	4,403

(b) A household with shelter provided at no cost effective September 1, 1991.

Recipients in Household	185% of Need Standard
1	\$ 730
2	925
3	1,143
4	1,346
5	1,550
6	1,759
7	2,033
8	2,249
9	2,469
10 or more	2,684

(3) The statewide monthly payment standard shall be:

(a) Payment standard for a household with an obligation to pay shelter costs effective January 1, 1991.

Treat a household residing in a lower income housing project, assisted under the United States Housing Act of 1937 or Section 236 of the National Housing Act, as a renter if the household member makes a utility payment in lieu of a rental payment.

This payment standard includes recipients owning, purchasing, or renting their home.

Effective April 23, 1990, this payment standard includes a homeless family or person:

(i) Lacking a fixed, regular, and adequate nighttime residence;

(ii) Residing in a public or privately operated shelter designed to provide temporary living accommodations; or

(iii) Provided temporary lodging through a public or privately funded emergency shelter program.

Recipients in Household	Payment Standard
1	\$ 339
2	428
3	531
4	624
5	719
6	817
7	943
8	1,044
9	1,146
10 or more	1,246

(b) Payment standard for a household with shelter provided at no cost effective January 1, 1991, except as described under subsection (3)(a) of this section.

The monthly payment standard for a client with shelter provided at no cost includes requirements for food, clothing, personal maintenance and necessary incidentals, transportation, and household maintenance.

Recipients in Household	Payment Standard
1	\$ 206
2	261
3	323
4	380
5	438
6	497
7	574
8	635
9	698
10 or more	758

[Statutory Authority: RCW 74.08.090. 91-17-065 (Order 3236), § 388-29-100, filed 8/20/91, effective 9/20/91; 91-02-072 (Order 3122), § 388-29-100, filed 12/28/90, effective 1/28/91; 90-21-031 (Order 3084), § 388-29-100, filed 10/9/90, effective 11/9/90; 90-15-018 (Order 3038), § 388-29-100, filed 7/12/90, effective 8/12/90; 90-06-035 (Order 2947), § 388-29-100, filed 3/1/90, effective 4/1/90; 89-21-065 (Order 2882), § 388-29-100, filed 10/17/89, effective 11/17/89; 88-18-056 (Order 2677), § 388-29-100, filed 9/1/88. Statutory Authority: 1987 1st ex.s. c 7. 88-04-019 (Order 2588), § 388-29-100, filed 1/22/88. Statutory Authority: RCW 74.08.090. 86-16-048 (Order 2404), § 388-29-100, filed 8/1/86; 85-24-051 (Order 2309), § 388-29-100, filed 12/2/85; 85-16-049 (Order 2265), § 388-29-100, filed 7/31/85; 85-07-020 (Order 2215), § 388-29-100, filed 3/13/85; 84-13-049 (Order 2104), § 388-29-100, filed 6/18/84; 83-17-070 (Order 2008), § 388-29-100, filed 8/19/83; 82-17-066 (Order 1862), § 388-29-100, filed 8/18/82; 82-11-001 (Order 1804), § 388-29-100, filed 5/6/82; 81-19-127 (Order 1701), § 388-29-100, filed 9/23/81; 81-10-011 (Order 1643), § 388-29-100, filed 4/27/81; 80-15-002 (Order 1550), § 388-29-100, filed 10/2/80; 79-10-083 (Order 1434), § 388-29-100, filed 9/21/79; 78-08-084 (Order 1321), § 388-29-100, filed 7/28/78; Order 1241, § 388-29-100, filed 9/23/77.]

WAC 388-29-125 Standards of assistance--Persons in medical institutions. Effective July 1, 1988, the monthly standard for clothing, personal maintenance,

and necessary incidentals for an eligible person in a skilled nursing home, a public nursing home, a general or tuberculosis hospital, JCAH-approved psychiatric hospital, or an intermediate care facility shall be forty-one dollars and sixty-two cents.

[Statutory Authority: RCW 74.08.090. 91-10-028 (Order 3164), § 388-29-125, filed 4/23/91, effective 5/24/91; 88-16-078 (Order 2659), § 388-29-125, filed 8/2/88. Statutory Authority: 1987 1st ex.s. c 7. 88-04-019 (Order 2588), § 388-29-125, filed 1/22/88. Statutory Authority: RCW 74.08.090. 85-07-020 (Order 2215), § 388-29-125, filed 3/13/85; 84-13-049 (Order 2104), § 388-29-125, filed 6/18/84; 83-17-070 (Order 2008), § 388-29-125, filed 8/19/83; 81-19-127 (Order 1701), § 388-29-125, filed 9/23/81; 79-10-083 (Order 1434), § 388-29-125, filed 9/21/79; Order 1241, § 388-29-125, filed 9/23/77.]

WAC 388-29-150 Standards of assistance--Additional requirements. (1) Additional requirements are provided under the circumstances and limitations specified in this chapter.

(2) The department's grant standards provide for certain additional requirements when a person's circumstances are such that the item is essential in accordance with the established criteria. The department shall verify the need for these items in each case where any are included. When the requirement is ongoing, the department shall add the requirement to the basic grant payment standard of the assistance unit.

(3) The circumstances giving rise to an additional requirement may regularly recur or be nonrecurring depending on the nature of the item. In determining whether the need for an additional requirement exists, the department shall take the total case situation into account, i.e., the circumstances that created the need, the changes which have occurred in the person's health or living conditions and, if the problem is not new, how it was met in the past.

(4) The department shall establish a plan for periodically reviewing the necessity for continuing the allowance for an ongoing additional requirement in each case, taking into account:

(a) The change in the person's living arrangements and health; and

(b) Any other factor which has a bearing on the need for the item.

(5) The department shall reestablish the need for any ongoing additional requirement as often as the case plan indicates, but at least:

(a) Semiannually for recipients of AFDC, FIP or refugee assistance; or

(b) Annually for recipients of general assistance or SSI, when it is established there is a continuing need that is likely not subject to change.

(6) The department may authorize the following additional requirements for clients eligible only for AFDC, FIP, refugee, or general assistance grants and for SSI recipients:

- (a) Restaurant meals, WAC 388-29-100;
- (b) Home delivered meals, WAC 388-29-180;
- (c) Food for guide dog, WAC 388-29-200;
- (d) Telephone, WAC 388-29-210; and
- (e) Laundry, WAC 388-29-220.

(7) The department may authorize the additional requirement of winterizing homes, WAC 388-29-230 for clients eligible only for AFDC or FIP assistance grants.

(8) The department may authorize the additional requirements for emergent situations as listed in WAC 388-29-270 for clients eligible only for AFDC, FIP or refugee assistance grants.

[Statutory Authority: RCW 74.04.090 [74.08.090]. 91-23-085 (Order 3287), § 388-29-150, filed 11/19/91, effective 12/20/91. Statutory Authority: RCW 74.08.090. 85-07-020 (Order 2215), § 388-29-150, filed 3/13/85; 78-12-001 (Order 1355), § 388-29-150, filed 11/3/78; Order 1241, § 388-29-150, filed 9/23/77.]

WAC 388-29-180 Additional requirements--Home-delivered meals (meals-on-wheels). (1) For some persons who cannot be expected to prepare all of their own meals, prepared and home-delivered meals may be available.

(2) Use the following criteria to authorize the service:

(a) The person requires help in preparation of some meals and would benefit nutritionally or otherwise from home-delivered meals; and

(b) Help in preparation of meals is not reasonably available without cost to the person; and

(c) Board (or board and room) is not available, feasible, or is costlier for the recipient.

(3) When a plan for use of this service is approved, the monthly standard shall be the amount charged by the agency delivering the service.

[Statutory Authority: RCW 74.04.005. 91-23-086 (Order 3288), § 388-29-180, filed 11/19/91, effective 12/20/91. Statutory Authority: RCW 74.08.090. 85-07-020 (Order 2215), § 388-29-180, filed 3/13/85; 81-19-127 (Order 1701), § 388-29-180, filed 9/23/81; 79-10-083 (Order 1434), § 388-29-180, filed 9/21/79; Order 1241, § 388-29-180, filed 9/23/77.]

Chapter 388-33 WAC

AID TO FAMILIES WITH DEPENDENT CHILDREN AND CONTINUING GENERAL ASSISTANCE--GRANT OR VENDOR PAYMENT

WAC

388-33-135	Effective date of change in eligibility.
388-33-376	Advance and adequate notice--Suspension--Termination--Reduction of benefits.

WAC 388-33-135 Effective date of change in eligibility. (1) A change in circumstances is any change affecting eligibility or continued payment of the grant previously authorized.

(2) When a change in income including the receipt of a lump-sum payment causes ineligibility for more than one month, the recipient shall be ineligible effective the first day of the month of receipt. All assistance the recipient receives shall be an overpayment and subject to recovery under chapter 388-44 WAC.

(3) If the change causes ineligibility for one month only, refer to WAC 388-33-355.

(4) Except as provided in subsection (5) of this section, when a change of circumstances other than increased income renders the assistance unit or any member of the assistance unit ineligible, the effective

date of the recipient's ineligibility shall be the first day of the month following the month in which the change occurred. For ineligibility of striking workers, see WAC 388-24-042.

(5) Effective July 28, 1991, the effective date of ineligibility for a recipient of general assistance based on the relinquishment of a child for adoption, as described under WAC 388-37-030(3), shall be the first day of the month following the month in which the period of six weeks following the date of the birth of the child ends.

[Statutory Authority: 1991 c 126, 91-20-052 (Order 3250), § 388-33-135, filed 9/24/91, effective 10/25/91. Statutory Authority: 1990 c 285, 90-16-085 (Order 3045), § 388-33-135, filed 8/1/90, effective 9/1/90. Statutory Authority: RCW 74.08.090, 88-07-117 (Order 2613), § 388-33-135, filed 3/23/88; 85-15-056 (Order 2258), § 388-33-135, filed 7/17/85; 83-23-058 (Order 2049), § 388-33-135, filed 11/16/83; 83-04-033 (Order 1940), § 388-33-135, filed 1/28/83, effective 3/1/83; 82-09-034 (Order 1792), § 388-33-135, filed 4/14/82; Order 1058, § 388-33-135, filed 10/1/75; Order 694, § 388-33-135, filed 6/29/72; Order 534, § 388-33-135, filed 3/31/71, effective 5/1/71; Order 443, § 388-33-135, filed 4/15/70; Regulation 10.26, filed 1/24/64.]

WAC 388-33-376 Advance and adequate notice--Suspension--Termination--Reduction of benefits. In cases of planned actions to terminate, suspend, or reduce benefits to recipients of AFDC, FIP, GA, or all medical assistance programs, the department shall give advance and adequate notice, except as provided under WAC 388-33-385, as follows:

(1) "Advance notice" means the department mails the notice at least ten days before the date of action.

(2) "Adequate notice" means a written statement of the:

- (a) Action the department intends to take;
- (b) Facts relating to the decision;
- (c) Policy supporting the action; and
- (d) Recipient's right to request a fair hearing, including the circumstances under which assistance is continued if a hearing is requested.

(3) The department shall fully translate advance and adequate notice into the primary language of the limited English proficient recipient/enrollee;

(4) When advance notice of planned action is not required as provided under WAC 388-33-385, the department shall give adequate notice as provided under subsection (2) of this section; and

(5) When changes in either state or federal law require automatic grant adjustments for classes of recipients, the department shall give the recipient notice including the specific change in law.

[Statutory Authority: RCW 74.08.090, 91-11-020 (Order 3178), § 388-33-376, filed 5/7/91, effective 6/1/91; 90-09-035 (Order 2966), § 388-33-376, filed 4/11/90, effective 5/12/90; 89-03-051 (Order 2755), § 388-33-376, filed 1/13/89; 86-10-023 (Order 2369), § 388-33-376, filed 5/1/86; 78-08-053 (Order 1320), § 388-33-376, filed 7/20/78.]

Chapter 388-37 WAC

GENERAL ASSISTANCE--ELIGIBILITY--STANDARDS OF ASSISTANCE--PAYMENT

WAC

388-37-029	General assistance retrospective budgeting supplement for AFDC or FIP recipients.
388-37-030	Continuing general assistance--Eligible persons.
388-37-038	Incapacity--Waiver of medical documentation.
388-37-115	Progressive evaluation process Step I--Review of medical documentation.

WAC 388-37-029 General assistance retrospective budgeting supplement for AFDC or FIP recipients. (1) Within funds appropriated by the legislature, the department shall provide a general assistance supplemental payment to recipients of aid to families with dependent children (AFDC) or the family independence program (FIP) who experience a temporary reduction in monthly income below their entitled benefit payment level. The temporary reduction occurs due to the retrospective budgeting of income.

(2) To qualify for the supplement, the recipient's loss of income must be due to one of the following reasons:

(a) Loss or reduction of wages due to termination of employment or reduction of regularly scheduled hours; or

(b) Loss of unemployment benefits.

(3) The department shall authorize payment based on the following conditions:

(a) The amount of the general assistance supplement shall equal the difference between the appropriate AFDC or FIP grant payment standard, including authorized additional requirements and FIP incentives, for the assistance unit and the total amount of the net income actually received; and

(b) In determining net income, the department shall not allow as deductions from gross income:

- (i) Grant reductions for repayment of overpayments;
- (ii) Earned income exemptions; or
- (iii) Income lost that is not an allowable deduction according to AFDC or FIP income rules.

(4) General assistance supplements paid under this section shall be exempt income when determining eligibility or payment amount for the AFDC or FIP programs.

(5) The authorization of this retrospective budgeting supplement is limited to the specific amount of money the legislature appropriated for this supplemental assistance. When the department has expended the amount appropriated, the supplemental assistance benefit will end.

[Statutory Authority: RCW 74.08.090, 91-21-124 (Order 3269), § 388-37-029, filed 10/23/91, effective 11/23/91.]

WAC 388-37-030 Continuing general assistance--Eligible persons. When other eligibility is established, the department shall grant continuing general assistance to the following:

(1) Incapacitated persons. As used in this section, an incapacitated person shall mean a person physically, emotionally, or mentally unable to work as a result of a

condition expected to continue for ninety days or more from date of application, except as provided under WAC 388-37-038 (1) and (2). A person incapacitated by alcoholism or drug addiction is not included in this definition, but an alcoholic or drug addict incapacitated due to other mental or physical conditions may be eligible for general assistance. Incapacity refers to a person's capacity to earn income by employment. A person's incapacity does not refer to the availability or lack of job opportunities.

(a) Eligible persons are:

(i) An incapacitated single person eighteen years of age or older;

(ii) A married couple if both persons are incapacitated; or

(iii) The incapacitated spouse in the case of a married couple when only one person is employable. The income and resources of the employable spouse shall be considered as described under WAC 388-28-500 (1)(a) and (b).

(b) An incapacitated person shall accept and follow through on required available medical treatment, which is reasonably expected to render the person able to work, unless there is good cause for failure to do so.

The department shall make the "good cause" determination based on the criteria under WAC 388-37-037(5).

(c) An incapacitated person may also receive medical services provided under the state-financed medical care services program as defined under WAC 388-86-120.

(2) Pregnant women who are:

(a) Income and resource eligible for the aid to families with dependent children program; and

(b) In their first or second trimester of pregnancy; or

(c) Members of a two-parent household during a time when the aid to dependent children-employable (AFDC-E) program is in effect, but do not meet categorical eligibility for AFDC-E. These women may receive a continuing general assistance grant for the duration of their pregnancy.

(3) Effective June 7, 1990, to women who:

(a) Relinquish a child for adoption; and

(b) Are receiving general assistance under WAC 388-37-030(2); or

(c) Lose AFDC or FIP eligibility because an eligible child does not reside in the household.

(d) Effective July 28, 1991, assistance granted under subsection (3) of this section shall be limited to the end of the month in which the period of six weeks following the date of the birth of the child ends.

[Statutory Authority: 1991 c 10 and 126. 91-20-051 (Order 3249), § 388-37-030, filed 9/24/91, effective 10/25/91. Statutory Authority: 1990 c 285. 90-16-085 (Order 3045), § 388-37-030, filed 8/1/90, effective 9/1/90. Statutory Authority: 1987 c 406. 87-18-005 (Order 2525), § 388-37-030, filed 8/21/87. Statutory Authority: RCW 74.08.090. 85-15-090 (Order 2259), § 388-37-030, filed 7/24/85; 84-19-046 (Order 2152), § 388-37-030, filed 9/17/84; 83-21-012 (Order 2034), § 388-37-030, filed 10/6/83; 83-08-025 (Order 1955), § 388-37-030, filed 3/30/83; 81-10-010 (Order 1642), § 388-37-030, filed 4/27/81; 80-02-022 (Order 1471), § 388-37-030, filed 1/9/80; 78-06-021 (Order 1295), § 388-37-030, filed 5/16/78; Order 1214, § 388-37-030, filed 6/23/77; Order 1189, § 388-37-030, filed 2/18/77; Order 1173, § 388-37-030, filed 11/24/76; Order 1102, § 388-37-

030, filed 3/2/76; Order 1083, § 388-37-030, filed 12/24/75; Order 976, § 388-37-030, filed 10/28/74; Order 973, § 388-37-030, filed 9/26/74; Order 939, § 388-37-030, filed 5/23/74; Order 904, § 388-37-030, filed 1/31/74; Order 841, § 388-37-030, filed 8/9/73.]

WAC 388-37-038 Incapacity--Waiver of medical documentation. (1) Incapacity will be considered to be established without medical documentation when the person:

(a) Has been determined to be eligible for any benefits based on Social Security Administration disability criteria;

(b) Is eligible for services from the division of developmental disabilities;

(c) Is sixty-five years of age or older.

(2) Incapacity will be considered established for a period of ninety days without a psychiatric/psychological evaluation when the person is being released from inpatient psychiatric treatment and is participating in direct treatment services to meet his or her mental health needs as described in WAC 275-56-015(17), with the exception of:

(a) Clients admitted under the Involuntary Treatment Act (ITA), who are subsequently released without participating in direct treatment services;

(b) Clients voluntarily admitted to a psychiatric hospital or the psychiatric ward of a general hospital for evaluation and diagnosis only, who are released without participating in direct treatment services;

(c) Clients voluntarily admitted to a psychiatric hospital or the psychiatric ward of a general hospital for an acute, short-term episode, who are released without participating in direct treatment services; and

(d) Clients who leave ongoing inpatient psychiatric treatment against medical advice.

[Statutory Authority: 1991 c 10 and 126. 91-20-051 (Order 3249), § 388-37-038, filed 9/24/91, effective 10/25/91. Statutory Authority: 1987 c 406. 87-18-005 (Order 2525), § 388-37-038, filed 8/21/87. Statutory Authority: RCW 74.08.090. 84-19-046 (Order 2152), § 388-37-038, filed 9/17/84; 83-08-025 (Order 1955), § 388-37-038, filed 3/30/83; 82-22-021 (Order 1894), § 388-37-038, filed 10/26/82.]

WAC 388-37-115 Progressive evaluation process Step I--Review of medical documentation. The department will review medical documentation prior to making a determination of incapacity in order to insure the following requirements have been met:

(1) The medical report must contain sufficient information on which to determine incapacity per WAC 388-37-035(2). If the information received is not sufficient to determine incapacity, the department can require complete information before any incapacity decision is made.

(2) The medical report must be a written report from an authorized medical professional.

(3) The impairment(s) must be expected to last at least ninety days from the date of application.

(4) The medical report must document the existence of a potentially incapacitating condition.

[Statutory Authority: 1991 c 10 and 126. 91-20-051 (Order 3249), § 388-37-115, filed 9/24/91, effective 10/25/91. Statutory Authority:

RCW 74.08.090. 85-15-090 (Order 2259), § 388-37-115, filed 7/24/85.]

Chapter 388-42 WAC
FUNERAL EXPENSE

WAC
388-42-150 Maximum cost standards.

WAC 388-42-150 Maximum cost standards.

- (1) Mortuary services—Actual costs, but not to exceed:
(a) Essential services only \$ 286
(b) Essential services plus funeral/memorial service \$ 657
(2) Burial services—Actual costs, but not to exceed:
(a) Burial only, no plot included \$ 358
(b) Burial with plot included, single or multiple interment \$ 414
(3) Cremation services—Actual costs, but not to exceed:
(a) Cremation only \$ 169
(b) Cremation and disposition \$ 254
(4) These standards include all applicable taxes.
(5) These standards shall be effective January 1, 1991.

[Statutory Authority: RCW 74.08.090. 91-06-005 (Order 3142), § 388-42-150, filed 2/21/91, effective 3/24/91; 90-10-031 (Order 2973), § 388-42-150, filed 4/25/90, effective 5/26/90; 88-18-023 (Order 2682), § 388-42-150, filed 8/30/88. Statutory Authority: 1987 c 7. 87-24-073 (Order 2563), § 388-42-150, filed 12/2/87. Statutory Authority: RCW 74.08.090. 85-24-052 (Order 2310), § 388-42-150, filed 12/2/85; 84-11-071 (Order 2100), § 388-42-150, filed 5/22/84, effective 7/1/84; 82-06-050 (Order 1772), § 388-42-150, filed 3/3/82; 81-17-026 (Order 1691), § 388-42-150, filed 8/12/81; 80-11-055 (Order 1532), § 388-42-150, filed 8/20/80; 79-10-083 (Order 1434), § 388-42-150, filed 9/21/79; 78-10-058 (Order 1340), § 388-42-150, filed 9/22/78; Order 1247, § 388-42-150, filed 10/10/77; Order 1052, § 388-42-150, filed 9/10/75; Order 907, § 388-42-150, filed 2/14/74; Order 612, § 388-42-150, filed 9/27/71; Order 538, § 388-42-150, filed 3/31/71, effective 5/1/71; Order 378, § 388-42-150, filed 8/7/69; Order 255, § 388-42-150, filed 11/8/67; Regulation 15.60, filed 1/24/64.]

Chapter 388-44 WAC
OVERPAYMENT--REPAYMENT

WAC
388-44-145 Involuntary repayment of overpayment—Mandatory grant deduction.

WAC 388-44-145 Involuntary repayment of overpayment—Mandatory grant deduction. (1) The department shall recoup an overpayment by mandatory deduction from future continuing assistance grants except as modified by WAC 388-44-125 and 388-44-127. (2) The department shall recover an intentional overpayment by a mandatory grant deduction of ten percent of the payment standard unless the recipient has cash, bank accounts, or marketable securities the recipient refuses to use in full or partial satisfaction of an overpayment. In such cases, a monthly deduction of up to one

hundred percent of future grant or grants shall be established until such time as the amount of the grant or grants the recipient would be otherwise eligible to receive equals the value of the cash, bank accounts, or marketable securities withheld. The amount of income and resources remaining available to the assistance unit shall not be less than ninety percent of the grant payment standard defined in WAC 388-44-010(7).

(3) The department shall deduct five percent of the recipient's total monthly grant payment standard for unintentional overpayments unless the recipient voluntarily requests a larger deduction in writing.

(a) When a recipient is in a nursing home, intermediate care facility, or hospital, a monthly deduction may be made against the clothing and incidental grant to the recipient. A monthly deduction shall not be made against the vendor payment to the nursing home or intermediate care facility.

(b) The grant shall be suspended when the monthly deduction is equal to or more than the grant which would have been paid had no overpayment occurred.

(4) The department shall inform the client in writing of the amount of the monthly deduction prior to the initial grant deduction. The notification shall state the amount of the current grant before and after the deduction is made, the date the deduction begins, the total amount of overpayment to be recouped by grant deduction, and the approximate number of months the deduction will be made.

(5) The department's mandatory deduction from public assistance grants shall not recoup more than one hundred percent of the amount of assistance the individual was ineligible to receive.

[Statutory Authority: RCW 74.08.090. 91-09-070 (Order 3160), § 388-44-145, filed 4/17/91, effective 5/18/91. Statutory Authority: RCW 74.04.050. 86-04-014 (Order 2335), § 388-44-145, filed 1/24/86. Statutory Authority: RCW 74.08.090. 84-21-079 (Order 2163), § 388-44-145, filed 10/18/84; 83-05-046 (Order 1947), § 388-44-145, filed 2/16/83; 82-04-072 (Order 1755), § 388-44-145, filed 2/3/82; 81-09-045 (Order 1638), § 388-44-145, filed 4/15/81; Order 965, § 388-44-145, filed 8/29/74; Order 897, § 388-44-145, filed 1/11/74; Order 800, § 388-44-145, filed 5/25/73; Order 539, § 388-44-145, filed 3/31/71, effective 5/1/71; Order 401, § 388-44-145, filed 11/5/69; Order 324, § 388-44-145, filed 11/27/68; Emergency Order 310, filed 10/18/68; Regulation 16.321, filed 6/30/67; Regulation 16.321, filed 8/29/66, 1/24/64.]

Chapter 388-49 WAC
FOOD ASSISTANCE PROGRAMS
(Formerly chapter 388-54 WAC)

- WAC
388-49-020 Definitions.
388-49-030 Filing an application.
388-49-040 Supplemental security income (SSI) households.
388-49-080 Expedited service.
388-49-120 Application disposition.
388-49-190 Household concept.
388-49-270 Sponsored aliens.
388-49-310 Citizenship and alien status.
388-49-330 Student.
388-49-410 Resources—Exempt.
388-49-420 Resources—Nonexempt.
388-49-430 Resources—Vehicles.
388-49-470 Income—Exclusions.

388-49-480	Income—Ineligible household members.
388-49-500	Income—Deductions.
388-49-505	Utility allowances.
388-49-510	Income eligibility standards.
388-49-520	Prospective income budgeting.
388-49-530	Retrospective income budgeting.
388-49-535	Special circumstances—Income budgeting.
388-49-550	Monthly allotments.
388-49-600	Notices to households.
388-49-630	Changes—Reporting requirements.
388-49-640	Overissuances.

WAC 388-49-020 Definitions. (1) "Administrative disqualification hearing" means a formal hearing to determine whether or not a person committed an intentional program violation.

(2) "Administrative error overissuance" means any overissuance caused solely by:

(a) Department action or failure to act when the household properly and accurately reported all the household's circumstances to the department; or

(b) For households determined categorically eligible under WAC 388-49-180(1), department action or failure to act which resulted in the household's improper eligibility for public assistance, provided a claim can be calculated based on a change in net food stamp income and/or household size.

(3) "Administrative law judge" means an employee of the office of administrative hearings empowered to preside over adjudicative proceedings.

(4) "Aid to families with dependent children (AFDC) program" means the federally funded public assistance program for dependent children and their families authorized under Title IV-A of the Social Security Act.

(5) "Allotment" means the total value of coupons a household is certified to receive during a calendar month.

(6) "Application process" means the filing and completion of an application form, interview or interviews, and verification of certain information.

(7) "Authorized representative" means an adult non-household member sufficiently aware of household circumstances designated, in writing, by the head of the household, spouse, or other responsible household member to act on behalf of the household.

(8) "Beginning months" means the first month the household is eligible for benefits, and the month thereafter. The first beginning month cannot follow a month in which a household was certified eligible to receive benefits.

(9) "Benefit level" means the total value of food stamps a household is entitled to receive based on household income and circumstances.

(10) "Boarder" means an individual residing with the household, except a person described under WAC 388-49-190 (2)(a), (b), (c), or (d), who is a:

(a) Person paying reasonable compensation to the household for lodging and meals; or

(b) Foster child.

(11) "Budget month" means the first month of the monthly reporting cycle; the month for which the household reports their circumstances.

(12) "Certification period" means definite period of time within which the household has been determined eligible to receive food stamps.

(13) "Child" means someone seventeen years of age or younger, and under parental control.

(14) "Collateral contact" means oral contact in person or by telephone with someone outside of the household to confirm the household's circumstances.

(15) "Commercial boarding home" means an enterprise offering meals and lodging for compensation with the intent of making a profit.

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

(17) "Dependent care deduction" means costs incurred by a household member for care provided by a nonhousehold member when the care is necessary for a household member to seek, accept, or continue employment, or attend training or education preparatory to employment.

(18) "Destitute household" means a household with a migrant or seasonal farmworker with little or no income at the time of application and in need of immediate food assistance.

(19) "Disabled person" means a person who meets one of the following criteria:

(a) Receives Supplemental Security Income (SSI) under Title XVI of the Social Security Act;

(b) Receives disability or blindness payments under Titles I, II, XIV, or XVI of the Social Security Act;

(c) Is a veteran:

(i) With service-connected or nonservice-connected disability rated or paid as total under Title 38 of the United States Code (USC); or

(ii) Considered in need of regular aid and attendance, or permanently housebound under Title 38 of the USC.

(d) Is a surviving spouse of a veteran and considered in need of aid and attendance, or permanently housebound; or a surviving child of a veteran and considered permanently incapable of self-support under Title 38 of the USC;

(e) A surviving spouse or child of a veteran and entitled to compensation for service-connected death or pension benefits for a nonservice-connected death under Title 38 of the USC and has a disability considered permanent under section 221(i) of the Social Security Act;

(f) Receives disability retirement benefits from a federal, state, or local government agency, because of a disability considered permanent under section 221(i) of the Social Security Act;

(g) Receives an annuity payment as part of the Railroad Retirement Act of 1974 under:

(i) Section 2 (a)(1)(iv) and is determined eligible to receive Medicare by the Railroad Retirement Board; or

(ii) Section 2 (a)(1)(v) and is determined disabled based on the criteria under Title XVI of the Social Security Act.

(h) Is a recipient of disability-related medical assistance under Title XIX of the Social Security Act.

(20) "Documentary evidence" means written confirmation of a household's circumstances.

(21) "Documentation" means the process of recording the source, date, and content of verifying information.

(22) "Elderly person" means a person sixty years of age or older.

(23) "Eligible food" means, for a homeless food stamp household, meals prepared for and served by an authorized homeless meal provider.

(24) "Entitlement" means the food stamp benefit a household received including a disqualified household member.

(25) "Equity value" means fair market value less encumbrances.

(26) "Expedited services" means providing food stamps within five calendar days to an eligible household which:

(a) Has liquid resources of one hundred dollars or less; and

(b) Has gross monthly income under one hundred fifty dollars; or

(c) Has combined gross monthly income and liquid resources which are less than the household's current monthly rent or mortgage and either the:

(i) Standard utility allowance as set forth in WAC 388-49-505; or

(ii) Actual utility costs, whichever is higher; or

(d) Includes all members who are homeless individuals; or

(e) Includes a destitute migrant or seasonal farmworker.

(27) "Fair hearing" means an adjudicative proceeding in which the department hears and decides an applicant/recipient's appeal from the department's action or decision.

(28) "Fair market value" means the value at which a prudent person might sell the property if the person was not forced to sell.

(29) "Food coupon" means food stamps and the two terms are interchangeable.

(30) "Food coupon authorization (FCA) card" means the document issued by the local or state office to authorize the allotment the household is eligible to receive.

(31) "Food stamp monthly reporting cycle" means the three-month reporting cycle consisting of the budget month, the process month, and the payment month.

(32) "Gross income eligibility standard" means one hundred thirty percent of the federal poverty level for the forty-eight contiguous states.

(33) "Group living arrangement" means a public or private nonprofit residential setting serving no more than sixteen residents certified by the appropriate state agency under section 1616(e) of the Social Security Act.

(34) "Head of household" means:

(a) The person designated by the household to be named on the case file, identification card, and FCA card;

(b) For employment services or the voluntary quit provision, the household member who is the principal wage earner with the greatest source of earned income in the two months prior to the month of violation, including members not required to register, provided:

(i) The employment involves at least twenty hours per week; and

(ii) The person is not living with a parent or a person fulfilling that role who is:

(A) Registered for work,

(B) Exempt from work registration because of registration in a Title IV-A or IV-C work program of the Social Security Act, as amended, or the receipt of unemployment compensation, or

(C) Employed or self-employed and working a minimum of thirty hours per week, or receiving weekly earnings equal to the federal minimum wage multiplied by thirty hours.

(35) "Home visit" means a personal contact at the person's residence by a department employee. The home visit shall be scheduled in advance with the household.

(36) "Homeless individual" means a person lacking a fixed and regular nighttime residence or a person whose primary nighttime residence is a:

(a) Supervised shelter designed to provide temporary accommodations;

(b) Halfway house or similar institution providing temporary residence for persons needing institutionalization;

(c) Temporary accommodation in the residence of another person; or

(d) Place not designed for, or ordinarily used as, a regular sleeping accommodation for humans.

(37) "Homeless meal provider" means a public or private nonprofit establishment (e.g., soup kitchen, temporary shelter, mission, or other charitable organizations) feeding homeless persons, approved by division of income assistance (DIA) and authorized by food and nutrition service (FNS).

(38) "Household" means the basic client unit in the food stamp program.

(39) "Household disaster" means when food coupons, food purchased with food coupons, or food coupon authorization cards are destroyed by a natural disaster, such as flood, fire, etc.

(40) "Identification card" means the document identifying the bearer as eligible to receive and use food stamps.

(41) "Inadvertent household error overissuance" means any overissuance caused by either:

(a) Misunderstanding or unintended error by a household;

(i) Not determined categorically eligible under WAC 388-49-180(1); or

(ii) Determined categorically eligible under WAC 388-49-180(1) if a claim can be calculated based on a change in net food stamp income and/or household size; or

(b) Social Security Administration action or failure to take action which resulted in the household's categorical eligibility, if a claim can be calculated based on a change in net food stamp income and/or household size.

(42) "Ineligible household member" means the member excluded from the food stamp household because of:

(a) Disqualification for intentional program violation;

(b) Failure to apply for or provide a Social Security number;

(c) Failure to comply with work requirements as described under WAC 388-49-360;

(d) Status as an ineligible alien;

(e) Status as an ineligible student; or

(f) Failure to sign the application attesting to the member's citizenship or alien status.

(43) "Institution" means any place of residence (private or public) providing maintenance and meals for two or more persons.

(44) "Institution of higher education" means any institution normally requiring a high school diploma or equivalency certificate for enrollment. This includes any two-year or four-year college. Also included is any course in a trade or vocational school that normally requires a high school diploma or equivalency for admittance to the course.

(45) "Intentional program violation," after August 8, 1983, means intentionally:

(a) Making a false or misleading statement;

(b) Misrepresenting, concealing, or withholding facts;

or

(c) Committing any act constituting a violation of the Food Stamp Act, the food stamp program regulations, or any state statute relating to the use, presentation, transfer, acquisition, receipt, or possession of food stamp coupons or FCAs.

Intentional program violation which ended before August 8, 1983, consists of any action by a person or persons to knowingly, willfully, and with deceitful intent:

(a) Make a false statement to the department, either orally or in writing, to obtain benefits to which the household is not entitled;

(b) Conceal information to obtain benefits to which the household is not entitled;

(c) Alter authorization cards or coupons to obtain benefits to which the household is not entitled;

(d) Use coupons to buy expensive or conspicuous non-food items;

(e) Use or possess improperly obtained coupons or authorization cards; and

(f) Trade or sell coupons or authorization cards.

(46) "Intentional program violation overissuance" means any overissuance caused by an intentional program violation.

(47) "Live-in attendant" means a person residing with a household to provide medical, housekeeping, child care, or other similar personal services.

(48) "Lump sum" means money received in the form of a nonrecurring payment including, but not limited to:

(a) Income tax refunds,

(b) Rebates,

(c) Retroactive payments, and

(d) Insurance settlements.

(49) "Mandatory fees" means those fees charged to all students within a certain curriculum. Transportation, supplies, and textbook expenses are not uniformly charged to all students and are not considered as mandatory fees.

(50) "Migrant farmworker" means a person working in seasonal agricultural employment who is required to be absent overnight from the person's permanent residence.

(51) "Net income eligibility standard" means the federal income poverty level for the forty-eight contiguous states.

(52) "Nonhousehold member" means a person who is not considered a member of the food stamp household such as a:

(a) Roomer;

(b) Live-in attendant; or

(c) Person who does not purchase and prepare meals with the food stamp household.

(53) "Nonstriker" means any person:

(a) Exempt from work registration the day prior to the strike for reasons other than their employment;

(b) Unable to work as a result of other striking employees, e.g., truck driver not working because striking newspaper pressmen not printing output;

(c) Not part of the bargaining unit on strike but not wanting to cross picket line due to fear of personal injury or death; or

(d) Unable to work because workplace is closed to employees by employer in order to resist demands of employees, e.g., a lockout.

(54) "Offset" means reduce restored benefits by any overissue (claim) owed by the household to the department.

(55) "Overissuance" means the amount of coupons issued to a household in excess of the amount eligible to receive.

(56) "Overpayment" means the same as "overissuance" and shall be the preferred term used in procedures.

(57) "Payment month" means the third month of the budget cycle; the month in which the food stamp allotment is affected by information reported on the monthly report for the budget month.

(58) "Period of intended use" means the period for which an FCA or food coupon is intended to be used.

(59) "Post secondary education" means a school not requiring a high school diploma or equivalency for enrollment. This includes trade school, vocational schools, business colleges, beauty schools, barber schools, etc.

(60) "Process month" means the second month of the monthly reporting cycle; the month in which the monthly report is to be returned by the household to the local office.

(61) "Project area" means the county or similar political subdivision designated by the state as the administrative unit for program operations.

(62) "Prospective budgeting" means the computation of a household's income based on income received or anticipated income the household and department are reasonably certain will be received during the month of issuance.

(63) "Prospective eligibility" means the determination of eligibility based on prospective budgeting rules and other household circumstances anticipated during the month of issuance.

(64) "Quality control review" means a review of a statistically valid sample of cases to determine the accuracy of budgeting, issuance, denial, withdrawal, and termination actions taken by the department.

(65) "Quality control review period" means the twelve-month period from October 1 of each calendar year through September 30 of the following calendar year.

(66) "Recent work history" means receipt of earned income in one of the two months prior to the payment month.

(67) "Recertification" means approval of continuing benefits based on an application submitted prior to the end of the current certification period.

(68) "Resident of an institution" means a person residing in an institution that provides the person with the majority of meals as part of the institution's normal service.

(69) "Retrospective budgeting" means the computation of a household's income for a payment month based on actual income received in the corresponding budget month of the monthly reporting cycle.

(70) "Retrospective eligibility" means the determination of eligibility based on retrospective budgeting rules and other circumstances existing in the budget month.

(71) "Roomer" means a person to whom a household furnishes lodging, but not meals, for compensation.

(72) "Seasonal farmworker" means a person working in seasonal agricultural employment who is not required to be absent overnight from the person's permanent residence.

(73) "Shelter costs" means:

(a) Rent or mortgage payments plus taxes on a dwelling and property;

(b) Insurance on the structure only, unless the costs for insuring the structure and its contents cannot be separated;

(c) Assessments;

(d) Utility costs such as heat and cooking fuel, cooling and electricity, water, garbage, and sewage disposal;

(e) Standard basic telephone allowance;

(f) Initial installation fees for utility services; and

(g) Continuing charges leading to shelter ownership such as loan repayments for the purchase of a mobile home including interest on such payments.

(74) "Shelter for battered women and children" means a public or private nonprofit residential facility serving battered women and children.

(75) "Sibling" means a natural, adopted, half brother or stepbrother or natural, adopted, half sister or stepsister.

(76) "Sponsor" means a person who executed an affidavit of support or similar agreement on behalf of an alien as a condition of the alien's admission into the United States as a permanent resident.

(77) "Sponsored alien" means an alien lawfully admitted for permanent residence who has an affidavit of support or similar agreement executed by a person on behalf of the alien as a condition of the alien's admission into the United States as a permanent resident.

(78) "Spouse" means:

(a) Married under applicable state law; or

(b) Living with another person and holding themselves out to the community as husband and wife by representing themselves as such to relatives, friends, neighbors, or trades people.

(79) "Striker" means any person:

(a) Involved in a strike or concerted stoppage of work by employees including stoppage due to expiration of a collective bargaining agreement; or

(b) Involved in any concerted slowdown or other concerted interruption of operations by employees.

(80) "Student" means any person:

(a) At least eighteen but less than sixty years of age,

(b) Physically and mentally fit for employment, and

(c) Enrolled at least half time in an institution of higher education.

(81) "Systematic alien verification for entitlements (SAVE)" means the immigration and naturalization service (INS) program whereby the department may verify the validity of documents provided by aliens applying for food stamp benefits by obtaining information from a central data file.

(82) "Temporary disability" means a nonpermanent physical illness or injury that incapacitates beyond the initial issuance month.

(83) "Thrifty food plan" means the diet required to feed a family of four as determined by the United States Department of Agriculture. The cost of the diet is the basis for all allotments, taking into account the household size adjustments based on a scale.

(84) "Under parental control" means living with the parent or any adult other than the parent. A person is not under parental control when that person is:

(a) Receiving an AFDC grant as the person's own payee;

(b) Receiving, as the person's own payee, gross income equal to, or exceeding, the AFDC grant payment standard as described under WAC 388-29-100 (3)(b); or

(c) Married.

(85) "Vehicle" means any device for carrying or conveying persons and objects, including travel by land, water, or air.

(86) "Vendor payment" means money payments not owed or payable directly to a household, but paid to a third party for a household expense, such as:

(a) A payment made in money on behalf of a household whenever another person or organization makes a direct payment to either the household's creditors or a person or organization providing a service to the household; or

(b) Rent or mortgage payments, made to landlords or mortgagees by the department of housing and urban development or by state or local housing authorities.

(87) "Verification" means the use of documentation or third-party information to establish the accuracy of statements on the application. Sources of verification shall be documentary evidence, collateral contacts, or a home visit.

[Statutory Authority: RCW 74.04.510, 91-16-065 (Order 3224), § 388-49-020, filed 8/1/91, effective 9/1/91; 91-10-096 (Order 3170),

§ 388-49-020, filed 5/1/91, effective 6/1/91; 90-12-057 (Order 3015), § 388-49-020, filed 5/31/90, effective 7/1/90; 89-18-035 (Order 2854), § 388-49-020, filed 8/29/89, effective 9/29/89; 89-07-001 (Order 2770), § 388-49-020, filed 3/2/89. Statutory Authority: RCW 74.04.050. 88-16-081 (Order 2662), § 388-49-020, filed 8/2/88. Statutory Authority: RCW 74.04.510. 88-08-080 (Order 2618), § 388-49-020, filed 4/6/88. Statutory Authority: RCW 74.04.050. 88-02-031 (Order 2575), § 388-49-020, filed 12/31/87.]

WAC 388-49-030 Filing an application. (1) The department shall:

- (a) Make application forms readily available; and
- (b) Provide an application to any person requesting one.
- (2) A person shall file an application by submitting the form to the CSO:
 - (a) In person;
 - (b) By mail; or
 - (c) Through an authorized representative.
- (3) A household consisting of SSI members may file an application at the Social Security Administration district office (SSADO).
- (4) A person has a right to file an application on the same day he or she contacts the department.
- (5) The department shall accept an incomplete application filed by a responsible household member or authorized representative who:
 - (a) Completes the name and address; and
 - (b) Signs the application.
- (6) The department shall require one of the following persons to sign the application attesting to citizenship or alien status for all household members:
 - (a) An adult household member; or
 - (b) The applicant, in the absence of an adult household member.

[Statutory Authority: RCW 74.04.510. 91-14-081 (Order 3194), § 388-49-030, filed 7/1/91, effective 8/1/91; 89-07-001 (Order 2770), § 388-49-030, filed 3/2/89. Statutory Authority: RCW 74.04.050. 88-02-031 (Order 2575), § 388-49-030, filed 12/31/87.]

WAC 388-49-040 Supplemental security income (SSI) households. (1) The department shall complete certification of food stamp applications processed by the Social Security Administration district office (SSADO) no later than thirty days after the date:

- (a) A household consisting solely of persons eligible for or applying for SSI files an application at the SSADO; or
- (b) An applicant is released from a public institution when the person filed an application before release.
- (2) The department shall begin the expedited service time frame on the date the:
 - (a) Correct community services office (CSO) receives the application of a noninstitutionalized SSI household; or
 - (b) Applicant is released from a public institution.
- (3) The department shall complete recertification when a SSI/food stamp household files a timely request through the SSADO.

[Statutory Authority: RCW 74.04.510. 91-14-082 (Order 3195), § 388-49-040, filed 7/1/91, effective 8/1/91. Statutory Authority: RCW 74.04.050. 88-02-031 (Order 2575), § 388-49-040, filed 12/31/87.]

WAC 388-49-080 Expedited service. (1) The department shall provide expedited service for applying households when the household:

- (a) Has liquid resources of one hundred dollars or less; and
- (b) Has gross monthly income under one hundred fifty dollars; or
- (c) Has combined gross monthly income and liquid resources which are less than the household's current monthly rent or mortgage and either the:
 - (i) Standard utility allowance as set forth in WAC 388-49-505; or
 - (ii) Actual utilities costs, whichever is higher; or
- (d) Includes all members who are homeless individuals; or
- (e) Includes a destitute migrant or seasonal farm worker whose liquid resources do not exceed one hundred dollars.

(2) The department shall provide food stamps to households eligible for expedited service by the end of the fifth calendar day following the date the application was filed.

(3) The department shall provide food stamps to residents of drug and alcohol treatment centers and group living arrangements eligible for expedited service, by the fifth calendar day following the date of application.

(4) When certifying a household eligible for expedited service, the department shall:

- (a) Verify the applicant's identity through readily available documentary evidence, or if this is unavailable, through a collateral contact; or
- (b) Verify the identity of the authorized representative who applies on behalf of the household; and
- (c) Make a reasonable effort to complete verification as described in WAC 388-49-110 within the expedited processing standards;
- (d) Require the applicant to register for work unless exempt or the authorized representative is applying for the household;
- (e) Attempt to register other nonexempt household members for work without delaying expedited benefits;
- (f) Issue benefits within five calendar days for expedited service; and
- (g) Assist the household in obtaining necessary verification.

(5) The department shall certify an expedited service household:

- (a) Based on certification periods in WAC 388-49-160 when all necessary verification is provided; or
- (b) For one month when necessary verification is postponed; or
- (c) For the month of application and the second month when:
 - (i) Verification is postponed; and
 - (ii) The application is received on or after the sixteenth of the month.

(6) The department shall, after postponed verification is received for cases certified under subsection (5)(c), issue the second month's benefits:

- (a) Within five working days from receipt of the verification; or

(b) The first working day of the second month, whichever is later.

(7) There is no limit to the number of times a household may receive expedited service provided:

(a) The household completes the postponed verification requirements, or

(b) The household was certified under the thirty-day processing standard since the last expedited certification.

(8) The department shall conduct an out-of-office interview and complete the application process within the expedited service standard when a household is entitled to expedited service and a waiver of the office interview.

[Statutory Authority: RCW 74.04.510. 91-12-043 (Order 3187), § 388-49-080, filed 6/4/91, effective 7/5/91; 90-23-072 (Order 3097), § 388-49-080, filed 11/20/90, effective 12/21/90; 90-12-055 (Order 3013), § 388-49-080, filed 5/31/90, effective 7/1/90. Statutory Authority: RCW 74.04.050. 88-02-031 (Order 2575), § 388-49-080, filed 12/31/87.]

WAC 388-49-120 Application disposition. (1) The department shall provide a household which completes the initial application process an opportunity to participate no later than thirty days following the date the application was filed.

(2) The department shall consider the date the application is filed as the date the:

(a) Application is received in the correct community services office (CSO) except for conditions described under subsection (2)(b) and (c) of this section; or

(b) Application is received in the Social Security Administration District Office (SSADO) from a noninstitutionalized household consisting solely of persons applying, or eligible, for Supplemental Security Income (SSI); or

(c) Applicant is released from a public institution when the person applied for SSI and food stamps through the SSADO before release.

(3) The department shall send a written approval or denial notice to all applicants as soon as a determination of eligibility and benefit level is made based on documentary evidence provided by the applicant. Such written notice shall be issued no later than thirty days after the date the application is filed.

(4) The department shall send a written denial notice on the thirtieth day after the date the application is filed when documentary evidence is not provided to make an eligibility determination.

(5) The department shall send the denial notice on the last working day before the thirtieth day when the thirtieth day falls on a weekend or a holiday.

(6) The department shall delay the written notice until the thirtieth day when the household has been denied food stamps with an eligibility decision pending for AFDC or SSI.

(7) The household may voluntarily withdraw the application any time before the eligibility determination.

[Statutory Authority: RCW 74.04.510. 91-14-082 (Order 3195), § 388-49-120, filed 7/1/91, effective 8/1/91. Statutory Authority: RCW 74.04.050. 88-02-031 (Order 2575), § 388-49-120, filed 12/31/87.]

WAC 388-49-190 Household concept. (1) The department shall consider the following as households:

(a) A person living alone;

(b) A person living with others and purchasing and preparing meals separate and apart from the others;

(c) A group of persons who live together and purchase and prepare meals together;

(d) A permanently disabled, elderly person unable to prepare meals provided the:

(i) Person's spouse shall be included in the household; and

(ii) Income of other individuals, except the person's spouse, living with the person does not exceed one hundred sixty-five percent of the poverty level.

(e) A person who is the parent of a child seventeen years of age or younger, along with that person's child and spouse, if the person and the person's child are:

(i) Living with the person's parent or sibling, and

(ii) Purchasing and preparing meals separate from the parent or sibling.

(f) A person who is a parent or sibling living with the person described in WAC 388-49-190 (1)(e) or (h);

(g) A person living with the person's natural, adoptive, or stepchild, or the child living with parents when one parent is:

(i) Elderly or disabled, and

(ii) Purchasing and preparing meals separate from the child.

(h) A person, living with a sibling, who is:

(i) Elderly or disabled, and

(ii) Purchasing and preparing meals separate from the sibling.

(2) The department shall not grant separate household status to:

(a) A child seventeen years of age or younger, and under parental control of a member of the household;

(b) A parent living with the parent's natural, adoptive, or stepchild, or the child living with the parent unless the child and parent qualify as separate households as described under WAC 388-49-190 (1)(d), (e), (f), or (g);

(c) A spouse of a household member;

(d) Siblings unless they qualify as separate households as described under WAC 388-49-190 (1)(d), (e), (f), or (h);

(e) A boarder.

(3) The department shall consider the following persons living with the household as nonhousehold members who, if otherwise eligible, may qualify as a separate household:

(a) Roomers,

(b) Live-in attendants, or

(c) Persons sharing living quarters with the household who purchase food and prepare meals separately from the household.

(4) The department shall consider the following persons living with the household as ineligible household members:

(a) Persons disqualified for intentional program violation;

(b) Persons disqualified because of noncompliance with work requirements as described under WAC 388-49-360;

(c) Persons who are ineligible aliens;

(d) Persons disqualified for failure to apply for or provide a Social Security number;

(e) Persons who are ineligible students; or

(f) Persons who fail to sign the application attesting to their citizenship or alien status.

[Statutory Authority: RCW 74.04.510. 91-10-098 (Order 3172), § 388-49-190, filed 5/1/91, effective 6/1/91; 90-14-064 (Order 3033), § 388-49-190, filed 6/29/90, effective 8/1/90; 89-07-001 (Order 2770), § 388-49-190, filed 3/2/89. Statutory Authority: RCW 74.04.050. 88-16-081 (Order 2662), § 388-49-190, filed 8/2/88; 88-02-031 (Order 2575), § 388-49-190, filed 12/31/87.]

WAC 388-49-270 Sponsored aliens. (1) The sponsored alien as defined in WAC 388-49-020 and the sponsored alien's spouse are responsible for providing information necessary to determine income and resources of the sponsor and the sponsor's spouse for three years from the sponsored alien's date of entry or admission as a lawful, permanent resident.

(2) The department shall recalculate income and resources when the sponsored alien switches sponsors during a certification period.

(3) The department shall verify:

(a) The income and resources of the sponsor and spouse;

(b) The number of aliens the sponsor agreed to support;

(c) The provision of the Immigration and Nationality Act under which the sponsored alien is admitted;

(d) The sponsored alien's date of entry as a lawful, permanent resident;

(e) The sponsored alien's date and place of birth and alien registration number;

(f) The number of dependents for federal income tax of the sponsor and spouse; and

(g) The name, address, and telephone number of the sponsor.

(4) If verification is not received on a timely basis, the department shall consider the sponsored alien and spouse ineligible household members.

(5) The provisions of this section do not apply to:

(a) An alien participating in the food stamp program as a member of the sponsor's household;

(b) An alien sponsored by an organization;

(c) An alien not required to have a sponsor under the Immigration and Nationality Act; or

(d) An alien required to have a sponsor under the Immigration and Nationality Act but exempted by federal regulations from the provisions of this section.

[Statutory Authority: RCW 74.04.510. 91-16-063 (Order 3225), § 388-49-270, filed 8/1/91, effective 9/1/91. Statutory Authority: RCW 74.04.050. 88-02-031 (Order 2575), § 388-49-270, filed 12/31/87.]

WAC 388-49-310 Citizenship and alien status. (1) The department shall require applicants to sign the application attesting to their citizenship or alien status as described under WAC 388-49-030(6).

(2) The department shall consider applicants failing to meet the requirements of subsection (1) of this section as ineligible household members under WAC 388-49-190(4), 388-49-420(5), and 388-49-480(2).

(3) The department shall consider the following persons residing in the United States eligible for participation in the food stamp program:

(a) A United States citizen; or

(b) An alien lawfully admitted for permanent residence; or

(c) An alien who:

(i) Entered the United States before January 1, 1972, or some later date as required by law; and

(ii) Has continuously maintained residency in the United States since then; and

(iii) Is not ineligible for citizenship but is considered to be lawfully admitted for permanent residence as a result of an exercise of discretion by the attorney general under section 249 of the Immigration and Nationality Act.

(d) An alien who qualified for entry after March 17, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion under sections 203 (a)(7), 207, and 208 of the Immigration and Nationality Act; or

(e) An alien qualified for conditional entry before March 18, 1980, under former section 203 (a)(7) of the Immigration and Nationality Act; or

(f) An alien granted asylum through an exercise of discretion by the attorney general under section 208 of the Immigration and Nationality Act; or

(g) An alien lawfully present in the United States as a result of:

(i) An exercise of discretion by the attorney general for emergent reasons or reasons deemed strictly in the public interest under section 212 (d)(5) of the Immigration and Nationality Act; or

(ii) A grant of parole by the attorney general.

(h) An alien living within the United States for whom the attorney general withheld deportation, under section 243 of the Immigration and Nationality Act, because the attorney general judges the alien is subject to persecution because of race, religion, or political opinion; or

(i) An alien having temporary resident status as a special agricultural worker under section 210 of the Immigration and Nationality Act; or

(j) An aged, blind, or disabled alien admitted for temporary or permanent residence under section 245A of the Immigration and Nationality Act; or

(k) An alien who is not aged, blind, or disabled admitted under section 245A of the Immigration and Nationality Act when:

(i) Temporary or permanent status has been gained; and

(ii) A five-year period has expired.

(4) The household shall provide verification when:

(a) Citizenship is questionable; or

(b) One or more of its members are aliens.

(i) The department shall not contact the immigration and naturalization service to obtain information without the alien's written consent.

(ii) The department shall give the household failing to provide verification the option of:

- (A) Withdrawing the application; or
 - (B) Participating without the alien member.
- (5) An applicant shall be ineligible until:
- (a) Questionable citizenship is verified; or
 - (b) Lawful alien status is verified.

(6) The department shall accept a statement under a penalty of perjury signed by a United States citizen that the applicant is a United States citizen when:

- (a) The applicant cannot produce acceptable citizenship verification; and
- (b) The household can reasonably explain why the verification is not available.

(7) The department shall notify immigration and naturalization services when any household member is ineligible because that person is present in the United States in violation of a known deportation order of the Immigration and Nationality Act.

(8) Lawfully admitted aliens who are ineligible include:

- (a) Alien visitors;
- (b) Tourists;
- (c) Diplomats; and
- (d) Students with temporary status.

[Statutory Authority: RCW 74.04.050, 91-11-019 (Order 3177), § 388-49-310, filed 5/7/91, effective 6/1/91. Statutory Authority: RCW 74.04.510, 89-16-106 (Order 2836), § 388-49-310, filed 8/2/89, effective 9/2/89; 89-07-001 (Order 2770), § 388-49-310, filed 3/2/89. Statutory Authority: RCW 74.04.050, 88-16-085 (Order 2666), § 388-49-310, filed 8/2/88; 88-02-031 (Order 2575), § 388-49-310, filed 12/31/87.]

WAC 388-49-330 Student. (1) A student, as defined under WAC 388-49-020, shall meet one of the following criteria to receive food stamps:

(a) Work and receive payment for a minimum of twenty hours per week. A self-employed student's minimum weekly earnings shall at least be equal to the federal minimum hourly wage multiplied by twenty hours;

(b) Work and receive money from a federal or state work study program;

(c) Be responsible for the care of a dependent household member five years of age or younger;

(d) Be responsible for the care of a dependent household member at least six years of age, but under twelve years of age, and the department has determined adequate child care is not available;

(e) Receive benefits from the aid to families with dependent children program; or

(f) Attend an institution of higher education through a program under Job Training Partnership Act (JTPA).

(2) Student status begins the first day of the school term.

(3) Student status continues through normal periods of class attendance, vacation, and recess.

(4) Student status is lost when a student:

- (a) Graduates;
- (b) Is suspended;
- (c) Is expelled;
- (d) Drops out; or

(e) Does not intend to register for the next normal school term excluding summer school.

[Statutory Authority: RCW 74.04.510, 91-10-099 (Order 3173), § 388-49-330, filed 5/1/91, effective 6/1/91; 89-16-107 (Order 2837), § 388-49-330, filed 8/2/89, effective 9/2/89. Statutory Authority: RCW 74.04.050, 88-02-031 (Order 2575), § 388-49-330, filed 12/31/87.]

WAC 388-49-410 Resources--Exempt. (1) The department shall exempt the following resources:

(a) An occupied home and surrounding property not separated by intervening property owned by others;

(b) An unoccupied home and surrounding property if the household:

- (i) Is making a good faith effort to sell; or
- (ii) Intends to return to the home and the house is unoccupied due to:

- (A) Employment;
- (B) Training for future employment;
- (C) Illness; or
- (D) Uninhabitability due to casualty or natural disaster.

(c) A piece of land where the household is building or intends to build a permanent home, if the household does not own another home. The land must not be separated by intervening property owned by others;

(d) Personal effects;

(e) Household goods;

(f) One burial plot per household member;

(g) Cash value of:

- (i) Life insurance policies; and
- (ii) Pension funds.

(h) Vehicles as provided under WAC 388-49-430;

(i) That portion of real or personal property directly related to the maintenance or use of a vehicle excluded under WAC 388-49-430 (1)(a), (b), and (f);

(j) Property annually producing income consistent with its fair market value, even if only used on a seasonal basis;

(k) Rental homes used by household for vacation purposes during the year if the property annually produces income consistent with its fair market value;

(l) Property essential to the employment or self-employment of a household member. Property excluded under this provision because the property is used by a self-employed farmer shall retain its exclusion for one year from the date the household member terminates self-employment from farming;

(m) Resources held separately by a nonhousehold member or an ineligible student;

(n) Indian lands:

(i) Held jointly with the tribe; or

(ii) Sold only with the approval of the Bureau of Indian Affairs.

(o) Resources prorated as income for self-employed persons or eligible students. These funds, if commingled in an account with nonexcluded funds, shall retain their exclusion for the period of time they are prorated as income;

(p) Cash value of resources not accessible to the household;

(q) Funds in a trust and the income produced by that trust, to the extent they are not available;

(r) Resources excluded by express provision of federal law from consideration in the food stamp program;

(s) Installment contracts or agreements for the sale of land or other property when it is producing income consistent with its fair market value;

(t) Value of the property sold under an installment contract;

(u) The value of property held for security if the purchase price is consistent with fair market value;

(v) Real or personal property when:

(i) Secured by a lien as a result of obtaining a business loan; and

(ii) The security or lien agreement prohibits the household from selling the asset or assets.

(w) Governmental payments designated for restoration of a home damaged in a disaster. The household must be subject to legal sanction if the funds are not used as intended;

(x) Energy assistance payments or allowances made under federal, state, or local laws;

(y) Resources of persons residing in shelters for battered women and children if:

(i) The resources are jointly owned with members of the former household; and

(ii) Access to the resources depends on the agreement of the joint owner.

(z) Payments received under the Puyallup Tribe of Indians Settlement Act of 1989, P.L. 101-41, as follows:

(i) Payments from the annuity fund established by P.L. 101-41 made to a Puyallup Tribe member upon reaching twenty-one years of age;

(ii) The investments or purchases made directly with the annuity payment up to the amount from the annuity fund payment; and

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

(2) The department shall continue to exempt a household's funds commingled in an account with nonexempt funds for up to six months from the date the funds are commingled.

(3) The department shall exempt a resource of a household member who receives a supplemental security income (SSI) or aid to families with dependent children (AFDC) grant when:

(a) The resource is exempt by SSI or AFDC rules; and

(b) Such household member's income does not exceed the one-person gross monthly income standard in WAC 388-49-510.

[Statutory Authority: RCW 74.04.510. 91-23-087 (Order 3289), § 388-49-410, filed 11/19/91, effective 12/20/91; 91-10-097 (Order 3171), § 388-49-410, filed 5/1/91, effective 6/1/91; 90-11-004 (Order 2976), § 388-49-410, filed 5/3/90, effective 6/3/90; 89-18-030 (Order 2857), § 388-49-410, filed 8/29/89, effective 9/29/89. Statutory Authority: RCW 74.04.050. 88-16-081 (Order 2662), § 388-49-410, filed 8/2/88. Statutory Authority: RCW 74.04.510. 88-08-081 (Order 2619), § 388-49-410, filed 4/6/88. Statutory Authority: RCW 74.04.050. 88-02-031 (Order 2575), § 388-49-410, filed 12/31/87.]

WAC 388-49-420 Resources--Nonexempt. (1) The department shall consider the following resources nonexempt:

(a) Liquid resources;

(b) Real and personal property not exempted by WAC 388-49-410; and

(c) Money secured in the form of a lump sum.

(2) The value of a nonexempt resource, except for licensed vehicles as specified in WAC 388-49-430, shall be its equity value.

(3) The department shall exempt funds having been commingled in an account with nonexempt funds for more than six months.

(4) The department shall consider resources owned jointly by separate households available in their entirety to each household, unless:

(a) The resource is inaccessible to one of the households, and

(b) Ownership is verified, if questionable.

(5) The department shall consider resources of the following persons as available to the remaining household members:

(a) Ineligible aliens;

(b) Persons disqualified for failure to meet Social Security number requirements;

(c) Persons disqualified for intentional program violation;

(d) Persons disqualified for failure to comply with work requirements as described under WAC 388-49-360; or

(e) Persons who fail to sign the application attesting to their citizenship or alien status.

(6) Excluding one thousand five hundred dollars, the department shall consider resources of an alien sponsor and spouse living together available:

(a) To the household as specified in WAC 388-49-270, for three years following the alien's admission to the United States for permanent residence;

(b) To the extent deemed resources are divided by the number of sponsored aliens applying for or participating in the program, if the alien can demonstrate the sponsor is sponsoring other aliens; and

(c) Until one of the following occurs:

(i) Alien obtains a new sponsor, should the alien lose a sponsor during the three-year limit;

(ii) The three-year period for applying the sponsored alien provisions expires; or

(iii) The sponsor dies.

[Statutory Authority: RCW 74.04.510. 91-22-046 (Order 3277), § 388-49-420, filed 10/31/91, effective 12/1/91; 91-10-097 (Order 3171), § 388-49-420, filed 5/1/91, effective 6/1/91; 90-23-075 (Order 3100), § 388-49-420, filed 11/20/90, effective 12/21/90; 89-07-001 (Order 2770), § 388-49-420, filed 3/2/89. Statutory Authority: RCW 74.04.050. 88-16-081 (Order 2662), § 388-49-420, filed 8/2/88; 88-02-031 (Order 2575), § 388-49-420, filed 12/31/87.]

WAC 388-49-430 Resources--Vehicles. (1) The department shall exclude the entire value of a licensed vehicle if it is:

(a) Used for income-producing purposes over fifty percent of the time it is in use. A vehicle excluded under

this provision because the vehicle is used by a self-employed farmer shall retain its exclusion for one year from the date the household member terminates self-employment from farming;

(b) Annually producing income consistent with its fair market value;

(c) Essential to the employment of a household member, ineligible aliens, or disqualified persons whose resources are considered available to the household. This exclusion applies only if the vehicle is necessary for long distance travel other than daily commuting;

(d) Necessary for subsistence hunting or fishing;

(e) Used as the household's home; or

(f) Necessary to transport one of the following persons who has a temporary or permanent physical disability:

(i) Household member;

(ii) Ineligible alien whose resources are available to the household; or

(iii) Disqualified person whose resources are available to the household.

The exclusion is limited to one vehicle per physically disabled person.

(2) The department shall exclude the entire value of unlicensed vehicles:

(a) Driven by Indian tribal members on those reservations not requiring vehicle licensing; and

(b) Meeting one of the provisions in subsection (1) of this section.

(3) The department shall continue the exclusions described in subsection (1) and (2) of this section when the vehicle is not in use because of temporary unemployment.

(4) The department shall:

(a) Determine the fair market value of all licensed vehicles not excluded in subsections (1) and (2) of this section. Fair market value will be determined by the value of those vehicles as listed in publications written for the purpose of providing guidance to automobile dealers and loan companies; and

(b) Count the fair market value of each vehicle in excess of four thousand five hundred dollars toward the household's resource maximum.

(5) The department shall determine the equity value of all licensed vehicles except:

(a) Those excluded in subsections (1) and (2) of this section;

(b) One licensed vehicle per household regardless of the use of the vehicle; and

(c) Any other licensed vehicle used for:

(i) Transportation to and from employment;

(ii) Seeking employment; or

(iii) Transportation for training or education which is preparatory to employment.

(6) The department shall count the equity value of licensed and unlicensed vehicles not excluded in subsections (1), (2), and (5) of this section toward the household's maximum allowable resource limit.

(7) The department shall consider only the greater amount as a resource if the vehicle has:

(a) A countable fair market value in excess of four thousand five hundred dollars; and

(b) A countable equity value.

[Statutory Authority: RCW 74.04.510, 91-16-064 (Order 3226), § 388-49-430, filed 8/1/91, effective 9/1/91; 89-18-030 (Order 2857), § 388-49-430, filed 8/29/89, effective 9/29/89. Statutory Authority: RCW 74.04.050, 88-02-031 (Order 2575), § 388-49-430, filed 12/31/87.]

WAC 388-49-470 Income—Exclusions. (1) The department shall exclude the following income:

(a) Money withheld from an assistance payment, earned income, or other income source used to repay a prior overpayment from that same income source;

(b) Income specifically excluded by any federal statute from consideration as income in the food stamp program;

(c) The earned income of children who are:

(i) Members of the household;

(ii) Seventeen years of age or under; and

(iii) Attending school at least half time.

(d) Infrequent or irregular income received during a three-month period that:

(i) Cannot be reasonably anticipated as available; and

(ii) Shall not exceed thirty dollars for all household members.

(e) Loans, including those from private individuals and commercial institutions, other than educational loans where repayment is deferred;

(f) Nonrecurring lump sum payments;

(g) The cost of producing self-employment income;

(h) Financial aid received under Title IV of the Higher Education Act designated by the school for:

(i) Tuition;

(ii) Fees, including equipment and material;

(iii) Books;

(iv) Supplies;

(v) Transportation; and

(vi) Miscellaneous personal expenses, including dependent care, determined by the institution.

(i) Other federal financial aid designated by the school for:

(i) Tuition; and

(ii) Mandatory fees.

(j) Nonfederal financial aid designated by the school for:

(i) Tuition and mandatory fees at any school beyond high school or a school at any level for the physically or mentally handicapped; and

(ii) Other earmarked educational expenses such as transportation, supplies, textbooks, and dependent care.

(k) Reimbursements for past or future expenses to the extent the reimbursements do not:

(i) Exceed the actual expense; and

(ii) Represent a gain or benefit to the household.

(l) Any gain or benefit not in money;

(m) Vendor payments as defined in WAC 388-49-020;

(n) Money received and used for the care and maintenance of a third-party beneficiary who is not a household member;

(o) Supplemental payments or allowances made under federal, state, or local laws for the purpose of offsetting increased energy costs;

(p) Energy allowances included in AFDC, continuing general assistance, and refugee assistance grants.

Number in Grant Assistance Unit	Energy Exclusion
1	\$ 36
2	47
3	56
4	67
5	77
6	87
7	101
8 or more	111

(q) Support payments specified by the support court order or other legally binding written support or alimony agreement to go directly to a third-party beneficiary rather than to the household;

(r) Support payments not required by the support court order or other legally binding written support or alimony agreement paid directly to a third party rather than to the household;

(s) Payments from the individual and family grant program;

(t) Public assistance payments:

- (i) Over and above the regular warrant amount;
- (ii) Not normally a part of the regular warrant; and
- (iii) Paid directly to a third party on behalf of the household.

(u) From Jobs Training Partnership Act programs:

- (i) Allowances; and
- (ii) Earnings from on-the-job training by household members under parental control and eighteen years of age and younger.

(v) Cash donations based on need:

- (i) Received directly by the household;
- (ii) From one or more private, nonprofit, charitable organizations; and
- (iii) Not exceeding three hundred dollars in any federal fiscal year quarter.

(w) Earned income credit; and

(x) Federal census bureau wages earned:

- (i) During the 1990 Federal Census Demonstration Project; and
- (ii) By a temporary census worker eligible for this exclusion.

(2) When a child's earnings or amount of work performed cannot be differentiated from the earnings or work performed by other household members, the department shall:

- (a) Prorate the earnings equally among the working members; and
- (b) Exclude the child's pro rata share.

(3) When the intended beneficiaries of a single payment for care and maintenance of a third-party beneficiary include both household members and persons not in the household, the department shall exclude:

(a) Any identifiable portion intended and used for the care and maintenance of the person out of the household; or

(b) If the portions are not readily identified as:

(i) An even pro rata share; or

(ii) The amount actually used for the care and maintenance of the person out of the household, whichever is less.

[Statutory Authority: RCW 74.04.510, 91-06-004 (Order 3141), § 388-49-470, filed 2/21/91, effective 3/24/91; 90-15-028 (Order 3040), § 388-49-470, filed 7/13/90, effective 8/13/90; 89-24-040 (Order 2911), § 388-49-470, filed 12/1/89, effective 1/1/90; 89-11-101 (Order 2800), § 388-49-470, filed 5/24/89; 88-21-096 (Order 2716), § 388-49-470, filed 10/19/88; 88-08-079 (Order 2617), § 388-49-470, filed 4/6/88. Statutory Authority: RCW 74.04.050, 88-02-031 (Order 2575), § 388-49-470, filed 12/31/87.]

WAC 388-49-480 Income--Ineligible household members. (1) The department shall determine eligibility and benefit level for households containing persons disqualified for intentional program violation or persons disqualified for failure to meet work requirements described in WAC 388-49-360 as follows:

(a) The entire income of the disqualified persons shall be considered available to the remaining household members;

(b) The entire household's allowable earned income, standard deduction, medical, dependent care, and excess shelter deduction shall be considered in their entirety; and

(c) The household's coupon allotment shall not be increased as a result of the exclusion of one or more persons.

(2) The department shall determine eligibility and benefit level for households containing persons ineligible because of alien status, disqualification for refusal to obtain or provide a Social Security number, or failure to sign the application attesting to their citizenship or alien status as follows:

(a) A pro rata share of the income of the ineligible persons shall be counted as income to the remaining household members;

(b) The twenty percent earned income deduction shall apply to the ineligible persons' earned income attributed to the household; and

(c) The portion of the household's allowable shelter and dependent care expense which is paid by or billed to the ineligible members shall be divided evenly among all members of the household, providing the ineligible members have income.

(3) The department shall not consider the income of ineligible students.

(4) The department shall exclude ineligible or disqualified household members when determining the household's size for purposes of:

(a) Assigning a benefit level; and

(b) Comparing the household's monthly income to the income eligibility standards.

[Statutory Authority: RCW 74.04.510, 91-15-088 (Order 3209), § 388-49-480, filed 7/23/91, effective 8/23/91; 89-07-001 (Order 2770), § 388-49-480, filed 3/2/89. Statutory Authority: RCW 74.04.050, 88-16-081 (Order 2662), § 388-49-480, filed 8/2/88; 88-02-031 (Order 2575), § 388-49-480, filed 12/31/87.]

WAC 388-49-500 Income--Deductions. (1) The department shall allow the following deductions when computing net income:

(a) A standard deduction of one hundred twenty-two dollars per household per month;

(b) An earned income deduction of twenty percent of gross earned income except as provided in WAC 388-49-640(8);

(c) A dependent care deduction of the actual amount incurred not to exceed one hundred sixty dollars per dependent when care is necessary for a household member to:

(i) Seek, accept, or continue employment; or

(ii) Attend training or education preparatory to employment.

(d) A deduction for nonreimbursable monthly medical expenses over thirty-five dollars incurred by an elderly or disabled household member;

(e) Shelter costs in excess of fifty percent of the household's income after deducting the standard, earned income, medical, and dependent care deductions. The shelter deduction shall not exceed one hundred ninety-four dollars; and

(f) An excess shelter deduction for the monthly amount exceeding fifty percent of the household's monthly income after all applicable deductions for households containing an elderly or disabled person.

(2) A household's shelter costs may include:

(a) Costs for a home not occupied because of employment, training away from the home, illness, or abandonment caused by casualty loss or natural disaster shall be allowed if the:

(i) Household intends to return to the home;

(ii) Current occupants, if any, are not claiming shelter costs for food stamp purposes; and

(iii) Home is not being leased or rented during the household's absence.

(b) Charges for the repair of the home substantially damaged or destroyed due to a natural disaster;

(c) The standard utility allowance when a household incurs any separate utility charges for heating or cooling costs. A household may incur a separate utility charge when the household:

(i) Has not yet received a billing for utilities;

(ii) Is billed monthly by the landlord for actual usage as determined through individual metering; or

(iii) Shares residence and utility costs with other persons, in which case the deduction is for the household's prorated share of the standard allowance.

(d) Actual utility costs rather than the standard utility allowance if the household is:

(i) Not entitled to the standard utility allowance; or

(ii) Requesting use of actual utility bills. A monthly telephone standard shall be allowed for households incurring telephone expenses if the household is not entitled to claim the standard utility allowance.

(3) A household may switch between actual utility costs and the standard utility allowance:

(a) At each recertification; and

(b) One additional time during each twelve-month period following the initial certification action.

(4) The department shall provide excess medical or shelter deductions effective with supplemental security income (SSI) eligibility when households:

(a) Become categorically eligible within the time limits specified under WAC 388-49-120 and 388-49-150 after a food stamp application;

(b) Receive food stamps as a nonassistance household until becoming categorically eligible; or

(c) Become categorically eligible after denial of non-assistance food stamps.

(5) The department shall not provide a deduction for that portion of a deductible expense, described under this section, paid by an excluded:

(a) Reimbursement; or

(b) Vendor payment, except for Low Income Home Energy Assistance Act (LIHEAA) payments.

(6) The department shall verify:

(a) Dependent care costs including changes, except in prospective budgeting; and

(b) Medical expenses and the reimbursement amounts resulting in a deduction:

(i) At recertification, if the amount has changed more than twenty-five dollars; and

(ii) On a monthly basis for a household subject to monthly reporting.

(7) If medical reimbursement cannot be verified, the department shall certify the household without allowing the deduction, except in prospective budgeting.

[Statutory Authority: RCW 74.04.510. 91-23-090 (Order 3292), § 388-49-500, filed 11/19/91, effective 12/20/91; 90-23-074 (Order 3099), § 388-49-500, filed 11/20/90, effective 12/21/90; 90-12-054 (Order 3012), § 388-49-500, filed 5/31/90, effective 7/1/90; 89-23-083 (Order 2901), § 388-49-500, filed 11/17/89, effective 12/18/89; 88-23-085 (Order 2726), § 388-49-500, filed 11/18/88; 88-08-078 (Order 2616), § 388-49-500, filed 4/6/88. Statutory Authority: RCW 74.04.050. 88-02-031 (Order 2575), § 388-49-500, filed 12/31/87.]

WAC 388-49-505 Utility allowances. (1) The department shall:

(a) Establish an annualized standard utility allowance for use in calculating shelter costs;

(b) Obtain FNS approval of the methodology used to establish the standard utility allowance;

(c) Establish a separate annualized telephone allowance;

(d) Obtain FNS approval of the methodology used to establish the telephone allowance.

(2) The annual standard utility allowance shall be one hundred and seventy-two dollars.

(3) The monthly telephone standard shall be twenty-five dollars.

[Statutory Authority: RCW 74.04.510. 91-08-013. (Order 3154), § 388-49-505, filed 3/26/91, effective 4/26/91; 89-23-083 (Order 2901), § 388-49-505, filed 11/17/89, effective 12/18/89; 88-23-085 (Order 2726), § 388-49-505, filed 11/18/88. Statutory Authority: RCW 74.04.050. 88-04-042 (Order 2593), § 388-49-505, filed 1/28/88.]

WAC 388-49-510 Income eligibility standards. (1) Categorically eligible households, as described in WAC 388-49-180, are not subject to the provisions of this section.

(2) The department shall determine eligibility on the basis of gross income and net food stamp income except for households in subsection (3) of this section.

(3) The department shall determine eligibility on the basis of net food stamp income for households containing an elderly or disabled member.

(4) The gross and net monthly maximum income standards as established by the department of agriculture are as follows:

Gross Monthly Income Standard

<u>Household Size</u>	<u>Maximum Standard</u>
1	\$ 718
2	962
3	1,207
4	1,452
5	1,697
6	1,942
7	2,187
8	2,431
9	2,676
10	2,921
Each additional person	+ 245

Net Monthly Income Standard

<u>Household Size</u>	<u>Maximum Standard</u>
1	\$ 552
2	740
3	929
4	1,117
5	1,305
6	1,494
7	1,682
8	1,870
9	2,059
10	2,248
Each additional person	+ 189

[Statutory Authority: RCW 74.04.510. 91-23-090 (Order 3292), § 388-49-510, filed 11/19/91, effective 12/20/91; 90-23-074 (Order 3099), § 388-49-510, filed 11/20/90, effective 12/21/90; 89-23-083 (Order 2901), § 388-49-510, filed 11/17/89, effective 12/18/89; 88-23-085 (Order 2726), § 388-49-510, filed 11/18/88. Statutory Authority: RCW 74.04.050. 88-02-031 (Order 2575), § 388-49-510, filed 12/31/87.]

WAC 388-49-520 Prospective income budgeting.

(1) The department shall budget income prospectively for the first two beginning months.

(2) The department shall budget income prospectively for the entire certification period for:

(a) Households in which all adult members are elderly or disabled and do not have:

- (i) Earned income; or
- (ii) Recent work history as defined in WAC 388-49-020(65);
- (b) Migrant households;
- (c) Seasonal farmworker households; and
- (d) Households in which all members are homeless individuals.

(3) The department shall budget the following income prospectively:

- (a) Monthly student financial aid, except for work study;
- (b) Public assistance;
- (c) Supplemental security income (SSI); and
- (d) Income from a new household member for the first two months of participation when the:
 - (i) Household timely reports the new member; and
 - (ii) New member has not received benefits within the last calendar month.

(4) The department shall consider income exclusions and deductions prospectively when budgeting income for households defined in subsections (1) and (2) of this section.

[Statutory Authority: RCW 74.04.510. 91-12-025 (Order 3184), § 388-49-520, filed 5/31/91, effective 7/1/91; 90-17-117 (Order 3051), § 388-49-520, filed 8/21/90, effective 9/21/90. Statutory Authority: RCW 74.04.050. 88-16-082 (Order 2663), § 388-49-520, filed 8/2/88; 88-02-031 (Order 2575), § 388-49-520, filed 12/31/87.]

WAC 388-49-530 Retrospective income budgeting.

The department shall:

(1) Budget income retrospectively in months other than beginning months for all:

- (a) Households except those described in WAC 388-49-520(2); and
- (b) Types of income except those described in WAC 388-49-520(3).

(2) Consider income exclusions and deductions retrospectively when budgeting income for households described in subsection (1) of this section.

(3) Use the household composition as of the last day of the budget month unless a member leaves or enters the household during the process month.

(4) Disregard income received:

- (a) In a beginning month if the income was:
 - (i) From a source no longer providing income to the household; and
 - (ii) Included in the household's prospective budget.
- (b) From a discontinued source when the household reports the discontinuance of that income at least ten days before the start of the payment month for:
 - (i) A nonassistance household member who applies for and begins to receive a public assistance grant; or
 - (ii) A household receiving both public assistance and food stamps.

[Statutory Authority: RCW 74.04.510. 91-12-025 (Order 3184), § 388-49-530, filed 5/31/91, effective 7/1/91. Statutory Authority: RCW 74.04.050. 88-16-082 (Order 2663), § 388-49-530, filed 8/2/88; 88-02-031 (Order 2575), § 388-49-530, filed 12/31/87.]

WAC 388-49-535 Special circumstances--Income budgeting. The department shall:

- (1) Budget additional public assistance payments either prospectively or retrospectively, using only the amount authorized for the month the income is received.
- (2) Annualize and then prorate the following income to determine eligibility and benefit levels in the beginning months if:

(a) Self-employment income is received other than monthly; or

(b) Contract income is received in less than one year.

(c) After the first beginning months, the department shall use actual income received in the corresponding budget month.

(3) When a participating household member establishes a new household:

(a) Remove that member from the prior household; and

(b) Use the method of income budgeting that was in effect in the prior household.

(4) Consider either prospectively or retrospectively over the period the expense is intended to cover, expenses that have been averaged if the household:

(a) Has expenses that fluctuate or are billed less often than monthly; and

(b) Chooses to have the expenses averaged.

(5) When adding or deleting a household member, add or delete that person's income, following change of circumstance rules in WAC 388-49-610.

(6) Consider income exclusions and deductions retrospectively in households having income budgeted both prospectively and retrospectively.

[Statutory Authority: RCW 74.04.510. 91-12-025 (Order 3184), § 388-49-535, filed 5/31/91, effective 7/1/91. Statutory Authority: RCW 74.04.050. 88-16-082 (Order 2663), § 388-49-535, filed 8/2/88.]

WAC 388-49-550 Monthly allotments. (1) The department shall determine the value of the allotment a household receives.

(2) The monthly allotment shall equal the thrifty food plan (TFP) for the household size reduced by thirty percent of the household's net income. The department shall use the monthly allotment standards as established by the food and nutrition service.

<u>Household Size</u>	<u>Thrifty Food Plan</u>
1	111
2	203
3	292
4	370
5	440
6	528
7	584
8	667
9	750
10	833
Each additional member	+ 83

(3) The department shall issue to households, except for households as specified in subsection (4) of this section, a prorated coupon allotment for the number of days remaining from the date of application to the end of the initial month of eligibility.

(a) The allotment shall be based upon a thirty-day month.

(b) No allotment shall be issued for less than ten dollars.

(4) The department shall issue a full month allotment to migrant and seasonal farmworker households applying within thirty days after a prior certification ends.

(5) The department shall determine the value of the monthly allotment a household receives by:

(a) Multiplying the household's net monthly income by thirty percent;

(b) Rounding the product up to the next whole dollar if it ends with one through ninety-nine cents; and

(c) Subtracting the result from the thrifty food plan for the appropriate household size.

(6) One- and two-person households shall receive a minimum monthly allotment of ten dollars except in the initial benefit month when no allotment shall be issued for less than ten dollars.

(7) The department shall issue an identification card to each certified household.

[Statutory Authority: RCW 74.04.510. 91-23-088 (Order 3290), § 388-49-550, filed 11/19/91, effective 12/20/91; 90-23-077 (Order 3102), § 388-49-550, filed 11/20/90, effective 12/21/90; 89-22-132 (Order 2894), § 388-49-550, filed 11/1/89, effective 12/2/89; 89-05-031 (Order 2760), § 388-49-550, filed 2/13/89; 88-23-082 (Order 2728), § 388-49-550, filed 11/18/88. Statutory Authority: RCW 74.04.050. 88-02-031 (Order 2575), § 388-49-550, filed 12/31/87.]

WAC 388-49-600 Notices to households. (1) The department shall notify a certified household of any change:

(a) At least ten days before the change; or

(b) By the date benefits are to be received for a household reporting changes on the monthly report.

(2) The department is not required to provide advance notice when:

(a) The federal or state government makes mass changes;

(b) The department determines all household members have died;

(c) The household moves from the state;

(d) The department restored lost benefits and previously notified the household in writing when the increased allotment would terminate;

(e) The department notified the household at the time of certification that allotments would vary from month to month;

(f) The household's benefits are reduced because a public assistance grant is approved; or

(g) A household member is disqualified for intentional program violation or the benefits of the remaining household members are reduced or terminated to reflect the disqualification of that household member.

[Statutory Authority: RCW 74.04.510. 91-11-087 (Order 3181), § 388-49-600, filed 5/21/91, effective 6/1/91; 90-09-036 (Order 2967), § 388-49-600, filed 4/11/90, effective 5/12/90. Statutory Authority: RCW 74.04.050. 88-02-031 (Order 2575), § 388-49-600, filed 12/31/87.]

WAC 388-49-630 Changes--Reporting requirements. The department shall require a household certified for more than one month and not subject to mandatory monthly reporting to report the following changes within ten days of the date the change becomes known to the household:

(1) Change in the source of income;

(2) Change in the amount of gross monthly income, except for public assistance income;

(3) Change in medical expenses of more than twenty-five dollars;

(4) Change in the household composition, such as the addition or loss of a household member;

(5) Change in residence and resulting change in shelter cost;

(6) The acquisition of licensed vehicles;

(7) The end of a temporary disability when the temporary disability is the reason for exempting the value of a vehicle; and

(8) When nonexempt liquid resources exceed two thousand dollars or three thousand dollars for households with one or more members sixty years of age or older.

[Statutory Authority: RCW 74.04.510, 91-22-045 and 91-24-039 (Orders 3276 and 3276A), § 388-49-630, filed 10/31/91 and 11/27/91, effective 12/1/91 and 2/1/92. Statutory Authority: RCW 74.04.050, 88-02-031 (Order 2575), § 388-49-630, filed 12/31/87.]

WAC 388-49-640 Overissuances. (1) The department shall establish claims and take collection action against households and household members for administrative error, inadvertent household error, or intentional program violation resulting in overissuances except as provided in subsections (3), (10), and (11) of this section.

(2) The department shall establish an overissuance claim against any household:

(a) Receiving more food stamp benefits than it was entitled to receive; or

(b) Containing an adult member who was an adult member of another household receiving more benefits than it was entitled to receive.

(3) The department shall not establish an administrative error claim or an inadvertent household error claim if an overissuance occurred because:

(a) The department failed to ensure the household:

(i) Signed the application form;

(ii) Completed a current work registration form; or

(iii) Was certified in the correct project area.

(b) The household transacted an expired food coupon authorization (FCA) unless the household had altered the FCA.

(4) The department shall hold all persons who were adult members of the household at the time of the overissuance jointly and severally liable for the overissuance.

(a) The department shall establish an overissuance claim and pursue collection action against any or all of these persons.

(b) If the household composition changes, the department may establish an overissuance claim and pursue collection action against any household containing a person who was an adult member of the household receiving the overissuance.

(5) The department shall not collect more than the amount of the overissuance.

(6) The department shall calculate the allotment the household should have been authorized when the department discovers an:

(a) Administrative error or inadvertent household error occurred in the prior twenty-four months; or

(b) Intentional program violation in the prior seventy-two months.

(7) Except as provided in subsection (8) of this section, the amount of the overissuance shall be the difference between:

(a) The monthly allotment actually authorized, and

(b) The monthly allotment the household should have been authorized.

(8) When determining the monthly allotment the household should have been authorized, the department shall not apply the twenty percent earned income deduction:

(a) To that portion of earned income which the household intentionally failed to report;

(b) When the department has determined that the household committed an intentional program violation.

(9) The amount of the household's and/or household member's liability for an overissuance shall be the difference between:

(a) The amount of the overissuance; and

(b) Any lost benefits not previously restored or used as an offset.

(10) The department shall initiate collection action on all inadvertent household or administrative error claims unless:

(a) The claim is collected through offset;

(b) The total amount of the claim is less than thirty-five dollars and the claim cannot be recovered by reducing the household's allotment;

(c) The department cannot locate the liable household; or

(d) The department determines collection action will prejudice an inadvertent household error claim case being referred for possible prosecution or administrative disqualification.

(11) The department shall initiate collection action against the liable household whose member is found to have committed an intentional program violation unless:

(a) The household has repaid the overissuance;

(b) The department cannot locate the household; or

(c) The department determines collection action will prejudice the case against a household member referred for prosecution.

(12) The department shall initiate collection action by providing the household a demand letter.

(13) A household or household member may repay an overissuance except as provided in subsections (14) through (18) of this section by:

(a) A lump sum;

(b) Regular installments under a payment schedule agreed to by the household or household member and the department; and/or

(c) Allotment reductions.

(14) When the allotment reduction is the method of collection, the department shall reduce a currently participating household's allotment to repay an:

(a) Inadvertent household error overissuance by the greater of:

(i) Ten percent of the household's monthly allotment; or

(ii) Ten dollars per month.

(b) Intentional program violation overissuance by the greater of:

(i) Twenty percent of the household's monthly entitlement; or

(ii) Ten dollars per month.

(c) Administrative error overissuance by the amount agreed to by the household.

(15) A household member and/or the department may request the payment schedule be renegotiated.

(16) The department shall ensure the negotiated monthly installment amount is not less than the amount which could be recovered through allotment reduction when:

(a) A current participating household is liable for an inadvertent household error or an intentional program violation; and

(b) An installment payment schedule is the method of collection.

(17) The department shall reduce the allotment to repay an inadvertent household error or an intentional program violation overissuance without additional notice if, after notification of failure to make payment in accordance with a repayment schedule, the household member fails to:

(a) Make the overdue payments; or

(b) Request renegotiation of the payment schedule.

(18) The department shall reduce the household's allotment if:

(a) The household member fails to respond to the demand letter:

(i) Within thirty days of the date the inadvertent household error overissuance notice is mailed; or

(ii) Upon receipt of the intentional program violation overissuance notice or the next business day if received on a nonbusiness day.

(b) The household is liable for an inadvertent household error or an intentional program violation claim.

(19) The department shall suspend collection action when:

(a) Collection action has not been initiated as provided in subsection (10) of this section;

(b) A liable household member cannot be located; or

(c) The cost of further collection action is likely to exceed the amount that can be recovered.

(20) The department may accept offers of compromise for overissuances when:

(a) The department has already established the account receivable for the overissuance and taken steps to recover the overissuance; and

(b) The amount offered approximates the net amount expected to be collected prior to the expiration of the collection period allowed by statute.

(21) The department shall write-off amounts from its account receivable records and release any applicable liens prior to the expiration of the collection period allowed by statute when there is:

(a) No further possibility of collection;

(b) An account receivable balance after payment of an accepted offer of compromise; or

(c) An account receivable balance after a claim has been in suspense for three consecutive years, as provided in subsection (19) of this section.

[Statutory Authority: RCW 74.04.510, 91-22-047 (Order 3278), § 388-49-640, filed 10/31/91, effective 12/1/91; 88-08-039 (Order 2610), § 388-49-640, filed 4/1/88. Statutory Authority: RCW 74.04-.050, 88-02-031 (Order 2575), § 388-49-640, filed 12/31/87.]

Chapter 388-53 WAC

INDIVIDUAL AND FAMILY GRANT PROGRAM-- DISASTER RELIEF

WAC

388-53-010 Purpose.
388-53-050 Eligibility for grants.

WAC 388-53-010 Purpose. The purpose of these rules is to set forth the conditions of eligibility for the individual and family grant (IFG) program under P.L. 93-288, following a presidential declaration of a major disaster in the state. For disasters declared on or after November 23, 1988, the Robert T. Stafford Disaster Relief, Emergency Assistance Act of 1988, and 44 CFR 206.131 provide for IFG grants up to the standard set annually by the Federal Emergency Management Agency (FEMA). Chapter 38.52 RCW places responsibility for determining eligibility standards with the department of social and health services. Responsibility for administration of disaster assistance rests with the division of emergency management in the department of community development (DCD). Program administration rules and procedures are contained in chapter 118-33 WAC and in the DCD administrative plan for the IFG program.

[Statutory Authority: RCW 38.52.030, 91-06-006 (Order 3143), § 388-53-010, filed 2/21/91, effective 3/24/91; 87-12-053 (Order 2498), § 388-53-010, filed 6/1/87; 85-14-106 (Order 2256), § 388-53-010, filed 7/3/85; 80-04-039 (Order 1494), § 388-53-010, filed 3/20/80; Order 1104, § 388-53-010, filed 3/11/76.]

WAC 388-53-050 Eligibility for grants. (1) General. In order to qualify for a grant under this section, an individual or family representative shall:

(a) Make application to all applicable governmental disaster programs for assistance:

(i) Meeting a necessary expense or serious need, and be determined not qualified for such assistance; or

(ii) Demonstrating the assistance received does not satisfy the total necessary expense or serious need;

(b) Not have previously received or refused assistance from other means for the specific necessary expense or serious need, or portion thereof, for which application is made. If other benefits applied for have not been received by the IFG application date, IFG may be granted providing the applicant agrees to repay the IFG administrator all duplicate assistance received.

(c) Agree to refund to the state that part of the grant for which assistance from other means is received or is not spent as identified in the grant award document.

(d) Live in an area in which a grant may be authorized.

The Flood Disaster Protection Act of 1973, P.L. 93-234, as amended, imposes certain restrictions on approval of federal financial assistance for acquisition and construction purposes. 44 CFR 206.131 (d)(i), (iii) refines those requirements for the individual and family grant program.

(e) Make application within sixty days following the date on which the major disaster was declared:

(i) Except applications filed after the sixty-day filing period, but within ninety days following the date on which the major disaster was declared shall be reviewed by the assistant director of the division of emergency management to determine whether the late filing was the result of extenuating circumstances or conditions beyond the individual's or family's control. If it is determined good cause existed for late filing, the application shall be accepted. If the determination is not made, the application shall be rejected.

(ii) Except the state may accept applications after ninety days from persons for whom the Small Business Administration (SBA) has processed an application submitted late because of "substantial causes essentially beyond the control of the applicant." The SBA must have declined to approve an adequate loan for reasons that would normally make the applicant eligible for IFG and referred the application to the state IFG administrator. The state must complete all administrative activity for the IFG grant within a two hundred seventy-day period after the disaster declaration.

(iii) Application shall be taken on forms provided by the Federal Emergency Management Agency at times and places the state coordinating officer and the Federal Coordinating Officer make available. An application on the FEMA Disaster Assistance Registration Application form allows the individual or family to apply to all applicable governmental programs available simultaneously.

(f) First apply to participating Small Business Administration (SBA) or Farmers Home Administration (FMHA) offices for loan assistance for repair, replacement, or rebuilding of real or personal property, transportation or other eligible items/services. SBA/FMHA must determine the applicant ineligible, or the assistance from SBA/FMHA must be insufficient, before the applicant can be found eligible for an individual and family grant.

(2) Eligible categories. IFG may provide assistance to meet disaster-related necessary expenses or serious needs by providing essential items or services in the following categories:

(a) Medical or dental.

(b) Housing. For private owner-occupied primary residences, including mobile homes, IFG grants may be authorized to:

(i) Repair, replace, rebuild;

(ii) Provide access;

(iii) Clean or make sanitary;

(iv) Remove debris from residences. Debris removal shall be limited to the minimum required to remove

health hazards or protect against additional residence damage.

(v) Provide minimum measures required to protect residences against the immediate damage threat.

(vi) Move mobile homes to prevent and/or reduce the immediate damage threat. These minimization measures, to comply with the provisions of 44 CFR Part 9 (Floodplain management and protection of wetlands), enable owner-occupants to receive assistance from other means and/or to comply with a community's floodplain management regulation.

(c) Personal property. Grants may be authorized to:

(i) Replace clothing;

(ii) Repair and replace household items, furnishings, or appliances;

(iii) Replace tools, specialized or protective clothing or equipment essential to or a condition of a wage earner's employment;

(iv) Repair, clean, or sanitize, any eligible personal property item; and

(v) Move and store to prevent or reduce the immediate threat of damage.

(d) Transportation. Grants may be authorized to replace, repair, or provide privately-owned vehicles, or provide public transportation. The cost of replacing the vehicle should not exceed fifty percent of the maximum grant, except in the instance of a handicapped person needing special controls.

(e) Funeral expenses. Grants may include funeral and burial (and/or cremation) expenses, less payment from other sources e.g., Social Security, veterans benefits, etc.

(f) Flood insurance requirements. Individuals or families eligible for a grant under this section who live in a flood hazard area (Zone A or V) shall purchase and maintain adequate flood insurance for three years, or as long as they live in the affected area, whichever is less.

(i) Adequate flood insurance for IFG purposes is a policy that covers at least the amount of the grant award.

(ii) The first year's flood insurance premium is an eligible cost and is included in the award. If the same premium provides more than the required coverage, the higher coverage should be obtained.

(iii) Grant recipients required to obtain flood insurance must furnish proof of purchase to the grant coordinating officer.

(g) Estimates. Cost for estimates required for eligibility determinations under the IFG program. Housing and personal property estimates shall be provided by the government. However, an applicant may appeal to the state if the applicant feels the government estimate is inaccurate. The cost of an applicant-obtained estimate to support the appeal is not an eligible cost.

(3) Ineligible categories. Assistance shall not be made available under the IFG program to applicants for any item or service in the following categories.

(a) Business losses, including farm businesses, self-employment and loss of wages;

(b) Improvements or additions to real or personal property;

(c) Landscaping;

(d) Real or personal property used exclusively for recreation;

(e) Financial obligations incurred prior to the disaster; and

(f) Any necessary expense or serious need or portion thereof for which assistance was available from other means but was refused by the individual or family.

(4) Other categories. Should the state determine an individual or family has an expense or need not specifically identified as eligible, the state shall provide a factual summary to the regional director, FEMA, and request a determination.

(5) Item cost standards. Cost standards not set by FEMA for covered property and services may be developed by the IFG administrator using documented current median prices, subject to department review and approval.

[Statutory Authority: RCW 38.52.030. 91-06-006 (Order 3143), § 388-53-050, filed 2/21/91, effective 3/24/91; 87-12-053 (Order 2498), § 388-53-050, filed 6/1/87; 85-14-106 (Order 2256), § 388-53-050, filed 7/3/85; 80-04-039 (Order 1494), § 388-53-050, filed 3/20/80; Order 1104, § 388-53-050, filed 3/11/76.]

Chapter 388-53A WAC

TEMPORARY HOUSING PROGRAM--LIMITED TO GOVERNOR'S REQUEST FOR FEDERAL ASSISTANCE

WAC

388-53A-010 through 388-53A-140 Repealed.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

- 388-53A-010 Purpose. [Statutory Authority: RCW 38.52.030. 79-06-082 (Order 1404), § 388-53A-010, filed 6/1/79.] Repealed by 91-15-087 (Order 3208), filed 7/23/91, effective 8/23/91. Statutory Authority: RCW 38.52.030.
- 388-53A-020 Definitions. [Statutory Authority: RCW 38.52.030. 79-06-082 (Order 1404), § 388-53A-020, filed 6/1/79.] Repealed by 91-15-087 (Order 3208), filed 7/23/91, effective 8/23/91. Statutory Authority: RCW 38.52.030.
- 388-53A-030 Authorization of program. [Statutory Authority: RCW 38.52.030. 79-06-082 (Order 1404), § 388-53A-030, filed 6/1/79.] Repealed by 91-15-087 (Order 3208), filed 7/23/91, effective 8/23/91. Statutory Authority: RCW 38.52.030.
- 388-53A-040 Administrative procedures. [Statutory Authority: RCW 38.52.030. 79-06-082 (Order 1404), § 388-53A-040, filed 6/1/79.] Repealed by 91-15-087 (Order 3208), filed 7/23/91, effective 8/23/91. Statutory Authority: RCW 38.52.030.
- 388-53A-050 Program eligibility. [Statutory Authority: RCW 38.52.030. 79-06-082 (Order 1404), § 388-53A-050, filed 6/1/79.] Repealed by 91-15-087 (Order 3208), filed 7/23/91, effective 8/23/91. Statutory Authority: RCW 38.52.030.
- 388-53A-060 Program eligibility review. [Statutory Authority: RCW 38.52.030. 79-06-082 (Order 1404), § 388-53A-060, filed 6/1/79.] Repealed by 91-15-087 (Order 3208), filed 7/23/91, effective 8/23/91. Statutory Authority: RCW 38.52.030.
- 388-53A-070 Criteria for continued eligibility. [Statutory Authority: RCW 38.52.030. 79-06-082 (Order 1404), § 388-53A-070, filed 6/1/79.] Repealed by 91-15-087 (Order 3208), filed 7/23/91, effective 8/23/91. Statutory Authority: RCW 38.52.030.

- 388-53A-080 Termination of temporary housing. [Statutory Authority: RCW 38.52.030. 79-06-082 (Order 1404), § 388-53A-080, filed 6/1/79.] Repealed by 91-15-087 (Order 3208), filed 7/23/91, effective 8/23/91. Statutory Authority: RCW 38.52.030.
- 388-53A-090 Allocation of funds. [Statutory Authority: RCW 38.52.030. 79-06-082 (Order 1404), § 388-53A-090, filed 6/1/79.] Repealed by 91-15-087 (Order 3208), filed 7/23/91, effective 8/23/91. Statutory Authority: RCW 38.52.030.
- 388-53A-100 Organization and functions. [Statutory Authority: RCW 38.52.030. 79-06-082 (Order 1404), § 388-53A-100, filed 6/1/79.] Repealed by 91-15-087 (Order 3208), filed 7/23/91, effective 8/23/91. Statutory Authority: RCW 38.52.030.
- 388-53A-110 Eligibility determinations. [Statutory Authority: RCW 38.52.030. 79-06-082 (Order 1404), § 388-53A-110, filed 6/1/79.] Repealed by 91-15-087 (Order 3208), filed 7/23/91, effective 8/23/91. Statutory Authority: RCW 38.52.030.
- 388-53A-120 Notification of approval or disapproval. [Statutory Authority: RCW 38.52.030. 79-06-082 (Order 1404), § 388-53A-120, filed 6/1/79.] Repealed by 91-15-087 (Order 3208), filed 7/23/91, effective 8/23/91. Statutory Authority: RCW 38.52.030.
- 388-53A-130 Reconsideration process. [Statutory Authority: RCW 38.52.030. 79-06-082 (Order 1404), § 388-53A-130, filed 6/1/79.] Repealed by 91-15-087 (Order 3208), filed 7/23/91, effective 8/23/91. Statutory Authority: RCW 38.52.030.
- 388-53A-140 State appeal. [Statutory Authority: RCW 38.52.030. 79-06-082 (Order 1404), § 388-53A-140, filed 6/1/79.] Repealed by 91-15-087 (Order 3208), filed 7/23/91, effective 8/23/91. Statutory Authority: RCW 38.52.030.

WAC 388-53A-010 through 388-53A-140 Repealed. See Disposition Table at beginning of this chapter.

Chapter 388-55 WAC REFUGEE ASSISTANCE

WAC

- 388-55-010 Common eligibility conditions.
388-55-040 Refugee medical assistance.

WAC 388-55-010 Common eligibility conditions.

(1) The department shall grant assistance to refugees within the provisions of P.L. 96-212, the Refugee Assistance Program to applicants who provide proof, in the form of documentation issued by Immigration and Naturalization Service (INS), of one of the following statuses:

(a) Admittance from any country having parole status as a refugee asylee or parolee under Section 212 (d)(5) of the Immigration and Naturalization Act (INA);

(b) Admittance from any country as a conditional entrant under Section 203 (a)(7) of the INA;

(c) Admittance from any country as a refugee under Section 207 of the INA;

(d) Granted asylum under Section 208 of the INA;

(e) Admittance with an immigration status that entitled the individual to refugee assistance prior to enactment of the Refugee Act of 1980;

(f) Admittance as an Amerasian immigrant from Vietnam admitted through the orderly departure program,

under section 584 of the Foreign Operations Appropriations Act, incorporated in the FY88 Continuing Resolution P.L. 100-202; and

(g) Admitted for permanent residence, provided the individual previously held one of the statuses described in subsection (1)(a), (b), (c), or (d) of this section.

(2) The department shall transfer eligible refugees to the AFDC, FIP, and/or Medicaid programs retroactively effective October 1, 1977, or as of such date as the refugees qualified for refugee assistance, whichever is later. The department shall regard such refugees as recipients rather than new applicants and shall disregard the recipient's income accordingly.

(3) The department shall determine eligibility for AFDC or Medicaid before determining eligibility for the refugee assistance program for applications from refugees not currently receiving refugee cash assistance and/or medical assistance.

(a) If the applicant is not eligible for AFDC or FIP, then the department shall determine eligibility under the refugee assistance program.

(b) If the applicant is not eligible for Medicaid, then the department shall determine eligibility under the refugee assistance medical program.

(4) The department shall waive requirements of categorical relatedness of federal assistance programs, except for mandatory monthly reporting, for refugee assistance program. Requirements under WAC 388-24-044 apply.

(5) The department shall determine as not eligible for refugee assistance, refugees terminated from the AFDC program because of refusal to comply with eligibility requirements.

(6) Except as specified in subsection (7) of this section, the department shall provide assistance to all refugees, regardless of family composition, at the AFDC monthly standards. The department shall treat income and resources according to AFDC standards. The department shall not consider resources which are unavailable, including property remaining in other countries, in determining eligibility for financial assistance.

(7) Applicants for and recipients of refugee assistance are not eligible for the thirty dollar plus one-third of the remainder exemption from earned income.

(8) The department shall treat the refugee family unit including United States citizen children born in this country, as a single assistance unit under the refugee assistance program under the provisions of WAC 388-24-050.

(9) Beginning October 1, 1991, for new applicants and beginning December 1, 1991, for current recipients, the department shall consider refugees meeting the criteria in this section as eligible for refugee assistance only during the eight-month period beginning the first month the refugee entered the United States.

(10) The department shall not consider full-time students in an institution of higher education eligible for refugee assistance, unless participating in a department-approved job or language training program not to exceed twelve months.

(11) The department shall notify the voluntary agency (VOLAG) sponsoring the refugee when the refugee applies for assistance.

(12) Refugees meeting the criteria in this section are eligible for additional requirements for emergent situations under chapter 388-29 WAC.

[Statutory Authority: RCW 43.20A.550. 91-24-046 (Order 3299), § 388-55-010, filed 11/27/91, effective 12/28/91; 91-01-122 (Order 3120), § 388-55-010, filed 12/19/90, effective 1/19/91; 89-17-029 (Order 2846), § 388-55-010, filed 8/8/89, effective 9/8/89; 89-03-008 (Order 2752), § 388-55-010, filed 1/6/89; 84-13-028 (Order 2111), § 388-55-010, filed 6/13/84; 83-13-069 (Order 1969), § 388-55-010, filed 6/16/83; 82-10-061 (Order 1800), § 388-55-010, filed 5/5/82; 81-08-061 (Order 1630), § 388-55-010, filed 4/1/81; 79-02-025 (Order 1367), § 388-55-010, filed 1/17/79, effective 3/1/79; 78-04-037 (Order 1283), § 388-55-010, filed 3/20/78; Order 1188, § 388-55-010, filed 2/18/77; Order 1173, § 388-55-010, filed 11/24/76; Order 1160, § 388-55-010, filed 10/6/76; Order 1079, § 388-55-010, filed 12/24/75; Order 1041, § 388-55-010, filed 8/7/75.]

WAC 388-55-040 Refugee medical assistance. (1)

A refugee receiving a continuing assistance grant is eligible for medical assistance as specified in WAC 388-82-010(1).

(2) The department shall determine the nonrecipient refugee eligibility for medical care as specified in chapter 388-83 WAC. The department shall base eligibility on medical and financial need only; requirements of categorical relatedness are waived.

(3) The department shall apply WAC 388-55-030(1) in determining the amount of participation in medical costs for refugee medical assistance recipients.

(4) The refugee financial assistance recipient who becomes ineligible because of increased income from employment shall remain eligible for medical assistance for four calendar months beginning with the month of ineligibility provided:

(a) In the case of a single individual assistance unit the individual:

(i) Receives assistance in at least three of the six months immediately preceding the month of ineligibility; and

(ii) Continues employment.

(b) In the case of a multiple individual assistance unit:

(i) The family received assistance in at least three of the six months immediately preceding the month of ineligibility; and

(ii) A member of the family continues employment.

(5) Medical need is not an eligibility factor for subsection (4)(a) or (b) of this section.

(6) Refugee recipients shall have continuing eligibility for financial and medical assistance redetermined at least once in every six months of continuous receipt of assistance.

(7) Effective October 1, 1991, for new applicants and effective December 1, 1991, for current recipients, persons meeting the criteria in this section are eligible for refugee assistance only during the eight-month period beginning in the first month the person entered the United States.

[Statutory Authority: RCW 43.20A.550. 91-24-046 (Order 3299), § 388-55-040, filed 11/27/91, effective 12/28/91; 89-03-008 (Order

2752), § 388-55-040, filed 1/6/89; 83-13-069 (Order 1969), § 388-55-040, filed 6/16/83.]

effective 5/1/71; Regulation 26.74, filed 1/24/64.] Repealed by 91-17-060 (Order 3231), filed 8/20/91, effective 9/20/91. Statutory Authority: RCW 74.08.090.

Chapter 388-62 WAC

REPATRIATED UNITED STATES CITIZENS-- ASSISTANCE

WAC

388-62-020	United States (U.S.) repatriates—Program objectives.
388-62-025	United States (U.S.) repatriates—Definitions.
388-62-035	United States (U.S.) repatriates—Department responsibilities.
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388-62-070	United States (U.S.) repatriates—Eligibility.
388-62-075	United States (U.S.) repatriates—Standards of assistance.
388-62-080	United States (U.S.) repatriates—Resources.
388-62-095	United States (U.S.) repatriates—Assistance payments—Types of grants.
388-62-100	Repealed.
388-62-115	Repealed.
388-62-130	Repealed.
388-62-135	United States (U.S.) repatriates—Care and protection of children.
388-62-155	Repealed.
388-62-160	Repealed.
388-62-165	Repealed.
388-62-170	Repealed.
388-62-190	United States (U.S.) repatriates—Safeguarding information.
388-62-200	United States (U.S.) repatriates—Reimbursement and assignment of claims.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

388-62-050	Persons served. [Regulation 26.30, filed 1/24/64.] Repealed by 91-17-060 (Order 3231), filed 8/20/91, effective 9/20/91. Statutory Authority: RCW 74.08.090.
388-62-100	Payments of assistance—Grants. [Regulation 26.52, filed 1/24/64.] Repealed by 91-17-060 (Order 3231), filed 8/20/91, effective 9/20/91. Statutory Authority: RCW 74.08.090.
388-62-115	Repatriated United States citizens—Duration of assistance. [Order 546, § 388-62-115, filed 3/31/71, effective 5/1/71; Regulation 26.55, filed 1/24/64.] Repealed by 91-17-060 (Order 3231), filed 8/20/91, effective 9/20/91. Statutory Authority: RCW 74.08.090.
388-62-130	Repatriated United States citizens—Welfare services. [Order 546, § 388-62-130, filed 3/31/71, effective 5/1/71; Regulation 26.60, filed 1/24/64.] Repealed by 91-17-060 (Order 3231), filed 8/20/91, effective 9/20/91. Statutory Authority: RCW 74.08.090.
388-62-155	Repatriated United States citizens—Food stamps. [Order 546, § 388-62-155, filed 3/31/71, effective 5/1/71; Regulation 26.71, filed 1/24/64.] Repealed by 91-17-060 (Order 3231), filed 8/20/91, effective 9/20/91. Statutory Authority: RCW 74.08.090.
388-62-160	Repatriated United States citizens—Work incentive program. [Order 546, § 388-62-160, filed 3/31/71, effective 5/1/71; Regulation 26.72, filed 1/24/64.] Repealed by 91-17-060 (Order 3231), filed 8/20/91, effective 9/20/91. Statutory Authority: RCW 74.08.090.
388-62-165	Repatriated United States citizens—Funeral—burial expenses. [Order 969, § 388-62-165, filed 9/13/74; Order 546, § 388-62-165, filed 3/31/71, effective 5/1/71; Regulation 26.73, filed 1/24/64.] Repealed by 91-17-060 (Order 3231), filed 8/20/91, effective 9/20/91. Statutory Authority: RCW 74.08.090.
388-62-170	Repatriated United States citizens—Related social services. [Order 546, § 388-62-170, filed 3/31/71,

WAC 388-62-020 United States (U.S.) repatriates—Program objectives. The purpose of this program is to assist eligible U.S. citizens or their dependents returned or brought to the U.S. from foreign countries to resettle in the U.S. The intent is to provide temporary assistance, as described in this chapter, to eligible repatriates only until other resources become available. Repatriates are required to repay the cost of this assistance to the U.S. government in accordance with their ability.

[Statutory Authority: RCW 74.08.090. 91-17-060 (Order 3231), § 388-62-020, filed 8/20/91, effective 9/20/91; Order 546, § 388-62-020, filed 3/31/71, effective 5/1/71; Regulation 26.10, filed 1/24/64.]

WAC 388-62-025 United States (U.S.) repatriates—Definitions. (1) "Dependent of U.S. citizen," for the purposes of the U.S. repatriates program, is limited to the following:

- (a) An adult repatriated U.S. citizen's:
 - (i) Spouse;
 - (ii) Unmarried minor children, including adopted and stepchildren;
 - (iii) Unmarried adult children with disabilities when dependency is based on the disability; or
 - (iv) Parents.
 - (b) A minor repatriated U.S. citizen's:
 - (i) Spouse;
 - (ii) Parents or grandparents;
 - (iii) Minor siblings.
 - (c) The U.S. citizen's repatriated spouse's:
 - (i) Parents; or
 - (ii) Minor siblings.
- (2) "Repatriate" means the U.S. citizen or the dependent of a U.S. citizen who is without available resources and is returned or brought back from a foreign country to the U.S. because of:
- (a) Destitution of the U.S. citizen; or
 - (b) Illness of the U.S. citizen or the dependent of a U.S. citizen; or
 - (c) War, threat of war, invasion, or similar crisis.

[Statutory Authority: RCW 74.08.090. 91-17-060 (Order 3231), § 388-62-025, filed 8/20/91, effective 9/20/91.]

WAC 388-62-035 United States (U.S.) repatriates—Department responsibilities. (1) The department shall assess the needs of repatriates and develop a plan for the repatriate's reception and resettlement. Effective assessment and planning may require that the department consult with relatives, other supportive persons, or social service agencies. The department may perform any or all of the following activities as part of this responsibility:

- (a) Conduct a social study, before or after the repatriate returns to this country, regarding:
 - (i) Problems induced or aggravated by physical or mental illness;
 - (ii) Possibilities of employment;

(iii) The willingness and ability of relatives or other supportive persons to assist the repatriate;

(iv) Other resources available for self-support; or

(v) If assistance may be needed indefinitely, obtaining assistance in the state of final destination.

(b) Meet the repatriate or repatriates at the port of entry;

(c) Arrange for the repatriate's transportation from the port of entry to final destination if, after social study, this is in the best interests of the repatriate;

(d) Refer repatriates to available employment, retraining, vocational rehabilitation, or medical services;

(e) Assure safeguards for repatriated minors not under the immediate care and protection of a parent or grandparent. Department responsibility for unaccompanied minors shall not end until adequate legal protection is established; and

(f) Inform all persons requesting repatriation assistance that they must agree to repay to the U.S. government the cost of such assistance.

(2) For mentally ill repatriates, the department shall provide related hospitalization and other medical assistance, including involuntary treatment in a mental health hospital, as necessary.

[Statutory Authority: RCW 74.08.090, 91-17-060 (Order 3231), § 388-62-035, filed 8/20/91, effective 9/20/91; Order 969, § 388-62-035, filed 9/13/74; Order 546, § 388-62-035, filed 3/31/71, effective 5/1/71; Regulation 26.21, filed 1/24/64.]

WAC 388-62-050 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-62-070 United States (U.S.) repatriates—Eligibility. (1) To be eligible for assistance under the U.S. repatriates program, a person shall:

(a) Meet the definition of repatriate under WAC 388-62-025; and

(b) Be identified by the U.S. Department of State (U.S. State Department) as returned or brought from a foreign country to the U.S. because of destitution, illness, war, or similar crisis; and

(c) Be without available resources.

(2) In case of war or similar crisis, a person shall be eligible for assistance under the U.S. repatriates program if the U.S. State Department determines that such crisis is the general cause for the return of a U.S. citizen or dependent from a particular foreign country to the U.S. The person shall provide sufficient evidence that they were either:

(a) Brought by special airlift from that foreign country; or

(b) Returned from that foreign country by means other than special airlift after the U.S. State Department had made such determination.

(3) Assistance under the U.S. repatriates program shall be limited to the first ninety days from the date of the repatriate's arrival in the U.S. The department may extend repatriate assistance an additional nine months upon prior approval by the Administration for Children and Families. Approval is based on the repatriate being unable to attain self-support or self-care for reasons such as age, disability, or lack of vocational preparation.

(4) The department shall immediately terminate a repatriate's assistance under the U.S. repatriates program upon the repatriate's receipt of financial benefits under either the Aid to Families with Dependent Children (AFDC) or Supplemental Security Income (SSI) programs.

[Statutory Authority: RCW 74.08.090, 91-17-060 (Order 3231), § 388-62-070, filed 8/20/91, effective 9/20/91; Order 1082, § 388-62-070, filed 12/24/75; Order 546, § 388-62-070, filed 3/31/71, effective 5/1/71; Regulation 26.40, filed 1/24/64.]

WAC 388-62-075 United States (U.S.) repatriates—Standards of assistance. (1) Temporary assistance under the U.S. repatriates program means the department shall provide the repatriate cash assistance at the port of entry, medical care, temporary lodging and meals, transportation to reach final destination, or subsistence and resettlement expenses. The department shall provide a repatriate with social services as needed.

(2) The repatriate's subsistence and resettlement expenses for the first month shall not exceed five hundred and sixty dollars per person. Assistance provided to repatriates after the first month shall be based upon the department's standards for the AFDC program as appropriate for the number of eligible repatriates.

(3) Depending on particular resettlement needs, the department may grant assistance to repatriates:

(a) In their own homes;

(b) For their maintenance in congregate facilities; or

(c) For board and room in hotels or private homes.

(4) Transportation to reach final destination shall mean travel costs for repatriates to return to:

(a) Their place of residence;

(b) The residence of a relative; or

(c) Other place where the repatriates can resettle. The department shall use the least costly and most direct means of transportation unless effective service calls for other accommodations. Transportation of repatriates shall include related travel expenses, such as meals and lodging enroute and assistance with checking, storage, or transportation of personal effects or luggage. The department may also provide the repatriate with sufficient funds for meals and lodging to cover the time period until the repatriate can contact the state or local public assistance agency at their final destination.

(5) The department shall allow repatriates other subsistence and resettlement expenses including:

(a) Communication by phone or telegraph to contact relatives, friends, or former employers to obtain access to resources for self-support;

(b) The cost of a special diet recommended by a physician;

(c) Purchase of restaurant meals;

(d) Housing arrangements to provide adequate accommodations, including housing or utility deposits; and

(e) Essential items of clothing.

(6) The department shall provide a repatriate with medical and hospital care that a physician considers necessary to stabilize or protect the repatriate's physical or mental health. When this state is the repatriate's port of entry and their final destination is in another state,

the department shall only provide medical treatment of acute illness which prevents repatriates from traveling to their final destination where the repatriate can obtain more complete care.

[Statutory Authority: RCW 74.08.090, 91-17-060 (Order 3231), § 388-62-075, filed 8/20/91, effective 9/20/91; Order 969, § 388-62-075, filed 9/13/74; Order 546, § 388-62-075, filed 3/31/71, effective 5/1/71; Regulation 26.41, filed 1/24/64.]

WAC 388-62-080 United States (U.S.) repatriates--Resources. (1) To determine eligibility for the U.S. repatriates program, the department shall only consider those resources immediately available to the repatriate at the time financial assistance is needed. A resource may be considered immediately available when the:

- (a) Value of the resource is ascertainable;
- (b) Resource is under the control of the repatriate; and
- (c) Repatriate can draw upon the resource for maintenance.

(2) Within sixty days after the repatriate's arrival in the U.S., the department shall refer all repatriates who are sixty-five years of age or older, blind, or disabled to the Social Security Administration to apply for SSI benefits.

[Statutory Authority: RCW 74.08.090, 91-17-060 (Order 3231), § 388-62-080, filed 8/20/91, effective 9/20/91; Order 546, § 388-62-080, filed 3/31/71, effective 5/1/71; Regulation 26.42, filed 1/24/64.]

WAC 388-62-095 United States (U.S.) repatriates--Assistance payments--Types of grants. The department's assistance shall be granted in cash, voucher, or warrant to the repatriate or in the repatriate's behalf.

[Statutory Authority: RCW 74.08.090, 91-17-060 (Order 3231), § 388-62-095, filed 8/20/91, effective 9/20/91; Order 546, § 388-62-095, filed 3/31/71, effective 5/1/71; Regulation 26.51, filed 1/24/64.]

WAC 388-62-100 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-62-115 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-62-130 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-62-135 United States (U.S.) repatriates--Care and protection of children. The department shall provide services for the care and protection of unattended repatriate minors. The department shall provide social services or arrange for placement of the repatriate minor in facilities that supplement or substitute for parental care and supervision, as needed, through the child welfare services program. Such services and assistance shall conform to the department's standards for foster home, receiving home, or institutional care. The department shall observe recognized child welfare practices in protecting an unaccompanied repatriate minor.

[Statutory Authority: RCW 74.08.090, 91-17-060 (Order 3231), § 388-62-135, filed 8/20/91, effective 9/20/91; Order 969, § 388-62-135, filed 9/13/74; Order 546, § 388-62-135, filed 3/31/71, effective 5/1/71; Regulation 26.61, filed 1/24/64.]

WAC 388-62-155 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-62-160 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-62-165 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-62-170 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-62-190 United States (U.S.) repatriates--Safeguarding information. (1) The department shall limit use of information obtained about repatriates to the provision of services under or administration of the U.S. repatriates program. Except as noted in subsection (2) of this section, the department shall not disclose the following:

- (a) Names and addresses of repatriates including lists or passenger manifests; or
- (b) Personal information identifying the repatriate, their circumstances or physical or mental health as furnished on applications, reports of investigations, medical reports, or any other department records in any form.

(2) The department may release personal information to another agency from whom the repatriate has requested services when the objective is the protection or advancement of the repatriate's welfare. The department shall base disclosure on:

- (a) A request to the department by the repatriate; or
- (b) Receipt of release of relevant information from the other agency which specifies disclosure of the information will not be made by the other agency.

[Statutory Authority: RCW 74.08.090, 91-17-060 (Order 3231), § 388-62-190, filed 8/20/91, effective 9/20/91; Order 969, § 388-62-190, filed 9/13/74; Order 546, § 388-62-190, filed 3/31/71, effective 5/1/71; Regulation 26.82, filed 1/24/64.]

WAC 388-62-200 United States (U.S.) repatriates--Reimbursement and assignment of claims. (1) The department function with respect to repayment shall be to:

- (a) Explain to the repatriate that assistance received under the U.S. repatriate program is a loan which the repatriate is expected to repay;
- (b) Obtain a signed statement that the repatriate understands the repayment requirement and agrees to make repayment;
- (c) Determine the repatriate's ability to repay;
- (d) Assist the repatriate in developing a repayment plan; or
- (e) Document reasons why repatriate is unable to make repayment; and
- (f) Advise the repatriate repayment shall be made to the U.S. Department of Health and Human Services (HHS).

(2) The department shall consider the repatriate able to repay assistance when income or resources in excess of continuing needs will become available within a reasonable period of time after resettlement. The department shall use one year as a maximum in determining a reasonable period of time for the repatriate to make repayment.

(3) If the department determines the repatriate is able to repay repatriation assistance provided, the department shall:

(a) Notify the repatriate of this determination; and
(b) Assist the repatriate in developing a repayment plan.

(4) When repatriation is terminated, the department shall inform the repatriate:

(a) Of the total amount of repatriation assistance paid to the repatriate or in the repatriate's behalf; and

(b) That the repatriate must remain in contact with HHS until repayment is complete or waived by HHS.

[Statutory Authority: RCW 74.08.090. 91-17-060 (Order 3231), § 388-62-200, filed 8/20/91, effective 9/20/91; Order 969, § 388-62-200, filed 9/13/74; Order 546, § 388-62-200, filed 3/31/71, effective 5/1/71; Regulation 26.90, filed 1/24/64.]

Chapter 388-70 WAC

CHILD WELFARE SERVICES--FOSTER CARE-- ADOPTION SERVICES--SERVICES TO UNMARRIED PARENTS

WAC

388-70-031	Foster parent liability fund.
388-70-032	Period of coverage.
388-70-033	Persons eligible for coverage.
388-70-034	Limits of coverage.
388-70-035	Exclusions.
388-70-036	Subrogation.
388-70-037	Investigation of claims.

WAC 388-70-031 Foster parent liability fund. (1) The state of Washington, department of social and health services, under chapter 283, Laws of 1991, establishes a fund to pay liability claims on behalf of foster parents licensed under chapter 74.15 RCW. The department shall administer this fund and shall pay a foster parent's liability claim subject to available funds, individual claim limits, and eligibility criteria as established under this chapter.

(2) The department's foster parent liability fund shall provide foster parent liability injury and property damage claims made by a:

- (a) Third party;
- (b) Natural parent; or
- (c) Guardian or guardian ad litem.

(3) A foster parent liability coverage shall:

(a) Only apply to an occurrence arising from a foster parent's act or omission in the good faith provision of foster child care and supervision; and

(b) Be subject to all legal limitations on a foster parent's liability.

[Statutory Authority: RCW 74.08.090. 91-24-044 (Order 3297), § 388-70-031, filed 11/27/91, effective 12/28/91.]

WAC 388-70-032 Period of coverage. The department's coverage under the foster parent liability fund shall be effective for claims arising out of occurrences on or after July 1, 1991.

[Statutory Authority: RCW 74.08.090. 91-24-044 (Order 3297), § 388-70-032, filed 11/27/91, effective 12/28/91.]

WAC 388-70-033 Persons eligible for coverage. A person eligible for foster parent liability fund coverage shall be a foster parent licensed by the department or a licensed child placing agency as described under chapter 74.15 RCW.

[Statutory Authority: RCW 74.08.090. 91-24-044 (Order 3297), § 388-70-033, filed 11/27/91, effective 12/28/91.]

WAC 388-70-034 Limits of coverage. (1) The foster parent's liability fund coverage shall be limited to twenty-five thousand dollars per occurrence. "Occurrence" shall be defined for purposes of this WAC as the event precipitating the claim.

(2) The foster parent's claim for a twenty-five thousand dollar limitation per occurrence shall apply regardless of whether there are multiple claims arising from the same occurrence.

(3) For purposes of this section, the department shall consider a liability claim against one or more foster parents occupying the same household as a single occurrence claim.

(4) The department's aggregate coverage of the foster parent liability fund shall be limited to the availability of funds specifically appropriated for the foster parent coverage minus costs associated with administering the coverage.

(5) The department foster parent liability fund shall pay a claim on behalf of a licensed foster parent, within the occurrence and aggregate funding limits, for personal injury or property damage of a third party arising from a foster parent's act or omission in the good faith provision of family foster care and supervision of a foster child.

(6) The department shall not make a payment of claims from this liability fund if the foster parent is not liable to the third party or the foster child's natural parent or guardian because of any:

- (a) Immunities;
- (b) Limitations; or
- (c) Exclusions provided by law.

(7) The department's coverage under this foster parent liability fund shall be in excess of any other available liability insurance.

(8) The department shall not pay a foster parent money from this liability fund unless the foster parent exhausts all proceeds available from another valid and collectible liability insurance.

[Statutory Authority: RCW 74.08.090. 91-24-044 (Order 3297), § 388-70-034, filed 11/27/91, effective 12/28/91.]

WAC 388-70-035 Exclusions. (1) The department's foster parent liability fund shall not pay any liability fund claims arising out of a foster parent's illegal conduct or bad faith acts in providing family foster care.

(2) A foster parent's illegal conduct or bad faith act shall include, but is not limited to any:

(a) Loss arising out of a dishonest, fraudulent, criminal or intentional act or omission;

(b) Loss arising out of licentious, immoral, or sexual behavior;

(c) Actual giving of any alcoholic beverage, which causes or contributes to the intoxication of a foster child, for whatever reason or cause; and

(d) Judgment based on alienation of affection against a foster parent.

(3) The department shall specifically exclude the following from foster parent's liability fund coverage:

(a) A claim based on an occurrence not arising from the family foster care relationship. This exclusion shall include a foster child's act occurring:

(i) As a result of the foster child's visit to or with the natural parent; or

(ii) While temporarily assigned outside the jurisdiction of the foster parent.

(b) A bodily injury or property damage arising out of the operation or use of any motor vehicle, aircraft, or water craft owned by, operated by, rented to, or loaned to any foster parent; or

(c) An injury or damage arising out of an occurrence before July 1, 1991.

[Statutory Authority: RCW 74.08.090. 91-24-044 (Order 3297), § 388-70-035, filed 11/27/91, effective 12/28/91.]

WAC 388-70-036 Subrogation. (1) If the department pays a liability fund claim to a foster parent, the department shall be subrogated to a foster parent's rights of recovery against any person or organization against whom the foster parent may have a legal claim.

(2) The foster parent shall sign and deliver to the department any documents necessary to secure such foster parent's rights of subrogation for the state.

[Statutory Authority: RCW 74.08.090. 91-24-044 (Order 3297), § 388-70-036, filed 11/27/91, effective 12/28/91.]

WAC 388-70-037 Investigation of claims. (1) The department may conduct an appropriate investigation of any foster parent liability fund claim.

(2) The foster parent shall fully cooperate with the department for any liability fund claims filed against the foster parent.

[Statutory Authority: RCW 74.08.090. 91-24-044 (Order 3297), § 388-70-037, filed 11/27/91, effective 12/28/91.]

Chapter 388-76 WAC

ADULT FAMILY HOMES MINIMUM LICENSING REQUIREMENTS

WAC

388-76-030	Definitions.
388-76-040	Application for license.
388-76-087	Inspections.

WAC 388-76-030 Definitions. Those terms in chapter 70.128 RCW shall have the same meaning when used in this chapter except as otherwise provided herein.

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(1) "Abuse" means an act of physical or mental mistreatment or injury, harming or threatening a person through action or inaction by another individual.

(a) "Exploitation" means the illegal or improper use of a vulnerable adult or the adult's resources for another person's profit or advantage.

(b) "Neglect" means a pattern of conduct resulting in deprivation of care necessary to maintain minimum physical and mental health.

(2) "Adult dependent person" means a person eighteen years of age or older found legally incompetent under chapter 11.88 RCW or found disabled to such a degree under this chapter that protection is needed.

(3) "Adult family home" means a regular family abode of a person providing personal care, room, and board to more than one, but not more than four, adults not related by blood or marriage to the person or persons providing the services; except, a maximum of six adults may be permitted if the department determines the home is of adequate size and the home and provider are capable of meeting standards and qualifications as provided for in law and this chapter.

(4) "Adult in need of personal care" means a person eighteen years of age or older who, because of developmental disability or physical or mental disability requires supervision and assistance in personal care services.

(5) "Ambulatory resident" means a resident physically and mentally capable of walking unaided or capable of independent mobility or transfer with the use of a cane, crutches, walker, wheelchair, artificial limb, or other assistive device. A resident is considered nonambulatory when bedridden, immobile, unable to walk or move without assistance from another person, or unable to independently transfer.

(6) "Applicant" means a person who completes an adult family home license application.

(7) "Bedroom" means a living space set apart by floor-to-ceiling walls on all sides with all openings provided with doors or windows.

(8) "Board" means the availability of three or more daily meals.

(9) "Capacity" means the maximum number of persons permitted under adult family home care at a given time.

(10) "Complaint" means a verbal or written expression of concern filed with the licensor or other department staff. These concerns relate to licensed adult family home sponsor's particular issues or incidents of noncompliance with the minimum licensing requirements as specified under chapter 70.120 RCW and this chapter.

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

(12) "Developmentally disabled adult" means a person eighteen years of age or older who the department determines is developmentally disabled.

(13) "Good cause" means the conditions providing for the best interest of the resident.

(14) "Imminent danger" means serious physical harm to or death of a resident occurred or a serious threat to resident life, health, or safety exists.

(15) "Inspection" means an in home visit conducted by an adult family home licensor for the purpose of evaluating compliance with the licensing requirements of chapter 70.128 RCW and this chapter. The term "inspection," as used in this chapter, is distinguished from investigations conducted by adult protective service workers under chapter 388-15 WAC.

(16) "Nursing care" means the practice of nursing by a licensed practical nurse (LPN) or registered nurse (RN) as specified under chapter 18.88 or 18.78 RCW.

(17) "Other persons on the premises" means relief caregivers, supportive assistance staff person, family members, other relatives and friends of the sponsor with unmonitored access to the residents in care.

(18) "Personal care" means assistance with the following tasks:

- (a) Personal hygiene;
- (b) Dressing;
- (c) Bathing;
- (d) Eating;
- (e) Toileting;
- (f) Ambulation;
- (g) Transfer;
- (h) Positioning;
- (i) Self-medication;
- (j) Body-care;
- (k) Travel to medical services; and
- (l) Essential shopping.

These tasks are provided to the resident as needed according to the resident's physical condition. The department may define and include additional tasks.

(19) "Premises" means the residence, other buildings, and adjoining grounds.

(20) "Private pay resident" means a resident whose cost of care is paid entirely without the assistance of state funds.

(21) "Provider" is synonymous with "sponsor."

(22) "Relative" or "related" means a person related by birth, marriage, or adoption as follows:

- (a) Parent,
- (b) Grandparent,
- (c) Brother,
- (d) Sister,
- (e) Son,
- (f) Daughter,
- (g) Step parent,
- (h) Step brother,
- (i) Step sister,
- (j) Uncle,
- (k) Aunt, and/or
- (l) First cousin.

(23) "Relief caregiver" means a person designated by the sponsor and who meets the relief caregiver standards to care for residents in the sponsor's absence.

(24) "Resident" means any adult person unrelated to the sponsor receiving room, board, personal, and/or special care and supervision, as defined by the department, in an adult family home.

(25) "Service plan" means a written description of a resident's needs and capabilities, including who, when, and how often care services are provided and the expected outcomes.

(26) "Special care" means care beyond personal care and other services authorized through an exception to policy process. Special care services are provided to persons suffering chronic long-term health conditions.

(27) "Sponsor" means a person licensed under this chapter to operate an adult family home. The sponsor shall reside at the adult family home. Exceptions may be authorized by the department for good cause, as defined in the rule.

(28) "State-pay resident" means a resident receiving financial assistance from the state for paying adult family home cost of care.

(29) "Supervision" means a sponsor available to:

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

(b) Provide protective supervision to a client who cannot be left alone because of confusion, forgetfulness, or lack of judgment; or

(c) Intervene on a resident's behalf if a crisis arises.

(30) "Supportive assistance" means assistance with caregiving tasks provided to residents and/or home care by co-sponsor, employed staff, or appropriate others at the same time the sponsor or relief caregiver is present in the adult care home.

(31) "Vulnerable adult" means a person sixty years of age or older and unable to care for or protect self because of a functional, mental, or physical disability.

[Statutory Authority: RCW 70.128.040. 91-09-016 (Order 3131), § 388-76-030, filed 4/9/91, effective 5/10/91. Statutory Authority: 1989 c 427. 90-03-051 (Order 2934), § 388-76-030, filed 1/16/90, effective 2/16/90. Statutory Authority: RCW 74.08.044. 86-01-079 (Order 2319), § 388-76-030, filed 12/18/85.]

WAC 388-76-040 Application for license. (1) Persons making application for a license under this chapter shall do so upon department-provided forms. The forms shall contain information the department reasonably requires. The application shall be made by and in the name of the person who shall be the adult family home sponsor.

(2) The department shall send the sponsor a license application form and written notice no later than one hundred twenty days before the license expiration date. The sponsor shall apply for license renewal no later than ninety days before the expiration date. Submittal of a renewal application and fee before the expiration date shall keep the license in effect until the department takes action. If the renewal application and applicable fee are not submitted before the expiration date, the department shall treat the home as an unlicensed facility. The department shall have the authority to investigate the accuracy of any information included in the application for a license.

(3) The applicant shall submit additional information the department considers necessary for proper administration of this chapter. The department shall make investigations of the applicant, relief caregivers, supportive

assistance staff persons, and members of applicant's household.

(4) The department shall make a criminal history check of all applicants, relief caregivers, supportive assistance staff persons, and members of the applicant's household before an initial license is issued or a license is renewed. The department shall furnish, upon request from the sponsor, a copy of the completed State Patrol criminal history check for any person involved in the sponsor's adult family home operation.

(5) The department shall issue licenses provided under this chapter for a period of one year.

(6) A sponsor may accept a state-pay client into the adult family home only if the sponsor is licensed and has an adult family home contract with the department.

(7) If the department finds the home is not in compliance with licensing standards as set forth in chapter 70.128 RCW and this chapter, the department shall require the home to correct any violations of licensing standards in a time frame specified by the department. If corrections are not made within this time period, the department may take one or more of the following actions:

- (a) Refuse to issue a license;
- (b) Suspend, revoke, or refuse to renew a license; or
- (c) Suspend admissions to the adult family home.

(8) The department shall issue a license to an adult family home if:

(a) The department finds the applicant and the home are in compliance with chapter 70.128 RCW and the rules adopted under this chapter;

(b) The applicant has no prior violations of the rules pertaining to adult family home licensing in either the home the applicant is applying for or any other adult family home;

(c) The applicant has no prior violation of any other law regulating residential care facilities within the past five years resulting in revocation or nonrenewal of a license.

(9) The department shall serve upon the applicant a copy of the decision granting or denying an application for a license. An applicant shall have the right to contest denial of the applicant's application for a license. The proceedings shall be governed by the Administrative Procedure Act (chapter 34.05 RCW) and chapter 388-08 WAC by requesting a hearing, in writing, within ten days after receipt of the notice of denial.

[Statutory Authority: RCW 70.128.040, 91-09-016 (Order 3131), § 388-76-040, filed 4/9/91, effective 5/10/91. Statutory Authority: 1989 c 427, 90-03-051 (Order 2934), § 388-76-040, filed 1/16/90, effective 2/16/90. Statutory Authority: RCW 74.08.044, 86-01-079 (Order 2319), § 388-76-040, filed 12/18/85.]

WAC 388-76-087 Inspections. (1) The department shall inspect an adult family home regarding compliance with licensing standards set forth in chapter 70.128 RCW and this chapter at the time of initial licensure.

(2) The department shall inspect licensed homes regarding compliance with licensing standards set forth in chapter 70.128 RCW and this chapter every eighteen months. The department shall notify the sponsor, in

writing, two weeks or more in advance of a regular inspection.

(3) When a licensing complaint is received regarding noncompliance with licensing standards set forth in chapter 70.128 RCW and this chapter, the department may inspect, without written notice, a licensed home. At the time of the licensing complaint inspection, the department shall furnish the sponsor with a written copy of the complaint. The name of the complainant shall remain confidential.

(4) During licensing inspections of an adult family home, the department shall have access and authority to examine areas and articles in the home used to provide resident care or support, including resident's records, accounts, equipment, and the physical premises. The department also has the authority to interview the sponsor, relief caregiver, supportive assistance staff person, residents, guardian and resident advocates of an adult family home.

(5) When conducting a licensing inspection, the department shall prepare a written report summarizing all information obtained during the inspection. If the home is in violation of this chapter, the department shall provide the sponsor a copy of the licensing inspection report at the same time as a notice of violation is served. If the home is not in violation of this chapter, the department shall mail the sponsor a copy of the inspection report within ten days of the home inspection. The department shall make available to the public, during business hours, all department licensing inspection reports that pertain to compliance with chapter 70.128 RCW and this chapter.

(6) The licensing inspection report shall describe any of the sponsor's corrective measures which are completed and necessary to pass a reinspection and will include a time frame when the corrections shall be completed. If the department finds upon reinspection of the home the corrective measures are satisfactorily implemented, the department shall cease any actions taken against the home. This section shall not require the department to license or renew the adult family home's license where serious physical harm or death occurred to a resident due to the action or inaction of the sponsor.

(7) An applicant/sponsor reported to be a perpetrator of abuse, neglect, or exploitation shall be subject to chapters 26.44, 74.34 RCW, and the regulations contained in WAC 388-15-120. The department may immediately deny, revoke, or suspend the license of an applicant/sponsor found to be a perpetrator of abuse, neglect or exploitation. The department may take this action without providing the applicant/sponsor an opportunity for corrective action as outlined in this chapter.

(8) An adult family home shall have readily available for the public's review:

- (a) The adult family home's license to operate; or
- (b) Copies of licensing inspection reports the adult family home received from the department for the past three years.

[Statutory Authority: RCW 70.128.040, 91-09-016 (Order 3131), § 388-76-087, filed 4/9/91, effective 5/10/91. Statutory Authority:

1989 c 427, 90-03-051 (Order 2934), § 388-76-087, filed 1/16/90, effective 2/16/90.]

Chapter 388-77 WAC
FAMILY INDEPENDENCE PROGRAM

WAC

388-77-010	Definition.
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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

388-77-230	Family independence program—Incapacity criteria. [Statutory Authority: RCW 74.50.010, 89-12-036 (Order 2805), § 388-77-230, filed 6/1/89. Statutory Authority: Chapter 74.21 RCW, 88-12-093 (Order 2630), § 388-77-230, filed 6/1/88.] Repealed by 91-01-062, 91-04-041, 91-05-010, 91-05-058 and 91-08-050 (Orders 3113, 3113A, 3113AA, 3113AAA and 3113AAAA), filed 12/14/90, 1/31/91, 2/7/91, 2/15/91 and 4/1/91, effective 2/1/91, 2/7/91, 2/15/91, 4/1/91 and 5/1/91. Statutory Authority: RCW 74.21.070.
388-77-530	Income—Nonrecurring lump sum payments. [Statutory Authority: Chapter 74.21 RCW, 88-18-024 (Order 2683), § 388-77-530, filed 8/30/88.] Repealed by 91-01-062, 91-04-041, 91-05-010, 91-05-058 and 91-08-050 (Orders 3113, 3113A, 3113AA, 3113AAA and 3113AAAA), filed 12/14/90, 1/31/91, 2/7/91, 2/15/91 and 4/1/91, effective 2/1/91, 2/7/91, 2/15/91, 4/1/91 and 5/1/91. Statutory Authority: RCW 74.21.070.

WAC 388-77-010 Definition. Unless the context clearly requires otherwise, the definitions in WAC 388-77-010 apply throughout chapter 388-77 WAC. When using the definition for child, parent, stepparent, etc., this can stand for either singular or plural. Other definitions applicable to FIP are contained in chapters 388-22 and 388-49 WAC.

(1) "Assessment" means both a FIP orientation and an evaluation of the enrollee's readiness to pursue employment, education, or training and other services available to help the enrollee to achieve self-sufficiency. Normally, the orientation and the evaluation will each take one appointment.

(2) "Benchmark standard" means the basic monthly level of cash benefits, established according to family size, which equals the state's payment standard under the aid to families with dependent children program, plus food cash assistance as determined in WAC 388-77-820.

(3) "Dependent" means spouse, minor children or stepchildren, full-time students eighteen years of age and under nineteen years of age who are reasonably expected to complete a program of secondary school, or

the equivalent level of vocational or technical training, before the end of the month in which nineteen years of age is reached.

(4) "Enrollee" means the head of household and/or family member of a family eligible to receive FIP cash assistance or other services under the family independence program.

(5) "Transitional benefits" means noncash benefits the enrollee is eligible to receive after eligibility for cash assistance no longer exists because of increased earnings.

(6) "Family independence program" means a demonstration project which remains within the AFDC system under Title IV of the federal Social Security Act and the Food Stamp Act.

(7) "Family independence program services" includes job readiness programs, job development, employment, work programs, training, education, family planning services, development of mentor programs, income and medical support, parenting education, child care, and training in family responsibility and family management skills, including appropriate financial counseling and training on management of finances and use of credit.

(8) "FIP cash assistance" means the IV-A payment for the grant, additional requirements, and incentive and/or the cash equivalent for food stamps.

(9) "FIP noncash benefits" means benefits, such as medical or child care.

(10) "Full-time employment" means working one hundred fifty or more hours per month.

(11) "Good cause for late reporting" means any circumstance beyond the control of the enrollee. Good cause shall be determined by the department.

(12) "Half-time employment" means working seventy-five or more hours, but less than one hundred fifty hours, per month.

(13) "Incentive benefit payments" means those additional benefits payable to enrollees due to their participation in education, training, work programs, or employment.

(14) "Job" means a regularly performed lawful activity which generates a cash benefit for the enrollee.

(15) "Overpayment" means FIP cash assistance including food assistance, and/or medical benefits, received by the FIP assistance unit in excess of the amount for which the unit was eligible. An overpayment includes:

(a) "Intentional overpayment" means an overpayment resulting from a willful or knowing intent of the enrollee to receive or retain benefits to which the enrollee is not entitled;

(b) "Unintentional overpayment" means an overpayment that is not attributed to the applicant's/enrollee's willful intent to defraud the department.

(16) "Qualifying parent" means the parent in a two-parent household who earned the greater amount of income in the twenty-four-month period immediately preceding the month in which the application for FIP assistance is filed.

(17) "Self-sufficiency plan" means a written agreement between the employment security department or

the department and the enrollee that may include activities specifically undertaken for self-support, and other items outlined in the employability plan or social services plan.

(18) "Subsidized employment" means employment for which FIP has provided the employer the financial resources, in whole or in part, to compensate an enrollee for the performance of work.

[Statutory Authority: RCW 74.21.070, 91-01-062, 91-04-041, 91-05-010, 91-05-058 and 91-08-050 (Orders 3113, 3113A, 3113AA, 3113AAA and 3113AAAA), § 388-77-010, filed 12/14/90, 1/31/91, 2/7/91, 2/15/91 and 4/1/91, effective 2/1/91, 2/7/91, 2/15/91, 4/1/91 and 5/1/91. Statutory Authority: Chapter 74.21 RCW. 88-12-093 (Order 2630), § 388-77-010, filed 6/1/88.]

WAC 388-77-230 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-77-240 FIP--Eligibility for qualifying a parent. (1) A child residing with two parents, when neither is incapacitated, shall be categorically eligible for FIP when the qualifying parent:

(a) Is not employed more than one hundred hours a month except for intermittent temporary jobs; and

(b) Has been unemployed as defined by subsection (1)(a) of this section for thirty days or more prior to the date FIP is authorized; and

(c) Meets the work quarter or unemployment compensation requirement in subsection (3) of this section. The work quarter and unemployment requirements shall only apply to:

(i) Initial applications filed on or after July 1, 1989; or

(ii) Reapplications following a one-month break or more in assistance, filed on or after July 1, 1989; and

(d) Has not refused a bona fide offer of employment or employment training; or

(e) Has not voluntarily left a job without good cause during the thirty days prior to the date FIP is authorized; or

(f) Has not refused to apply for or accept unemployment compensation, if eligible.

(2) The qualifying parent is that parent earning the greater amount of income in the twenty-four-month period immediately preceding the month in which the application for FIP assistance is filed.

(a) The household shall designate the qualifying parent if both parents earned an identical amount of income, or had no earnings.

(b) The designated qualifying parent remains the qualifying parent for each consecutive month the family remains on assistance.

(3) The qualifying parent shall meet the work quarter or unemployment compensation requirement if:

(a) Within one year prior to application, the qualifying parent:

(i) Received, or was eligible to receive, unemployment compensation had the parent applied; or

(ii) For noncovered employment, had a work history such that had the employment been covered the parent would have been eligible for unemployment compensation; or

(b) The qualifying parent had six or more quarters of work within any thirteen calendar quarter period ending within one year prior to the request for benefits:

(i) A quarter of work means a calendar quarter in which the qualifying parent received earned income of not less than fifty dollars, or participated in Opportunities; education, training, or employment related FIP services; or JOBS; and

(ii) A calendar quarter means a period of three consecutive calendar months ending March 31st, June 30th, September 30th, or December 31st.

(4) The department shall consider the following conditions good cause for refusal of an offer of employment or refusal to continue employment:

(a) Physical, mental, or emotional inability of the qualifying parent to satisfactorily perform the work required;

(b) Inability of the qualifying parent to get to and from the job without undue cost or hardships;

(c) The nature of the work would be hazardous to the qualifying parent;

(d) The wages do not meet any applicable minimum wage requirements and are not customary for such work in the community;

(e) The job is available because of a labor dispute; or

(f) Adequate child care is not available.

(5) The child shall be residing with both parents except that one parent may be temporarily absent for up to ninety days to search for employment with the expectation of continuing to reside with the family.

(6) FIP shall not be denied or terminated solely because the qualifying parent works over one hundred hours while participating in:

(a) Institutional work experience training; or

(b) A public service employment and training program.

[Statutory Authority: RCW 74.21.070, 91-19-024 (Order 3244), § 388-77-240, filed 9/10/91, effective 10/11/91. Statutory Authority: RCW 74.50.010, 89-12-036 (Order 2805), § 388-77-240, filed 6/1/89. Statutory Authority: Chapter 74.21 RCW. 88-12-093 (Order 2630), § 388-77-240, filed 6/1/88.]

WAC 388-77-320 Resources--Exempt. In addition to those exempted under aid to families with dependent children in WAC 388-28-005 through 388-28-474 and 388-28-575, the department shall exempt nonexempt real property as long as the enrollee is making a good faith effort to sell the property.

[Statutory Authority: RCW 74.21.070, 91-01-062, 91-04-041, 91-05-010, 91-05-058 and 91-08-050 (Orders 3113, 3113A, 3113AA, 3113AAA and 3113AAAA), § 388-77-320, filed 12/14/90, 1/31/91, 2/7/91, 2/15/91 and 4/1/91, effective 2/1/91, 2/7/91, 2/15/91, 4/1/91 and 5/1/91. Statutory Authority: Chapter 74.21 RCW. 88-12-093 (Order 2630), § 388-77-320, filed 6/1/88.]

WAC 388-77-500 Income--Determination of need.

(1) An applicant is not eligible for FIP cash assistance if nonexempt gross monthly income less disregards, as specified in AFDC, exceeds the payment standard and authorized additional requirements for AFDC in effect at the time of application:

(a) The department shall apply the one hundred eighty-five percent gross income test in WAC 388-28-484(7) to the income of FIP applicants; and

(b) For the purpose of subsection (1) of this section, an applicant shall not have been a recipient of AFDC or an enrollee of FIP for ninety days prior to application.

(2) For FIP enrollees, the AFDC one hundred eighty-five percent gross income test and the AFDC payment standard test shall not apply.

(3) Unless the household qualifies for a hold-harmless payment, an enrollee shall not be eligible for IV-A FIP cash assistance if nonexempt monthly income less disregards exceeds the totals of:

(a) The payment standard for AFDC for the appropriate household size;

(b) Applicable incentives; and

(c) Authorized additional requirements.

(4) An enrollee shall not be eligible for FIP cash assistance when nonexempt income less deductions exceeds the benchmark plus applicable incentives and authorized additional requirements unless the household qualifies for a hold-harmless payment. For the purpose of subsection (4) of this section, the food assistance amount used in the benchmark shall be calculated at eighty percent of the thrifty food plan.

(5) The department shall determine the exempt or nonexempt status of all income.

[Statutory Authority: RCW 74.21.070. 91-01-062, 91-04-041, 91-05-010, 91-05-058 and 91-08-050 (Orders 3113, 3113A, 3113AA, 3113AAA and 3113AAAA), § 388-77-500, filed 12/14/90, 1/31/91, 2/7/91, 2/15/91 and 4/1/91, effective 2/1/91, 2/7/91, 2/15/91, 4/1/91 and 5/1/91. Statutory Authority: Chapter 74.21 RCW. 88-18-024 (Order 2683), § 388-77-500, filed 8/30/88; 88-12-093 (Order 2630), § 388-77-500, filed 6/1/88.]

WAC 388-77-515 Income--Exempt. In addition to income exempted under the AFDC program in chapter 388-28 WAC, the department shall exempt the following income from FIP:

(1) Higher education benefits;

(2) The earnings of a child under eighteen years of age;

(3) Retroactive FIP benefits;

(4) Income tax refunds; and

(5) Gifts as follows:

(a) Small nonrecurring gifts, not to exceed thirty dollars per recipient in any quarter;

(b) Gifts to cover the costs of tuition, books, or fees; or

(c) Gifts to cover medical expenses for procedures used to eliminate barriers to employment.

[Statutory Authority: RCW 74.21.070. 91-01-062, 91-04-041, 91-05-010, 91-05-058 and 91-08-050 (Orders 3113, 3113A, 3113AA, 3113AAA and 3113AAAA), § 388-77-515, filed 12/14/90, 1/31/91, 2/7/91, 2/15/91 and 4/1/91, effective 2/1/91, 2/7/91, 2/15/91, 4/1/91 and 5/1/91. Statutory Authority: Chapter 74.21 RCW. 90-12-042 (Order 2984), § 388-77-515, filed 5/31/90, effective 7/1/90; 88-12-093 (Order 2630), § 388-77-515, filed 6/1/88.]

WAC 388-77-520 Income--Deductions. (1) In computing income for FIP Title IV-A assistance, the only deduction the department shall allow is ten percent from gross earned income.

(2) The department shall not allow the ten percent earned income deduction if earnings are reported after the eighteenth of the process month without good cause.

[Statutory Authority: RCW 74.21.070. 91-01-062, 91-04-041, 91-05-010, 91-05-058 and 91-08-050 (Orders 3113, 3113A, 3113AA, 3113AAA and 3113AAAA), § 388-77-520, filed 12/14/90, 1/31/91, 2/7/91, 2/15/91 and 4/1/91, effective 2/1/91, 2/7/91, 2/15/91, 4/1/91 and 5/1/91. Statutory Authority: Chapter 74.21 RCW. 88-12-093 (Order 2630), § 388-77-520, filed 6/1/88.]

WAC 388-77-530 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-77-531 Non recurring lump sum income.

(1) For the Title IV-A portion of FIP, when a household ceases to be eligible for FIP because of the receipt of non recurring lump-sum income, the department shall follow WAC 388-28-484 (2)(b); except in determining the period of ineligibility.

(2) The period of ineligibility shall be established by following (2)(a) or (2)(b) below, whichever results in the shorter period of ineligibility. The department shall:

(a) Divide the unit's non recurrent lump sum income, plus other income after applicable disregards following AFDC income rules by the AFDC need standard plus authorized additional requirements; or

(b) Divide the unit's not recurrent lump sum income, plus other income after applicable deductions following FIP income rules by the benchmark standard plus applicable incentives and authorized additional requirements.

(3) The minimum period of ineligibility shall be one month.

(4) For the purposes of FIP food assistance, the department shall treat non recurring lump sums according to the food stamp program.

[Statutory Authority: RCW 74.21.070. 91-15-086 (Order 3207), § 388-77-531, filed 7/23/91, effective 8/23/91.]

WAC 388-77-555 Earned income reporting. (1)

The department shall send employed enrollees a form to report their gross earnings and hours worked. This section shall not apply to an employed child.

(2) Approved applicants who are employed shall begin to report their earnings and hours worked the month following the month of opening.

(3) Newly employed enrollees shall report earnings and hours worked in writing beginning the month following the month the department becomes aware of the earnings.

(4) The department shall:

(a) Issue advance and adequate notice of termination to an enrollee who fails to submit a written report and verify earned income and hours worked by the tenth of the process month;

(b) Terminate FIP cash assistance if an enrollee fails to submit a written report and verify earned income and hours worked by the end of the process month;

(c) Disallow AFDC income disregards in the hold-harmless calculation if income is reported after the eighteenth of the process month without good cause.

(5) Earned income reporting shall apply to both the Title IV-A and food assistance portions of FIP in place of mandatory monthly reporting.

[Statutory Authority: RCW 74.21.070, 91-01-062, 91-04-041, 91-05-010, 91-05-058 and 91-08-050 (Orders 3113, 3113A, 3113AA, 3113AAA and 3113AAAA), § 388-77-555, filed 12/14/90, 1/31/91, 2/7/91, 2/15/91 and 4/1/91, effective 2/1/91, 2/7/91, 2/15/91, 4/1/91 and 5/1/91. Statutory Authority: Chapter 74.21 RCW. 88-12-093 (Order 2630), § 388-77-555, filed 6/1/88.]

WAC 388-77-600 Standards of assistance—Hold harmless. (1) The department shall ensure no applicant or enrollee of FIP receives less financial assistance than he or she would otherwise have been entitled to receive as a sum of the AFDC and food stamp programs under the rules in effect January 1, 1988, and as adjusted to reflect all increases in:

(a) The federal food stamp allotment and deductions; and

(b) The Washington state payment standard for AFDC.

(2) The department shall compare the amount the household would have received under the AFDC program (excluding the allowance for the child care) with the FIP IV-A payment. If the AFDC payment amount is greater, the department shall issue a supplement to bring the FIP IV-A payment up to the amount the household would have received on AFDC.

(3) Notwithstanding subsection (2) of this section, the department shall allow the AFDC child care deduction in the hold-harmless computation for the month of conversion to FIP and the month following if such deduction may be allowed for AFDC.

[Statutory Authority: RCW 74.21.070, 91-01-062, 91-04-041, 91-05-010, 91-05-058 and 91-08-050 (Orders 3113, 3113A, 3113AA, 3113AAA and 3113AAAA), § 388-77-600, filed 12/14/90, 1/31/91, 2/7/91, 2/15/91 and 4/1/91, effective 2/1/91, 2/7/91, 2/15/91, 4/1/91 and 5/1/91. Statutory Authority: Chapter 74.21 RCW. 88-18-024 (Order 2683), § 388-77-600, filed 8/30/88; 88-12-093 (Order 2630), § 388-77-600, filed 6/1/88.]

WAC 388-77-610 Standards of assistance—Incentive standards. (1) The department shall provide enrollees who are teen parents in high school or enrollees who are employed with incentive benefits as follows:

(a) Five percent of the benchmark standard for pregnant or parenting teenage parents under twenty-two years of age who stay in:

(i) High school and progress toward graduation; and

(ii) Participate, when available, in parenting education approved by the office of the superintendent of public instruction or the department.

(b) Fifteen percent of the benchmark standard for enrollees working half time;

(c) Thirty-five percent of the benchmark standard for enrollees working full time.

(2) As described under subsection (1) of this section, the department shall not provide employment incentives for:

(a) Earnings reported after the eighteenth day of the process month unless good cause exists for late reporting; or

(b) Earnings that are exempt or disregarded, except when the earnings are produced by the adult member(s) in the FIP assistance unit.

(3) The department shall provide other FIP enrollees participating in education or training programs approved by ESD or the department with incentive benefits equaling five percent of the benchmark standard.

(4) The department shall allow self-employed enrollees with an approved self-employment plan fifteen percent or thirty-five percent of the benchmark standard based on:

(a) The enrollee's declaration of hours worked for six consecutive months starting with the first month the enrollee is entitled to an incentive for self-employment; and

(b) Thereafter, the hours worked as computed by dividing the enrollee's gross income by the federal minimum wage.

(5) An enrollee's participation in job search skills development or job search activities shall not qualify the enrollee for an incentive under WAC 388-77-610.

(6) The department shall not allow more than one incentive per assistance unit. The department shall allow the incentive at the highest level for which the assistance unit qualifies.

(7) The department shall round incentive payments down to the nearest dollar.

(8) The department shall provide incentives for employment to correspond with the budgeting of income. Incentives for training shall be provided using prospective budgeting.

(9) For the purposes of the incentive computation, the department shall calculate the food assistance amount used in the benchmark at eighty percent of the thrifty food plan. The department shall round the product of the calculation of the eighty percent of the thrifty food plan down to the nearest dollar.

[Statutory Authority: RCW 74.21.070, 91-13-081 (Order 3192), § 388-77-610, filed 6/18/91, effective 7/19/91; 91-01-062, 91-04-041, 91-05-010, 91-05-058 and 91-08-050 (Orders 3113, 3113A, 3113AA, 3113AAA and 3113AAAA), § 388-77-610, filed 12/14/90, 1/31/91, 2/7/91, 2/15/91 and 4/1/91, effective 2/1/91, 2/7/91, 2/15/91, 4/1/91 and 5/1/91. Statutory Authority: Chapter 74.21 RCW. 89-03-053 (Order 2757), § 388-77-610, filed 1/13/89; 88-18-024 (Order 2683), § 388-77-610, filed 8/30/88; 88-12-093 (Order 2630), § 388-77-610, filed 6/1/88.]

WAC 388-77-615 Standards of assistance—Payment amounts. (1) To determine FIP Title IV-A cash assistance, the department shall deduct nonexempt income, less disregards, from the sum of the applicable AFDC payment standard, the incentive, and authorized additional requirements. The department shall round the amount to be issued down to the nearest dollar.

(2) Payment amounts for enrollees, not in their own home, shall be as in WAC 388-29-125 through 388-29-280.

[Statutory Authority: RCW 74.21.070, 91-01-062, 91-04-041, 91-05-010, 91-05-058 and 91-08-050 (Orders 3113, 3113A, 3113AA, 3113AAA and 3113AAAA), § 388-77-615, filed 12/14/90, 1/31/91, 2/7/91, 2/15/91 and 4/1/91, effective 2/1/91, 2/7/91, 2/15/91, 4/1/91 and 5/1/91. Statutory Authority: Chapter 74.21 RCW. 88-12-093 (Order 2630), § 388-77-615, filed 6/1/88.]

Chapter 388-81 WAC

MEDICAL CARE--ADMINISTRATION--GENERAL

WAC

- 388-81-030 Case exception.
- 388-81-070 Determination of maternity care distressed areas.

WAC 388-81-030 Case exception. A request for an exception to policy for medical care services denied by strict application of a rule or regulation requires approval by the division of medical assistance. See WAC 388-20-020 for exception to policy procedures.

[Statutory Authority: RCW 74.08.090, 91-07-011 (Order 3150), § 388-81-030, filed 3/11/91, effective 4/11/91; 82-17-072 (Order 1868), § 388-81-030, filed 8/18/82; 80-13-020 (Order 1542), § 388-81-030, filed 9/9/80; Order 1112, § 388-81-030, filed 4/15/76; Order 299, § 388-81-030, filed 9/6/68; Order 264 (part), § 388-81-030, filed 11/24/67.]

WAC 388-81-070 Determination of maternity care distressed areas. (1) A maternity care distressed area shall be defined as a county where women eligible for medical assistance are unable to obtain adequate maternity care.

(2) The department shall conduct a review of each county in the state to determine if the county is a maternity care distressed area. The department shall include the following factors in the department's determination:

- (a) Higher than average percentage of eligible women receive late or no prenatal care;
- (b) Higher than average percentage of eligible women go out of the area to receive maternity care;
- (c) Higher than average ratio of medical assistance births to obstetrical care providers;
- (d) Higher than average percentage of infants are born to eligible persons per obstetrical care provider; and
- (e) Higher than average percentage of infants are of low birth weight born to eligible women. Low birth weight shall be defined as less than five and one-half pounds, or less than two thousand five hundred grams.

(3) The department shall notify the relevant county authority, for example, board of county commissioners, county council, or county executive, when the department determines a maternity care distressed area exists.

(4) The county authority shall, within one hundred twenty days from the date notified, submit a brief report to the department recommending remedial action.

- (a) The county authority shall prepare the report in consultation with:
 - (i) The department and the department's local community service offices;
 - (ii) The local public health officer;
 - (iii) Community health clinics;
 - (iv) Health care providers;
 - (v) Hospitals;
 - (vi) The business community;
 - (vii) Labor representatives; and
 - (viii) Low income advocates in the distressed area.
- (b) The county authority may contract with a local nonprofit agency to develop the report.

(c) The county authority shall notify the department within thirty days if the county authority is unable or unwilling to develop the report.

(5) The department shall develop the report for the distressed area if the department is notified that the county authority is unable or unwilling to develop the report.

(6) The department shall review the report and use the report in developing strategies to improve maternity care access in the distressed area.

[Statutory Authority: RCW 74.08.090, 91-23-080 (Order 3282), § 388-81-070, filed 11/19/91, effective 12/20/91; 89-22-033 (Order 2883), § 388-81-070, filed 10/27/89, effective 11/27/89.]

Chapter 388-82 WAC

MEDICAL CARE--PROGRAM DESCRIBED--LIMITATIONS

WAC

- 388-82-010 Persons eligible for medical assistance.
- 388-82-140 Qualified Medicare beneficiaries eligible for Medicare cost sharing.
- 388-82-160 Hospital premium insurance enrollment for the working disabled.

WAC 388-82-010 Persons eligible for medical assistance. Medical assistance is available to any categorically needy person who is:

(1) Receiving or eligible to receive a cash assistance payment. Payment categories a person may qualify for include:

- (a) Aid to families with dependent children (AFDC);
- (b) Supplemental Security Income (SSI);
- (c) State supplemental payment. The ineligible spouse of an SSI beneficiary receiving a state supplement payment for the ineligible spouse is not eligible for categorically needy medical assistance; and

(d) A person twenty years of age and younger:

(i) Whose income is less than the one-person AFDC standard and is in:

- (A) Foster care; or
- (B) Subsidized adoption; or
- (C) A skilled nursing home, intermediate care facility, or intermediate care facility for mentally retarded (ICF/MR); or
- (D) An approved inpatient psychiatric facility.

(ii) Meeting the eligibility requirements under WAC 388-83-033.

(e) Family independence program (FIP).

(2) A pregnant woman:

(a) Who would be eligible for AFDC if her child were born and residing with her. In determining income eligibility for Medicaid, the department shall increase the number in the household as if the unborn was born before comparing the pregnant woman's income to the AFDC payment standard; or

(b) Meeting the eligibility requirements under WAC 388-83-032.

(3) In a medical facility and:

(a) Who would be eligible for cash assistance if the person was not institutionalized. This includes all categorically needy groups; or

(b) SSI categorically related and would not be eligible for cash assistance including only aged, blind, and disabled groups if the person was not institutionalized and the person's gross income does not exceed the three hundred percent SSI benefit cap.

(4) Not receiving cash assistance because of special provisions as defined under WAC 388-83-130;

(5) Not an inmate of a public institution;

(6) Sixty-five years of age or older, a patient in an institution for mental diseases, and eligible under subsection (3)(a) and (b) of this section;

(7) An individual eligible for and accepting of, hospice services as described under WAC 388-86-047 shall be:

(a) SSI categorically related with gross income less than three hundred percent of the SSI federal benefit rate; or

(b) AFDC categorically related.

(8) Blind or disabled under SSI criteria, as described under WAC 388-92-015, and the person receives continuing state-funded cash assistance.

[Statutory Authority: RCW 74.08.090. 91-15-014 (Order 3203), § 388-82-010, filed 7/9/91, effective 8/9/91; 91-06-003 (Order 3140), § 388-82-010, filed 2/21/91, effective 3/24/91; 90-04-013 (Order 2932), § 388-82-010, filed 1/29/90, effective 3/1/90; 88-09-037 (Order 2620), § 388-82-010, filed 4/15/88; 86-11-025 (Order 2378), § 388-82-010, filed 5/14/86; 82-21-024 (Order 1891), § 388-82-010, filed 10/13/82; 82-06-003 (Order 1766), § 388-82-010, filed 2/18/82; 82-01-001 (Order 1725), § 388-82-010, filed 12/3/81; 81-16-033 (Order 1685), § 388-82-010, filed 7/29/81; 81-11-046 (Order 1655), § 388-82-010, filed 5/20/81; 80-13-020 (Order 1542), § 388-82-010, filed 9/9/80; 78-10-077 (Order 1346), § 388-82-010, filed 9/27/78; Order 1202, § 388-82-010, filed 4/1/77; Order 1137, § 388-82-010, filed 7/29/76; Order 1044, § 388-82-010, filed 8/14/75; Order 995, § 388-82-010, filed 12/31/74; Order 952, § 388-82-010, filed 7/16/74; Order 911, § 388-82-010, filed 3/1/74; Order 382, § 388-82-010, filed 8/27/69; Order 300, § 388-82-010, filed 9/6/68; Order 264 (part), § 388-82-010, filed 11/24/67.]

WAC 388-82-140 Qualified Medicare beneficiaries eligible for Medicare cost sharing. (1) The department shall provide Medicare cost sharing under WAC 388-81-060(2) for an individual:

(a) Meeting the general nonfinancial requirements under chapter 388-83 WAC;

(b) Entitled to Medicare hospital insurance benefits, Part A, under Title XVIII of the Social Security Act;

(c) Having resources not exceeding twice the maximum supplemental security income (SSI) resource limits under chapter 388-92 WAC; and

(d) Having a total countable family income, as determined under chapter 388-92 WAC, except as specified in subsection (2) of this section, not exceeding one-hundred percent of the federal poverty income guidelines as published and updated by the secretary of health and human services. Effective April 1, 1991, one-hundred percent of the 1991 federal poverty income guidelines is:

	Family Size	Monthly
(i)	One	\$ 552
(ii)	Two	740
(iii)	Three	928
(iv)	Four	1,117
(v)	Five	1,305
(vi)	Six	1,493
(vii)	Seven	1,682
(viii)	Eight	1,870
(ix) For family units with more than eight members, add \$188 to the monthly income for each additional member.		

(2) Effective January 1, 1991, for applicants and recipients, the department shall not consider Social Security cost of living allowance increase until April 1, of each year.

[Statutory Authority: RCW 74.08.090. 91-07-011 (Order 3150), § 388-82-140, filed 3/11/91, effective 4/11/91; 90-12-045 (Order 2987), § 388-82-140, filed 5/31/90, effective 7/1/90; 89-24-039 (Order 2910), § 388-82-140, filed 12/1/89, effective 1/1/90; 89-11-057 (Order 2798), § 388-82-140, filed 5/17/89; 89-05-029 (Order 2758), § 388-82-140, filed 2/13/89.]

WAC 388-82-160 Hospital premium insurance enrollment for the working disabled. The department shall pay premiums for Medicare Part A for an individual:

(1) Who is not otherwise entitled for medical assistance;

(2) Entitled to enroll for Medicare hospital insurance benefits, Part A, under section 1818A of the Social Security Act;

(3) Having resources, as determined under chapter 388-92 WAC, not exceeding twice the maximum supplemental security income (SSI) resource limits under chapter 388-92 WAC for an individual or a couple (individual with a spouse); and

(4) Having a total countable family income, as determined under chapter 388-92 WAC, not exceeding two hundred percent of the poverty income guidelines as published and updated by the secretary of health and human services. Two hundred percent of the 1991 poverty income guidelines is:

	Family Size	Monthly
(a)	One	\$1,104.00
(b)	Two	1,480.00

(c) For family units with three members or more, add \$376.00 to the monthly income for each additional member.

[Statutory Authority: RCW 74.08.090. 91-11-086 (Order 3180), § 388-82-160, filed 5/21/91, effective 6/21/91; 90-18-006 (Order 3060), § 388-82-160, filed 8/23/90, effective 9/23/90.]

Chapter 388-83 WAC
MEDICAL CARE--ELIGIBILITY

WAC	
388-83-013	Cooperation in securing medical support.
388-83-032	Pregnant women.
388-83-033	Children—Eligible to eighteen years of age.
388-83-041	Income—Eligibility.
388-83-130	Eligibility—Special situations.
388-83-200	Community options program entry system (COPES).

WAC 388-83-013 Cooperation in securing medical support. (1) As a condition of eligibility for medical assistance, the department shall require the applicant or recipient/enrollee, unless a pregnant woman or there is a finding of good cause, to cooperate with the department in:

(a) Obtaining medical support for the applicant or recipient/enrollee or for any other applicant or recipient/enrollee other than an unborn for whom the applicant or recipient/enrollee can legally assign rights; and

(b) Identifying and providing information to assist the department in pursuing any liable third party.

(2) The department shall also require an AFDC/FIP-related medical assistance client to cooperate as described under WAC 388-14-200 (2)(a), (b), (c), (3), (4), (5), (6), (7), (8), (9), and (16), unless a pregnant woman or there is a finding of good cause under WAC 388-24-111, except for the provision under WAC 388-24-111 (15)(b), in establishing:

(a) The paternity of a child; and
(b) Medical support as defined under WAC 388-11-011.

(3) The department shall waive such cooperation requirements if the department finds the applicant or recipient/enrollee has good cause under WAC 388-83-014 for noncooperation.

(4) Unless the department finds good cause for noncooperation under WAC 388-24-111 or 388-83-014, the department shall find the applicant or recipient/enrollee, who refuses to cooperate under subsection (1) of this section, ineligible to receive medical assistance.

(5) The department shall provide medical assistance to an otherwise eligible applicant or recipient/enrollee when the person who has the legal authority to cooperate on behalf of the applicant or recipient/enrollee refuses such cooperation.

(6) Effective March 1, 1991, the department shall not establish an obligation to collect birth costs that are:

(a) Paid or expected to be paid by the department; and
(b) Defined under WAC 388-11-011.

(7) The department may seek reimbursement of birth costs covered by available insurance or other liable third party.

[Statutory Authority: RCW 74.08.090. 91-10-101 (Order 3175), § 388-83-013, filed 5/1/91, effective 6/1/91; 90-04-012 (Order 2937), § 388-83-013, filed 1/29/90, effective 3/1/90; 89-12-080 (Order 2809), § 388-83-013, filed 6/7/89.]

WAC 388-83-032 Pregnant women. (1) The department shall find a pregnant woman eligible for Medicaid as categorically needy, if the pregnant woman meets:

(a) The income requirements of this section; and
(b) Citizenship, Social Security number, and residence requirements under chapter 388-83 WAC.

(2) If a pregnant woman applies on or before the last day of pregnancy, the department shall find her eligible for continued Medicaid coverage through the end of the month containing the sixtieth day from the day pregnancy ends.

(3) Income eligibility:

(a) Total family income shall not exceed one hundred eighty-five percent of the federal poverty income guidelines as published and updated by the secretary of health and human services. Effective April 1, 1991, one hundred eighty-five percent of the 1991 federal poverty income guidelines is:

	Family Size	Monthly
(i)	One	\$ 1,021
(ii)	Two	\$ 1,369
(iii)	Three	\$ 1,717
(iv)	Four	\$ 2,066
(v)	Five	\$ 2,414
(vi)	Six	\$ 2,762
(vii)	Seven	\$ 3,112
(viii)	Eight	\$ 3,460

(ix) For family units with nine members or more, add \$ 348 to the monthly income for each additional member.

(b) The department shall determine family income:

(i) According to AFDC methodology, except the department shall:

(A) Exclude the income of the unmarried father of the unborn or unborns unless the income is actually contributed; and

(B) Determine eligibility as if the unborn or unborns are born.

(ii) Apply the special situations under WAC 388-83-130.

(c) The department shall consider the provisions of WAC 388-83-130(1) in determining countable income for a pregnant minor.

(4) The department shall not consider resources in determining the pregnant woman's eligibility.

(5) Changes in family income shall not affect eligibility for medical assistance for the pregnant woman during pregnancy and when eligible under subsection (2) of this section through the end of the month that contains the sixtieth day from the last day of pregnancy:

(a) Once the department determines a pregnant woman eligible under this section; or

(b) If at any time while eligible for and receiving medical assistance a pregnant woman meets the eligibility requirements of this section.

[Statutory Authority: RCW 74.08.090. 91-10-100 (Order 3174), § 388-83-032, filed 5/1/91, effective 6/1/91; 90-24-027 (Order 3105), § 388-83-032, filed 11/30/90, effective 12/31/90; 90-12-052 (Order

3010), § 388-83-032, filed 5/31/90, effective 7/1/90; 89-22-034 (Order 2884), § 388-83-032, filed 10/27/89, effective 11/27/89; 89-11-057 (Order 2798), § 388-83-032, filed 5/17/89; 88-23-084 (Order 2730), § 388-83-032, filed 11/18/88; 88-19-033 (Order 2695), § 388-83-032, filed 9/12/88; 88-11-063 (Order 2626), § 388-83-032, filed 5/17/88; 87-17-042 (Order 2521), § 388-83-032, filed 8/17/87.]

WAC 388-83-033 Children--Eligible to eighteen years of age. (1) The department shall find a child who has not yet attained eighteen years of age eligible for Medicaid when the child meets citizenship, residence, and enumeration requirements under this chapter and the income requirement corresponding to the age levels under the following subsections:

(a) A child born before October 1, 1983, who attains seven years of age, but has not attained eighteen years of age, shall be eligible as categorically needy when the family income and resources are equal to or less than the AFDC income and resource standards;

(b) A child born after September 30, 1983, who attains six years of age, but has not attained eight years of age, shall be eligible as categorically needy when the total family countable income does not exceed one hundred percent of the poverty income guidelines as published and updated by the secretary of health and human services. One hundred percent of the 1991 poverty income guidelines is:

FAMILY SIZE MONTHLY

(i)	One	\$	552
(ii)	Two	\$	740
(iii)	Three	\$	928
(iv)	Four	\$	1,117
(v)	Five	\$	1,305
(vi)	Six	\$	1,493
(vii)	Seven	\$	1,682
(viii)	Eight	\$	1,870

(ix) For family units with more than eight members, add \$188 to the monthly income for each additional member.

(c) A child who attains one year of age, but has not attained six years of age, shall be eligible as categorically needy when the total family countable income does not exceed one hundred thirty-three percent of the federal poverty income guidelines as published and updated by the secretary of health and human services. One hundred thirty-three percent of the 1991 federal poverty income guidelines is:

FAMILY SIZE MONTHLY

(i)	One	\$	734
(ii)	Two	\$	984
(iii)	Three	\$	1,234
(iv)	Four	\$	1,486
(v)	Five	\$	1,736
(vi)	Six	\$	1,986
(vii)	Seven	\$	2,237
(viii)	Eight	\$	2,487

(ix) For family units with more than eight members, add \$250 to the monthly income for each additional member.

(d) An infant under one year of age shall be eligible as categorically needy when the infant is a member of a family whose total family countable income does not exceed one hundred eighty-five percent of the 1991 federal poverty income guidelines. See income guidelines as described under WAC 388-83-032 (3)(a).

(2) The department shall:

(a) Find an infant under one year of age and born before January 1, 1991, eligible as categorically needy when the infant:

(i) Is born to a woman eligible for and receiving medical assistance on the date of the infant's birth; and

(ii) Remains a member of the mother's household and the mother remains eligible for medical assistance.

(b) Find an infant under one year of age and born on or after January 1, 1991, eligible as categorically needy when the infant:

(i) Is born to a woman eligible for and receiving medical assistance on the date of the infant's birth; and

(ii) Remains a member of the mother's household.

(c) Not consider citizenship, enumeration, income, or resource requirements for infants under this subsection.

(3) Effective January 1, 1991, regardless of citizenship or enumeration, the department shall determine a child from birth to eighteen years of age, eligible for state-funded medical services with the same medical coverage as categorically needy, if the:

(a) Child is not eligible for any federally-funded Medicaid program; and

(b) Child's total family countable income does not exceed one hundred percent of the 1991 federal poverty income guidelines. See income guidelines as described under subsection (1)(b) of this section.

(4) The department shall determine family income according to AFDC methodology, and apply the special situations as required under WAC 388-83-130.

(5) The department shall not consider resources in determining eligibility of a child under this section except in subsection (1)(a) of this section.

(6) A child shall remain eligible under this section until the later of the end of the month:

(a) Of the child's birthday that exceeds the age requirement; or

(b) In which the child receives inpatient services if:

(i) The child is receiving inpatient services on the last day of the month of the child's birthday that exceeds the age requirement; and

(ii) The stay for inpatient services continues into the following month or months; and

(iii) Except for the age requirement, the child would be eligible for assistance under this section.

[Statutory Authority: RCW 74.08.090, 91-11-085 (Order 3179), § 388-83-033, filed 5/21/91, effective 6/21/91; 90-24-027 (Order 3105), § 388-83-033, filed 11/30/90, effective 12/31/90; 90-12-043 (Order 2985), § 388-83-033, filed 5/31/90, effective 7/1/90; 89-22-034 (Order 2884), § 388-83-033, filed 10/27/89, effective 11/27/89.]

WAC 388-83-041 Income--Eligibility. (1) For cash assistance recipients of AFDC, FIP, or SSI, the department shall find a person eligible for medical programs without a separate determination of eligibility.

(2) For noncash medical assistance recipients or applicants, the department shall determine countable income according to AFDC, FIP, or SSI methodology, except the department shall:

- (a) Budget income prospectively as defined under WAC 388-28-483;
- (b) Not use mandatory monthly income reporting;
- (c) Consider financial relative responsibility as described under WAC 388-83-130 and 388-92-025;
- (d) Exclude lump sum payments as described under WAC 388-92-045;
- (e) Consider the AFDC earned income exemption as described under WAC 388-83-130; and
- (f) Count the payment and interest from sales contracts as unearned income.
- (g) Exclude earned income tax credit refunds and payments, the person receives on or after January 1, 1991, during the month of receipt and the following month.

[Statutory Authority: RCW 74.08.090. 91-09-017 (Order 3132), § 388-83-041, filed 4/9/91, effective 5/10/91.]

WAC 388-83-130 Eligibility--Special situations.

(1) In determining eligibility for medical services, the department shall:

- (a) Consider parent's income available whether or not actually contributed, when determining eligibility of a person under eighteen years of age residing in the same family unit with parents; except
- (b) In determining a pregnant minor's medical eligibility, the department shall:
 - (i) Not consider the income of her natural, adoptive or stepparents unless the income is actually contributed; and
 - (ii) Consider a pregnant minor as living on her own.

(2) The department shall not allow the AFDC earned income exemption of thirty dollars plus one-third of remainder to clients:

- (a) Applying solely for medical assistance, except for families applying for medical assistance who received AFDC or FIP cash assistance in any of the four preceding months; and
- (b) After the client receives the thirty dollars plus one-third income disregard for a maximum of four consecutive months. A client is not eligible for the disregard until the client does not receive AFDC or FIP cash assistance for twelve consecutive months.

(3) For family units determined ineligible for AFDC or FIP cash assistance solely due to the requirements of WAC 388-24-050 or 388-77-210 that certain siblings be included in the assistance unit, at the applicant's option, such individuals and their income may be excluded from the assistance unit when determining eligibility of the remaining assistance unit members for categorically needy medical assistance.

(4) For family units determined ineligible for AFDC or FIP financial assistance solely due to the requirements of WAC 388-28-500(4) or 388-77-285 that income of the nonapplying parents of a minor parent be considered available to the assistance unit of the minor

parent and such minor's child or children, such income shall be disregarded when determining eligibility of such minor's child or children.

(5) The department shall consider AFDC and FIP children sixteen and seventeen years of age, terminated from cash assistance, as eligible for Medicaid on the same basis as dependent children when termination was solely due to the:

- (a) AFDC or FIP children ceasing to attend school; or
- (b) AFDC children refusing to participate in the Job Opportunities and Basic Skills Training program.

(6) The department shall consider a person eligible for Medicaid when the person is denied AFDC or FIP cash assistance solely because:

- (a) Of income and resources deemed available from the following person who is not a member of the AFDC or FIP unit, unless actually available to the assistance unit:
 - (i) Stepparent who is not legally liable for support of stepchildren;
 - (ii) Grandparent;
 - (iii) Legal guardian who is not a parent;
 - (iv) Alien sponsor; or
 - (v) Sibling.

(b) Of counting a sibling's income or resources or both to determine AFDC or FIP cash assistance when the sibling is residing in the same residence, unless the sibling actually contributes or makes available the income or resources or both to the AFDC or FIP assistance unit; and

(c) After July 1, 1989, a member of the family transferred a resource without receiving adequate compensation. If the family member is institutionalized, refer to chapter 388-95 WAC.

(7) The department shall consider a person eligible for Medicaid when the person is denied SSI cash assistance solely because of income and resources deemed available from an alien sponsor.

[Statutory Authority: RCW 74.08.090. 91-10-100 (Order 3174), § 388-83-130, filed 5/1/91, effective 6/1/91; 90-12-060 (Order 3018), § 388-83-130, filed 5/31/90, effective 7/1/90; 88-17-062 (Order 2672), § 388-83-130, filed 8/17/88; 86-20-015 (Order 2424), § 388-83-130, filed 9/22/86; 84-02-055 (Order 2063), § 388-83-130, filed 1/4/84; 82-10-062 (Order 1801), § 388-83-130, filed 5/5/82; 81-23-046 (Order 1721), § 388-83-130, filed 11/18/81; 81-16-033 (Order 1685), § 388-83-130, filed 7/29/81; 81-10-014 (Order 1646), § 388-83-130, filed 4/27/81.]

WAC 388-83-200 Community options program entry system (COPES). (1) An eligible person for COPES is a person eighteen years of age or over who:

(a) Meets the Title XIX categorically needy eligibility requirements for an SSI-related institutionalized person. For the purposes of COPES, a person is considered institutionalized as of the date all eligibility criteria, except institutionalized status, is met;

(b) Requires the level of care provided in a nursing facility;

(c) Has a department approved plan of care and the total cost for this plan of care, including the MNIL for one person, is less than ninety percent of the department's state-wide average nursing facility rate; and

(d) Is able and chooses to reside at home with community support services, in a congregate care facility, or in a licensed adult family home.

(2) The department shall allocate available income of the COPEs recipient as described under WAC 388-95-360 (1), (2)(c), (d), (e), (f), and (g), (3), (4), and (5), except the recipient retains an amount equal to the medically needy income level (MNIL) for one person for the recipient's maintenance needs.

(3) The recipient residing in an adult family home or congregate care facility shall:

(a) Retain from a maintenance needs amount a specified personal needs allowance as described under WAC 388-29-130 and 388-29-280; and

(b) Pay the lessor of the remaining maintenance needs amount or the facility room and board rate to the facility for the cost of board and room.

(4) Income remaining after allocations shall be the participation amount for COPEs services as described under WAC 388-15-620.

[Statutory Authority: RCW 74.08.090, 91-16-059 (Order 3220), § 388-83-200, filed 8/1/91, effective 9/1/91; 90-12-050 (Order 3008), § 388-83-200, filed 5/31/90, effective 7/1/90; 85-13-063 (Order 2243), § 388-83-200, filed 6/18/85. Statutory Authority: RCW 74.08.044, 84-12-033 (Order 2103), § 388-83-200, filed 5/30/84. Statutory Authority: RCW 74.08.090, 83-18-030 (Order 2020), § 388-83-200, filed 8/31/83; 83-08-024 (Order 1954), § 388-83-200, filed 3/30/83.]

Chapter 388-84 WAC

MEDICAL CARE—APPLICATION

WAC

388-84-105 Medical application.

WAC 388-84-105 Medical application. (1) The department shall accept and process applications for medical programs as described under subsections of WAC 388-38-010, 388-38-030, 388-38-040, 388-38-045, and 388-38-050 except as specified under this section.

(2) The department shall accept applications for medical programs without delay.

(a) The department shall provide clients with:

(i) An explanation of the Civil Rights Act;

(ii) Fair hearing information;

(iii) Information about early and periodic screening, diagnosis, and treatment (EPSDT) also known as the healthy kids program, when appropriate; and

(iv) Information about family planning, when appropriate.

(v) Information about the special supplemental food program for women, infants and children's (WIC), when appropriate.

(b) The request for medical programs shall be in writing on a department designated form.

(c) A relative or representative may complete the application on a client's behalf, when the client is unable to complete the application or if the client dies.

(3) The department shall complete the application process by conducting a face-to-face interview in the

local community services office CSO, unless the client or their representative:

(a) Requests the office interview be waived and the:

(i) Client is unable to come to the CSO; and

(ii) Client has no representative to complete the interview; or

(iii) Client is unable to name a representative to complete the interview; and

(iv) Department has adequate information to determine eligibility for medical programs without a face-to-face interview.

(b) Is a pregnant woman applying only for a medical program; or

(c) Is a child up to eighteen years of age and the application is only for a medical program.

(4) If the client meets the requirements of subsection (3)(a), the department may complete the application process through:

(a) A face-to-face home visit;

(b) A telephone interview; or

(c) The mail.

(5) The department shall find clients who receive cash assistance under AFDC, FIP, SSI, or state supplement eligible for medical assistance without a separate application.

(6) A spouse ineligible for SSI benefits solely because of the spouse's income level shall apply individually for a medical program.

(7) A Washington state resident temporarily out of the state may make application directly to the CSO in the resident's area of the state through either a person or agency acting in the client's behalf.

[Statutory Authority: RCW 74.08.090, 91-23-083 (Order 3285), § 388-84-105, filed 11/19/91, effective 12/20/91; 91-05-011 (Order 3138), § 388-84-105, filed 2/7/91, effective 3/10/91; 88-17-062 (Order 2672), § 388-84-105, filed 8/17/88; 81-16-033 (Order 1685), § 388-84-105, filed 7/29/81; 81-10-014 (Order 1646), § 388-84-105, filed 4/27/81.]

Chapter 388-85 WAC

MEDICAL CARE—CERTIFICATION

WAC

388-85-115 Denied Title II and Title XVI applicants.

WAC 388-85-115 Denied Title II and Title XVI applicants. When a person has applied for Title II or Title XVI benefits and the SSA has denied the person's application solely because of a failure to meet Title II and XVI blindness or disability criteria, the SSA denial shall be binding on the department, unless the applicant:

(1) SSA denial is under appeals in the reconsideration stage, the SSA's administrative hearing process, or the SSA's appeals council; or

(2) Medical condition has changed since the SSA denial was issued.

[Statutory Authority: RCW 74.08.090, 91-16-024 (Order 3215), § 388-85-115, filed 7/26/91, effective 8/26/91; 86-07-004 (Order 2347), § 388-85-115, filed 3/6/86; 84-02-055 (Order 2063), § 388-85-115, filed 1/4/84; 82-01-001 (Order 1725), § 388-85-115, filed 12/3/81.]

Chapter 388-86 WAC

MEDICAL CARE—SERVICES PROVIDED

WAC

- 388-86-00901 Kitsap Physicians Service—Sound Care Plan.
 388-86-071 Private duty nursing services.
 388-86-085 Transportation (other than ambulance).

WAC 388-86-00901 Kitsap Physicians Service—Sound Care Plan. (1) The department shall enroll aid to families with dependent children (AFDC-R) grant recipients and family independence program (FIP-J and G) enrollees residing in Kitsap, Mason, or Jefferson counties in the Kitsap Physicians Service—Sound Care Plan (plan), except as provided in subsections (4) and (5) of this section.

(2) The department may offer optional enrollment to additional program eligible groups with the agreement of the plan.

(3) Timely provision of services means a recipient shall have the right to receive medically necessary care without unreasonable delay.

(4) Upon a client's request, the department may exempt the client, for whom medically necessary care is required, when the plan is contracted to provide the service but cannot make medically necessary service available. In making the exemption determination, the department's consideration shall include, but not be limited to whether:

(a) Distance or transportation problems make it unreasonably difficult for the client to obtain services; or

(b) The absence of a translator for or of services accessible to disabled persons makes it unreasonably difficult for the client to obtain services.

(5) Native Americans eligible under subsection (1) of this section and eligible to receive health services through the Indian Health Service may choose to enroll in the plan.

(6) Emergencies and emergency transportation services are exempt from the plan's routine medical care authorization procedures. Emergency defines a situation in which a person immediately requires medical services to avoid placing a person's health in serious jeopardy or alleviate a condition manifesting itself by acute symptoms, including severe pain, discomfort, or active labor.

(a) The recipient is not responsible for determining, or for the cost of determining, if an emergency exists.

(b) If an emergency exists, the recipient is not financially responsible for any services rendered.

(c) If an emergency does not exist, and the plan will not authorize further services, the recipient is financially responsible for further services received only if the recipient is informed and agrees, in writing, to the responsibility before receiving the services as described under WAC 388-87-010(6).

(7) Any client aggrieved by a decision of the plan or the department has the right to a fair hearing under chapter 388-08 WAC.

(a) Except as provided in subdivision (b) and (c) of this subsection, a recipient shall exhaust the plan's

grievance procedure before requesting a fair hearing. The plan's grievance procedure shall result in a written decision stating the basis for the decision. The recipient has the right to request a fair hearing if the decision is adverse or the written decision is not received within thirty days from the date the plan received the grievance. The plan may be a party to the fair hearing.

(b) In any case where the plan denies a recipient urgently needed medical services, a recipient need only provide a written grievance to the plan before or when requesting a fair hearing.

(c) A client requesting exemption from enrollment in the plan is required to file a written request with the department. If not satisfied with the department's decision, the client may request a fair hearing. The plan may be a party to the fair hearing.

(8) Each recipient enrolled in the plan shall have a primary care physician (PCP):

(a) Recipients shall have an opportunity to choose a PCP from current plan providers;

(b) The plan shall assign a PCP to recipients not choosing a participating provider;

(c) Recipients shall have the right to change their PCP:

(i) One time during a twelve-month period for any reason;

(ii) For subsequent changes during the twelve-month period the recipient shall first show good cause.

(d) When requesting a change in their PCP the recipient shall notify the plan of the:

(i) Desired change including the name of the new PCP; and

(ii) Reason for the desired change.

(9) The recipient shall have the right to a second opinion by another participating physician or specialist:

(a) When the recipient needs more information as to the medical necessity of medical treatment recommended by the PCP; or

(b) If the recipient believes the PCP is not authorizing medically necessary care.

(10) When medically necessary, the PCP shall make a prompt referral to another participating physician or specialist.

(11) The department may terminate enrollment of a recipient in the plan if the:

(a) Recipient loses eligibility for the plan; or

(b) Recipient requests disenrollment under the same considerations as subsection (4) of this section; or

(c) Plan requests a disenrollment of the recipient, in writing, and the:

(i) Plan establishes the recipient's behavior is:

(A) Inconsistent with the plan's rules and regulations, such as intentional misconduct; or

(B) Such that it becomes medically nonfeasible to safely or prudently provide medical services.

(ii) Plan's requested termination is approved by the director of the division of medical assistance or the director's designee. The division of medical assistance shall:

(A) Make a decision on the requested termination within fifteen days of the receipt of the request; and

(B) Notify the recipient ten days in advance of the effective date of disenrollment for any approved termination.

(12) The plan shall not request termination of a recipient solely due to an adverse change in the recipient's health.

(13) The plan shall appoint a medical director who:

(a) Is responsible for the plan's quality assurance program and shall review all plan grievances; and

(b) Furnishes the division of medical assistance with a copy of all written grievances and the plan's response to such grievances.

(14) On at least an annual basis, the department shall arrange for and the plan shall permit an independent, external review of the quality of recipient services provided or arranged by the plan.

[Statutory Authority: RCW 74.08.090, 91-08-012 (Order 3153), § 388-86-00901, filed 3/26/91, effective 4/26/91; 90-04-014 (Order 2936), § 388-86-00901, filed 1/29/90, effective 3/1/90; 87-22-093 (Order 2554), § 388-86-00901, filed 11/4/87; 87-06-004 (Order 2471), § 388-86-00901, filed 2/19/87; 86-21-120 (Order 2437), § 388-86-00901, filed 10/21/86.]

WAC 388-86-071 Private duty nursing services. (1) The department shall approve private duty nursing services when:

(a) The recipient would otherwise be institutionalized;

(b) The care is provided in a noninstitutional setting;

(c) The services are medically necessary;

(d) The cost of the services will not exceed the cost of:

(i) Available skilled nursing facility care as determined by the exceptional rate review; or

(ii) Hospital care if skilled nursing facility care is not available;

(e) The recipient requires more nursing care than is available through intermittent home health nursing services;

(f) A registered or licensed practical nurse provides the care under the direction of a physician; and

(g) The medical assistance administration gives prior approval to the overall plan of care.

(2) The recipient and/or family may pay for supplemental services, not covered in the approved plan of care, as provided in WAC 388-83-010(3).

(3) The department shall contract only with Washington state licensed home health agencies as providers for special duty nursing services.

(a) Current providers, as of October 1, 1991, shall be Washington state licensed as home health agencies by April 1, 1992.

(b) New providers shall be Washington state licensed before the department will contract with them as providers for special duty nursing services.

[Statutory Authority: RCW 74.08.090, 91-23-079 (Order 3281), § 388-86-071, filed 11/19/91, effective 12/20/91; 87-06-002 (Order 2469), § 388-86-071, filed 2/19/87; 83-01-056 (Order 1923), § 388-86-071, filed 12/15/82.]

WAC 388-86-085 Transportation (other than ambulance). (1) The department shall assure the availability of necessary transportation for a recipient:

(a) To and from medical services;

(b) Covered under the recipient's medical program; and

(c) Suitable to the recipient's medical need.

(2) For the purposes of this section and WAC 388-87-035, the department defines transportation as a service when a recipient enters a vehicle and is transported to medical services which are at least one-quarter mile away.

(3) The department shall authorize payment for such transportation:

(a) When other means of transportation are not available or appropriate to the recipient's need;

(b) At the least costly alternative mode of transportation suitable to the recipient's medical condition;

(c) When the department, broker, or contractor gives prior authorization for the transportation or gives retro-authorization within seventy-two hours for transportation during hours when the department, broker, or contractor is not available; and

(d) When transportation is given to and from covered services:

(i) Within the local medical community unless necessary medical services are not available locally; or

(ii) Outside of the local medical community to the closest provider able and willing to provide the necessary and covered medical services.

(4) The department shall:

(a) Contract to provide such transportation as an administrative service in counties under broker or contractor agreements.

(i) Brokers or contractors shall certify transportation providers for medical services in accordance with rules established by the department; and

(ii) The department shall require the brokers and contractors to operate the services in accordance with all federal, state, and local ordinances, statutes, and regulations.

(b) Provide transportation as a medical service in unbrokered or noncontracted counties.

(5) The department, broker, or contractor shall pay for transportation only for the recipient unless the broker determines that the recipient needs an attendant or escort to ensure personal or public safety.

(6) When the department determines no other appropriate transportation resource is available to the recipient, the department may:

(a) Authorize public transit when a transit authority is present in the community and when the recipient is capable of using this level of service;

(b) Reimburse the recipient for mileage in a private vehicle or issue a gas voucher, in areas with gas voucher systems:

(i) When prior authorized;

(ii) If the distance traveled is more than forty miles to and from covered medical services in a given week; and

(iii) When the driver and vehicle meet the state insurance and licensure requirements.

(c) Reimburse volunteers providing recipient transportation:

(i) When prior authorized;

(ii) From volunteer's point of origin, and back to volunteer's point of origin; and

(iii) When the driver and vehicle meet the state insurance and licensure requirements.

(7) When transportation in subsection 6 of this section is either not available or not accessible by the recipient, and the transportation is medically necessary, the department shall authorize transportation by:

(a) A nonprofit organization using specialized equipment, such as wheelchair lifts when the medical necessity is clearly demonstrated and the physical condition of the recipient is such that any less specialized means of transportation is inadvisable;

(b) Cabulance vehicle when medical necessity is clearly demonstrated and the physical condition of the recipient is such that any less specialized means of transportation is inadvisable;

(c) Taxi transportation when medically necessary and other less expensive modes of transportation are not available or not appropriate to meet the recipient's needs.

(8) The department shall authorize interstate and intrastate transportation, e.g., bus, train, air, when:

(a) Transportation is medically necessary;

(b) Necessary medical treatment is not available locally; and

(c) The physical condition of the recipient is such that the use of any other method of transportation is inadvisable.

(9) The department, broker, or contractor shall not authorize transportation for a nursing facility recipient to or from medical services which are expected to be provided by the facility:

(a) Securing prescriptions;

(b) Nursing care and supervision;

(c) Personal hygiene including baths, shampoos, routine nail care for feet or hands, shaves, routine daily oral care, and skin care;

(d) Services relating to meeting medically-related psychosocial needs ordered by the physician when appropriate;

(e) Ancillary care services including services provided by activities specialists, audiologists, social workers, speech pathologists, physical therapists, and/or occupational therapists; or

(f) A nutritionally adequate and varied diet including supplementary nourishments and vitamins.

[Statutory Authority: RCW 74.08.090. 91-23-082 (Order 3284), § 388-86-085, filed 11/19/91, effective 12/20/91; 90-16-053 (Order 3044), § 388-86-085, filed 7/27/90, effective 8/27/90; 89-23-081 (Order 2899), § 388-86-085, filed 11/17/89, effective 12/18/89; 88-20-042 (Order 2702), § 388-86-085, filed 9/30/88; 88-06-083 (Order 2600), § 388-86-085, filed 3/2/88; 86-02-031 (Order 2321), § 388-86-085, filed 12/27/85; 85-05-024 (Order 2207), § 388-86-085, filed 2/14/85; 84-20-098 (Order 2155), § 388-86-085, filed 10/3/84; 82-02-022 (Order 1743), § 388-86-085, filed 12/30/81; 81-16-033 (Order 1685), § 388-86-085, filed 7/29/81; 81-10-015 (Order 1647), § 388-86-085, filed 4/27/81; 80-15-034 (Order 1554), § 388-86-085, filed 10/9/80; 79-06-034 (Order 1402), § 388-86-085, filed 5/16/79; 79-01-002 (Order 1359), § 388-86-085, filed 12/8/78; Order 1230, § 388-86-085, filed 8/23/77; Order 1203, § 388-86-085, filed 4/1/77; Order 1154, § 388-86-085, filed 9/22/76; Order 1112, § 388-86-085, filed 4/15/76; Order 995, § 388-86-085, filed 12/31/74;

Order 938, § 388-86-085, filed 5/23/74; Order 754, § 388-86-085, filed 12/14/72; Order 738, § 388-86-085, filed 11/22/72; Order 705, § 388-86-085, filed 8/11/72; Order 696, § 388-86-085, filed 6/29/72; Order 666, § 388-86-085, filed 3/23/72; Order 566, § 388-86-085, filed 5/19/71; Order 484, § 388-86-085, filed 10/13/70; Order 335, § 388-86-085, filed 2/3/69; Order 303, § 388-86-085, filed 9/6/68; Order 264 (part), § 388-86-085, filed 11/24/67.]

Chapter 388-87 WAC

MEDICAL CARE--PAYMENT

WAC

388-87-007	Medical provider agreement.
388-87-010	Conditions of payment—General.
388-87-015	Billing limitations.
388-87-025	Services requiring approval.
388-87-070	Payment—Hospital inpatient services.
388-87-072	Payment—Hospital outpatient services.
388-87-105	Payment—Medical care outside state of Washington.

WAC 388-87-007 Medical provider agreement. The department shall offer the medical care program through the use of enrolled providers of medical and other covered services. To be enrolled, a provider shall be licensed, if required, to provide said services, shall meet the conditions of eligibility defined in WAC 388-87-005, and shall sign and submit a standard contract form to the department agreeing to participate in the program according to the terms of this section. This contract form and participation by the provider according to the terms of this section shall constitute the agreement between the department and the provider. The department shall issue a contract provider number to an enrolled provider which is authorization to participate in the medical care program. Providers who participate in the medical care program are bound by the rules and standards set forth in this section and as issued by the department.

(1) Providers shall keep all records necessary to disclose the extent of services the provider furnishes to recipients of medical assistance.

(2) Providers shall furnish the department with any information it may request regarding payments claimed by the provider for furnishing services to recipients of medical assistance.

(3) The provider shall bill according to instructions issued by the department and accept payment for services according to the schedule of maximum allowances, the current medical assistance drug listings and other applicable maximum payment levels or schedules. Such payment shall constitute complete remuneration for such services.

(4) The provider shall refund to the recipient any payment received directly from the recipient for services for which the department is responsible for payment. The department shall limit its responsibility for payment of services provided in a retroactive period, as defined in WAC 388-80-005, to cases in which the cost of the services has not been otherwise paid. A provider may refund to a recipient a payment received in a retroactive period of eligibility for Medicaid. Such refund would be for services for which the department would otherwise

be responsible for payment. After refunding the recipient's payment, [recipient,] the provider may bill the department. Upon receipt of a medical coupon that identifies the patient as eligible retroactively, the provider shall not bill the recipient for any unpaid charges for covered services remaining from the retroactive period.

(5) Provider billing invoices submitted to the department shall contain the following language and verification: "I hereby certify under penalty of perjury, that the material furnished and service rendered is a correct charge against the state of Washington; the claim is just and due; that no part of the same has been paid and I am authorized to sign for the payee; and that all goods furnished and/or services rendered have been provided without discrimination on the grounds of race, creed, color, sex, religion, national origin, marital status, or the presence of any sensory, mental or physical handicap."

(6) Providers shall render all services without discrimination on the grounds of race, creed, color, sex, religion, national origin, marital status, or the presence of any sensory, mental or physical handicap.

(7) The department shall give a thirty-day written notice of action to suspend or withdraw the provider's number and contract authorization to participate in the medical care program. The thirty-day notice shall not be required if:

(a) A provider is convicted of a criminal offense related to participation in the Medicare/Medicaid program; or

(b) The provider's license is suspended or revoked; or

(c) Federal funding is revoked; or

(d) By investigation, the department can document a violation of law or contract; or

(e) In the opinion of the medical director, division of medical assistance, the quality of care provided is such that the health and safety of recipients is endangered.

(8) Providers shall render all services according to the applicable sections of the Revised Code of Washington, the Washington Administrative Code, federal regulations and program instructions issued by the department.

(9) Nothing in this section shall preclude the department and any provider or provider group or association from jointly negotiating or entering into another form of written agreement for provision of medical care services to eligible recipients. If such a contract involves the payment of Title XIX funds, the contract shall satisfy all requirements of the standard form contract as modified by any applicable federal waivers.

(10) The provider must meet the disclosure of ownership requirements of WAC 388-87-008.

[Statutory Authority: RCW 74.08.090, 91-20-053 (Order 3251), § 388-87-007, filed 9/24/91, effective 10/25/91; 88-16-084 (Order 2665), § 388-87-007, filed 8/2/88; 85-04-022 (Order 2198), § 388-87-007, filed 1/30/85; 83-17-095 (Order 2007), § 388-87-007, filed 8/23/83; 83-10-077 (Order 1958), § 388-87-007, filed 5/4/83; 80-13-020 (Order 1542), § 388-87-007, filed 9/9/80.]

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

WAC 388-87-010 Conditions of payment—General.

(1) The department shall be responsible for payment of service rendered to a recipient only when the:

(a) Services are within the scope of care of the medical assistance program under chapter 388-86 WAC;

(b) Services are properly authorized;

(c) Services are billed properly;

(d) Services are timely billed as described under WAC 388-87-015;

(e) Recipient is certified as eligible; and

(f) Third-party payment procedures are followed.

(2) The fees and rates the department establishes shall constitute the maximum allowable payment for approved medical care and services the providers provide to recipients.

(3) A "recipient" shall mean a person the department finds eligible for any medical program. The provider is responsible for ascertaining whether a client has medical coverage for the dates of service.

(4) A provider shall not bill, demand, or otherwise collect reimbursement from a recipient, or from other persons on behalf of the recipient, for any service included in the medical program's scope of benefits, and the recipient is not liable for payment for such services if the provider:

(a) Does not properly bill the department for services the department is responsible for payment; or

(b) Fails to satisfy department conditions of payment, including but not limited to:

(i) Prior approval when required;

(ii) Timely billing and billing according to department instructions;

(iii) Pursuit of third-party liability; or

(iv) Adequate documentation of medical necessity.

(5) A hospital shall not bill, demand, or otherwise collect reimbursement from a medically indigent recipient, or from other persons on behalf of such recipient, for inpatient or outpatient hospital services received during a period of eligibility.

(6) The department shall not pay for services not included in the medical program's scope of benefits.

(7) A provider may bill a recipient for services only when the:

(a) Recipient signs a specific written agreement with the provider before receiving the services stating the:

(i) Specific service provided;

(ii) Service is not covered by the medical assistance program;

(iii) Recipient chooses to receive the specific service;

(iv) Agreement is to pay for the services; and

(v) Agreement is void and unenforceable and the recipient is under no obligation to pay the provider if the:

(A) Service is covered by the medical program; or

(B) Provider fails to satisfy department conditions of payment as described under WAC 388-87-010 (4)(b).

(b) Recipient received reimbursement directly from a third party for services the department has no payment responsibility for; or

(c) Bill counts toward a spenddown liability or deductible as described under WAC 388-99-030 and chapter 388-100 WAC.

(8) If a third party pays a provider the department rate, or more, for a covered service, the provider may not bill the department or the recipient for that service.

(9) The department shall pay for medical services and seek reimbursement from any liable third party, when the claim is for:

- (a) Prenatal care;
- (b) Labor, delivery, and post-partum care (except inpatient hospital costs) for a pregnant woman; or
- (c) Preventive pediatric service as covered under the early and periodic screening, diagnosis and treatment (EPSDT) program.

(10) The department shall pay for medical services and seek reimbursement from any liable third party when the provider submits to the department documentation of billing the third party and the provider has not received payment after thirty days from the date of service and:

- (a) The claim is for a covered service provided to a person on whose behalf the office of support enforcement is enforcing an absent parent to pay support.
- (b) For the purposes of this section, "is enforcing" means the absent parent:
 - (i) Is not complying with an existing court order; or
 - (ii) Received payment directly from the third party and did not pay for the medical services.

(11) If the third party pays the provider, then the provider shall refund to the department the amount of the:

- (a) Third party payment when the payment is less than the department's maximum allowable rate; or
- (b) Department's payment if the third payment is equal to or greater than the department's maximum allowable rate.

(12) The department shall not be responsible for payment of medical care or services if the third-party benefits are available to pay the recipient's medical expenses at the time the provider bills the department, except as described in subsection (8) of this section.

(13) The recipient shall not be responsible for payment except to the extent as described in subsection (6) of this section or to the extent the recipient has directly received third-party reimbursement for such services.

(14) A provider shall not refuse to furnish covered services to a recipient because of a third party's potential liability for the services.

(15) Payment for any service a provider furnishes to a recipient may not be made to or through a factor who advances money to that provider for accounts receivable.

(16) The department shall not be responsible for payment for medical care and goods or services or all three provided to a recipient:

- (a) Enrolled in a department-contracted, prepaid medical plan; and
- (b) Failing to use the provider under contract unless:
 - (i) Emergency conditions exist; or
 - (ii) The department has approved payment to another provider for provision of a service not covered by the prepaid plan.

(17) Payment for care under the medical assistance programs is retroactive for three months before the

month of application provided the applicant was eligible when the care was received. The applicant need not be eligible at the time of actual application. The central authorization unit's (CAU) medical consultant shall approve medical services that require approval for the retroactive period.

(18) Payment for care under the limited casualty program—medically indigent may be retroactive for seven days before the date of application if applicant is otherwise eligible. Medical services that require approval shall be approved by the CAU medical consultant for the retroactive period.

(19) The department may pay a claim a provider submits for payment for services rendered to a person subsequently determined ineligible at the time of service under the following conditions only when:

- (a) The ineligible person was certified at the time of service as both financially or medically eligible;
- (b) Payment was not made from sources outside the department; and
- (c) A request for such payment is submitted to and approved by the division of medical assistance.

(20) The department shall pay for billed medically necessary services on the basis of usual and customary charges or the rates the department establishes, whichever is lower.

(21) The department shall not authorize payment for well-child care except as provided under the EPSDT program. See WAC 388-86-027.

(22) In counties/areas where nonambulance transportation is provided as a medical service, payment for medically necessary transportation services, provided by nonprofit organizations, shall be based on the operating costs incurred in providing the service but shall not exceed the rates established by the department. See WAC 388-87-035 for nonambulance transportation payment other than provided by a nonprofit organization.

[Statutory Authority: RCW 74.08.090, 91-17-062 (Order 3233), § 388-87-010, filed 8/20/91, effective 9/20/91; 91-07-011 (Order 3150), § 388-87-010, filed 3/11/91, effective 4/11/91; 89-22-036 (Order 2886), § 388-87-010, filed 10/27/89, effective 11/27/89; 88-06-083 (Order 2600), § 388-87-010, filed 3/2/88; 85-05-024 (Order 2207) § 388-87-010, filed 2/14/85; 83-17-006 (Order 1996), § 388-87-010, filed 8/5/83; 82-01-001 (Order 1725), § 388-87-010, filed 12/3/81; 81-16-032 (Order 1684), § 388-87-010, filed 7/29/81; 81-10-016 (Order 1648), § 388-87-010, filed 4/27/81; 80-13-020 (Order 1542), § 388-87-010, filed 9/9/80; 79-06-034 (Order 1402), § 388-87-010, filed 5/16/79; Order 1158, § 388-87-010, filed 10/6/76; Order 1015, § 388-87-010, filed 3/27/75; Order 938, § 388-87-010, filed 5/23/74; Order 911, § 388-87-010, filed 3/1/74; Order 879, § 388-87-010, filed 11/29/73; Order 844, § 388-87-010, filed 8/9/73; Order 794, § 388-87-010, filed 4/26/73; Order 782, § 388-87-010, filed 3/16/73; Order 778, § 388-87-010, filed 3/1/73; Order 766, § 388-87-010, filed 1/10/73; Order 739, § 388-87-010, filed 11/22/72; Order 697, § 388-87-010, filed 6/29/72; Order 636, § 388-87-010, filed 1/13/72; Order 582, § 388-87-010, filed 7/20/71; Order 485, § 388-87-010, filed 10/13/70; Order 406, § 388-87-010, filed 11/24/69; Order 336, § 388-87-010, filed 2/3/69; Order 304, § 388-87-010, filed 9/6/68; Order 264 (part), § 388-87-010, filed 11/24/67.]

WAC 388-87-015 Billing limitations. (1) Providers shall submit their final charges no later than twelve months from the date of service.

(2) An exception to subsection (1) of this section shall be made as a result of a:

(a) Fair hearing decision or court order favorable to the recipient;

(b) Retroactive or delayed certification for a medical program (see chapter 388-80 WAC for definition of retroactive); or

(c) Timely filed Medicare claim for which Medicaid may pay relating to the same Medicare/Medicaid services. A provider shall submit the billing within six months of the Medicare claim disposition.

(3) For exceptions found under subsection (2) of this section, providers shall present final charges to the department no later than twelve months from the date:

(a) Of the fair hearing decision;

(b) The court order was entered; or

(c) Of the retroactive or delayed certification for medical coverage.

(4) For services rendered before July 28, 1991, final charges shall not be a charge against the state unless the final charges are presented within one hundred twenty days from the date of service.

(5) Within the twelve-month billing period, a provider shall bill known liable third parties before consideration of payment from the department.

[Statutory Authority: 1991 c 103, 91-20-054 (Order 3252), § 388-87-015, filed 9/24/91, effective 10/25/91. Statutory Authority: RCW 74.08.090, 88-01-041 (Order 2566), § 388-87-015, filed 12/11/87; 81-16-032 (Order 1684), § 388-87-015, filed 7/29/81; 79-12-048 (Order 1458), § 388-87-015, filed 11/26/79; 78-02-024 (Order 1265), § 388-87-015, filed 1/13/78; Order 1151, § 388-87-015, filed 9/8/76; Order 1061, § 388-87-015, filed 10/8/75; Order 970, § 388-87-015, filed 9/13/74; Order 879, § 388-87-015, filed 11/29/73; Order 739, § 388-87-015, filed 11/22/72; Order 264 (part), § 388-87-015, filed 11/24/67.]

WAC 388-87-025 Services requiring approval. All services to recipients on medical programs are subject to department review and approval.

[Statutory Authority: RCW 74.08.090, 91-23-081 (Order 3283), § 388-87-025, filed 11/19/91, effective 12/20/91; 86-02-031 (Order 2321), § 388-87-025, filed 12/27/85; 82-01-001 (Order 1725), § 388-87-025, filed 12/3/81; 81-16-032 (Order 1684), § 388-87-025, filed 7/29/81; 81-10-016 (Order 1648), § 388-87-025, filed 4/27/81; 80-15-034 (Order 1554), § 388-87-025, filed 10/9/80; 79-06-034 (Order 1402), § 388-87-025, filed 5/16/79; 79-01-002 (Order 1359), § 388-87-025, filed 12/8/78; 78-06-087 (Order 1301), § 388-87-025, filed 6/2/78; 78-02-024 (Order 1265), § 388-87-025, filed 1/13/78; Order 1244, § 388-87-025, filed 10/10/77; Order 1202, § 388-87-025, filed 4/1/77; Order 1196, § 388-87-025, filed 3/3/77; Order 1151, § 388-87-025, filed 9/8/76; Order 1098, § 388-87-025, filed 2/13/76; Order 1077, § 388-87-025, filed 12/24/75; Order 1019, § 388-87-025, filed 4/30/75; Order 1015, § 388-87-025, filed 3/27/75; Order 964, § 388-87-025, filed 8/19/74; Order 938, § 388-87-025, filed 5/23/74; Order 911, § 388-87-025, filed 3/1/74; Order 837, § 388-87-025, filed 7/26/73; Order 714, § 388-87-025, filed 9/14/72; Order 681, § 388-87-025, filed 5/10/72; Order 582, § 388-87-025, filed 7/20/71; Order 500, § 388-87-025, filed 12/2/70; Order 485, § 388-87-025, filed 10/13/70; Order 435, § 388-87-025, filed 3/31/70; Order 419, § 388-87-025, filed 12/31/69; Order 386, filed 8/27/69; Order 336, § 388-87-025, filed 2/3/69; Order 304, § 388-87-025, filed 9/6/68; Order 264 (part), § 388-87-025, filed 11/24/67.]

WAC 388-87-070 Payment--Hospital inpatient services. (1) For eligible recipients, the department shall pay for inpatient hospital services when:

(a) The eligible recipient is a patient in a general hospital when the hospital meets the current criteria defined in RCW 70.41.020, or as amended in the future;

(b) The services are medically necessary as defined under WAC 388-80-005;

(c) Effective with the 1990 annual cost reporting period, in-state and border hospital providers annually:

(i) Submit a copy of their annual Medicare HCFA 2552 cost report, except as described under item (1)(c)(ii) of this section:

(A) According to the applicable Medicare statutes, regulation, and instructions;

(B) Within one-hundred twenty days from the end of the hospital's fiscal year; or

(C) If the hospital provider's contract is terminated, within one-hundred twenty days of the effective termination date.

(ii) Request up to a thirty-day extension of the time for submitting the cost report in writing at least ten days prior to the report due date. The extension request shall contain:

(A) The report's completion date; and

(B) The circumstances prohibiting compliance with the report due date.

(iii) Maintain adequate records for:

(A) Audit and review purposes; and

(B) Assurance of cost report accuracy.

(2) If the hospital provider improperly completes a cost report or the cost report is received after the due date or approved extension dates, the department may hold all or part of the payment due until the department receives the properly completed or late report.

(3) The department shall determine payment for hospital inpatient services according to a diagnosis related group (DRG) based formula payment system established by the department, except for hospitals participating in the selective contracting program as described under WAC 388-86-051 and services excluded from DRG-based reimbursement as prescribed in subsection (5) of this section. The department shall base formula price payments on the methodology prescribed in the department's state plan under Title XIX of the Social Security Act, Methods and Standards Used for Establishing Payment Rates for Hospital Inpatient Services (hereafter referred to as the Title XIX state plan).

(4) The all inclusive-conversion factor of selective contracting hospitals for inpatient hospital services is identified in Appendix B of such selective contracts. The rate shall be inclusive of all inpatient services the contractor provides directly or indirectly and constitutes the department's maximum financial obligation under the contract.

(5) Certain services are excluded from the DRG-based payment system. These exclusions shall include:

(a) Rehabilitation services provided in department-approved rehabilitation hospitals and general hospital distinct units, and services for physical medicine and rehabilitation (PM&R) patient;

(b) Pain treatment provided in department-approved pain treatment facilities;

(c) Free standing psychiatric hospitals;

(d) Alcoholism treatment and detoxification provided in a department-approved alcohol treatment center (ATC);

(e) Detoxification, medical stabilization, and drug treatment for the pregnant Medicaid recipient at the division of alcoholism and substance abuse certified hospitals;

(f) Neonates, DRGs 385-389;

(g) Long-term hospital level care services;

(h) Services provided to patients occupying beds utilized by the Fred Hutchinson Cancer Research Center bone marrow transplant program;

(i) Health maintenance organization (HMO) hospitals providing inpatient services to HMO enrollees; and

(j) Department-approved services to AIDS patients.

(6) The department shall pay for non-DRG-based services based on the payment methodology as prescribed in the department's Title XIX state plan. For out-of-state hospitals, the department shall apply the Washington state-wide weighted average method to allowable charges. Border area hospitals shall be paid in the same manner as in-state hospitals.

(7) Disproportionate share payment may contain one or more of the following components:

(a) Low-income component based on a hospital's Medicaid utilization rate, its low-income utilization rate, and its provision of obstetric services;

(b) Medicaid utilization component based on a hospital's inpatient and outpatient services to patients eligible for Medicaid;

(c) Medically indigent component based on a hospital's services to patients eligible for the Medically indigent program;

(d) State-funds component to hospitals not qualifying for federal Medicaid utilization component payments;

(e) State-funds component to hospitals not qualifying for federal Medically indigent component payments; and

(f) Intergovernmental fund transfer component.

(8) For the purposes of this section and WAC 388-87-072, the state plan method described shall mean the hospital-specific ratio calculated as described in the Title XIX state plan.

(9) For dates of admission beginning October 1, 1985, payment rates established in accordance with subsections (2), (5), and (6) of this section are reduced for services provided to persons eligible for the medically indigent component of the limited casualty program and recipients of medical care services. Hospitals are grouped according to the percentage of total rate setting revenue comprising medical assistance, medicare, bad debt, charity, and other contractual adjustments and rates are reduced according to the following table.

Hospital Group	Percent Medicare, Medicaid, Bad Debt, Charity and other Contractual Adjustments of Total Rate Setting Revenue	Percentage Reduction in Payment Rate
1	60.00 or more*	20.0
2	50.00 - 59.99	40.0
3	less than 50.00	60.0

*Plus psychiatric hospitals

[Statutory Authority: RCW 74.08.090. 91-21-123 (Order 3268), § 388-87-070, filed 10/23/91, effective 11/23/91; 91-10-025 (Order 3161), § 388-87-070, filed 4/23/91, effective 5/24/91; 90-01-053 (Order 2916), § 388-87-070, filed 12/15/89, effective 1/15/90; 88-04-048 (Order 2594), § 388-87-070, filed 1/29/88. Statutory Authority: 1987 c 406. 87-19-091 (Order 2539), § 388-87-070, filed 9/17/87. Statutory Authority: RCW 74.08.090. 85-23-034 (Order 2307), § 388-87-070, filed 11/15/85; 85-17-033 (Order 2266), § 388-87-070, filed 8/15/85; 85-03-073 (Order 2195), § 388-87-070, filed 1/17/85; 84-21-078 (Order 2162), § 388-87-070, filed 10/18/84; 84-11-070 (Order 2099), § 388-87-070, filed 5/22/84; 83-17-096 (Order 2015), § 388-87-070, filed 8/23/83; 83-08-022 (Order 1951), § 388-87-070, filed 3/30/83; 83-03-016 (Order 1937), § 388-87-070, filed 1/12/83; 82-18-066 (Order 1873), § 388-87-070, filed 9/1/82; 82-01-001 (Order 1725), § 388-87-070, filed 12/3/81; 81-16-032 (Order 1684), § 388-87-070, filed 7/29/81; 81-10-016 (Order 1648), § 388-87-070, filed 4/27/81; 80-15-034 (Order 1554), § 388-87-070, filed 10/9/80; 79-01-002 (Order 1359), § 388-87-070, filed 12/8/78; 78-02-024 (Order 1265), § 388-87-070, filed 1/13/78; Order 1112, § 388-87-070, filed 4/15/76; Order 681, § 388-87-070, filed 5/10/72; Order 615, § 388-87-070, filed 10/7/71; Order 582, § 388-87-070, filed 7/20/71; Order 550, § 388-87-070, filed 3/31/71, effective 5/1/71; Order 386, § 388-87-070, filed 8/27/69; Order 336, § 388-87-070, filed 2/3/69; Order 304, § 388-87-070, filed 9/6/68; Order 264 (part), § 388-87-070, filed 11/24/67.]

WAC 388-87-072 Payment--Hospital outpatient services. (1) For eligible recipients, the department shall reimburse for medically necessary hospital outpatient services when the services are medically necessary as defined under WAC 388-80-005, and the hospital provider meets the requirements under WAC 388-87-070(1).

(2) For hospital outpatient services provided prior to July 1, 1985, except for nonallowable revenue codes, reimbursement shall be determined by applying the hospital commission approved operating expenses ratio and total rate setting revenue.

(3) For hospital outpatient services, except for services in subsection (4) of this section and nonallowable revenue codes, provided from July 1, 1985, to June 30, 1991, reimbursement payment shall be determined by applying the hospital commission operating expenses ratio and total rate setting revenue.

(4) For hospital outpatient services provided on or after July 1, 1991, reimbursement shall be the hospital ratio of cost to charge (RCC), determined from the hospital specific HCFA 2552 Medicare Cost Report, then reduced for the average charge level inflation over the Data Research Incorporated HCFA Market Basket inflation index.

(5) For hospital outpatient laboratory, x-ray, and allowable therapy (physical, speech, and hearing) services, payment shall be the lesser of billed charges or the fee listed in the Medical Assistance Administration Schedule of Maximum Allowances.

[Statutory Authority: RCW 74.08.090. 91-21-123 (Order 3268), § 388-87-072, filed 10/23/91, effective 11/23/91; 91-10-025 (Order 3161), § 388-87-072, filed 4/23/91, effective 5/24/91; 85-17-033 (Order 2266), § 388-87-072, filed 8/15/85.]

WAC 388-87-105 Payment--Medical care outside state of Washington. (1) Medical care furnished in designated bordering cities is not considered to be out-of-state care. Payment is made to the provider of service as

for care provided within the state of Washington. Provider licensure requirements are those of the state in which care is rendered.

(2) Payment shall not be authorized for out-of-state medical care furnished to state-funded recipients.

(3) The three-month retroactive coverage shall apply to out-of-state care given for covered medical care to eligible clients.

(4) Out-of-state providers, who do not have a current provider number (agreement), shall be furnished with necessary billing forms, instructions, and a core provider agreement.

(5) Upon receipt of the signed core provider agreement from the out-of-state provider a provider number shall be issued.

(6) Final charges from out-of-state providers without a current provider number must be presented no later than twelve months from the date of the issuance of a provider number.

(7) Out-of-state providers with a current provider number (agreement) are subject to the billing requirements of WAC 388-87-015.

(8) If the deductible or coinsurance portions of Medicare are claimed, it will be necessary for the provider to submit his billing to the intermediary or carrier in his own state on the appropriate Medicare billing form. If the state of Washington is checked as being responsible for medical billing on the form, the intermediary or carrier may bill on behalf of the provider or may return the billing to the provider for submission to the state.

(9) Approved out-of-state nursing facility reimbursement rate is the lower of:

(a) The billed amount; or

(b) The adjusted state-wide average reimbursement rate for in-state nursing facility care.

(10) The reimbursement rate for out-of-state hospitals is the lower of:

(a) The billed amount; or

(b) The adjusted state-wide average reimbursement rate for in-state hospitals.

(11) The reimbursement for other out-of-state services is the lower of:

(a) The billed amount; or

(b) The rate paid by the Washington state Title XIX Medicaid program.

[Statutory Authority: 1991 c 103, 91-20-050 (Order 3248), § 388-87-105, filed 9/24/91, effective 10/25/91. Statutory Authority: RCW 74.08.090, 87-12-056 (Order 2501), § 388-87-105, filed 6/1/87; 82-01-001 (Order 1725), § 388-87-105, filed 12/3/81; 81-16-032 (Order 1684), § 388-87-105, filed 7/29/81; 81-10-016 (Order 1648), § 388-87-105, filed 4/27/81; 80-13-020 (Order 1542), § 388-87-105, filed 9/9/80; Order 1203, § 388-87-105, filed 4/1/77; Order 1112, § 388-87-105, filed 4/15/76; Order 1061, § 388-87-105, filed 10/8/75; Order 879, § 388-87-105, filed 11/29/73; Order 667, § 388-87-105, filed 3/23/72; Order 567, § 388-87-105, filed 5/19/71; Order 336, § 388-87-105, filed 2/3/69; Order 304, § 388-87-105, filed 9/6/68; Order 264 (part), § 388-87-105, filed 11/24/67.]

Chapter 388-91 WAC MEDICAL CARE--DRUGS

WAC

388-91-005	Drugs.
388-91-010	Drugs--Not requiring prior authorization.
388-91-013	Drugs--Physician's identification required on prescriptions.
388-91-015	Drugs--Payment.
388-91-016	Drugs--Nonpayment.
388-91-020	Drugs--Requiring authorization.
388-91-030	Drugs--Prescription claim.
388-91-035	Drugs--Pharmacist's agreement.
388-91-040	Drugs--Pricing standards.
388-91-050	Out-of-state prescriptions.

WAC 388-91-005 Drugs. In accordance with the department's rules and regulations, the department shall pay for drugs necessary and essential to the medical care of recipients eligible for medical care programs.

[Statutory Authority: RCW 74.08.090, 91-23-084 (Order 3286), § 388-91-005, filed 11/19/91, effective 12/20/91.]

WAC 388-91-010 Drugs--Not requiring prior authorization. (1) The department shall publish a list of all drugs not requiring prior approval. The medical assistance administration may make changes to this list based on the recommendations of the drug review advisory committee providing that action is in compliance with regulations governing the drug program and with acceptable management policies.

(2) The department's decision not to require authorization for drug preparations is based on these criteria:

(a) The drug shall be established as a part of necessary and essential care for the condition for which it is used;

(b) The drug shall be in general use by physicians practicing in Washington;

(c) The drug shall be of moderate cost. The department shall use generic forms when the drug is listed under the department or federal maximum allowable cost (MAC) programs. When two preparations of equal effectiveness but disparate costs are presented, the department shall select the less expensive drug;

(d) The food and drug administration shall not have classified the drug as "less than effective";

(e) The drug shall not be experimental.

(3) The department shall use the following process to determine when a drug preparation requires prior authorization:

(a) Review objective, scientific information and utilization data for appropriateness according to the criteria in subsection (2) of this section; or

(b) Provide for the potential appointment of an advisory committee by the secretary in accordance with RCW 43.20A.360 to review and advise the medical assistance administration whether the drug preparation requires prior authorization;

(c) Make appropriate changes in the need to not prior authorize a drug preparation when consistent with subsection (2) of this section, and may accept recommendations of the advisory committee providing that action is

in compliance with regulations governing the program and with acceptable management policies.

(4) The department shall comply with federal Medicaid laws to not require prior authorization for any new biological or drug that the federal Food and Drug Administration approves for a period of six months after such approval.

[Statutory Authority: RCW 74.08.090. 91-23-084 (Order 3286), § 388-91-010, filed 11/19/91, effective 12/20/91; 86-01-080 (Order 2320), § 388-91-010, filed 12/18/85; 84-09-017 (Order 2090), § 388-91-010, filed 4/10/84; 81-16-032 (Order 1684), § 388-91-010, filed 7/29/81; 81-10-016 (Order 1648), § 388-91-010, filed 4/27/81; 80-15-034 (Order 1554), § 388-91-010, filed 10/9/80; 80-02-024 (Order 1473), § 388-91-010, filed 1/9/80; 79-06-034 (Order 1402), § 388-91-010, filed 5/16/79; 78-10-077 (Order 1346), § 388-91-010, filed 9/27/78; Order 682, § 388-91-010, filed 5/10/72; Order 632, § 388-91-010, filed 11/24/71; Order 583, § 388-91-010, filed 7/20/71; Order 461, § 388-91-010, filed 6/17/70, effective 8/1/70; Order 387, § 388-91-010, filed 8/27/69; Order 316, § 388-91-010, filed 10/31/68.]

WAC 388-91-013 Drugs--Physician's identification required on prescriptions. The prescription claim, Form 525-106 or the equivalent electronic billing claim format, shall bear the prescribing physician's name or Medicaid provider identification number.

[Statutory Authority: RCW 74.08.090. 91-23-084 (Order 3286), § 388-91-013, filed 11/19/91, effective 12/20/91; 85-11-034 (Order 2233), § 388-91-013, filed 5/15/85; 79-06-034 (Order 1402), § 388-91-013, filed 5/16/79; Order 1112, § 388-91-013, filed 4/15/76; Order 884, § 388-91-013, filed 12/17/73; Order 682, § 388-91-013, filed 5/10/72; Order 461, § 388-91-013, filed 6/17/70, effective 8/1/70.]

WAC 388-91-015 Drugs--Payment. (1) In order for the department to pay for a covered outpatient drug, the drug shall be made by a manufacturer who has an agreement with the federal Department of Health and Human Services, except when the:

- (a) Department determines that the drug is essential to the health of a recipient;
- (b) Department identifies the drug as payable to a non-contract manufacturer; and
- (c) Recipient's pharmacist has received approval before dispensing the drug.

(2) The department shall approve drugs for unusual conditions only under WAC 388-91-020.

(3) The department may pay an established fee to a physician for a drug (oral or by injection) incidental to an office call. The fee is on the basis of the acquisition cost of the drug in addition to the office call fee. In the event the cost of the drug given the patient exceeds this fee, the physician may include on his invoice for his professional services to the patient the actual cost of the drug indicating name of manufacturer, strength and dosage.

[Statutory Authority: RCW 74.08.090. 91-23-084 (Order 3286), § 388-91-015, filed 11/19/91, effective 12/20/91.]

WAC 388-91-016 Drugs--Nonpayment. (1) The department shall not pay for:

- (a) Any drug regularly supplied as an integral part of program activity by other public agencies such as the United States Veterans' Administration, United States

Department of Health and Human Services, Division of Indian Health, local health departments, etc.;

(b) Drugs, biologicals, supplies, appliances, and equipment furnished by an extended care facility under Title XVIII of the Social Security Act;

(c) Drugs provided to persons enrolled in a special group medical coverage contract which includes the provision of drugs as a part of the contract;

(d) Drugs listed in the federal register as "less than effective." Payment shall not be made for such prescriptions under any circumstances;

(e) Drugs ordered for a recipient and used to replace drugs drawn from the doctor's stock for treatment of such recipient;

(f) Experimental or controversial medications; or

(g) Over-the-counter preparations unless medical necessity exists. The provisions of WAC 388-91-020 shall then apply.

(2) The term "covered outpatient drug" does not include any drug, biological product, or insulin provided as part of or as incident to and in the same setting as, any of the following:

- (a) Inpatient hospital services;
 - (b) Hospice services;
 - (c) Dental services, except as authorized under the state plan;
 - (d) Physicians' services;
 - (e) Outpatient hospital services emergency room visits;
 - (f) Other laboratory and x-ray services; or
 - (g) Renal dialysis.
- (3) The department shall not pay for:
- (a) A drug when the drug is used for the following reasons:
 - (i) Agents when used for anorexia or weight gain;
 - (ii) Agent when used to promote fertility;
 - (iii) Agents when used for cosmetic purposes or hair growth;
 - (iv) Agents when used to promote smoking cessation;
 - (v) Prescription vitamins and mineral products in the absence of a condition that is clinically recognized to produce a deficiency state, except prenatal vitamins and fluoride preparations; or
 - (b) The following drugs:
 - (i) Outpatient nonprescription drugs;
 - (ii) Covered outpatient drugs for which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee;
 - (iii) Described in section 107 (c)(3) of the Drug Amendments of 1962 and identical similar, or related drugs (DESI drugs).

[Statutory Authority: RCW 74.08.090. 91-23-084 (Order 3286), § 388-91-016, filed 11/19/91, effective 12/20/91; 86-01-080 (Order 2320), § 388-91-016, filed 12/18/85; 85-11-034 (Order 2233), § 388-91-016, filed 5/15/85; 84-20-101 (Order 2158), § 388-91-016, filed 10/3/84; 81-10-016 (Order 1648), § 388-91-016, filed 4/27/81; 79-06-034 (Order 1402), § 388-91-016, filed 5/16/79; Order 1170, § 388-91-016, filed 11/24/76; Order 1154, § 388-91-016, filed 9/22/76; Order 884, § 388-91-016, filed 12/17/73; Order 682, § 388-91-016, filed 5/10/72; Order 487, § 388-91-016, filed 10/13/70; Order 461, § 388-91-016, filed 6/17/70, effective 8/1/70.]

WAC 388-91-020 Drugs--Requiring authorization.

(1) The pharmacist shall make a request to the department for drugs requiring prior authorization before dispensing the drug. The request shall be supported by the medical diagnosis and include proper justification for the drug.

(2) Payment may be made for drugs requiring prior authorization which are prescribed without prior authorization only in an acute emergency, and if the physician can substantiate that a drug is mandatory. The department shall receive justification within seventy-two hours for consideration.

[Statutory Authority: RCW 74.08.090. 91-23-084 (Order 3286), § 388-91-020, filed 11/19/91, effective 12/20/91; 86-01-080 (Order 2320), § 388-91-020, filed 12/18/85; 85-11-034 (Order 2233), § 388-91-020, filed 5/15/85; 79-06-034 (Order 1402), § 388-91-020, filed 5/16/79; Order 1170, § 388-91-020, filed 11/24/76; Order 884, § 388-91-020, filed 12/17/73; Order 461, § 388-91-020, filed 6/17/70, effective 8/1/70; Order 316, § 388-91-020, filed 10/31/68.]

WAC 388-91-030 Drugs--Prescription claim. (1)

Pharmacist, when billing, shall use the department's official prescription [claim] form or the department's electronic billing specifications, if billing electronically.

(2) The department prohibits the use of presigned prescription blanks filled out by the nursing facility operators or pharmacists. The department shall consider this practice sufficient grounds for cancelling the vendor agreement of participating providers involved.

(3) The department requires that all data on the pharmacy statement be recorded accurately.

[Statutory Authority: RCW 74.08.090. 91-23-084 (Order 3286), § 388-91-030, filed 11/19/91, effective 12/20/91; 86-01-080 (Order 2320), § 388-91-030, filed 12/18/85; 85-11-034 (Order 2233), § 388-91-030, filed 5/15/85; 79-06-034 (Order 1402), § 388-91-030, filed 5/16/79; Order 884, § 388-91-030, filed 12/17/73; Order 461, § 388-91-030, filed 6/17/70, effective 8/1/70; Order 316, § 388-91-030, filed 10/31/68.]

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

WAC 388-91-035 Drugs--Pharmacist's agreement.

(1) Core Provider Agreement, Form DSHS 9-48 provided by the department shall be filed with the Department of Social and Health Services, Olympia, Washington 98504.

(2) To participate in this program, a licensed pharmacy shall agree to furnish goods and services in accordance with the department's rules, regulations, and payment procedures. The department shall establish fees and rates which shall constitute the full and complete charge for approved medical care and goods and services the vendors or providers provide to recipients.

(3) All pharmacists and pharmacies agreeing to render goods and services to eligible persons shall submit such charges as agreed upon between the department and the person or firm. Effective July 28, 1991, all pharmacists and pharmacies shall present their final charges within twelve months from the date of service or as otherwise provided by state law. For services rendered before July 28, 1991, all pharmacist and pharmacies

shall present their final charges not more than one hundred twenty days from the date of service.

(4) Sale or transfer of ownership will automatically cancel this agreement.

[Statutory Authority: RCW 74.08.090. 91-23-084 (Order 3286), § 388-91-035, filed 11/19/91, effective 12/20/91; 85-11-034 (Order 2233), § 388-91-035, filed 5/15/85; 81-10-016 (Order 1648), § 388-91-035, filed 4/27/81; 80-13-020 (Order 1542), § 388-91-035, filed 9/9/80; 79-06-034 (Order 1402), § 388-91-035, filed 5/16/79; Order 1170, § 388-91-035, filed 11/24/76; Order 884, § 388-91-035, filed 12/17/73; Order 461, § 388-91-035, filed 6/17/70, effective 8/1/70.]

WAC 388-91-040 Drugs--Pricing standards. (1)

The department shall determine maximum cost allowed for all drugs, including generic drugs.

(2) The department shall not pay more than the amount charged to the general public. In defining the charge to the general public, the department and pharmacist shall consider pricing practices such as granting discounts, special commissions, fees, etc., to patients, institutions, or corporations.

(3) There shall be no differential in pricing prescriptions issued in less than manufacturer's size.

(4) The department shall not pay more than the lower of ingredient cost plus a dispensing fee or the provider's usual and customary charge to the public. Ingredient cost shall be set at the estimated acquisition cost, which is the department's best estimate of the price providers generally are paying for a drug. The dispensing fee shall be set by taking into account the results of surveys and the costs of pharmacy operation. Reimbursement may also be made through exclusive service contracts for the provision of prescription drugs for nursing facility patients.

(5) True unit dose systems recognized by the department require each patient's medication to be delivered to the facility a minimum of five days a week or delivery of medical carts every other day with daily service available.

(6) Modified unit dose systems (also known as blister packs, "bingo" or punch cards) recognized by the department require each patient's medication be delivered in individually sealed single or multiple dose packages, and in quantities sufficient to meet specified minimums or one month's supply. Providers shall be paid a special dispensing fee per prescription. This special fee shall not apply to creams, ointments, ophthalmic/otic preparations, and oral liquids.

[Statutory Authority: RCW 74.08.090. 91-23-084 (Order 3286), § 388-91-040, filed 11/19/91, effective 12/20/91; 86-01-080 (Order 2320), § 388-91-040, filed 12/18/85; 82-01-001 (Order 1725), § 388-91-040, filed 12/3/81; 79-06-034 (Order 1402), § 388-91-040, filed 5/16/79; Order 1154, § 388-91-040, filed 9/22/76; Order 970, § 388-91-040, filed 9/13/74; Order 884, § 388-91-040, filed 12/17/73; Order 461, § 388-91-040, filed 6/17/70, effective 8/1/70; Order 316, § 388-91-040, filed 10/31/68.]

WAC 388-91-050 Out-of-state prescriptions. (1)

The department shall authorize drugs provided to residents of the state of Washington who are temporarily out of the state as defined under WAC 388-26-060 as part of medical care within the scope of WAC 388-86-

115. Border situations as described by WAC 388-82-130 are not subject to out-of-state rules and are to be considered as care provided in the state of Washington.

(2) Drugs provided by out-of-state pharmacists (bordering cities excepted) shall require the approval of the department before payment can be made.

[Statutory Authority: RCW 74.08.090, 91-23-084 (Order 3286), § 388-91-050, filed 11/19/91, effective 12/20/91; 86-01-080 (Order 2320), § 388-91-050, filed 12/18/85; 81-16-032 (Order 1684), § 388-91-050, filed 7/29/81; Order 475, § 388-91-050, filed 9/8/70; Order 316, § 388-91-050, filed 10/31/68.]

Chapter 388-92 WAC

MEDICAL CARE FOR PERSONS RECEIVING BENEFITS UNDER TITLE XVI OF SOCIAL SECURITY ACT--ELIGIBILITY--INCOME AND RESOURCE STANDARDS FOR APPLICANTS IN OWN HOME

WAC

388-92-045 Excluded resources.

WAC 388-92-045 Excluded resources. (1) The department shall exclude the following resources in determining eligibility for medical programs:

(a) Home.

(i) A home means any shelter:

(A) In which the client has ownership interest; and

(B) The client uses as the principal place of residence. The department shall consider only one home as the client's principal place of residence.

(ii) Client's absence from the home shall not affect the home exclusion. The client's home shall remain the principal place of residence as long as:

(A) The client intends to return home. The department shall accept the client's statement of intent without challenge; or

(B) A client's spouse or dependent relative uses the home during the client's absence. The department shall:

(I) Consider a person a dependent relative when such person is either financially or medically dependent on the client; and

(II) Accept the client's or dependent relative's written statement of dependency or relationship unless the department has reason to question it.

(iii) The department shall exclude the client's proceeds from the sale of the excluded home providing the client uses the proceeds to purchase another home within three months of the receipt of the proceeds. Proceeds shall include real estate contracts, or any similar home financing arrangements, and the income produced.

(iv) The department shall evaluate transfers of the home by an institutional client or client's spouse under WAC 388-95-395.

(b) Household goods and personal effects.

(c) Automobile or automobiles.

(i) The department shall exclude one automobile regardless of its value if the automobile is:

(A) Necessary for employment; or

(B) Necessary for the person's medical treatment; or

(C) Modified for operation by, or transportation of, a handicapped client; or

(D) Necessary due to climate, terrain, distance, or similar factors to provide the client transportation to perform essential daily activities.

(ii) The department shall:

(A) Exclude one of the client's automobiles to the extent its current market value does not exceed four thousand five hundred dollars;

(B) Count any excess against the resource limit; and

(C) Exclude an automobile under this subdivision only if an automobile is not excluded under subsection (1)(c)(i) of this section.

(iii) The department shall treat the client's ownership of other automobiles as nonexempt resources and count the client's automobile equity value toward the resource limit.

(d) Property essential to self-support. The department shall exclude:

(i) Property regardless of value, when the client uses the property:

(A) In a trade or business;

(B) As an employee for work; or

(C) As authorized by the government for income producing activity.

(ii) Nonbusiness property up to six thousand dollars equity, when the client uses the property for producing goods or services essential to daily activities, solely for the client's household.

(iii) Nonbusiness property up to six thousand dollars equity, when the client uses the property to produce an annual income return of at least six percent of the excluded equity or is expected to produce at least a six percent return within a twenty-month period as long as the client:

(A) Currently uses the property in items (1)(d)(i), (ii), and (iii) of this section in the described activity; or

(B) Is expected to resume the use of the property in items (1)(d)(i), (ii), and (iii) of this section in the described activity within twelve months.

(e) Resources of a blind or disabled person. The department shall exclude resources necessary to fulfill an approved plan for a client to achieve self-support as long as such plan remains in effect.

(f) Alaska Native Claims Settlement Act stock. The department shall exclude shares of stock held in a regional or village corporation during the period of twenty years ending January 1, 1992, in which such stock is inalienable under the Alaska Native Claims Settlement Act.

(g) Life insurance.

(i) The department shall exclude the total cash surrender value if the total face value of all the policies held by each person is over one thousand five hundred dollars or less.

(ii) The cash surrender value applies to the resource limit if the face value of all the policies held by each person is over one thousand five hundred dollars.

(iii) When determining total face value in item (1)(h)(i) of this subdivision, the department shall exclude term or burial insurance with no cash surrender value.

(h) Restricted allotted land. The department shall exclude restricted allotted land owned by an enrolled tribal member and spouse, if married, if such land cannot be sold, transferred, or otherwise disposed of without permission of other persons, the tribe, or an agency of the federal government.

(i) Insurance settlements. The department shall exclude cash the client receives from an insurance company for purposes of repairing or replacing an excluded resource providing the client uses the total amount of the cash to repair or replace such excluded resource within nine months. The department may extend the nine-month period based on circumstances beyond the control of the client to a maximum of nine additional months. The department shall consider any cash not used within the time period as an available resource.

(j) Burial spaces. The department shall exclude the value of burial spaces for the client, the client's spouse, or any member of the client's immediate family.

(i) Burial spaces shall include conventional gravesites, crypts, mausoleums, urns, and other repositories customarily and traditionally used for the remains of deceased persons.

(ii) For purposes of subdivision (1)(k) of this section, immediate family means a client's minor and adult children, including adopted children and step-children; a client's brothers, sisters, parents, adoptive parents, and the spouses of those persons. The department shall consider neither dependency nor living-in-the-same-household as factors in determining whether a person is an immediate family member.

(k) Burial funds.

(i) Funds specifically set aside for the burial arrangements of a client or the client's spouse not to exceed one thousand five hundred dollars for each spouse. The department shall count burial funds in excess of this limit toward the resource limit in WAC 388-92-050.

(ii) The department shall require funds set aside for burial expenses be kept separate from all other resources not intended for the burial of the client or the client's spouse and separately identified and designated as set aside for burial. If the excluded burial funds are mixed with resources not intended for burial this exclusion shall not apply to any portion of the funds. The department may exclude designated burial funds retroactively back to the first day of the month in which the person intended the funds to be set aside for burial or to November 1, 1982, whichever is later.

(iii) Funds set aside for burial include revocable burial contracts, burial trusts, other burial arrangements, cash, accounts, or other financial instruments with a definite cash value the person clearly designates as set aside for the person's (or spouse's, if any) burial expenses.

(iv) The department shall reduce the one-thousand-five-hundred-dollars-exclusion by:

(A) The face value of the client's insurance policies owned by the person or spouse on the life of the person if

the policies have been excluded as provided in subsection (1)(g) of this section; and

(B) Amounts in an irrevocable trust.

(v) The department shall exclude interest earned on excluded burial funds and appreciation in the value of excluded burial arrangements if the excluded interest and appreciation are left to accumulate and become part of the separately identified burial fund.

(vi) When used for other purposes, the department shall consider any excluded burial funds, interest, or appreciated values set aside for burial expenses as an available resource if, when added to other nonexempt resources, the total exceeds the resource limit.

(l) Other resources excluded by federal statute.

(m) Retroactive payments. The department shall exclude retroactive SSI including benefits a client receives under the interim assistance reimbursement agreement with the Social Security administration, or OASDI payments:

(i) For six months following the month of receipt this exclusion applies to:

(A) Payments the client received from October 1, 1984 through September 30, 1987 and after September 30, 1989;

(B) Payments received by the client, spouse, and/or any other person whose income the department considers available to meet the applicant's or recipient's needs;

(C) SSI payments made to the client for benefits due for a month prior to the month of payment;

(D) OASDI payments made to the client for benefits due for a month that is two or more months prior to the month of payment; and

(E) Payments that remain in the form of cash, checking or saving accounts; this exclusion shall not apply once the retroactive payment has been converted to any other form.

(ii) For nine months following the month of receipt if:

(A) Subsection (1)(m)(i)(B), (C), (D), and (E) of this section is met; and

(B) The payment is received during the period beginning October 1, 1987, and ending September 30, 1989.

(n) Payments for medical or social services. The department shall exclude, from resources for the one-calendar month following the month of receipt, certain cash payments an SSI person receives from a governmental or nongovernmental medical or social service agency to pay for medical or social services.

(o) Restitution to civilians relocated and interned during war time. The department shall exclude payments to persons of Japanese or Aleut ancestry under P.L. 100-383.

(p) The annuity payment of trust funds to Puyallup Tribal Indians received under P.L. 101-41.

(q) Funds received from the Agent Orange Settlement Fund or any other funds established to settle Agent Orange liability claims under P.L. 101-201.

(r) Payments to certain survivors of the Holocaust under the Federal Republic of Germany's Law for Compensation of National Socialist Persecution or German Restitution Act. Interest earned on conserved payment is not excluded.

(s) Unspent assistance payments the client receives because of a presidentially declared major disaster, under P.L. 93-288, is excluded for nine months from date of receipt.

(i) The exclusion may extend an additional nine months, if circumstances beyond the client's control:

(A) Prevents the client from repairing or replacing the damaged or destroyed property; or

(B) Keeps the client from contracting for such repair or replacement.

(ii) Interest earned on the excluded resource is excluded for the period the exclusion applies.

(t) Earned income tax credit refunds and payments, received on or after January 1, 1991, during the month of receipt and the following month.

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

(2) The department shall not consider sales contracts as countable resources to the extent that the sales contracts are not transferred. WAC 388-83-027 shall apply to sales contract income and interest payments.

(3) Applicants or recipients may transfer or exchange exempt resources. The department shall consider cash received from the sale of an exempt resource as a non-exempt resource to the extent that the cash is not used to:

(a) Replace; or

(b) Be reinvested in another exempt resource within the same month, except as specified under this section.

[Statutory Authority: RCW 74.08.090. 91-09-017 (Order 3132), § 388-92-045, filed 4/9/91, effective 5/10/91; 89-24-036 (Order 2907), § 388-92-045, filed 12/1/89, effective 1/1/90; 88-06-087 (Order 2604), § 388-92-045, filed 3/2/88; 85-05-014 (Order 2204), § 388-92-045, filed 2/13/85; 84-17-069 (Order 2139), § 388-92-045, filed 8/15/84; 84-02-055 (Order 2063), § 388-92-045, filed 1/4/84; 83-10-077 (Order 1958), § 388-92-045, filed 5/4/83; 82-24-069 (Order 1916), § 388-92-045, filed 12/1/82; 82-10-062 (Order 1801), § 388-92-045, filed 5/5/82; 82-01-001 (Order 1725), § 388-92-045, filed 12/3/81; 81-10-014 (Order 1646), § 388-92-045, filed 4/27/81; 79-10-095 (Order 1439), § 388-92-045, filed 9/25/79; Order 1015, § 388-92-045, filed 3/27/75; Order 898, § 388-92-045, filed 1/25/74.]

Chapter 388-95 WAC

**INSTITUTIONAL--MEDICAL ASSISTANCE--
ELIGIBILITY**

WAC

- 388-95-320 Eligibility determination--Institutional.
- 388-95-337 Availability of resources.
- 388-95-360 Allocation of income--Institutionalized recipient.
- 388-95-380 Excluded resources.
- 388-95-395 Transfer of resources.

WAC 388-95-320 Eligibility determination--Institutional. (1) The department shall find a person residing in or expected to reside in a Medicaid-approved medical facility for at least thirty consecutive days eligible for institutional care, if the person:

(a) Is Title XVI-related with gross income at or below three hundred percent of the SSI federal benefit amount payable under section 1611 (b)(1) of the Social

Security Act to a person residing in the person's own home who does not have income or resources. If gross income is:

(i) Equal to or less than three hundred percent of SSI federal benefit amount, the department shall determine a person's eligibility under the categorically needy program; and

(ii) Greater than three hundred percent of SSI federal benefit amount, the department shall determine a person's eligibility under the limited casualty program--medically needy as determined under WAC 388-95-400;

(b) Does not have nonexcluded resources under WAC 388-95-380 and 388-95-395, greater than the limitations under WAC 388-95-390; and

(c) Is not subject to a period of ineligibility for transferring of resources under WAC 388-95-395.

(2) The department shall allocate recipient's income and resources as described under WAC 388-95-360.

(3) When both spouses are institutionalized, the department shall determine eligibility of each spouse individually.

(4) Persons residing or expected to reside in a Medicaid-approved medical facility less than thirty consecutive days shall have the person's eligibility determined as for a noninstitutionalized person.

(5) Effective January 1, 1991, for an institutionalized person twenty years of age or under, the department shall not consider the income and resources of the parents available unless the income and resources are actually contributed.

(6) The department shall not consider a person's transfer between institutions as a change in institutional status.

(7) For the effect of a social absence from an institutional living arrangement, see WAC 388-88-115.

[Statutory Authority: RCW 74.08.090. 91-09-019 (Order 3134), § 388-95-320, filed 4/9/91, effective 5/10/91; 90-12-062 (Order 3020), § 388-95-320, filed 5/31/90, effective 7/1/90; 86-08-005 (Order 2351), § 388-95-320, filed 3/20/86; 83-12-059 (Order 1964), § 388-95-320, filed 6/1/83. Formerly WAC 388-83-135.]

WAC 388-95-337 Availability of resources. (1) Resources are defined under WAC 388-92-005 for the SSI-related applicant or recipient and under WAC 388-22-030 for an AFDC-related applicant or recipient.

(2) The methodology and standards for determining and evaluating resources are under WAC 388-95-340, 388-95-380, and 388-95-390. Transfers of resources are evaluated under WAC 388-95-395.

(3) The department shall follow Washington state community property principles in determining the ownership of resources:

(a) For persons whose most recent period of institutionalization began before October 1, 1989 and remain continuously institutionalized.

(b) For purposes of Medicaid eligibility, the department shall presume all resources are:

(i) Community resources if jointly held in the names of both the husband and wife, or in the name of the applicant/recipient only;

(ii) The separate property of the nonapplicant spouse if:

(A) Held in the separate name of the nonapplicant spouse; or

(B) Transferred between spouses as described under WAC 388-92-043(6).

(c) The department shall divide by two, the total value of the community resources the husband and wife own and assign one-half of the total value to each spouse.

(4) A person is no longer continuously institutionalized if, for thirty consecutive days, the person:

(a) Is absent from an institution; or

(b) Does not receive COPES/CAP/OBRA/CCASA/HOSPICE waived services.

(5) The department shall use the following criteria for the purpose of determining Medicaid eligibility of a person, whose most recent continuous period of institutionalization starts on or after October 1, 1989:

(a) The department shall exclude resources in WAC 388-95-380 with the exception of subsection (3) under WAC 388-95-380. One automobile per couple is totally excluded without regard to use;

(b) The department shall consider available to the community spouse, resources in the name of either the community spouse or the institutionalized spouse, except resources exceeding the greater of:

(i) Sixty-six thousand four hundred eighty dollars effective January 1, 1991;

(ii) An amount established by a fair hearing under chapter 388-08 WAC if the community spouse's resource allowance is inadequate to provide a minimum monthly maintenance needs allowance; or

(iii) An amount ordered transferred to the community spouse by the court.

(c) The resources available to the community spouse shall be in the name of the community spouse or transferred to the community spouse or to another for sole benefit of the community spouse before the first regularly scheduled eligibility review after the initial eligibility determination is completed; and

(d) The department shall consider resources greater than such resources in subsection (5)(b) of this section available to the institutional spouse.

(6) The department shall consider resources of the community spouse:

(a) Unavailable to the institutionalized spouse during a continuous period of institutionalization; or

(b) When the institutionalized spouse acquires resources in excess of the one-person resource maximum, if the most recent period of institutionalization began after September 30, 1989.

[Statutory Authority: RCW 74.08.090. 91-07-011 (Order 3150), § 388-95-337, filed 3/11/91, effective 4/11/91; 90-12-049 (Order 3007), § 388-95-337, filed 5/31/90, effective 7/1/90; 89-23-080 (Order 2898), § 388-95-337, filed 11/17/89, effective 12/18/89. Statutory Authority: 1989 [1st ex.s.] c 5352 [19]. 89-18-056 (Order 2864), § 388-95-337, filed 9/1/89, effective 10/2/89. Statutory Authority: RCW 74.08.090. 88-01-042 (Order 2567), § 388-95-337, filed 12/11/87.]

WAC 388-95-360 Allocation of income--Institutionalized recipient. (1) In reducing payment to the institution, the department shall consider the institutionalized recipient's income under WAC 388-95-335 (3)(a), (b), (c), and (d).

(2) The department shall deduct the following amounts, in the following order, from the institutionalized recipient's total income, including amounts excluded in determining eligibility:

(a) Specified personal needs allowance;

(b) An amount an SSI, AFDC, or FIP-related client in a medical facility receives as a cash assistance payment sufficient to bring the client's income up to the personal needs allowance;

(c) The current personal needs allowance plus wages the SSI-related client receives for work approved by the department as part of a training or rehabilitative program designed to prepare the individual for a less-restrictive placement when the total wages received plus the personal needs allowance do not exceed the one-person medically needy income level:

(i) No deductions are allowed for expenses of employment; and

(ii) The excess wages shall apply to the cost of care when the total wages received plus the initial personal needs allowance exceeds the one-person medically needy income level.

(d) A monthly needs allowance for the community spouse:

(i) Of an amount added to the community spouse's income to provide a total community spouse's income of one thousand two hundred fifty-eight dollars;

(ii) Actual shelter expenses that exceed two hundred seventy dollars and ninety cents. The department shall calculate actual shelter expenses for the community spouse's principal residence for:

(A) Rent;

(B) Mortgage;

(C) Taxes and insurance;

(D) Any maintenance charge for a condominium or cooperative; and

(E) A food stamp standard allowance for utilities provided the utilities are not included in the maintenance charges for a condominium or cooperative.

(iii) The total of the community spouse's monthly needs allowance shall not exceed one thousand six hundred sixty-two dollars, unless:

(A) A court enters an order against the institutionalized client for the community spouse support in excess of this amount; or

(B) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(e) An amount for the maintenance needs of a family member residing with the community spouse equal to one-third of the amount nine hundred three dollars exceeds the family member's income for each:

(i) Dependent or minor child;

(ii) Dependent parent; or

(iii) Dependent sibling of the institutionalized or community spouse;

(f) If an institutional recipient does not have a community spouse, an amount for the maintenance needs of family members residing in the recipient's home is equal to the medically needy income level for the number of legal dependents in the home less the income of the dependents;

(g) Amounts for incurred medical expenses not subject to third-party payment including, but not limited to:

(i) Health insurance premiums, co-insurance, or deductible charges; and

(ii) Necessary medical care recognized under state law, but not covered under Medicaid.

(h) Maintenance of the home of a single person or couple:

(i) Up to one hundred eighty dollars per month; and

(ii) Limited to a six-month period; and

(iii) A physician has certified that either of the individuals is likely to return to the home within that period; and

(iv) Social service staff shall document initial need for the income exemption and review the person's circumstances after ninety days.

(3) The department shall not deduct specified personal needs allowance, community spouse, needy dependent maintenance needs, or home maintenance needs from a veteran's aid and attendance allowance.

(4) The recipient shall use the income remaining after allocations specified in subsection (2) of this section, toward payment of the recipient's cost of care at the department rate.

(5)(a) Effective July 1, 1988, SSI-related clients shall continue to receive total payment under 1611 (b)(1) of the Social Security Act (SSA) for the first three full calendar months of institutionalization in a public or Medicaid-approved medical institution or facility if the:

(i) Stay in the institution or facility is not expected to exceed three months; and

(ii) SSI-related clients plan to return to their former living arrangements.

(b) The department shall not consider the SSI payment when computing the participation amount.

(6) The department shall not consider income from reparation payments made by the Federal Republic of Germany when computing the participation amount.

[Statutory Authority: RCW 74.08.090. 91-17-061 (Order 3232), § 388-95-360, filed 8/20/91, effective 9/20/91; 91-07-011 (Order 3150), § 388-95-360, filed 3/11/91, effective 4/11/91; 90-12-049 (Order 3007), § 388-95-360, filed 5/31/90, effective 7/1/90; 89-23-080 (Order 2898), § 388-95-360, filed 11/17/89, effective 12/18/89. Statutory Authority: 1989 [1st ex.s.] c 5352 [19]. 89-18-056 (Order 2864), § 388-95-360, filed 9/1/89, effective 10/2/89. Statutory Authority: RCW 74.08.090. 88-23-022 (Order 2721), § 388-95-360, filed 11/7/88; 83-17-093 (Order 2005), § 388-95-360, filed 8/23/83; 83-12-059 (Order 1964), § 388-95-360, filed 6/1/83. Formerly WAC 388-83-140.]

WAC 388-95-380 Excluded resources. (1) In determining eligibility, the department shall exclude resources specified under WAC 388-92-045.

(2) The department shall apply WAC 388-95-395 for transfers of resources.

[Statutory Authority: RCW 74.08.090. 91-09-017 (Order 3132), § 388-95-380, filed 4/9/91, effective 5/10/91; 88-06-087 (Order

2604), § 388-95-380, filed 3/2/88; 85-05-014 (Order 2204), § 388-95-380, filed 2/13/85; 84-17-069 (Order 2139), § 388-95-380, filed 8/15/84; 84-02-055 (Order 2063), § 388-95-380, filed 1/4/84; 83-12-059 (Order 1964), § 388-95-380, filed 6/1/83.]

WAC 388-95-395 Transfer of resources. (1) The terms in this section shall have the following definitions:

(a) "Institutionalized person" means a person who is:

(i) An inpatient in a nursing facility;

(ii) An inpatient in a medical institution where the payment is made for a level of care provided in a nursing facility; or

(iii) In need of the level of care provided in a nursing facility or medical institution, but receiving home or community-based services under WAC 388-83-200 an 388-83-210; and

(iv) Expected to be in the nursing facility, medical institution, or receiving home or community-based services under WAC 388-83-200 and 388-83-210 for thirty consecutive days or more.

(b) "Institutional spouse" means a person who meets the requirements of (a) of this subsection and is married to a spouse who is not:

(i) In a medical institution;

(ii) Nursing facility; or

(iii) Receiving home or community-based services under WAC 388-83-200 or 388-83-210.

(c) "Community spouse" means the person married to an institutionalized person.

(d) "Institutional services" means a level of care provided in a nursing facility, equivalent nursing facility in a medical institution, or in a home or community-based program under WAC 388-83-200 or 388-83-210.

(e) "Transfer" means any act or omission to act whereby title to or any interest in property is assigned, set over, or otherwise vested or allowed to vest in another person, including but not limited to delivery of personal property, bills of sale, deeds, mortgages, pledges, or any other instrument conveying or relinquishing an interest in property.

(f) "Fair market value" means the price the resource may reasonably sell for on the open market at the time of transfer or assignment.

(g) "Uncompensated value" means the fair market value of a resource at the time of transfer minus the value of compensation the person receives in exchange for the resource.

(h) "Value of compensation received" means the consideration the purchaser pays or agrees to pay. Compensation includes:

(i) All money, real or personal property, food, shelter, or services the person receives under a legally enforceable agreement whereby the eligible person shall transfer the resource; and

(ii) The payment or assumption of a legal debt the person owes in exchange for the resource.

(i) "Undue hardship" means the client's inability to meet shelter, food, clothing, and health care needs.

(2) The department shall consider resource transfers made on or before June 30, 1989 under WAC 388-92-043.

(3) The department shall consider resource transfers made on or after July 1, 1989 under this section.

(4) The department shall not impose any penalty for transfer for less than fair market value of any exempt resource except for the home as provided under this section.

(5) The department shall calculate a period of ineligibility for nursing facility services, equivalent nursing facility services in a medical institution, and services described under WAC 388-83-200 and 388-83-210, for the institutionalized person when the person or the person's spouse disposes of a resource for less than fair market value at any time during or after the thirty-month period immediately before the date:

(a) The person becomes an institutionalized person, if eligible for medical assistance on such date; or

(b) If not eligible as of the date of institutionalization, the date an institutionalized person applies for such services.

(6) The department shall establish a period of ineligibility beginning on the first day of the month in which the person or the person's spouse transfers the resource. The number of months of ineligibility shall equal the lesser of:

(a) Thirty months; or

(b) The number of months found by dividing the total uncompensated value of the transferred resource by the statewide average monthly cost of nursing facility services to a private patient at the time of the application; and

(c) The period of ineligibility shall not include a partial month.

(7) The department shall not find the institutionalized person ineligible for institutional services if the resource transferred was a home and the home was transferred to the person's:

(a) Spouse; or

(b) Child who is:

(i) Blind or permanently and totally disabled; or

(ii) Twenty years of age or under.

(c) Sibling who has:

(i) Equity in the home; and

(ii) Lived in the home for one year immediately before the person became institutionalized.

(d) Child, other than described under subsection (7)(b) of this section, who:

(i) Lived in the home for two years or more immediately before the person became institutionalized; and

(ii) Provided care to the person to permit the person to remain continuously at home.

(8) The department shall not find the institutionalized person ineligible for institutionalized services if the resource other than the home was transferred to:

(a) Or from the person's spouse; or

(b) Or from another person for the sole benefit of the person's spouse; or

(c) The person's blind or permanently and totally disabled child.

(9) The department shall not find the person ineligible if the person can satisfactorily show the department that:

(a) He or she intended to transfer the home or nonexempt resource at fair market value or other valuable consideration; or

(b) He or she transferred the home or nonexempt resource exclusively for a purpose other than to qualify for medical assistance; or

(c) The denial of eligibility would cause an undue hardship.

(10) A person or the spouse of such a person, the department determines ineligible under this section, has the right to request a hearing to appeal the determination. The procedure for the hearing is under chapter 388-08 WAC.

(11) The department shall:

(a) Exclude cash received from the sale, transfer, or exchange of an excluded resource to the extent that the cash is used to replace or is reinvested in another excluded resource within the same month, except as specified under WAC 388-92-045.

(b) Consider any portion of the cash remaining a nonexcluded resource.

[Statutory Authority: RCW 74.08.090. 91-15-085 (Order 3206), § 388-95-395, filed 7/23/91, effective 8/23/91; 89-12-037 (Order 2806), § 388-95-395, filed 6/1/89.]

Chapter 388-96 WAC

NURSING HOME ACCOUNTING AND REIMBURSEMENT SYSTEM

WAC

388-96-010	Terms.
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388-96-904	Administrative review—Adjudicative proceeding.

WAC 388-96-010 Terms. Unless the context clearly requires otherwise, the following terms shall have the meaning set forth in this section when used in this chapter.

(1) "Accounting" means activities providing information, usually quantitative and often expressed in monetary units, for:

(a) Decision-making;

(b) Planning;

(c) Evaluating performance;

(d) Controlling resources and operations; and

(e) External financial reporting to investors, creditors, regulatory authorities, and the public.

(2) "Accrual method of accounting" means a method of accounting in which revenues are reported in the period when earned, regardless of when collected, and expenses are reported in the period in which incurred, regardless of when paid.

(3) "Administration and management" means activities employed to maintain, control, and evaluate the efforts and resources of an organization for the accomplishment of the objectives and policies of that organization.

(4) "Allowable costs" - See WAC 388-96-501.

(5) "Ancillary care" means services required by the individual, comprehensive plan of care provided by qualified therapists or by support personnel under their supervision.

(6) "Arm's-length transaction" means a transaction resulting from good-faith bargaining between a buyer and seller who have adverse bargaining positions in the marketplace.

(a) Sales or exchanges of nursing home facilities among two or more parties in which all parties subsequently continue to own one or more of the facilities involved in the transactions shall not be considered as arm's-length transactions for purposes of this chapter.

(b) Sale of a nursing home facility which is subsequently leased back to the seller within five years of the date of sale shall not be considered as an arm's-length transaction for purposes of this chapter.

(7) "Assets" means economic resources of the contractor, recognized and measured in conformity with generally accepted accounting principles. "Assets" also include certain deferred charges that are not resources but are recognized and measured in accordance with generally accepted accounting principles.

(8) "Bad debts" means amounts considered to be uncollectable from accounts and notes receivable.

(9) "Beds" means, unless otherwise specified, the number of set-up beds in the nursing home, not to exceed the number of licensed beds.

(10) "Beneficial owner" means any person who:

(a) Directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares:

(i) Voting power which includes the power to vote, or to direct the voting of such ownership interest; and/or

(ii) Investment power which includes the power to dispose, or to direct the disposition of such ownership interest.

(b) Directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement, or any other contract, arrangement, or device with the purpose or effect of divesting himself or herself of beneficial ownership of an ownership interest, or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the reporting requirements of this chapter.

(c) Subject to subsection (4) of this section, has the right to acquire beneficial ownership of such ownership interest within sixty days, including but not limited to any right to acquire:

(i) Through the exercise of any option, warrant, or right;

(ii) Through the conversion of an ownership interest;

(iii) Pursuant to the power to revoke a trust, discretionary account, or similar arrangement; or

(iv) Pursuant to the automatic termination of a trust, discretionary account, or similar arrangement;

Except that, any person who acquires an ownership interest or power specified in subsection (10)(c)(i), (ii), or (iii) of this section with the purpose or effect of changing or influencing the control of the contractor, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition shall be deemed to be the beneficial owner of the ownership interest which may be acquired through the exercise or conversion of such ownership interest or power.

(d) In the ordinary course of business, is a pledgee of ownership interest under a written pledge agreement and shall not be deemed the beneficial owner of such pledged ownership interest until the pledgee takes:

(i) Formal steps necessary required to declare a default; and

(ii) Determines the power to vote or to direct the vote or to dispose or to direct the disposition of such pledged ownership interest will be exercised provided the pledge agreement:

(A) Is bona fide and was not entered into with the purpose nor with the effect of changing or influencing the control of the contractor, nor in connection with any transaction having such purpose or effect, including persons meeting the conditions set forth in subsection (10)(b) of this section; and

(B) Prior to default, does not grant the pledgee the power to:

(I) Vote or direct the vote of the pledged ownership interest; or

(II) Dispose or direct the disposition of the pledged ownership interest, other than the grant of such power or powers pursuant to a pledge agreement under which credit is extended and in which the pledgee is a broker or dealer.

(11) "Capitalization" means the recording of an expenditure as an asset.

(12) "Capitalized lease" means a lease required to be recorded as an asset and associated liability in accordance with generally accepted accounting principles.

(13) "Cash method of accounting" means a method of accounting in which revenues are recognized only when cash is received, and expenditures for expense and asset items are not recorded until cash is disbursed for those expenditures and assets.

(14) "Change of ownership" means a change in the individual or legal organization responsible for the daily operation of a nursing home.

(a) Events which change ownership include but are not limited to the following:

(i) The form of legal organization of the contractor is changed (e.g., a sole proprietor forms a partnership or corporation);

(ii) Title to the nursing home business enterprise is transferred by the contractor to another party;

(iii) Where the contractor is a partnership, any event occurs which dissolves the partnership;

(iv) Where the contractor is a corporation, the corporation is dissolved, merges with another corporation

which is the survivor, or consolidates with one or more other corporations to form a new corporation; or

(v) Any other event occurs which results in a change of operating entity.

(b) Ownership does not change when the following, without more, occur:

(i) A party contracts with the contractor to manage the enterprise as the contractor's agent, i.e., subject to the contractor's general approval of daily operating decisions;

(ii) If the contractor is a corporation, some or all of its stock is transferred; or

(iii) The real property or personal property assets associated with the nursing home change ownership or are leased, or a lease of them is terminated, without a change of operating entity.

(15) "Charity allowances" means reductions in charges made by the contractor because of the indigence or medical indigence of a patient.

(16) "Contract" means a contract between the department and a contractor for the delivery of SNF or ICF services to medical care recipients.

(17) "Contractor" means an entity which contracts with the department to deliver care services to medical care recipients in a facility. The entity is responsible for operational decisions.

(18) "Courtesy allowances" means reductions in charges in the form of an allowance to physicians, clergy, and others, for services received from the contractor. Employee fringe benefits are not considered courtesy allowances.

(19) "CSO" means the local community services office of the department.

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

(21) "Depreciation" means the systematic distribution of the cost or other base of tangible assets, less salvage, over the estimated useful life of the assets.

(22) "Donated asset" means an asset the contractor acquired without making any payment for the asset in the form of cash, property, or services.

(a) An asset is not a donated asset if the contractor made even a nominal payment in acquiring the asset.

(b) An asset purchased using donated funds is not a donated asset.

(23) "Entity" means an individual, partnership, corporation, or any other association of individuals capable of entering enforceable contracts.

(24) "Equity capital" means total tangible and other assets which are necessary, ordinary, and related to patient care from the most recent provider cost report minus related total long-term debt from the most recent provider cost report plus working capital as defined in this section.

(25) "Exceptional care recipient" means a medical care recipient determined by the department to require exceptionally heavy care.

(26) "Facility" means a nursing home licensed in accordance with chapter 18.51 RCW, or that portion of a hospital licensed in accordance with chapter 70.41 RCW which operates as a nursing home.

(27) "Fair market value" means:

(a) Prior to January 1, 1985, the price for which an asset would have been purchased on the date of acquisition in an arm's-length transaction between a well-informed buyer and seller, neither being under any compulsion to buy or sell; or

(b) Beginning January 1, 1985, the replacement cost of an asset, less observed physical depreciation, on the date the fair market value is determined.

(28) "Financial statements" means statements prepared and presented in conformity with generally accepted accounting principles and the provisions of chapter 74.46 RCW and this chapter including, but not limited to:

(a) Balance sheet;

(b) Statement of operations;

(c) Statement of changes in financial position; and

(d) Related notes.

(29) "Fiscal year" means the operating or business year of a contractor. All contractors report on the basis of a twelve-month fiscal year, but provision is made in this chapter for reports covering abbreviated fiscal periods.

(30) "Gain on sale" means the actual total sales price of all tangible and intangible nursing home assets including, but not limited to, land, building, equipment, supplies, goodwill, and beds authorized by certificate of need, minus the net book value of such assets immediately prior to the time of sale.

(31) "Generally accepted accounting principles (GAAP)" means accounting principles approved by the Financial Accounting Standards Board (FASB).

(32) "Generally accepted auditing standards (GAAS)" means auditing standards approved by the American Institute of Certified Public Accountants (AICPA).

(33) "Goodwill" means the excess of the price paid for:

(a) A business over the fair market value of all other identifiable, tangible, and intangible assets acquired; and

(b) An asset over the fair market value of the asset.

(34) "Historical cost" means the actual cost incurred in acquiring and preparing an asset for use, including feasibility studies, architects' fees, and engineering studies.

(35) "ICF" means:

(a) An intermediate care facility when referring to a nursing home;

(b) When referring to a level of care, intermediate care; and

(c) When referring to a patient, a patient requiring intermediate care.

(36) "Imprest fund" means a fund which is regularly replenished in exactly the amount expended from it.

(37) "Interest" means the cost incurred for the use of borrowed funds, generally paid at fixed intervals by the user.

(38) "Intermediate care facility" means a licensed facility certified to deliver intermediate care services to medical care recipients.

(39) "Joint facility costs" means any costs representing expenses incurred which benefit more than one facility, or one facility and any other entity.

(40) "Lease agreement" means a contract between two parties for the possession and use of real or personal property or assets for a specified period of time in exchange for specified periodic payments. Elimination or addition of any party to the contract, expiration, or modification of any lease term in effect on January 1, 1980, or termination of the lease by either party by any means shall constitute a termination of the lease agreement. An extension or renewal of a lease agreement, whether or not pursuant to a renewal provision in the lease agreement, shall be considered a new lease agreement. A strictly formal change in the lease agreement which modifies the method, frequency, or manner in which the lease payments are made, but does not increase the total lease payment obligation of the lessee shall not be considered modification of a lease term.

(41) "Levels of care" means the classification of types of services provided to patients by a contractor, e.g., skilled nursing care or intermediate care.

(42) "Medical care program" means medical assistance provided under RCW 74.09.500 or authorized state medical care services.

(43) "Medical care recipient" means an individual determined eligible by the department for the services provided in chapter 74.09 RCW.

(44) "Multiservice facility" means a facility at which two or more types of health or related care are delivered, e.g., a hospital and SNF and/or ICF, or a boarding home and SNF and/or ICF. A combined SNF/ICF or ICF/IMR is not considered a multiservice facility.

(45) "Net book value" means the historical cost of an asset less accumulated depreciation.

(46) "Net invested funds" means the net book value of tangible fixed assets employed by a contractor to provide services under the medical care program, including land, buildings, and equipment as recognized and measured in conformity with generally accepted accounting principles and not in excess of any limits or reimbursement limits set forth in this chapter, plus an allowance for working capital which shall be five percent of the allowable costs of each contractor for the previous calendar year. Assets associated with central or home offices or otherwise not on the nursing home premises are not included in net invested funds.

(47) "Nonadministrative wages and benefits" means wages, benefits, and corresponding payroll taxes paid for nonadministrative personnel, not to include administrator, assistant administrator, or administrator-in-training.

(48) "Nonallowable costs" means same as "unallowable costs."

(49) "Nonrestricted funds" means funds which are not restricted to a specific use by the donor, e.g., general operating funds.

(50) "Nursing home" means a home, place, or institution, licensed under chapter 18.51 RCW, where skilled nursing and/or intermediate care services are delivered.

(51) "Operating lease" means a lease under which rental or lease expenses are included in current expenses in accordance with generally accepted accounting principles.

(52) "Owner" means a sole proprietor, general or limited partner, or beneficial interest holder of five percent or more of a corporation's outstanding stock.

(53) "Ownership interest" means all interests beneficially owned by a person, calculated in the aggregate, regardless of the form the beneficial ownership takes.

(54) "Patient day" means a calendar day of patient care. In computing calendar days of care, the day of admission is always counted. The day of discharge is counted only when the patient was admitted on the same day. A patient is admitted for purposes of this definition when the patient is assigned a bed and a patient medical record is opened.

(55) "Per diem (per patient day) costs" means total allowable costs for a fiscal period divided by total patient days for the same period.

(56) "Professionally designated real estate appraiser" means an individual:

(a) Regularly engaged in the business of providing real estate valuation services for a fee;

(b) Qualified by a nationally recognized real estate appraisal educational organization on the basis of extensive practical appraisal experience, including the:

(i) Writing of real estate valuation reports;

(ii) Passing of written examination on valuation practice and theory; and

(iii) Requirement to subscribe and adhere to certain standards of professional practice as the organization prescribes.

(57) "Prospective daily payment rate" means the rate assigned by the department to a contractor for providing service to medical care recipients. The rate is used to compute the maximum participation of the department in the contractor's costs.

(58) "Qualified therapist":

(a) An activities specialist having specialized education, training, or at least one year's experience in organizing and conducting structured or group activities;

(b) An audiologist eligible for a certificate of clinical competence in audiology or having the equivalent education and clinical experience;

(c) A mental health professional as defined by chapter 71.05 RCW;

(d) A mental retardation professional, either a qualified therapist or a therapist, approved by the department having specialized training or one year's experience in treating or working with the mentally retarded or developmentally disabled;

(e) A social worker graduated from a school of social work;

(f) A speech pathologist eligible for a certificate of clinical competence in speech pathology or having the equivalent education and clinical experience;

(g) A physical therapist as defined by chapter 18.74 RCW; or

(h) An occupational therapist graduated from a program in occupational therapy, or having the equivalent

of education or training, and meeting all requirements of state law.

(59) "Recipient" means a medical care recipient.

(60) "Records" means data supporting all financial statements and cost reports including, but not limited to:

- (a) All general and subsidiary ledgers;
- (b) Books of original entry;
- (c) Invoices;
- (d) Schedules;
- (e) Summaries; and
- (f) Transaction documentation, however maintained.

(61) "Regression analysis" means a statistical technique through which one can analyze the relationship between a dependent or criterion variable and a set of independent or predictor variables.

(62) "Related care" includes:

- (a) The director of nursing services;
- (b) Activities and social services programs;
- (c) Medical and medical records specialists; and
- (d) Consultation provided by:
 - (i) Medical directors;
 - (ii) Pharmacists;
 - (iii) Occupational therapists;
 - (iv) Physical therapists;
 - (v) Speech therapists; and
 - (vi) Other therapists; and
 - (vii) Mental health professionals as defined in law and regulation.

(63) "Related organization" means an entity under common ownership and/or control, or which has control of or is controlled by, the contractor. Common ownership exists if an entity has a five percent or greater beneficial ownership interest in the contractor and any other entity. Control exists if an entity has the power, directly or indirectly, to significantly influence or direct the actions or policies of an organization or institution, whether or not the power is legally enforceable and however exercisable or exercised.

(64) "Relative" includes:

- (a) Spouse;
- (b) Natural parent, child, or sibling;
- (c) Adopted child or adoptive parent;
- (d) Stepparent, stepchild, stepbrother, stepsister;
- (e) Father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law;
- (f) Grandparent or grandchild; and
- (g) Uncle, aunt, nephew, niece, or cousin.

(65) "Restricted fund" means a fund for which the use of the principal and/or income is restricted by agreement with or direction of the donor to a specific purpose, in contrast to a fund over which the contractor has complete control. Restricted funds generally fall into three categories:

- (a) Funds restricted by the donor to specific operating purposes;
- (b) Funds restricted by the donor for additions to property, plant, and equipment; and
- (c) Endowment funds.

(66) "Secretary" means the secretary of the department of social and health services (DSHS).

(67) "Skilled nursing facility" means a licensed facility certified to deliver skilled nursing care services to medical care recipients.

(68) "SNF" means:

- (a) When referring to a facility, a skilled nursing facility;
- (b) When referring to a level of care, skilled nursing care; and
- (c) When referring to a patient, a patient requiring skilled nursing care.

(69) "Start-up costs" means the one-time preopening costs incurred from the time preparation begins on a newly constructed or purchased building until the first patient is admitted. Start-up costs include:

- (a) Administrative and nursing salaries;
- (b) Utility costs;
- (c) Taxes;
- (d) Insurance;
- (e) Repairs and maintenance; and
- (f) Training costs.

Start-up costs do not include expenditures for capital assets.

(70) "Title XIX" means the 1965 amendments to the Social Security Act, P.L. 89-07, as amended.

(71) "Unallowable costs" means costs which do not meet every test of an allowable cost.

(72) "Uniform chart of accounts" means a list of account titles identified by code numbers established by the department for contractors to use in reporting costs.

(73) "Vendor number" means a number assigned to each contractor delivering care services to medical care recipients.

(74) "Working capital" means total current assets necessary, ordinary, and related to patient care from the most recent cost report minus total current liabilities necessary, ordinary, and related to patient care from the most recent cost report.

[Statutory Authority: RCW 74.09.120. 91-22-025 (Order 3270), § 388-96-010, filed 10/29/91, effective 11/29/91. Statutory Authority: RCW 79.09.120 [74.09.120] and 74.46.800. 90-09-061 (Order 2970), § 388-96-010, filed 4/17/90, effective 5/18/90. Statutory Authority: 1987 c 476. 88-01-126 (Order 2573), § 388-96-010, filed 12/23/87. Statutory Authority: RCW 74.09.120 and 74.46.800. 85-13-060 (Order 2240), § 388-96-010, filed 6/18/85. Statutory Authority: RCW 74.09.120. 84-24-050 (Order 2172), § 388-96-010, filed 12/4/84. Statutory Authority: RCW 74.46.800. 84-12-039 (Order 2105), § 388-96-010, filed 5/30/84. Statutory Authority: RCW 74.09.120. 83-19-047 (Order 2025), § 388-96-010, filed 9/16/83; 82-21-025 (Order 1892), § 388-96-010, filed 10/13/82; 81-22-081 (Order 1712), § 388-96-010, filed 11/4/81. Statutory Authority: RCW 74.09.120 and 74.46.800. 81-06-024 (Order 1613), § 388-96-010, filed 2/25/81. Statutory Authority: RCW 74.09.120. 80-09-083 (Order 1527), § 388-96-010, filed 7/22/80; 79-04-061 (Order 1381), § 388-96-010, filed 3/28/79. Statutory Authority: RCW 74.08.090 and 74.09.120. 78-06-080 (Order 1300), § 388-96-010, filed 6/1/78; Order 1262, § 388-96-010, filed 12/30/77.]

WAC 388-96-023 Conditions of participation. In order to participate in the prospective cost-related reimbursement system, the person or legal organization responsible for operation of a nursing home or multiservice facility shall:

- (1) Obtain a state certificate of need approval pursuant to chapter 70.38 RCW where required;

- (2) Hold the appropriate current license (e.g., nursing home license, hospital license);
- (3) Hold current Title XIX certification to provide SNF and/or ICF services;
- (4) Hold a current contract to provide SNF and/or ICF services; and
- (5) Obtain and continuously maintain Medicare certification, under 42 USC 1395 (Title XVIII of the Social Security Act), as amended, for no less than fifteen percent of the licensed beds of the facility.
- (6) Comply with all provisions of the contract, chapter 74.46 RCW, and all applicable regulations, including but not limited to the provisions of this chapter and of chapter 388-88 WAC.

[Statutory Authority: RCW 74.09.120, 91-22-025 (Order 3270), § 388-96-023, filed 10/29/91, effective 11/29/91; 83-19-047 (Order 2025), § 388-96-023, filed 9/16/83; 82-21-025 (Order 1892), § 388-96-023, filed 10/13/82. Statutory Authority: RCW 74.08.090 and 74.09.120, 78-06-080 (Order 1300), § 388-96-023, filed 6/1/78; Order 1262, § 388-96-023, filed 12/30/77.]

WAC 388-96-507 Costs of meeting standards. All documented costs that are ordinary, necessary and related to the care of medical care recipients and are not expressly unallowable which a contractor incurs in providing care services meeting all applicable standards, will be allowable costs. The expenses include necessary and ordinary costs of:

- (1) Meeting licensing and certification standards;
- (2) Meeting standards of providing regular room, nursing, ancillary, and dietary services, in accordance with WAC 388-88-050 and;
- (3) Fulfilling accounting and reporting requirements imposed by this chapter; and
- (4) Performing any patient assessment activity required by the department.

[Statutory Authority: RCW 74.09.120, 91-22-025 (Order 3270), § 388-96-507, filed 10/29/91, effective 11/29/91; 81-22-081 (Order 1712), § 388-96-507, filed 11/4/81. Statutory Authority: RCW 74.09.120 and 74.46.800, 81-06-024 (Order 1613), § 388-96-507, filed 2/25/81. Statutory Authority: RCW 74.08.090 and 74.09.120, 78-06-080 (Order 1300), § 388-96-507, filed 6/1/78; Order 1262, § 388-96-507, filed 12/30/77.]

WAC 388-96-559 Cost basis of land and depreciation base. (1) For all partial or whole rate periods after December 31, 1984, the total depreciation base of depreciable assets and the cost basis of land shall be the lowest of:

- (a) The contractor's appraisal, if any;
- (b) The department's appraisal obtained through the department of general administration of the state of Washington, if any; or
- (c) The historical purchase cost of the contractor, or lessor if the assets are leased by the contractor, in acquiring ownership of the asset in an arm's-length transaction, and preparing the asset for use, less goodwill, and less accumulated depreciation, if applicable, incurred during periods the assets have been used in or as a facility by any and all contractors. Such accumulated depreciation is to be measured in accordance with subsection

(5) of this section and WAC 388-96-561, 388-96-565, and 388-96-567. Estimated salvage value shall be deducted from historical cost where the straight-line or sum-of-the-years digits method of depreciation is used.

(2) Unless otherwise provided or limited by this chapter or by chapter 74.46 RCW, the department shall, in determining the total depreciation base of a depreciable real or personal asset owned or leased by the contractor, deduct depreciation relating to all periods subsequent to the more recent of:

- (a) The date such asset was first used in the medical care program; or
- (b) The most recent date such asset was acquired in an arm's-length purchase transaction which the department is required to recognize for Medicaid cost reimbursement purposes.

No depreciation shall be deducted for periods such asset was not used in the medical care program or was not used to provide nursing care.

(3) The department may have the fair market value of the asset at the time of purchase established by appraisal through the department of general administration of the state of Washington if:

- (a) The department challenges the historical cost of an asset; or
- (b) The contractor cannot or will not provide the historical cost of a leased asset and the department is unable to determine such historical cost from its own records or from any other source.

The contractor may allocate or reallocate values among land, building, improvements, and equipment in accordance with the department's appraisal.

If an appraisal is conducted, the depreciation base of the asset and cost basis of land will not exceed the fair market value of the asset. An appraisal conducted by or through the department of general administration shall be final unless the appraisal is shown to be arbitrary and capricious.

(4) For leased assets, the department may examine documentation in its files or otherwise obtainable from any source to determine:

- (a) The lessor's purchase acquisition date; or
- (b) The lessor's historical cost at the time of the last arm's-length purchase transaction.

If the department is unable to determine the lessor's acquisition date by review of its records or other records, the department, in determining fair market value as of such date, may use the construction date of the facility, as found in the state fire marshal's records or other records, as the lessor's purchase acquisition date of leased assets.

(5) For all rate periods past or future, where depreciable assets or land are acquired from a related organization, the contractor's depreciation base and land cost basis shall not exceed the base and basis the related organization had or would have had under a contract with the department.

(6) If a contractor cannot or will not provide the lessor's purchase acquisition cost of assets leased by the contractor and the department is unable to determine

historical purchase cost from another source, the appraised asset value of land, building, or equipment, determined by or through the department of general administration shall be adjusted, if necessary, by the department using the *Marshall and Swift Valuation Guide* to reflect the value at the lessor's acquisition date. If an appraisal has been prepared for leased assets and the assets subsequently sell in the first arm's-length transaction since January 1, 1980, under subsection (8) of this section, the *Marshall and Swift Valuation Guide* will be used to adjust, if necessary, the asset value determined by the appraisal to the sale date. If the assets are located in a city for which the *Marshall and Swift Valuation Guide* publishes a specific index, or if the assets are located in a county containing that city, the city-specific index shall be used to adjust the appraised value of the asset. If the assets are located in a city or county for which a specific index is not calculated, the *Western District Index* calculated by Marshall and Swift shall be used.

(7) For all rates effective on or after January 1, 1985, if depreciable assets or land are acquired by purchase which were used in the medical care program on or after January 1, 1980, the depreciation base or cost basis of such assets shall not exceed the net book value existing at the time of such acquisition or which would have existed had the assets continued in use under the previous Medicaid contract with the department; except that depreciation shall not be accumulated for periods during which such assets were not used in the medical care program or were not in use in or as a nursing care facility.

(8)(a) Subsection (7) of this section shall not apply to the most recent arm's-length purchase acquisition if it occurs ten years or more after the previous arm's-length transfer of ownership nor shall subsection (7) of this section apply to the first arm's-length purchase acquisition of assets occurring on or after January 1, 1980, for facilities participating in the Medicaid program before January 1, 1980. The depreciation base or cost basis for such acquisitions shall not exceed the lesser of the fair market value as of the date of purchase of the assets determined by an appraisal conducted by or through the department of general administration or the owner's acquisition cost of each asset, land, building, or equipment. An appraisal conducted by or through the department of general administration shall be final unless the appraisal is shown to be arbitrary and capricious. Should a contractor request a revaluation of an asset, the contractor must document ten years have passed since the most recent arm's-length transfer of ownership. As mandated by Section 2314 of the Deficit Reduction Act of 1984 (P.L. 98-369) and state statutory amendments, and under RCW 74.46.840, for all partial or whole rate periods after July 17, 1984, this subsection is inoperative for any transfer of ownership of any asset, including land and all depreciable or nondepreciable assets, occurring on or after July 18, 1984, leaving subsection (7) of this section to apply without exception to acquisitions occurring on or after July 18, 1984, except as provided in subsections (8)(b) and (9) of this section.

(b) For all rates after July 17, 1984, subsection (8)(a) shall apply, however, to transfers of ownership of assets:

(i) Occurring before January 1, 1985, if the costs of such assets have never been reimbursed under Medicaid cost reimbursement on an owner-operated basis or as a related party lease; or

(ii) Under written and enforceable purchase and sale agreements dated before July 18, 1984, which are documented and submitted to the department before January 1, 1988.

(c) For purposes of Medicaid cost reimbursement under this chapter, an otherwise enforceable agreement to purchase a nursing home dated before July 18, 1984, shall be considered enforceable even though the agreement contains:

(i) No legal description of the real property involved; or

(ii) An inaccurate legal description, notwithstanding the statute of frauds or any other provision of law.

(9)(a) In the case of land or depreciable assets leased by the same contractor since January 1, 1980, in an arm's-length lease, and purchased by the lessee/contractor, the lessee/contractor shall have the option to have the:

(i) Provisions of subsection (8) of this section apply to the purchase; or

(ii) Reimbursement for property and return on investment continue to be calculated under the provisions contained in RCW 74.46.530 (1)(e) and (f) and WAC 388-96-754(5). Reimbursement shall be based upon provisions of the lease in existence on the date of the purchase.

(b) The lessee/contractor may select the option in subsection (9)(a)(ii) of this section only when the purchase date meets one of the following criteria. The purchase date is:

(i) After the lessor has declared bankruptcy or has defaulted in any loan or mortgage held against the leased property;

(ii) Within one year of the lease expiration or renewal date contained in the lease;

(iii) After a rate setting for the facility in which the reimbursement rate set, under this chapter and under chapter 74.46 RCW, no longer is equal to or greater than the actual cost of the lease; or

(iv) Within one year of any purchase option in existence on January 1, 1988.

(10) For purposes of establishing the property and return on investment component rates, the value of leased equipment, if unknown by the contractor, may be estimated by the department using previous department of general administration appraisals as a data base. The estimated value may be adjusted using the *Marshall and Swift Valuation Guide* to reflect the value of the asset at the lessor's purchase acquisition date.

[Statutory Authority: RCW 74.09.120. 91-22-025 (Order 3270), § 388-96-559, filed 10/29/91, effective 11/29/91. Statutory Authority: RCW 79.09.120 [74.09.120] and 74.46.800. 90-09-061 (Order 2970), § 388-96-559, filed 4/17/90, effective 5/18/90. Statutory Authority: RCW 74.46.800. 88-16-079 (Order 2660), § 388-96-559, filed

8/2/88; 86-10-055 (Order 2372), § 388-96-559, filed 5/7/86, effective 7/1/86. Statutory Authority: RCW 74.09.120, 74.46.840 and 74.46.800. 85-17-052 (Order 2270), § 388-96-559, filed 8/19/85. Statutory Authority: RCW 74.09.120. 84-24-050 (Order 2172), § 388-96-559, filed 12/4/84; 81-22-081 (Order 1712), § 388-96-559, filed 11/4/81. Statutory Authority: RCW 74.09.120 and 74.46.800. 81-06-024 (Order 1613), § 388-96-559, filed 2/25/81; Order 1262, § 388-96-559, filed 12/30/77.]

WAC 388-96-569 Retirement of depreciable assets.

(1) Where depreciable assets are disposed of through sale, trade-in, scrapping, exchange, theft, wrecking, or fire or other casualty, depreciation shall no longer be taken on the assets. No further depreciation shall be taken on permanently abandoned assets.

(2) Where an asset has been retired from active use but is being held for stand-by or emergency service, and the department has determined that it is needed and can be effectively used in the future, depreciation may be taken.

(3) For rate setting effective July 1, 1991, and following, if a Medicaid contractor or lessor related to a lessee Medicaid contractor, as defined in this chapter, sells any or all of the nursing facility's tangible and/or intangible assets, including, but not limited to, land, building, equipment, supplies, goodwill, and beds authorized by certificate of need, the department shall recover depreciation reimbursement paid to the selling contractor or lessee related to the selling lessor. However, the department shall recover depreciation reimbursement only to the extent there was a gain on sale as defined in this chapter. Further, the department shall recover depreciation reimbursement for depreciation from July 1, 1991, forward only.

(4) Recovery of depreciation reimbursement as authorized in this section shall apply to all transfers of assets by sale on or after July 1, 1991, unless pursuant to an enforceable agreement in place prior to July 1, 1991, and on file with the department's rates management office on or before December 31, 1991.

(5) Recovery of depreciation reimbursement shall be from the buyer whether or not such buyer operates the nursing facility or is a Medicaid contractor. If recovery cannot be made from the buyer in whole or in part, the amount due shall be recovered from the selling contractor or selling lessor related to the contractor. If the buyer leases some or all of the assets purchased to a related party or organization as defined in this chapter, the department may recover directly from such related party or organization. The total amount subject to recovery shall be due and payable immediately after transfer of the assets by sale. However, the department may establish a repayment schedule to recover depreciation reimbursement for a period not to exceed six months after the transfer by sale.

(6) If repayment is not made immediately or commenced and maintained in accordance with a repayment schedule agreeable to the department, the department shall deduct the recovery from the monthly payments, if any, for Medicaid services made to the buyer, or from payments, if any, made to a contractor related to the

buyer as defined in this chapter. Such method of recovery shall be in addition to all other means of recovering debt to the state authorized by law.

(7) The depreciation base of depreciable assets and the cost basis of nondepreciable assets for all partial or whole Medicaid rate periods after the sale shall be established or continued in accordance with the provisions of this chapter. Neither shall be adjusted to reflect any liability for recovery of depreciation reimbursement. Upon request, the department shall provide to any prospective buyer or seller of nursing facility assets the total depreciation reimbursement paid to the selling contractor or lessee related to the selling lessor.

[Statutory Authority: RCW 74.09.120 and 74.46.800. 91-22-025 (Order 3270), § 388-96-569, filed 10/29/91, effective 11/29/91; 81-06-024 (Order 1613), § 388-96-569, filed 2/25/81; Order 1262, § 388-96-569, filed 12/30/77.]

WAC 388-96-585 Unallowable costs. (1) The department shall not allow costs if not documented, necessary, ordinary, and related to the provision of care services to authorized patients.

(2) The department shall include, but not limit unallowable costs to the following:

(a) Costs of items or services not covered by the medical care program. Costs of nonprogram items or services even if indirectly reimbursed by the department as the result of an authorized reduction in patient contribution;

(b) Costs of services and items provided to SNF or ICF recipients covered by the department's medical care program but not included in SNF or ICF services respectively. Items and services covered by the medical care program are listed in chapters 388-86 and 388-88 WAC;

(c) Costs associated with a capital expenditure subject to Section 1122 approval (Part 100, Title 42 C.F.R.) if the department found the capital expenditure inconsistent with applicable standards, criteria, or plans. If the contractor did not give the department timely notice of a proposed capital expenditure, all associated costs shall be nonallowable as of the date the costs are determined not to be reimbursable under applicable federal regulations;

(d) Costs associated with a construction or acquisition project requiring certificate of need approval pursuant to chapter 70.38 RCW if such approval was not obtained;

(e) Costs of outside activities (e.g., costs allocable to the use of a vehicle for personal purposes or related to the part of a facility leased out for office space);

(f) Salaries or other compensation of owners, officers, directors, stockholders, and others associated with the contractor or home office, except compensation paid for service related to patient care;

(g) Costs in excess of limits or violating principles set forth in this chapter;

(h) Costs resulting from transactions or the application of accounting methods circumventing the principles of the prospective cost-related reimbursement system;

(i) Costs applicable to services, facilities, and supplies furnished by a related organization in excess of the lower of the cost to the related organization or the price

of comparable services, facilities, or supplies purchased elsewhere;

(j) Bad debts. Beginning July 1, 1983, the department shall allow bad debts of Title XIX recipients only if:

(i) The debt is related to covered services;

(ii) It arises from the recipient's required contribution toward the cost of care;

(iii) The provider can establish reasonable collection efforts were made;

(iv) The debt was actually uncollectible when claimed as worthless; and

(v) Sound business judgment established there was no likelihood of recovery at any time in the future.

Reasonable collection efforts shall consist of three documented attempts by the contractor to obtain payment. Such documentation shall demonstrate the effort devoted to collect the bad debts of Title XIX recipients is at the same level as the effort normally devoted by the contractor to collect the bad debts of non-Title XIX patients. Should a contractor collect on a bad debt, in whole or in part, after filing a cost report, reimbursement for the debt by the department shall be refunded to the department to the extent of recovery. The department shall compensate a contractor for bad debts of Title XIX recipients at final settlement through the final settlement process only.

(k) Charity and courtesy allowances;

(l) Cash, assessments, or other contributions, excluding dues, to charitable organizations, professional organizations, trade associations, or political parties, and costs incurred to improve community or public relations. Any portion of trade association dues attributable to legal and consultant fees and costs in connection with lawsuits or other legal action against the department shall be unallowable;

(m) Vending machine expenses;

(n) Expenses for barber or beautician services not included in routine care;

(o) Funeral and burial expenses;

(p) Costs of gift shop operations and inventory;

(q) Personal items such as cosmetics, smoking materials, newspapers and magazines, and clothing, except items used in patient activity programs where clothing is a part of routine care;

(r) Fund-raising expenses, except expenses directly related to the patient activity program;

(s) Penalties and fines;

(t) Expenses related to telephones, televisions, radios, and similar appliances in patients' private accommodations;

(u) Federal, state, and other income taxes;

(v) Costs of special care services except where authorized by the department;

(w) Expenses of key-man insurance and other insurance or retirement plans not in fact made available to all employees on an equal or fair basis in terms of costs to employees and benefits commensurate to such costs;

(x) Expenses of profit-sharing plans;

(y) Expenses related to the purchase and/or use of private or commercial airplanes which are in excess of

what a prudent contractor would expend for the ordinary and economic provision of such a transportation need related to patient care;

(z) Personal expenses and allowances of owners or relatives;

(aa) All expenses of maintaining professional licenses or membership in professional organizations;

(bb) Costs related to agreements not to compete;

(cc) Goodwill and amortization of goodwill;

(dd) Expense related to vehicles which are in excess of what a prudent contractor would expend for the ordinary and economic provision of transportation needs related to patient care;

(ee) Legal and consultant fees in connection with a fair hearing against the department relating to those issues where:

(i) A final administrative decision is rendered in favor of the department or where otherwise the determination of the department stands at the termination of administrative review; or

(ii) In connection with a fair hearing, a final administrative decision has not been rendered; or

(iii) In connection with a fair hearing, related costs are not reported as unallowable and identified by fair hearing docket number in the period they are incurred if no final administrative decision has been rendered at the end of the report period; or

(iv) In connection with a fair hearing, related costs are not reported as allowable, identified by docket number, and prorated by the number of issues decided favorably to a contractor in the period a final administrative decision is rendered.

(ff) Legal and consultant fees in connection with a lawsuit against the department, including suits which are appeals of administrative decisions;

(gg) Lease acquisition costs and other intangibles not related to patient care;

(hh) Interest charges assessed by the state of Washington for failure to make timely refund of overpayments and interest expenses incurred for loans obtained to make such refunds;

(ii) Beginning January 1, 1985, lease costs, including operating and capital leases, except for office equipment operating lease costs;

(jj) Beginning January 1, 1985, interest costs;

(kk) Travel expenses outside the states of Idaho, Oregon, and Washington, and the Province of British Columbia. However, travel to or from the home or central office of a chain organization operating a nursing home will be allowed whether inside or outside these areas if such travel is necessary, ordinary, and related to patient care;

(ll) Board of director fees for services in excess of one hundred dollars per board member, per meeting, not to exceed twelve meetings per year;

(mm) Moving expenses of employees in the absence of a demonstrated, good-faith effort to recruit within the states of Idaho, Oregon, and Washington, and the Province of British Columbia;

(nn) Depreciation expense in excess of twenty-five hundred dollars per year for passenger cars or other vehicles primarily used for the administrator, facility staff, or central office staff;

(oo) Any costs associated with the use of temporary health care personnel from any nursing pool not registered with the director of the department of licensing at the time of such pool personnel use;

(pp) Costs of payroll taxes associated with compensation in excess of allowable compensation for owners, relatives, and administrative personnel;

(qq) Department-imposed postsurvey charges incurred by the facility as a result of subsequent inspections which occur beyond the first postsurvey visit during the certification survey calendar year;

(rr) Costs and fees otherwise allowable for legal services, whether purchased, allocated by a home office, regional office or management company, or performed by the contractor or employees of the contractor, in excess of the eighty-fifth percentile of such costs, measured on a total cost basis, reported by all contractors for the most recent cost report period: *Provided*, That this limit shall not apply to a contractor unless the contractor has exceeded this percentile for each of the three years preceding the most recent cost report year;

(ss) Costs and fees otherwise allowable for accounting and bookkeeping services, whether purchased, allocated by a home office, regional office or management company, or performed by the contractor or employees of the contractor, in excess of the eighty-fifth percentile of such costs, measured on a per patient-day cost basis, reported by all contractors for the most recent cost report period, provided this limit shall not apply to a contractor unless the contractor has exceeded this percentile for each of the three years preceding the most recent cost report year; and

(tt) For all partial or whole rate periods after July 17, 1984, costs of assets, including all depreciable assets and land, which cannot be reimbursed under the provisions of the Deficit Reduction Act of 1984 (DEFRA) and state statutes and regulations implementing DEFRA.

(uu) Effective for July 1, 1991, and all following rates, compensation paid for any purchased nursing care services, including registered nurse, licensed practical nurse, and nurse assistant services, obtained through service contract arrangement in excess of the amount of compensations which would have been paid for such hours of nursing care services had they been paid at the combined regular and overtime average hourly wage, including related taxes and benefits, for in-house nursing care staff of like classification of registered nurse, licensed practical nurse, or nursing assistant at the same nursing facility, as reported on the facility's filed cost report for the most recent cost report period.

[Statutory Authority: RCW 74.09.120. 91-22-025 (Order 3270), § 388-96-585, filed 10/29/91, effective 11/29/91. Statutory Authority: RCW 79.09.120 [74.09.120] and 74.46.800. 90-09-061 (Order 2970), § 388-96-585, filed 4/17/90, effective 5/18/90. Statutory Authority: RCW 74.46.800. 89-17-030 (Order 2847), § 388-96-585, filed 8/8/89, effective 9/8/89. Statutory Authority: RCW 74.09.180 and 74.46.800. 89-01-095 (Order 2742), § 388-96-585, filed 12/21/88. Statutory Authority: RCW 74.46.800. 87-09-058 (Order 2485), §

388-96-585, filed 4/20/87; 86-10-055 (Order 2372), § 388-96-585, filed 5/7/86, effective 7/1/86; 84-12-039 (Order 2105), § 388-96-585, filed 5/30/84. Statutory Authority: RCW 74.09.120. 83-19-047 (Order 2025), § 388-96-585, filed 9/16/83; 82-21-025 (Order 1892), § 388-96-585, filed 10/13/82; 82-11-065 (Order 1808), § 388-96-585, filed 5/14/82; 81-22-081 (Order 1712), § 388-96-585, filed 11/4/81. Statutory Authority: RCW 74.09.120 and 74.46.800. 81-06-024 (Order 1613), § 388-96-585, filed 2/25/81. Statutory Authority: RCW 74.09.120. 79-04-102 (Order 1387), § 388-96-585, filed 4/4/79. Statutory Authority: RCW 74.08.090 and 74.09.120. 78-06-080 (Order 1300), § 388-96-585, filed 6/1/78; Order 1262, § 388-96-585, filed 12/30/77.]

WAC 388-96-722 Nursing services cost area rate.

(1) The department shall pay the nursing services cost area reimbursement rate for the necessary and ordinary costs of providing routine nursing and related care to recipients. The cost of one-to-one care shall include care provided by qualified therapists and their employees only to the extent the costs are not covered by Medicare, part B, or any other coverage.

(2) The department shall subject nursing service costs to two reasonableness tests:

(a) A test for nursing staff hours; and

(b) A test for cost increases between the current and preceding report period.

(3) The test for nursing staff hours referenced in subsection (2)(a) of this section shall use a regression of hours reported by facilities for registered nurses, licensed practical nurses, and nurses' assistants, including:

(a) Purchased and allocated nursing and assistant staff time; and

(b) The average Battelle patient debility score for the corresponding facilities as computed by the department. The department shall take data for the regression from:

(i) Correctly completed cost reports; and

(ii) Patient assessments completed by the department for the corresponding calendar report year and available at the time the regression equation is computed. Effective January 1, 1988, the department shall not include the hours associated with off-site or class room training of nursing assistants and the supervision of such training for nursing assistants in the test for nursing staff hours. The department shall calculate and set for each facility a limit on nursing and nursing assistant staffing hours at predicted staffing hours plus 1.75 standard errors, utilizing the regression equation calculated by the department. The department shall reduce costs for facilities with reported hours exceeding the limit by an amount equivalent to:

(A) The hours exceeding the limit;

(B) Times the average wage rate for nurses and assistants indicated on cost reports for the year in question, including benefits and payroll taxes allocated to such staff. The department shall provide contractors' reporting hours exceeding the limit the higher of their January 1983 patient care rate or the nursing services rate computed for them according to the provisions of this subsection, plus applicable inflation adjustments.

(4) The test for cost increases referenced in subsection (2)(b) of this section shall compare:

(a) The percentage change in allowable nursing services cost for the facility between the most recent cost

report period and the next prior cost report period, excluding actual cost incurred relating to, but not to exceed an amount equal to, any prospective rate revision granted under WAC 388-96-774 in each cost report year;

(b) Against the percentage change in the medical care component of the consumer price index for all urban consumers between July of the most recent cost report period and July of the next prior cost report period. The department shall limit facilities reporting increases greater than the medical care component of the consumer price index to a rate determined by their adjusted patient care costs for the period immediately preceding the most recent cost report period, inflated by the medical care component of the consumer price index.

(5) In calculating and applying the test for cost increases, the department shall measure the allowable nursing services cost increase between the most recent and the next prior cost report periods on a total cost basis and on a per-patient-day cost basis only. The department shall utilize for each contractor the basis showing the lesser increase.

(6) For all rates effective after June 30, 1991, nursing services costs, as reimbursed within this chapter and as tested for reasonableness within this section, shall not include costs of any purchased nursing care services, including registered nurse, licensed practical nurse, and nurse assistant services, obtained through service contract arrangement (commonly referred to as "nursing pool" services), in excess of the amount of compensation which would have been paid for such hours of nursing care service had they been paid at the average hourly wage, including related taxes and benefits, for in-house nursing care staff of like classification at the same nursing facility, as reported in the most recent cost report period.

(7) Staff of like classification shall mean only the nursing classifications of registered nurse, licensed practical nurse or nurse assistant. The department shall not recognize particular individuals, positions or subclassifications within each classification for whom pool staff may be substituting or augmenting. The department shall derive the facility average hourly wage for each classification by dividing the total allowable regular and overtime salaries and wages, including related taxes and benefits, paid to facility staff in each classification divided by the total allowable hours worked for each classification. All data used to calculate the average hourly wage for each classification shall be taken from the cost report on file with the department's rates management office for the most recent cost report period.

(8) The department shall suspend application of the cost increase limitation, authorized by subsections (2)(b) and (4) of this section, for the July 1, 1991, through June 30, 1992, rate period only. The limitations shall remain in effect for all other rate periods and the suspension shall not affect application of the nursing hours lid, authorized by subsections (2)(a) and (3) of this section, which shall remain in effect for all rate periods.

[Statutory Authority: RCW 74.09.180 and 74.46.800. 91-22-025 (Order 3270), § 388-96-722, filed 10/29/91, effective 11/29/91. Statutory Authority: RCW 74.46.800 and 74.09.120. 91-12-026 (Order 3185), § 388-96-722, filed 5/31/91, effective 7/1/91. Statutory Authority: RCW 74.09.180 and 74.46.800. 89-01-095 (Order 2742), § 388-96-722, filed 12/21/88. Statutory Authority: 1987 c 476. 88-01-126 (Order 2573), § 388-96-722, filed 12/23/87. Statutory Authority: RCW 74.46.800. 87-09-058 (Order 2485), § 388-96-722, filed 4/20/87; 86-10-055 (Order 2372), § 388-96-722, filed 5/7/86, effective 7/1/86. Statutory Authority: RCW 74.09.120, 74.46.840 and 74.46.800. 85-17-052 (Order 2270), § 388-96-722, filed 8/19/85. Statutory Authority: RCW 74.09.120. 83-19-047 (Order 2025), § 388-96-722, filed 9/16/83; 82-11-065 and 82-13-050 (Orders 1808 and 1808A), § 388-96-722, filed 5/14/82 and 6/14/82; 81-15-049 (Order 1669), § 388-96-722, filed 7/15/81; 81-06-024 (Order 1613), § 388-96-722, filed 2/25/81; 80-06-122 (Order 1510), § 388-96-722, filed 5/30/80, effective 7/1/80; 79-12-085 (Order 1461), § 388-96-722, filed 11/30/79. Statutory Authority: RCW 18.51.310 and 74.09.120. 78-11-013 (Order 1349), § 388-96-722, filed 10/9/78. Statutory Authority: RCW 74.08.090 and 74.09.120. 78-06-080 (Order 1300), § 388-96-722, filed 6/1/78. Statutory Authority: RCW 74.09.120. 78-02-013 (Order 1264), § 388-96-722, filed 1/9/78.]

WAC 388-96-754 A contractor's return on investment. (1) The department shall establish for individual Medicaid facilities return on investment allowances composed of a financing allowance and a variable return allowance.

(2) The department shall determine the financing allowance by:

(a) Multiplying the net invested funds of each facility by ten percent and dividing by the contractor's total patient days effective for July 1, 1991, and all following rate settings. Annual patient days taken from the contractor's cost report for the most recent twelve-month cost report period will be used. If the cost report covers less than twelve months, the department will estimate annual patient days and working capital costs for a full year based upon data in the cost report. If a capitalized addition or retirement of an asset results in a different licensed bed capacity during the ensuing period, the department shall adjust the prior period total patient days used in computing the financing and variable return allowances to anticipated patient day level; and

(b) In computing the portion of net invested funds representing the net book value of tangible fixed assets, the same assets, depreciation bases, lives, and methods referred to in this chapter, including owned and leased assets, shall be used, except the capitalized cost of land upon which a facility is located and other such contiguous land which is reasonable and necessary for use in the regular course of providing patient care shall also be included. As such, subject to provisions contained in this chapter, capitalized cost of leased land, regardless of the type of lease, shall be the lessor's historical capitalized cost. Subject to provisions contained in this chapter, for land purchases before July 18, 1984 (the enactment date of the Deficit Reduction Act of 1984 (DEFRA)), capitalized cost of land shall be the buyer's capitalized cost. For all partial or whole rate periods after July 17, 1984, if the land is purchased on or after July 18, 1984, capitalized cost of land shall be that of the owner of record on July 17, 1984, or buyer's capitalized cost, whichever is lower. In the case of leased facilities where the net invested funds are unknown or the contractor is unable or

unwilling to provide necessary information to determine net invested funds, the department may determine an amount to be used for net invested funds based upon an appraisal conducted by the department of general administration per this chapter.

(3) The department shall determine the variable return allowance according to the following procedure:

(a) The department shall rank all facilities in numerical order from highest to lowest based upon average per diem allowable costs for the sum of the administration and operations and property cost centers for the preceding cost report period. In the case of a new contractor, property and administration and operations cost levels actually used to set the initial rate shall be used for the purpose of ranking the new contractor. The department shall adjust the new contractor's costs to the cost year used to establish the most recent variable return ranking for all providers using inflation factors authorized by provisions of this chapter.

(b) The department shall compute the variable return allowance by multiplying the total prospective rate for each facility by the appropriate percentage which shall not be less than one percent nor greater than four percent. The department shall divide the facilities ranked according to subsection (3)(a) of this section into four groups, from highest to lowest, with an equal number of facilities in each group or nearly equal as is possible. The department shall assign facilities in the highest quarter a percentage of one, in the second highest quarter a percentage of two, in the third highest quarter a percentage of three, and in the lowest quarter a percentage of four. The per patient day variable return allowance in the initial rate of a new contractor shall be the same as that in the rate of the preceding contractor, if any.

(4) The sum of the financing allowance and the variable return allowance shall be the return on investment for each facility and shall be added to the prospective rate for each facility.

(5) If a facility is leased by a contractor as of January 1, 1980, in an arm's-length agreement, which continues to be leased under the same lease agreement as defined in this chapter, and for which the annualized lease payment, plus any interest and depreciation expenses of contractor-owned assets, for the period covered by the prospective rates, divided by the contractor's total patient days, minus the property cost center determined according to this chapter, is more than the return on investment allowance determined according to this section, the following shall apply:

(a) The financing allowance shall be recomputed substituting the fair market value of the assets, as of January 1, 1982, determined by department of general administration appraisal less accumulated depreciation on the lessor's assets since January 1, 1982, for the net book value of the assets in determining net invested funds for the facility. Said appraisal shall be final unless shown to be arbitrary and capricious.

(b) The sum of the financing allowance computed under this subsection and the variable return allowance shall be compared to the annualized lease payment, plus

any interest and depreciation expenses of contractor-owned assets, for the period covered by the prospective rates, divided by the contractor's total patient days, minus the property cost center rate determined according to this chapter. The lesser of the two amounts shall be called the alternate return on investment allowances.

(c) The return on investment allowance determined in accordance with subsections (1), (2), (3), and (4) of this section or the alternate return on investment allowance, whichever is greater, shall be the return on investment allowance for the facility and shall be added to the prospective rate of the facility.

(d) In the case of a facility leased by the contractor as of January 1, 1980, in an arm's-length agreement, if the lease is renewed or extended pursuant to a provision of the lease agreement existing on January 1, 1980, the treatment provided in subsection (5)(a) of this section shall be applied except that in the case of renewals or extensions made on or subsequent to April 1, 1985, per a provision of the lease agreement existing on January 1, 1980, reimbursement for the annualized lease payment shall be no greater than the reimbursement for the annualized lease payment for the last year prior to the renewal or extension of the lease.

(6) The information from the two prior reporting periods used to set the two prospective return on investment rates in effect during the settlement year is subject to field audit. If the financing allowances which can be documented and calculated at audit of the prior periods are different than the prospective financing allowances previously determined by desk-reviewed, reported information, and other relevant information, the prospective financing allowances shall be adjusted to the audited level at final settlement of the year the rates were in effect, except the adjustments shall reflect a minimum bed occupancy level of eighty-five percent. Any adjustments to the financing allowances pursuant to this subsection shall be for settlement purposes only. However, the variable return allowances shall be the prospective allowances determined by desk-reviewed, reported information, and other relevant information and shall not be adjusted to reflect prior-period audit findings.

[Statutory Authority: RCW 74.09.120 and 74.46.800. 91-22-025 (Order 3270), § 388-96-754, filed 10/29/91, effective 11/29/91; 90-09-061 (Order 2970), § 388-96-754, filed 4/17/90, effective 5/18/90. Statutory Authority: RCW 74.09.180 and 74.46.800. 89-01-095 (Order 2742), § 388-96-754, filed 12/21/88. Statutory Authority: RCW 74.46.800. 87-09-058 (Order 2485), § 388-96-754, filed 4/20/87; 86-10-055 (Order 2372), § 388-96-754, filed 5/7/86, effective 7/1/86. Statutory Authority: RCW 74.09.120, 74.46.840 and 74.46-800. 85-17-052 (Order 2270), § 388-96-754, filed 8/19/85. Statutory Authority: RCW 74.09.120. 84-24-050 (Order 2172), § 388-96-754, filed 12/4/84.]

WAC 388-96-760 Upper limits to reimbursement rate. The average reimbursement rate for the cost report year shall not exceed the contractor's average customary charges to the general public for the services covered by the rate for the same time period, except that public facilities rendering such services free of charge or at a nominal charge will be reimbursed according to the methods and standards set out in this chapter. The contractor shall provide as part of the annual cost report a

statement of the average charges for the cost report year for services covered by the rate and supporting computations and documentation. The contractor shall immediately inform the department if its reimbursement rate does exceed customary charges for comparable services. If necessary, the rate will be adjusted in accordance with WAC 388-96-769.

[Statutory Authority: RCW 74.46.800 and 74.09.120. 91-12-026 (Order 3185), § 388-96-760, filed 5/31/91, effective 7/1/91. Statutory Authority: RCW 74.09.120. 84-24-050 (Order 2172), § 388-96-760, filed 12/4/84; 83-19-047 (Order 2025), § 388-96-760, filed 9/16/83; 81-22-081 (Order 1712), § 388-96-760, filed 11/4/81. Statutory Authority: RCW 74.08.090 and 74.09.120. 78-06-080 (Order 1300), § 388-96-760, filed 6/1/78. Statutory Authority: RCW 74.09.120. 78-02-013 (Order 1264), § 388-96-760, filed 1/9/78.]

WAC 388-96-901 Disputes. (1) If a reimbursement rate issued to a contractor is believed to be incorrect because it is based on errors or omissions by the contractor or department, the contractor may request an adjustment pursuant to WAC 388-96-769. Pursuant to WAC 388-96-904(1) a contractor may within twenty-eight days request an administrative review after notification of an adjustment or refusal to adjust.

(2) If a contractor wishes to contest the way in which a department rule, contract provision, or policy statement utilized as part of the prospective cost-related reimbursement system's rate calculation methodology was applied to the contractor by the department, e.g., in setting a reimbursement rate or determining a disallowance at audit, it shall first pursue the administrative review process set out in WAC 388-96-904.

(3) Subject to subsection (5) of this section the administrative review and fair hearing process set out in WAC 388-96-904 need not be exhausted if a contractor wishes to challenge the legal validity of a statute, rule, contract provision or policy statement.

(4) The department's administrative review and fair hearing process, set out in WAC 388-96-904 and in RCW 74.46.780, shall not be used to challenge the adequacy of prospective or settlement reimbursement rates or rate components, whether preliminary or final, either individually or collectively, or to challenge audit actions or adjustments, under the federal Boren amendment payment standard found at 42 USC 1396a(a)(13)(A) and contained in federal regulation. Further, the administrative review and fair hearing process shall not be used to challenge the department's procedural compliance with this standard. Only in courts of proper jurisdiction shall contractors challenge the department's substantive and/or procedural compliance with the Boren amendment standard.

(5) The prohibition contained in subsection (4) against pursuit of substantive or procedural Boren amendment challenges in the administrative review and fair hearing process shall apply regardless of whether the challenge is brought for the purpose of obtaining an administrative decision or for the purpose of making a record or argument for subsequent judicial review. Further, the process shall not be used to challenge the validity of statutes or regulations, whether for the purpose of obtaining an administrative decision or making a

record or argument for subsequent judicial review, based upon alleged substantive or procedural noncompliance with the Boren amendment standard.

[Statutory Authority: RCW 74.46.800 and 74.09.120. 91-12-026 (Order 3185), § 388-96-901, filed 5/31/91, effective 7/1/91. Statutory Authority: RCW 74.09.120. 82-21-025 (Order 1892), § 388-96-901, filed 10/13/82; Order 1262, § 388-96-901, filed 12/30/77.]

WAC 388-96-904 Administrative review—Adjudicative proceeding. (1) Within twenty-eight days after a contractor is notified of an action or determination it wishes to challenge, the contractor shall request, in writing, the appropriate director or the director's designee review such determination. The contractor shall send the request to the office of contracts management if the challenge pertains to audit findings (adjusting journal entries or AJEs) or other audit matters. For other matters (such as rates, desk reviews, and settlements), the contractor shall send the request to the manager, residential rates program. The contractor or the licensed administrator of the facility shall:

(a) Sign the request;

(b) Identify the challenged determination and the date thereof;

(c) State as specifically as practicable the issues and regulations involved and the grounds for contending the determination is erroneous; and

(d) Attach to the request copies of any documentation the contractor intends to rely on to support the contractor's position.

(2) After receiving a timely request meeting the criteria of this section, the department shall contact the contractor to schedule a conference for the earliest mutually convenient time. The department shall schedule the conference for no earlier than fourteen days after the contractor was notified of the conference and no later than ninety days after a properly completed request is received, unless both parties agree, in writing, to a specific later date. The department may conduct the conference by telephone unless either the department or the contractor requests, in writing, the conference be held in person.

(3) The contractor and appropriate representatives of the department shall participate in the conference. In addition, representatives selected by the contractor may participate. The contractor shall bring to the conference, or provide to the department in advance of the conference:

(a) Any documentation requested by the department which the contractor is required to maintain for audit purposes under WAC 388-96-113; and

(b) Any documentation the contractor intends to rely on to support the contractor's contentions. The parties shall clarify and attempt to resolve the issues at the conference. If additional documentation is needed to resolve the issues, the parties shall schedule a second session of the conference for not later than thirty days after the initial session unless both parties agree, in writing, to a specific later date.

(4) Regardless of whether agreement has been reached at the conference, the director of residential

rates and licensure services or designee or the director of the office of nursing home audit or designee shall furnish the contractor a written decision within sixty days after the conclusion of the conference.

(5) A contractor has the right to an adjudicative proceeding to contest only issues raised in the administrative review conference and addressed in the director's administrative review decision.

(a) A contractor contesting the director's decision shall within twenty-eight days of receipt of the decision:

(i) File a written application for an adjudicative proceeding with the office of appeals;

(ii) Sign the application or have the licensed administrator of the facility sign it;

(iii) State as specifically as practicable the issues and law involved;

(iv) State the grounds for contesting the director's decision; and

(v) Attach to the application a copy of the director's decision being contested and copies of any documentation the contractor intends to rely on to support its position.

(b) The proceeding shall be governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 388-08 WAC. If any provision in this chapter conflicts with chapter 388-08 WAC, the provision in this chapter governs.

(6) Subject to subsection (7) of this section adjudicative proceedings timely requested under subsection (5) of this section shall be dismissed unless within one calendar year after the department receives the application:

(a) All issues have been resolved by a written, signed settlement agreement between the contractor and the department; or

(b) The evidentiary record, including all briefing, has been closed.

(7) If a written settlement agreement resolving all the issues has not been signed by both the contractor and the department and if the evidentiary record, including all briefing, has not been closed upon the expiration of one year after the application was received by the department, the office of administrative hearings shall, within fourteen days after the expiration date:

(a) Issue a written order dismissing the adjudicative proceeding with prejudice to the contractor; or

(b) Issue a written order for a continuance for good cause described in the order for a period not to exceed ninety days.

Good cause as stated in the order must show the hearing was prevented from being held because of circumstances that were beyond the control of the contractor. Upon expiration of any extension period and without either a signed settlement agreement resolving all issues or a closed evidentiary record including all briefing, the office of administrative hearings shall either dismiss with prejudice to the contractor or continue for good cause as provided in this subsection. Orders for dismissal or continuance shall be subject to a petition for review timely filed with the department's office of appeals if desired by either party.

[Statutory Authority: RCW 74.46.800 and 74.09.120. 91-12-026 (Order 3185), § 388-96-904, filed 5/31/91, effective 7/1/91. Statutory Authority: RCW 34.05.220 (1)(a) and 74.09.120. 90-04-071 (Order 3003), § 388-96-904, filed 2/5/90, effective 3/1/90. Statutory Authority: RCW 74.09.180 and 74.46.800. 89-01-095 (Order 2742), § 388-96-904, filed 12/21/88. Statutory Authority: 1987 c 476. 88-01-126 (Order 2573), § 388-96-904, filed 12/23/87. Statutory Authority: RCW 34.04.020. 84-05-040 (Order 2076), § 388-96-904, filed 2/17/84. Statutory Authority: RCW 74.09.120. 82-21-025 (Order 1892), § 388-96-904, filed 10/13/82; Order 1262, § 388-96-904, filed 12/30/77.]

Chapter 388-99 WAC

LIMITED CASUALTY PROGRAM--MEDICALLY NEEDED

WAC

388-99-020 Eligibility determination--Medically needy in own home.

388-99-040 Availability of resources.

WAC 388-99-020 Eligibility determination--Medically needy in own home. (1) Effective January 1, 1991, the department shall set the medically needy income level (MNIL) at:

(a) One person	\$	458
(b) Two persons	\$	575
(c) Three persons	\$	650
(d) Four persons	\$	725
(e) Five persons	\$	833
(f) Six persons	\$	942
(g) Seven persons	\$	1,092
(h) Eight persons	\$	1,208
(i) Nine persons	\$	1,325
(j) Ten persons and above	\$	1,433

(2) The department shall compute countable income by deducting, from gross income, amounts that would be deducted in determining:

(a) AFDC eligibility for families and children in a nondesignated FIP geographic area. The department shall not apply the earned income exemption of thirty dollars plus one-third of the remainder for persons applying solely for medical assistance;

(b) SSI/SSP eligibility for aged, blind, or disabled persons; and

(c) FIP eligibility for families and children.

(3) The department shall allow the following special income disregards:

(a) Health insurance premiums, except Medicare, the person expects to pay during the base period;

(b) An amount equal to the maintenance needs of an ineligible or nonapplying spouse not to exceed the one-person medically needy income level; and

(c) Child care payment amounts allowed as if the person was a FIP enrollee.

(4) If countable income is equal to or less than the appropriate MNIL, the department shall certify the family or person eligible.

(5) If countable income is greater than the appropriate MNIL, the department shall require the applicant to spenddown the excess countable income for the base period. The base period shall be the three-month or six-

month period which corresponds to the certification period under WAC 388-99-055.

(6) The department shall consider the income and resources of the spouse or of the parent of an applicant under eighteen years of age:

(a) In the same household, available to the applicant, whether or not actually contributed; and

(b) Not in the same household, only to the extent of what is actually contributed.

(7) The department shall consider the financial responsibility of relatives for aged, blind, and disabled, under chapter 388-92 WAC.

(8) In mixed households, where more than one assistance unit exists, the department shall determine income for the:

(a) AFDC-related assistance unit according to subsections (2)(a) and (3) of this section;

(b) SSI-related assistance unit according to subsections (2)(b) and (3) of this section; and

(c) FIP-related assistance unit according to subsections (2)(c) and (3) of this section.

[Statutory Authority: RCW 74.08.090. 91-07-011 (Order 3150), § 388-99-020, filed 3/11/91, effective 4/11/91; 90-06-034 (Order 2946), § 388-99-020, filed 3/1/90, effective 4/1/90; 89-05-029 (Order 2758), § 388-99-020, filed 2/13/89; 88-23-081 (Order 2727), § 388-99-020, filed 11/18/88. Statutory Authority: 1987 1st ex.s. c 7. 88-05-056 (Order 2599), § 388-99-020, filed 2/17/88. Statutory Authority: RCW 74.08.090. 87-17-043 (Order 2522), § 388-99-020, filed 8/17/87; 87-06-006 (Order 2473), § 388-99-020, filed 2/19/87; 86-07-003 (Order 2346), § 388-99-020, filed 3/6/86; 85-16-047 (Order 2263), § 388-99-020, filed 7/31/85; 85-05-016 (Order 2206), § 388-99-020, filed 2/13/85; 84-17-013 (Order 2133), § 388-99-020, filed 8/3/84; 84-05-039 (Order 2075), § 388-99-020, filed 2/17/84; 83-17-094 (Order 2006), § 388-99-020, filed 8/23/83; 83-01-058 (Order 1925), § 388-99-020, filed 12/15/82; 82-17-072 (Order 1868), § 388-99-020, filed 8/18/82; 82-10-062 (Order 1801), § 388-99-020, filed 5/5/82; 82-01-001 (Order 1725), § 388-99-020, filed 12/3/81; 81-16-032 (Order 1684), § 388-99-020, filed 7/29/81.]

WAC 388-99-040 Availability of resources. (1) The department shall consider the resource standard for the medically needy program as listed under WAC 388-99-035.

(2) The department shall consider resources for:

(a) SSI-related medically needy, according to chapter 388-92 WAC;

(b) AFDC-related medically needy as in determining AFDC financial eligibility under WAC 388-28-415 through 388-28-450, except for:

(i) Sales contracts, which are considered exempt resources unless transferred; and

(ii) Resources as determined under WAC 388-28-425.

(c) FIP-related medically needy, as in determining FIP financial eligibility, except for sales contracts, which are considered exempt resources unless transferred.

(3) The department shall consider transferred sales contracts under WAC 388-83-130 (6)(c) and 388-95-395.

(4) For households with more than one assistance unit, the department shall consider resources for each assistance unit according to the related program.

(5) The department shall consider only resources available during the period for which income is computed.

[Statutory Authority: RCW 74.08.090. 91-09-017 (Order 3132), § 388-99-040, filed 4/9/91, effective 5/10/91; 88-23-081 (Order 2727), § 388-99-040, filed 11/18/88; 84-02-054 (Order 2062), § 388-99-040, filed 1/4/84; 81-16-032 (Order 1684), § 388-99-040, filed 7/29/81.]

Chapter 388-100 WAC

LIMITED CASUALTY PROGRAM--MEDICALLY INDIGENT

WAC

388-100-005	Limited casualty program—Medically indigent.
388-100-010	Limited casualty program—Medically indigent—Eligibility determination.
388-100-015	Allocation of excess income and nonexempted resource.
388-100-020	Limited casualty program—Medically indigent—Application process.
388-100-025	Certification.
388-100-030	Emergency medical expense requirement.
388-100-035	Scope of care for medically indigent.

WAC 388-100-005 Limited casualty program--Medically indigent. (1) The department of social and health services shall provide a limited casualty program of medical care, administered through the medical assistance administration, designed to meet the health care needs of persons not receiving cash assistance or eligible for other medical programs.

(2) For applications filed on or after July 1, 1991, a person is eligible for the medically indigent program when the person:

(a) Has an emergency medical condition.

(i) The term emergency medical condition means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

(A) Placing the patient's health in serious jeopardy;

(B) Serious impairment to bodily functions; or

(C) Serious dysfunction of any bodily organ or part.

(ii) For the purposes of this section pregnancy and treatment under the Involuntary Treatment Act (ITA) are considered emergency medical conditions.

(b) Meets the financial eligibility requirements under chapter 388-100 WAC;

(c) Meets an emergency medical expense requirement of one thousand five hundred dollars.

(i) Only expenses related to an emergency medical condition shall count toward the emergency medical expense requirement.

(ii) For the purpose of the medically indigent program, an "emergency medical expense" requirement is any bill for emergency medical services a client can use to qualify for the medically indigent program. This requirement may include the usual and customary amounts a hospital would charge for the services provided; and

(d) Meets a spenddown, if any, as described under WAC 388-100-010.

(e) Is not an inmate of a federal or state prison.

[Statutory Authority: RCW 74.08.090. 91-17-062 (Order 3233), § 388-100-005, filed 8/20/91, effective 9/20/91; 89-22-037 (Order 2887), § 388-100-005, filed 10/27/89, effective 11/27/89; 87-12-054 (Order 2499), § 388-100-005, filed 6/1/87; 86-09-007 (Order 2364), § 388-100-005, filed 4/4/86; 84-02-054 (Order 2062), § 388-100-005, filed 1/4/84; 83-13-071 (Order 1972), § 388-100-005, filed 6/16/83; 82-01-001 (Order 1725), § 388-100-005, filed 12/3/81; 81-16-032 (Order 1684), § 388-100-005, filed 7/29/81.]

Notice of Objection: It is the opinion of the Joint Administrative Rules Review Committee that the Department of Social and Health Services has not modified, amended, withdrawn or repealed WAC 388-100-005 to conform with the intent of the legislature, as expressed in both chapters 70.48 and 74.09 RCW.

Although the department has statutory authority in chapter 74.09 RCW, to determine who is eligible to receive assistance under the limited casualty medical program, that authority is not without limitation. The City and County Jail Act of 1977 requires the Department of Social and Health Services to reimburse the local government for inmate medical costs, provided that inmate is otherwise eligible for such care. Inmates have not been denied coverage based on their status as inmates since the enactment of the City and County Jail Act.

In determining legislative intent, a portion of a statute cannot be examined in a vacuum. Rather, all statutes relating to the same subject should be read together and given a harmonious interpretation. The legislature is presumed to enact law with knowledge of existing law. RCW 70.48.130 is made moot by the department's administrative denial of inmate medical coverage, and the legislature does not intend to enact "moot" legislation.

The Joint Administrative Rules Review Committee objects to WAC 388-100-005 and herewith directs the code reviser to publish this Notice of Objection . . . pursuant to RCW 34.04.240. [Joint Administrative Rules Review Committee, Memorandum, July 10, 1987—Filed July 27, 1987, WSR 87-16-031]

WAC 388-100-010 Limited casualty program--Medically indigent--Eligibility determination. (1) Citizenship and residency are not requirements for eligibility. However, a person shall not be eligible for LCP-MI when the person:

- (a) Is eligible for medical care from another state; or
- (b) Enters Washington state specifically for the purpose of obtaining medical care.

(2) Persons receiving LCP-MI shall meet the following eligibility standards:

(a) The person is not receiving continuing cash assistance or eligible for any other medical program;

(b) Income shall:

(i) Not exceed the medically needy income level in WAC 388-99-020; or

(ii) Be spent down to that level according to procedures in WAC 388-99-030.

(c) Nonexempt resources shall not exceed the resource standard for Supplemental Security Income (SSI) or shall be spent down to that level according to procedures in WAC 388-100-015;

(d) The applicant who transferred resources within two years before the date of application but after July 1, 1981, shall spenddown the uncompensated value of the resource as described in WAC 388-100-015. See WAC 388-92-043 for determining the uncompensated value of the transferred resource; and

(e) For a pregnant woman, the department shall increase the number in the household by the number of unborns before comparing the pregnant woman's income to the:

(i) Income requirements of subdivision (b) of this subsection; and

(ii) Resource requirements of subdivision (c) of this subsection.

(3) The department shall use Aid to Families with Dependent Children (AFDC) income guidelines in chapter 388-28 WAC to determine treatment of income, except:

(a) The AFDC earned income exemption of thirty dollars plus one-third of the remainder does not apply to applicants for LCP-MI; and

(b) Deduct health insurance premiums expected to be paid during the base period.

(4) The department shall use AFDC resource guidelines in chapter 388-28 WAC to determine resources, except for provisions under WAC 388-28-425.

(5) The applicant shall satisfy the emergency medical expense requirement in WAC 388-100-030.

[Statutory Authority: RCW 74.08.090. 91-17-062 (Order 3233), § 388-100-010, filed 8/20/91, effective 9/20/91; 90-24-027 (Order 3105), § 388-100-010, filed 11/30/90, effective 1/1/91; 90-12-053 (Order 3011), § 388-100-010, filed 5/31/90, effective 7/1/90; 86-11-025 (Order 2378), § 388-100-010, filed 5/14/86; 84-02-054 (Order 2062), § 388-100-010, filed 1/4/84; 82-17-072 (Order 1868), § 388-100-010, filed 8/18/82; 82-01-001 (Order 1725), § 388-100-010, filed 12/3/81; 81-16-032 (Order 1684), § 388-100-010, filed 7/29/81.]

WAC 388-100-015 Allocation of excess income and nonexempted resource. (1) All countable income and nonexempted resources above the medically needy income and resource levels described in WAC 388-99-020 and 388-99-035 shall apply toward spenddown.

(2) On initial or subsequent applications, the department shall deduct previously incurred medical expenses from excess countable income as described in WAC 388-99-030. These expenses cannot have been used toward a previous spenddown, deductible or emergency medical expense requirement.

[Statutory Authority: RCW 74.08.090. 91-17-062 (Order 3233), § 388-100-015, filed 8/20/91, effective 9/20/91; 82-01-001 (Order 1725), § 388-100-015, filed 12/3/81; 81-16-032 (Order 1684), § 388-100-015, filed 7/29/81.]

WAC 388-100-020 Limited casualty program--Medically indigent--Application process. (1) The department shall dispose of applications according to WAC 388-84-105 and 388-84-110.

(2) The effective date of eligibility is the date the applicant meets spenddown, if any, and the emergency medical expense requirement.

(3) The department shall pay for medical care the applicant received in the seven working days prior to the application date when:

(a) The condition was an emergency medical condition, and

(b) The person was otherwise eligible.

[Statutory Authority: RCW 74.08.090. 91-17-062 (Order 3233), § 388-100-020, filed 8/20/91, effective 9/20/91; 81-16-032 (Order 1684), § 388-100-020, filed 7/29/81.]

WAC 388-100-025 Certification. (1) The department shall certify an applicant from the date spenddown

and emergency medical expense requirements are met through the duration of treatment for the emergency medical condition.

The certification date shall not exceed three calendar months beginning with the application month.

(2) A verified pregnant applicant may apply and be certified for separate three-month periods through the duration of the pregnancy. The three-month limitation in subsection (1) of this section may be extended up to six weeks after delivery to cover the post partum care, which includes routine care for the newborn. Beyond this period of time eligibility for the mother or the newborn shall be determined separately.

(3) All medically indigent applicants shall be individually notified in writing of the disposition of their application.

(4) Any change in circumstances shall be promptly reported to the local community services office.

(5) Certification may be up to seven working days prior to the date of receipt of a written request for assistance. The department may waive the seven-day rule if a person fails to apply for medical reasons or other good cause.

[Statutory Authority: RCW 74.08.090, 91-17-062 (Order 3233), § 388-100-025, filed 8/20/91, effective 9/20/91; 85-17-034 (Order 2267), § 388-100-025, filed 8/15/85; 83-13-071 (Order 1972), § 388-100-025, filed 6/16/83; 82-17-072 (Order 1868), § 388-100-025, filed 8/18/82; 82-10-062 (Order 1801), § 388-100-025, filed 5/5/82; 81-16-032 (Order 1684), § 388-100-025, filed 7/29/81.]

WAC 388-100-030 Emergency medical expense requirement. (1) The department shall require documentation of emergency medical expenses of one thousand five hundred dollars per family over a twelve-month period.

(2) Only family members meeting the eligibility requirements in WAC 388-100-010 (1) through (4) can accumulate expenses against the emergency medical expense requirement.

(3) The accumulation of emergency medical expenses may begin up to seven working days prior to the application date. The department may waive the seven-day rule if a person fails to apply for medical reasons or other good cause.

(4) Only emergency medical services, including inpatient and outpatient hospital services, count toward the emergency medical expense requirement.

(5) Other than expenses qualifying as hospital charity care under RCW 70.170.060, emergency medical expense requirement and spenddown, if any, are the liability of the client.

(6) If the applicant does not satisfy the emergency medical expense requirement during the three-month base period beginning with the month of application, the department shall apply the amount to any subsequent applications within twelve months of the initial application.

[Statutory Authority: RCW 74.08.090, 91-17-062 (Order 3233), § 388-100-030, filed 8/20/91, effective 9/20/91; 83-17-071 (Order 2009), § 388-100-030, filed 8/19/83; 82-20-039 (Order 1880), § 388-100-030, filed 10/1/82; 82-13-079 (Order 1828), § 388-100-030, filed 6/21/82; 81-16-032 (Order 1684), § 388-100-030, filed 7/29/81.]

WAC 388-100-035 Scope of care for medically indigent. (1) The coverage under the limited casualty program—medically indigent shall be available to an eligible person for treatment of emergency medical conditions only. Services available are limited to the following:

- (a) Rural health clinic services;
- (b) Physical medicine and rehabilitation services;
- (c) Physician and clinic services;
- (d) Prescribed drugs;
- (e) Dentures;
- (f) Prosthetic devices;
- (g) Eyeglasses;
- (h) Nursing facilities, and intermediate care facilities for the mentally retarded;
- (i) Home health services;
- (j) Laboratory and x-ray services; and
- (k) Medically necessary transportation.

(2) The department shall not pay until the recipient has medical expenses equal to the total of the emergency medical expense requirement of one thousand five hundred dollars and the spenddown, if any.

(3) The emergency medical expense requirement in WAC 388-100-030 does not apply for treatment under the Involuntary Treatment Act (ITA). When any other medical need is identified for recipients undergoing treatment under the ITA the emergency medical expense requirement shall apply to the services other than ITA.

(4) When an applicant indicates that an urgent undefined medical illness exists, the department shall:

- (a) Regard the condition as an emergency medical condition;
- (b) Allow one office visit for diagnosis, provided all financial eligibility criteria are met; and
- (c) Allow treatment only when the condition meets the criteria for an emergency medical condition.

(5) For other conditions and limitations under which the department may provide these services refer to appropriate service in chapter 388-86 WAC.

(6) The department shall not provide out-of-state care except in the designated bordering cities.

[Statutory Authority: RCW 74.08.090, 91-17-062 (Order 3233), § 388-100-035, filed 8/20/91, effective 9/20/91; 86-02-031 (Order 2321), § 388-100-035, filed 12/27/85; 85-17-035 (Order 2268), § 388-100-035, filed 8/15/85; 84-02-054 (Order 2062), § 388-100-035, filed 1/4/84; 83-17-071 (Order 2009), § 388-100-035, filed 8/19/83; 82-17-072 (Order 1868), § 388-100-035, filed 8/18/82; 82-04-071 (Order 1754), § 388-100-035, filed 2/3/82; 81-16-032 (Order 1684), § 388-100-035, filed 7/29/81.]

Chapter 388-150 WAC

MINIMUM LICENSING REQUIREMENTS FOR CHILD DAY CARE CENTERS

WAC

388-150-005	Authority.
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388-150-280	General safety, maintenance, and site.
388-150-390	Discrimination prohibited.
388-150-450	Child records and information.

WAC 388-150-005 Authority. The following rules are adopted under chapter 74.15 RCW.

[Statutory Authority: RCW 74.15.030, 91-07-013 (Order 3151), § 388-150-005, filed 3/12/91, effective 4/12/91; 90-23-078 (Order 3103), § 388-150-005, filed 11/20/90, effective 12/21/90.]

WAC 388-150-020 Scope of licensing. (1) The person or organization operating a child day care center shall be subject to licensing by authority under chapter 74.15 RCW, unless specifically exempted by RCW 74.15.020(4).

(2) The person or organization operating a child day care center and qualifying for exemption from requirements of this chapter under RCW 74.15.020(4) shall not be subject to licensure. The person or organization claiming an exemption shall provide the department proof of entitlement to the exemption on the department's request.

(3) The department shall not license the center legally exempt from licensing. However, at the applicant's request, the department shall investigate and may certify the center as meeting licensing and other pertinent requirements. In such cases, the department's requirements and procedures for licensure shall apply equally to certification.

(4) The department may certify a day care center for payment without further investigation if the center is:

- (a) Licensed by an Indian tribe;
- (b) Certified by the Federal Department of Defense;

or

(c) Approved by the superintendent of public instruction's office. The center must be licensed, certified, or approved in accordance with national or state standards or standards approved by the department and be operated on the premises over which the entity operating the center has jurisdiction.

(5) The department shall not license the department employee or the member of the department employee's household when such person is involved directly, or in an administrative or supervisory capacity, in the:

- (a) Licensing or certification process;
- (b) Placement of a child in a licensed or certified center; or

(c) Authorization of payment for the child in care.

(6) The department may license the center located in a private family residence when the portion of the residence accessible to the child is:

- (a) Used exclusively for the child during the center's operating hours or while the child is in care; or
- (b) Separate from the family living quarters.

[Statutory Authority: RCW 74.15.030, 91-15-084 and 91-21-070 (Orders 3205 and 3205A), § 388-150-020, filed 7/23/91 and 10/17/91, effective 8/23/91 and 11/17/91; 90-23-078 (Order 3103), § 388-150-020, filed 11/20/90, effective 12/21/90.]

WAC 388-150-100 Activity program. (1) The licensee shall implement an activity program designed to meet the developmental, cultural, and individual needs of the child served. The licensee shall ensure the program contains a range of learning experiences for the child to:

(a) Gain self-esteem, self-awareness, self-control, and decision making abilities;

(b) Develop socially, emotionally, intellectually, and physically;

(c) Learn about nutrition, health, and personal safety; and

(d) Experiment, create, and explore.

(2) The licensee shall ensure the center's program offers variety and options, including a balance between:

(a) Child-initiated and staff-initiated activities;

(b) Free play and organized events;

(c) Individual and group activities; and

(d) Quiet and active experiences.

(3) The licensee shall ensure the center's program affords the child daily opportunities for small and large muscle activities and outdoor play.

(4) The licensee shall operate the center's program under a regular schedule of activities with allowances for a variety of special events. The licensee shall implement a planned program of activities as evidenced by a current, written activity schedule, and afford staff classroom planning time.

(5) The licensee shall manage child and staff movements from one planned activity or care area to another to achieve smooth, unregimented transitions by:

(a) Establishing familiar routines;

(b) Contributing to learning experiences; and

(c) Maintaining staff-to-child ratio and group size guidelines.

(6) The child may remain in care only ten hours or less per day except as necessitated by the parent's working hours and travel time from and to the center.

[Statutory Authority: RCW 74.15.030, 91-07-013 (Order 3151), § 388-150-100, filed 3/12/91, effective 4/12/91; 90-23-078 (Order 3103), § 388-150-100, filed 11/20/90, effective 12/21/90.]

WAC 388-150-180 Staff pattern and qualifications.

(1) General qualifications. The licensee, staff, volunteer, and other person associated with the operation of the center who has access to the child in care shall:

(a) Be of good character;

(b) Demonstrate the understanding, ability, personality, emotional stability, and physical health suited to meet the cultural, emotional, mental, physical, and social needs of the child in care; and

(c) Not have committed or been convicted of child abuse or any crime involving physical harm to another person.

(2) Center management. The licensee shall serve as or employ a director, responsible for the overall management of the center's facility and operation. The director shall:

(a) Be twenty-one years of age or older;

(b) Serve as administrator of the center, ensuring compliance with minimum licensing requirements;

(c) Have knowledge of child development as evidenced by professional references, education, experience, and on-the-job performance;

(d) Have the management and supervisory skills necessary for the proper administration of the center, including:

- (i) Record maintenance;
- (ii) Financial management; and
- (iii) Maintenance of positive relationships with staff, children, parents, and the community;

(e) Have completed forty-five or more college quarter credits in early childhood education/child development, or possess an equivalent educational background, or be a certified child development associate;

(f) Have two or more years successful experience working with children of the same age level as those served by the center as evidenced by professional references and on-the-job performance;

(g) Have planning, coordination, and supervisory skills to implement a high quality, developmentally appropriate program; and

(h) Have knowledge of children and how to meet children's needs.

(3) When the director does not meet the qualifications specified in subsections (2)(e), (f), (g), and (h) of this section, the director or licensee shall employ a program supervisor, responsible for planning and supervising the center's learning and activity program. The program supervisor shall:

(a) Be twenty-one years of age or older;

(b) Meet the education, experience, and competency qualifications specified in subsections (2)(e), (f), (g), and (h) of this section; and

(c) Discharge on-site program supervisory duties a minimum of twenty hours weekly.

(4) For the center serving the school age child only, the program supervisor may substitute equivalent courses in education, recreation, or physical education for required education.

(5) The director and program supervisor may be one and the same person when qualified for both positions. The director or program supervisor shall normally be on the premises while the child is in care. If temporarily absent from the center, the director and program supervisor shall leave a competent, designated staff person in charge.

(6) The director and program supervisor may also serve as child care staff when such role does not interfere with the director's or program supervisor's management and supervisory responsibilities.

(7) Center staffing. The licensee shall ensure the lead child care staff person in charge of a child or a group of children implementing the activity program:

(a) Is eighteen years of age or older; and

(b) Possesses a high school education or equivalent; or

(c) Has child development knowledge and experience.

(8) The licensee may assign a child care assistant or aide to support lead child care staff. The child care assistant or aide shall be sixteen years of age or older. The child care assistant or aide shall care for the child under the direct supervision of the lead child care staff person. The licensee shall ensure no person under eighteen years of age is assigned sole responsibility for a group of children. The assistant or aide, eighteen years of age or older, may care for a child or group of children without direct supervision by a superior for a brief period time.

(9) The licensee may arrange for a volunteer to support lead child care staff. The volunteer shall be sixteen years of age or older. The volunteer shall care for the child under the direct supervision of the lead child care staff person. The licensee may count the volunteer in the staff-to-child ratio when the volunteer meets staff qualification requirements.

(10) Support service personnel. The licensee shall provide or arrange for fulfillment of administrative, clerical, accounting, maintenance, transportation, and food service responsibilities so the child care staff is free to concentrate on program implementation.

(11) The licensee shall ensure completion of support service duties occurs in a manner allowing the center to maintain required staff-to-child ratios.

[Statutory Authority: RCW 74.15.030. 91-07-013 (Order 3151), § 388-150-180, filed 3/12/91, effective 4/12/91; 90-23-078 (Order 3103), § 388-150-180, filed 11/20/90, effective 12/21/90.]

WAC 388-150-210 Health care plan. (1) The licensee shall maintain current written health policies and procedures for staff orientation and use, and for the parent. The health care plan shall include, but not be limited to, information about the center's procedures concerning:

(a) Communicable disease prevention, reporting, and management;

(b) Action taken for medical emergencies;

(c) First aid;

(d) Care of minor illnesses;

(e) Medication management;

(f) General hygiene practices;

(g) Handwashing practices;

(h) Food and food services; and

(i) Infant care procedures and nursing consultation, where applicable.

(2) The licensee shall use the services of an advisory physician, physician's assistant, or registered nurse to assist in the development, approval, and periodic review of the center's health care plan.

[Statutory Authority: RCW 74.15.030. 91-07-013 (Order 3151), § 388-150-210, filed 3/12/91, effective 4/12/91; 90-23-078 (Order 3103), § 388-150-210, filed 11/20/90, effective 12/21/90.]

WAC 388-150-280 General safety, maintenance, and site. (1) The licensee shall operate the center:

(a) On an environmentally safe site;

(b) In a neighborhood free from a condition detrimental to the child's welfare; and

(c) In a location accessible to other services to carry out the program.

(2) The licensee shall maintain the indoor and outdoor premises in a safe and sanitary condition, free of hazards, and in good repair. The licensee shall ensure furniture and equipment are safe, stable, durable, child-sized, and free of sharp, loose, or pointed parts.

(3) The licensee shall:

(a) Install handrails or safety devices at child height adjacent to steps, stairways, and ramps;

(b) Maintain a flashlight or other emergency lighting device in working condition;

(c) Ensure there is no flaking or deteriorating lead-based paint on interior and exterior surfaces, equipment, and toys accessible to the preschool age and younger child;

(d) Finish or cover rough or untreated wood surfaces; and

(e) Maintain one or more telephones in working order, accessible to staff.

(4) The licensee shall supply bathrooms and other rooms subject to moisture with washable, moisture-imperious flooring.

(5) The licensee caring for the preschool age and younger child shall equip child-accessible electrical outlets with nonremovable safety devices or covers preventing electrical injury.

(6) The licensee shall ensure staff can gain rapid access in an emergency to a bathroom or other room occupied by the child.

(7) The licensee shall shield light bulbs and tubes in child-accessible areas.

(8) The licensee shall keep the premises free from rodents, fleas, cockroaches, and other insects and pests.

(9) The licensee shall use a housekeeping sink or another appropriate method for drawing clean mop water and disposing waste water.

(10) The licensee shall ensure the mop storage area is ventilated.

(11) The licensee shall ensure no firearm or another weapon is on the premises.

(12) The licensee shall comply with fire safety regulations adopted by the state fire marshal's office.

[Statutory Authority: RCW 74.15.030, 91-07-013 (Order 3151), § 388-150-280, filed 3/12/91, effective 4/12/91; 90-23-078 (Order 3103), § 388-150-280, filed 11/20/90, effective 12/21/90.]

WAC 388-150-390 Discrimination prohibited. The licensee shall comply with federal and state regulatory and statutory requirements, defined under chapter 49.60 RCW, regarding nondiscrimination in employment practices and client services.

[Statutory Authority: RCW 74.15.030, 91-07-013 (Order 3151), § 388-150-390, filed 3/12/91, effective 4/12/91; 90-23-078 (Order 3103), § 388-150-390, filed 11/20/90, effective 12/21/90.]

WAC 388-150-450 Child records and information. The licensee shall maintain on the premises organized confidential records and information concerning the child in care. The licensee shall ensure the child's record contains, at a minimum:

(1) Registration data:

(a) Name, birthdate, dates of enrollment and termination, and other identifying information;

(b) Name, address, and home and business telephone number of the parent and other person to be contacted in case of emergency; and

(c) Completed enrollment application signed by the parent, guardian, or responsible relative.

(2) Authorizations:

(a) Name, address, and telephone number of the person authorized to remove from the center the child under care;

(b) Written parental consent for transportation provided by the center, including field trips and swimming, when the child participates in these activities. A parent-signed blanket consent form may authorize the child's off-site travel; and

(c) Written parental consent, or court order, for providing medical care and emergency surgery, except for such care authorized by law.

(3) Medical and health data:

(a) Date and kind of illness and injury occurring on the premises, including the treatment given by staff;

(b) Medication given indicating dosage, date, time, and name of dispensing staff person; and

(c) A health history, obtained when the licensee or staff enrolls the child for care. The history includes:

(i) The date of the child's last physical examination;

(ii) Allergies;

(iii) Special health or developmental problems and other pertinent health information;

(iv) Immunization history as required under WAC 388-150-220; and

(v) Name, address, and telephone number of the child's health care provider or facility.

[Statutory Authority: RCW 74.15.030, 91-07-013 (Order 3151), § 388-150-450, filed 3/12/91, effective 4/12/91; 90-23-078 (Order 3103), § 388-150-450, filed 11/20/90, effective 12/21/90.]

Chapter 388-155 WAC

MINIMUM LICENSING REQUIREMENTS FOR FAMILY CHILD DAY CARE HOMES

WAC

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- 388-155-070 Application and reapplication for licensure—Orientation, training and investigation.
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388-155-500	Posting requirements.

WAC 388-155-005 Authority. The following rules are adopted under chapter 74.15 RCW.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-005, filed 2/1/91, effective 3/4/91.]

WAC 388-155-010 Definitions. As used and defined under this chapter:

(1) "Assistant" means a child care giver or child care givers employed by the licensee to supervise a child served at the home.

(2) "Capacity" means the maximum number of children the licensee is authorized to have on the premises at a given time.

(3) "Child" means a person seventeen years of age and under.

(4) "Child abuse or neglect" means the injury, sexual abuse, sexual exploitation, or negligent treatment or maltreatment of a child by a person under circumstances indicating the child's health, welfare, and safety is harmed.

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

(6) "Department of health" means the state department of health.

(7) "Family abode" means "a single dwelling unit and accessory buildings occupied for living purposes by a family which provides permanent provisions for living, sleeping, eating, cooking, and sanitation.

(8) "Family child care home" means a facility in the family residence of the licensee providing regularly scheduled care for twelve or fewer children, within a birth through eleven-years-of-age range exclusively, for periods less than twenty-four hours.

(9) "Family child day care home" means the same as "family child care home" and "a child day care facility, licensed by the state, located in the family abode of the person or persons under whose direct care and supervision the child is placed, for the care of twelve or fewer children, including children who reside at the home."

(10) "Family residence" means the same as "family abode."

(11) "Home" means the same as "family child care home."

(12) "License" means a permit issued by the department authorizing by law the licensee to operate a family

child care home and certifying the licensee meets minimum requirements under licensure.

(13) "Licensee" means the person, organization, or legal entity responsible for operating the home.

(14) "Premises" means the buildings where the home is located and the adjoining grounds over which the licensee has control.

(15) "Provider" means the same as "licensee."

(16) "Under two years of age" means a child twenty-three months of age or younger.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-010, filed 2/1/91, effective 3/4/91.]

WAC 388-155-020 Scope of licensing. (1) The person operating a family child care home shall be subject to licensing by authority under chapter 74.15 RCW, unless exempted by RCW 74.15.020(4).

(2) The person operating a family child care home and qualifying for exemption from requirements of this chapter under RCW 74.15.020(4) shall not be subject to licensure. The person claiming an exemption shall provide the department proof of entitlement to the exemption on the department's request.

(3) The department shall not license the home legally exempt from licensing. However, at the applicant's request, the department shall investigate and may certify the home as meeting licensing and other pertinent requirements. In such cases, the department's requirements and procedures for licensure shall apply equally to certification.

(4) The department may certify a family day care home for payment without further investigation if the home is:

(a) Licensed by an Indian tribe; or

(b) Certified by the Federal Department of Defense. The home must be licensed or certified in accordance with national or state standards or standards approved by the department and be operated on the premises over which the entity licensing or certifying the home has jurisdiction.

[Statutory Authority: RCW 74.15.030. 91-15-084 (Order 3205), § 388-155-020, filed 7/23/91, effective 8/23/91; 91-04-048 (Order 3136), § 388-155-020, filed 2/1/91, effective 3/4/91.]

WAC 388-155-040 Local ordinances and codes. The department shall issue or deny a license on the basis of the applicant's compliance with minimum licensing and procedural requirements. Local officials shall be responsible for enforcing city ordinances and county codes, such as zoning and building regulations.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-040, filed 2/1/91, effective 3/4/91.]

WAC 388-155-050 Waivers. (1) In an individual case, the department, for good cause, may waive a specific requirement and may approve an alternate method of achieving the specific requirement's intent if the:

(a) Licensee or applicant submits to the department a written waiver request fully explaining the circumstances necessitating the waiver; and

(b) Department determines waiver approval will not jeopardize the safety or welfare of the child in care or detract from the quality of services the licensee delivers.

(2) The department may approve a waiver request only for a specific purpose or child and for a specific period of time not exceeding the expiration date of the license.

(3) The department may limit or restrict a license issued in conjunction with a waiver.

(4) The licensee shall maintain on the premises a copy of the written waiver approval.

(5) The department's denial of a waiver request shall not be subject to appeal under chapter 34.05 RCW.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-050, filed 2/1/91, effective 3/4/91.]

WAC 388-155-060 Dual licensure. The department may either:

(1) Issue a family child care home license to the applicant having a foster home license or other license involving full-time care; or

(2) Permit simultaneous care for the child and adolescent or adult on the same premises if the applicant or licensee:

(a) Demonstrates evidence that care of one client category will not interfere with the quality of care provided to another category of clients;

(b) Maintains the most stringent maximum capacity limitation for the client categories concerned;

(c) Requests and obtains a waiver permitting dual licensure; and

(d) Requests and obtains a waiver to subsection (2)(b) of this section, if applicable.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-060, filed 2/1/91, effective 3/4/91.]

WAC 388-155-070 Application and reapplication for licensure—Orientation, training and investigation. (1) The person, organization, or legal entity applying for a license or relicensure under this chapter and responsible for operating the home shall:

(a) Attend orientation and training programs provided, arranged, or approved by the department;

(b) Comply with application procedures the department prescribes; and

(c) Submit to the department:

(i) A completed department-supplied application for family child care home license, including required attachments, ninety or more days before the:

(A) Beginning of licensed care;

(B) Expiration of a current license;

(C) Relocation of a home; or

(D) Change of licensed capacity category.

(ii) A completed criminal history and background inquiry form for each applicant, assistant, volunteer, or member of the household sixteen years of age or older having unsupervised or regular access to the child in care; and

(iii) The licensing fee.

(2) In addition to the required application materials specified under subsection (1) of this section, the applicant for initial licensure shall submit to the department:

(a) A department-supplied employment and education resume of the applicant and assistant including a transcript or its equivalent documenting early childhood education class completion, where appropriate; and

(b) Three references for the applicant.

(3) The applicant for a license under this chapter shall be eighteen years of age or older.

(4) The department may, at any time, require additional information from the applicant, licensee, assistant, volunteer, member of their household and other person having access to the child in care as the department deems necessary, including, but not limited to:

(a) Sexual deviancy evaluations;

(b) Substance and alcohol abuse evaluations;

(c) Psychiatric evaluations;

(d) Psychological evaluations; and

(e) Medical evaluations.

(5) The department may perform investigations of the applicant, licensee, assistant, volunteer, member of their household, and other person having access to the child in care as the department deems necessary, including accessing criminal histories and law enforcement files.

(6) The applicant shall conform to rules and regulations adopted by the:

(a) Department of health, promoting the health of the child in care, contained in this chapter; and

(b) State fire marshal's office, establishing standards for fire prevention and protection of life and property from fire and other pertinent fire safety regulations adopted by the state fire marshal's office.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-070, filed 2/1/91, effective 3/4/91.]

WAC 388-155-080 Issuance of license. (1) The department shall issue the applicant or licensee a license for a specific number of children dependent on the:

(a) Department's evaluation of the home's premises and physical accommodations;

(b) Number and skills of the licensee, assistant, and volunteers; and

(c) Ages and characteristics of the children served.

(2) The department:

(a) May issue the applicant or licensee a license to care for fewer children than the home's maximum capacity; and

(b) Shall not issue the applicant or licensee a license for the care of more children than permitted under this chapter.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-080, filed 2/1/91, effective 3/4/91.]

WAC 388-155-090 License denial, suspension, or revocation. (1) Before granting a license and as a condition for continuance of a license, the department shall consider the ability of the applicant and licensee to meet the requirements of this chapter. If more than one person is the applicant or licensee, the department shall consider the persons' qualifications separately and

jointly, and may deny, suspend, revoke, or not renew the license based on the failure of one of the persons to meet the requirements.

(2) The department shall deny, suspend, revoke, or not renew the license of a person who:

(a) Is a perpetrator of child abuse, or has been convicted of a crime involving child abuse or physical harm to another person, or allows such a person on the premises;

(b) Commits or was convicted of a felony reasonably related to the competency of the person to meet the requirements of this chapter;

(c) Engages in illegal use of a drug or excessive use of alcohol;

(d) Commits, permits, aids, or abets the commission of an illegal act on the premises;

(e) Commits, permits, aids, or abets the abuse, neglect, exploitation, or cruel or indifferent care to a child in care;

(f) Refuses to permit an authorized representative of the department, state fire marshal, or department of health to inspect the premises; or

(g) Refuses to permit an authorized representative of the department or the department of health access to records related to operation of the home or to interview an assistant or a child in care;

(3) The department may deny, suspend, revoke, or not renew a license of a person who:

(a) Seeks to obtain or retain a license by fraudulent means or misrepresentation, including, but not limited to:

(i) Making a materially false statement on the application; or

(ii) Omitting material information on the application.

(b) Provides insufficient staff in relation to the number, ages, or characteristics of children in care;

(c) Allows a person unqualified by training, experience or temperament to care for or be in contact with a child in care;

(d) Violates any condition or limitation on licensure including, but not limited to:

(i) Permitting more children on the premises than the number for which the home is licensed; or

(ii) Permitting on the premises a child of an age different from the ages for which the home is licensed.

(e) Fails to provide adequate supervision to a child in care;

(f) Demonstrates an inability to exercise fiscal responsibility and accountability with respect to operation of the home;

(g) Misappropriates property of a child in care;

(h) Knowingly permits on the premises an employee or volunteer who has made a material misrepresentation on an application for employment or volunteer service;

(i) Refuses or fails to supply necessary, additional department-requested information; or

(j) Fails to comply with any provision of chapter 74.15 RCW or this chapter.

(4) The department shall not issue a license to a person who has had denied, suspended, revoked, or not renewed a license to operate a facility for the care of

children or adults, in this state or elsewhere, unless the person demonstrates by clear, cogent, and convincing evidence the person has undertaken sufficient corrective action or rehabilitation to warrant public trust and to operate the home in accordance with the rules of this chapter.

(5) The department's notice of a denial, revocation, suspension, or modification of a license and the applicant's or licensee's right to a hearing, shall be governed under RCW 43.20A.205.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-090, filed 2/1/91, effective 3/4/91.]

WAC 388-155-100 Activities and routines. (1) The provider shall offer activities and routines designed to meet the developmental, cultural, and individual needs of the child served. The provider shall ensure the activities and routines contain a range of learning experiences for the child to:

(a) Gain self-esteem, self-awareness, self-control, and decision-making abilities;

(b) Develop socially, emotionally, intellectually, and physically;

(c) Learn about nutrition, health, and personal safety; and

(d) Experiment, create, and explore.

(2) The provider shall implement a schedule of daily activities, establishing familiar routines and contributing to learning experiences, with allowances for a variety of special events.

(3) The provider shall ensure the home's activities offer variety and options, including a balance between:

(a) Child-initiated and provider-initiated activities;

(b) Free play and organized events;

(c) Individual and group activities; and

(d) Quiet and active experiences.

(4) The provider shall ensure the home's daily routine affords the child opportunities for small and large muscle activities and outdoor play.

(5) The child may remain in care only ten hours or less per day except as necessitated by the parent's working hours and travel time from and to the home.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-100, filed 2/1/91, effective 3/4/91.]

WAC 388-155-110 Learning and play materials. The provider shall furnish the child a variety of easily accessible, developmentally appropriate learning and play materials of sufficient quantity to implement the home's daily activities. The provider shall ensure material is culturally relevant and promotes:

(1) Social development;

(2) Intellectual ability;

(3) Language development and communication;

(4) Self-help skills;

(5) Sensory stimulation;

(6) Large and small muscle development; and

(7) Creative expression.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-110, filed 2/1/91, effective 3/4/91.]

WAC 388-155-120 Provider-child interactions. (1) The provider shall furnish the child a nurturing, respectful, supportive, and responsive environment through frequent interactions with the child:

- (a) Supporting the child in developing an understanding of self and others by assisting the child to share ideas, experiences, and feelings;
- (b) Providing age-appropriate opportunities for intellectual growth and development of the child's social and language skills, including encouraging the child to ask questions;
- (c) Helping the child solve problems;
- (d) Fostering creativity and independence in routine activities, including showing tolerance for mistakes; and
- (e) Treating equally children in care regardless of race, religion, and handicapping condition.

(2) The provider shall:

- (a) Furnish the child a pleasant and educational environment at meal and snack times; and
- (b) Provide good models for nutrition habits and social behavior by:
 - (i) Eating with children, when feasible; and
 - (ii) Encouraging conversation among children.
- (3) The provider shall ensure the child is supervised by continuous visual or auditory contact.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-120, filed 2/1/91, effective 3/4/91.]

WAC 388-155-130 Behavior management and discipline. (1) The licensee shall guide the child's behavior based on an understanding of the individual child's needs and stage of development. The licensee shall promote the child's developmentally appropriate social behavior, self-control, and respect for the rights of others.

(2) The licensee shall ensure behavior management and discipline practices are fair, reasonable, consistent, and related to the child's behavior. The licensee shall not administer cruel, unusual, hazardous, frightening, or humiliating discipline.

(3) The licensee shall be responsible for implementing the behavior management and discipline practices of the home. The child in care shall not determine or administer behavior management or discipline.

(4) The licensee shall prohibit and prevent:

(a) Corporal punishment by any person on the premises, including hitting, biting, jerking, shaking, spanking, slapping, striking, or kicking the child, or other means of inflicting physical pain or causing bodily harm;

(b) The use of a physical restraint method injurious to the child;

(c) The use of a mechanical restraint for disciplinary purposes, locked time-out room, or closet; or

(d) The withholding of food as a punishment.

(5) In emergency situations, the licensee competent to use restraint methods may use limited physical restraint when:

(a) Protecting a person on the premises from physical injury;

(b) Obtaining possession of a weapon or other dangerous object; or

(c) Protecting property from serious damage.

(6) The licensee shall document any incident involving the use of physical restraint.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-130, filed 2/1/91, effective 3/4/91.]

WAC 388-155-140 Rest periods. (1) The provider shall offer a supervised rest period to the child:

(a) Five years of age and under remaining in care more than six hours; or

(b) Showing a need for rest.

(2) The provider shall plan quiet activities for the child not needing rest.

(3) The provider shall allow the child twenty-nine months of age and under to follow an individual sleep schedule.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-140, filed 2/1/91, effective 3/4/91.]

WAC 388-155-150 Evening and nighttime care. (1) For the home offering child care during evening and nighttime hours, the licensee shall adapt the activities, routines, and equipment to meet the physical and emotional needs of the child away from home at night.

(2) The licensee shall maintain the same capacity requirements in effect during daytime care. At all times, including sleeping hours, the child shall be within continuous visual or auditory range of the licensee or assistant.

(3) The licensee shall arrange child grouping so the sleeping child remains asleep during the arrival or departure of another child.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-150, filed 2/1/91, effective 3/4/91.]

WAC 388-155-160 Off-site trips. (1) The licensee may transport or permit the off-site travel of the child to attend school, participate in field trips, or engage in other off-site activities only with written parental consent.

(2) The parent's consent may be:

(a) For a specific date and trip; or

(b) A blanket authorization describing the full range of trips the child may take. In such case, the licensee shall notify the parent in advance about the trip.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-160, filed 2/1/91, effective 3/4/91.]

WAC 388-155-165 Transportation. When the licensee provides transportation for the child in care:

(1) The licensee shall ensure the motor vehicle is maintained in a safe operating condition;

(2) The licensee shall ensure the motor vehicle is equipped with appropriate safety devices and individual seat belts or safety seats for each child to use when the vehicle is in motion. An individual safety seat is required for the child eleven months of age and younger;

(3) The licensee shall ensure the number of passengers does not exceed the seating capacity of the motor vehicle;

(4) The licensee or driver shall carry motor vehicle liability and medical insurance. The driver shall have a

current Washington driver's license, valid for the classification of motor vehicle operated;

(5) The licensee or assistant supervising the child in the motor vehicle shall have current first aid and cardiopulmonary resuscitation training; and

(6) The licensee, assistant, or driver shall not leave the child unattended in the motor vehicle.

(7) The licensee shall ensure the assistant is present in the motor vehicle when capacity guidelines require an assistant.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-165, filed 2/1/91, effective 3/4/91.]

WAC 388-155-170 Parent communication. (1) The licensee shall:

(a) Explain to the parent the provider's policies and procedures;

(b) Orient the parent to the home and activities;

(c) Advise the parent of the child's progress and issues relating to the child's care and individual practices concerning a child's special needs; and

(d) Encourage parent participation in the home's activities.

(2) The licensee shall give the parent the following written policy and procedure information:

(a) Enrollment and admission requirements;

(b) The fee and payment plan;

(c) A typical activity schedule, including hours of operation;

(d) Meals and snacks served, including guidelines on food brought from the child's home;

(e) Permission for free access by the child's parent to all home areas used by the child;

(f) Child abuse reporting requirements;

(g) Behavior management and discipline;

(h) Nondiscrimination statement;

(i) Religious activities, if any;

(j) Transportation and field trip arrangements;

(k) Medical emergencies;

(l) Practices concerning an ill child;

(m) Medication management; and

(n) If licensed for the care of the young child;

(i) Diapering;

(ii) Toilet training; and

(iii) Feeding.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-170, filed 2/1/91, effective 3/4/91.]

WAC 388-155-180 Staffing--Qualifications. (1) General qualifications. The licensee, assistant, volunteer, and other person associated with the operation of the home who has access to the child in care shall:

(a) Be of good character;

(b) Have the understanding, ability, personality, emotional stability, and physical health suited to meet the cultural emotional, mental, physical, and social needs of the child in care; and

(c) Not have committed or been convicted of child abuse or any crime involving physical harm to another person.

(2) The licensee shall:

(a) Be eighteen years of age or older;

(b) Be the primary child care provider; and

(c) Ensure compliance with minimum licensing requirements under this chapter.

(3) The assistant shall be:

(a) Fourteen years of age or older; or

(b) Eighteen years of age or older if assigned sole responsibility for the child in care; and

(c) Competent to exercise appropriate judgements.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-180, filed 2/1/91, effective 3/4/91.]

WAC 388-155-190 Capacity. (1) The department shall determine the maximum capacity of the family child care home based on the:

(a) Licensee's experience and training;

(b) Assistant's qualifications;

(c) Number, ages, and characteristics of the children cared for;

(d) Number and ages of the licensee's own children and other children residing in the home eleven years of age and under;

(e) Usable indoor and outdoor space; and

(f) Supply of toys and equipment.

(2) The department may license the family child care home according to the following table:

NUMBER OF PROVIDERS REQUIRED	AGE RANGE IN YEARS	MAXIMUM NUMBER OF CHILDREN UNDER TWO YEARS OF AGE	MAXIMUM NUMBER OF CHILDREN
(a) Licensee	Birth - 11	2	6
(b) Licensee with one year experience	2 - 11	None	8
(c) Licensee with one year experience	5 - 11	None	10
(d) Licensee with one year experience plus assistant	Birth - 11	4	9
(e) Licensee with two years' experience and one early childhood education (ECE) class	3 - 11	None	10
(f) Licensee with two years' experience and one ECE class plus assistant	Birth - 11	4	12

So that the:

(a) Unassisted licensee may provide care for a maximum of six children, birth through eleven years of age, with two or fewer children under two years of age; or

(b) Unassisted licensee with one year of experience operating a licensed family child care home or the equivalent experience may provide care for a maximum

of eight children, two years through eleven years of age; or

(c) Unassisted licensee with one year of experience operating a licensed family child care home or the equivalent experience may provide care for a maximum of ten children, five years through eleven years of age; or

(d) Licensee with one year of experience as a licensed family child care home provider or the equivalent experience and an assistant may provide care for seven through nine children, birth through eleven years of age, with four or fewer children under two years of age; or

(e) Unassisted licensee with two years of experience operating a licensed family child care home or the equivalent experience and one class in ECE, or the equivalent education, may provide care for a maximum of ten children, three years through eleven years of age; or

(f) Licensee with two years of experience operating a licensed family child care home or the equivalent experience, one class in ECE or the equivalent education, and a qualified assistant may provide care for a maximum of twelve children, birth through eleven years of age, with four or fewer children under two years of age.

(3) The licensee shall ensure an assistant is on the premises when:

(a) Three or more children under two years of age are in care;

(b) Seven or more children are in care and any child in care is under two years of age; or

(c) More than ten children are in care.

(4) The department's determination of capacity shall include all children eleven years of age or under on the premises.

(5) The licensee shall ensure the assistant is eighteen years of age or older when the assistant is solely responsible for the child in care.

[Statutory Authority: RCW 74.15.030, 91-04-048 (Order 3136), § 388-155-190, filed 2/1/91, effective 3/4/91.]

WAC 388-155-200 Development and training. (1) The licensee shall have an orientation system making the new employee and volunteer aware of policies and practices. The licensee shall provide the new employee or volunteer an orientation including, but not limited to:

(a) Minimum licensing rules required under this chapter;

(b) Goals and philosophy of the home;

(c) Daily activities and routines;

(d) Child guidance and behavior management methods;

(e) Child abuse and neglect prevention, detection, and reporting policies and procedures;

(f) Special health and developmental needs of the individual child;

(g) The health care plan;

(h) Fire prevention and safety procedures; and

(i) Personnel policies, when applicable.

(2) The licensee shall:

(a) Obtain basic, standard first aid, and cardiopulmonary resuscitation (CPR) training, approved by the department of health. CPR training shall include methods appropriate for child age groups in care; and

(b) Ensure that first aid and CPR training is current.

(3) The licensee shall ensure the assistant eighteen years of age or older obtains basic, standard first aid, and CPR training approved by the department of health if the assistant will be solely responsible for the child in care.

(4) The licensee and assistant shall obtain appropriate education and training on the prevention and transmission of human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS).

(5) The licensee shall encourage the assistant to participate in training opportunities to promote ongoing education and enhance practice skills.

(6) The licensee shall conduct periodic meetings for planning and coordination purposes when applicable.

[Statutory Authority: RCW 74.15.030, 91-04-048 (Order 3136), § 388-155-200, filed 2/1/91, effective 3/4/91.]

WAC 388-155-210 Health care plan. (1) The licensee shall write and implement health policies and procedures. The licensee shall make the health care plan available to:

(a) The assistant, new employee or volunteer for training and use; and

(b) The parent of the child in care, upon request.

(2) The licensee's health care plan shall include, but not be limited to, information about the home's general health practices concerning:

(a) Injury prevention;

(b) Treatment of illnesses;

(c) Medication management;

(d) Cleaning and disinfecting;

(e) First aid, including medical emergencies;

(f) Communicable disease prevention, management, and reporting;

(g) Handwashing practices;

(h) Food and food services; and

(i) Care of the young child, where applicable.

[Statutory Authority: RCW 74.15.030, 91-04-048 (Order 3136), § 388-155-210, filed 2/1/91, effective 3/4/91.]

WAC 388-155-220 Health supervision and infectious disease prevention. (1) Child. The licensee shall encourage the parent to arrange a physical examination for the child who has not had regular health care or a physical examination within one year before enrollment.

(2) The licensee shall encourage the parent to obtain health care for the child when necessary. The licensee shall not be responsible for providing or paying for the child's health care.

(3) Before or on the child's first day of attendance, the parent shall present a certificate of immunization status form prescribed by the department of health proving the child's full immunization for:

(a) Diphtheria;

(b) Tetanus;

(c) Pertussis (whooping cough);

- (d) Poliomyelitis;
- (e) Measles (rubeola);
- (f) Rubella (German measles);
- (g) Mumps; and
- (h) Other diseases prescribed by the department of health.

(4) The licensee may accept the child without all required immunizations on a conditional basis if immunizations are:

- (a) Initiated before or on enrollment; and
 - (b) Completed as rapidly as medically possible.
- (5) The licensee may exempt the immunization requirement for the child if the parent or guardian:
- (a) Signs a statement expressing a religious, philosophical, or personal objection; or
 - (b) Furnishes a physician's statement of a valid medical reason for the exemption.
- (6) Procedures. The licensee shall daily observe the child for signs of illness. The licensee shall care for or discharge home the ill child based on the home's policies concerning an ill child.

(a) When the child has a severe illness or is injured, tired, or upset, the licensee shall separate the child from other children and attend the child continuously until:

- (i) The licensee secures appropriate health care for the child; or
- (ii) The licensee makes an arrangement to return the child to the parent; or
- (iii) The child is able to rejoin the group.

(b) The licensee shall provide a quiet, separate care room or area allowing the child requiring separate care an opportunity to rest.

(c) The licensee shall sanitize equipment used by the child, if the licensee suspects the child has a communicable disease.

(d) The licensee may use the separate care room or area for other purposes when not needed for separation of the child.

(7) The licensee shall wash, or assist the child to wash hands according to the home's handwashing procedures.

(8) The licensee shall clean and disinfect toys, equipment, furnishings, and facilities according to the home's cleaning and disinfecting policies.

(9) The licensee shall have appropriate extra clothing available for the child who wets or soils clothes.

(10) The licensee shall ensure the child does not share personal hygiene or grooming items.

(11) Each licensee, assistant, volunteer, and adult member of the household having regular contact with the child in care shall have a tuberculin (TB) skin test, by the Mantoux method, upon employment or initial licensure, unless against medical advice.

(a) The person whose TB skin test is positive (ten millimeters or more induration) shall have a chest x-ray within thirty days following the skin test.

(b) The licensee shall not require the person to obtain routine periodic TB retesting or x-ray (biennial or otherwise) after entry testing unless directed to obtain retesting by the person's health care provider or the local health department.

(12) The licensee shall not permit the person with a reportable communicable disease to be on duty in the home or have contact with the child in care unless approved by a health care provider.

(13) The licensee and assistant shall wash hands according to the home's handwashing practices.

[Statutory Authority: RCW 74.15.030, 91-04-048 (Order 3136), § 388-155-220, filed 2/1/91, effective 3/4/91.]

WAC 388-155-230 Medication management. (1) The home may have a policy of not giving medication to the child in care.

(2) If the home's health care plan includes giving medication to the child in care, the licensee:

(a) Shall give medications, prescription and nonprescription, only on the written approval of a parent, person, or agency having authority by court order to approve medical care;

(b) Shall give prescription medications:

- (i) Only as specified on the prescription label; or
- (ii) As authorized by a physician or other person legally authorized to prescribe medication.

(c) Shall give the following classifications of nonprescription medications, with written parent authorization, only at the dose, duration, and method of administration specified on the manufacturer's label for the age or weight of the child needing the medication:

- (i) Antihistamines;
- (ii) Nonaspirin fever reducers/pain relievers;
- (iii) Nonnarcotic cough suppressants;
- (iv) Decongestants;
- (v) Anti-itching ointments or lotions, intended specifically to relieve itching;
- (vi) Diaper ointments and powders, intended specifically for use in the diaper area of the child; and
- (vii) Sun screen.

(d) Shall give other nonprescription medication:

- (i) Not included in the categories listed in subsection (2)(c) of this section; or
- (ii) Taken differently than indicated on the manufacturer's label; or

(iii) Lacking labeled instructions, only when disbursement of the nonprescription medication is as required under subsection (2) (d) (i) and (ii):

- (A) Authorized, in writing, by a physician; or
- (B) Based on established medical policy approved, in writing, by a physician or other person legally authorized to prescribe medication.

(e) Shall accept from the child's parent, guardian, or responsible relative only medicine in the original container, labeled with:

- (i) The child's first and last names;
- (ii) The date the prescription was filled; or
- (iii) The medication's expiration date; and
- (iv) Legible instructions for administration, such as manufacturer's instructions or prescription label.

(f) Shall keep medication, refrigerated or nonrefrigerated, in an orderly fashion, inaccessible to the child;

(g) Shall store external medication in a compartment separate from internal medication;

(h) Shall keep a record of medication disbursed;

(i) Shall return to the parent or other responsible party, or shall dispose of medications no longer being taken; and

(j) May at the licensee's option, permit self-administration of medication by a child in care if the:

(i) Child is physically and mentally capable of properly taking medication without assistance;

(ii) Licensee includes in the child's file a parental or physician's written statement of the child's capacity to take medication without assistance; and

(iii) Licensee ensures the child's medications and other medical supplies are stored so the medications and medical supplies are inaccessible to another child in care.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-230, filed 2/1/91, effective 3/4/91.]

WAC 388-155-240 Nutrition. (1) The licensee shall provide food meeting the nutritional needs of the child in care, taking into consideration the:

- (a) Number of children in care;
- (b) Child's age and developmental level;
- (c) Child's cultural background;
- (d) Child's handicapping condition; and
- (e) Hours of care on the premises.

(2) The licensee shall provide only pasteurized milk or a pasteurized milk product.

(3) The licensee shall provide only whole milk to the child twenty-three months of age or under except with the written permission of the child's parent.

(4) The licensee may serve the child twenty-four months of age or older powdered Grade A milk mixed in the home provided the licensee completes the dry milk mixture, service, and storage in a safe and sanitary manner.

(5) The licensee may provide the child nutrient concentrates, nutrient supplements, a modified diet, or an allergy diet only with written permission of the child's health care provider. The licensee shall obtain from the parent or child's health care provider a written list of foods the child cannot consume.

(6) The licensee shall use the following meal pattern to provide food to the child in care in age-appropriate servings:

- (a) Providing the child in care for ten or less hours:
 - (i) Two or more snacks and one meal; or
 - (ii) Two meals and one snack.
- (b) Providing the child in care for ten or more hours:
 - (i) Two or more meals and two snacks; or
 - (ii) One meal and three snacks;
- (c) Providing the child arriving after school a snack;
- (d) Providing the child with food at not less than two-hour intervals, and not more than three and one-half hours apart; and
- (e) Allowing the occasional serving of party foods not meeting nutritional requirements.

(7) The licensee shall provide the child in care food which complies with the meal pattern of the United States Department of Agriculture Child and Adult Care Food Program, with the addition of:

(a) A minimum of one serving of Vitamin C fruit, vegetable, or juice, provided daily; and

(b) Servings of food high in Vitamin A, provided three or more times weekly.

(8) The licensee shall provide:

(a) Dinner to the child in evening care when the child did not receive dinner at home before arriving;

(b) A bedtime snack to the child in nighttime care; and

(c) Breakfast to the child in nighttime care if the child remains at the home after the child's usual breakfast time.

(9) The licensee shall monitor foods brought from the child's home for consumption by the child, all children, or a group of children in care ensuring safe storage and nutritional adequacy.

(10) For the home permitting sack lunches, the licensee shall have available food supplies to supplement food deficient in meeting nutrition requirements brought from the child's home and to nourish the child arriving without food.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-240, filed 2/1/91, effective 3/4/91.]

WAC 388-155-250 Kitchen and food service. (1) The licensee shall provide equipment for the proper storage, preparation, and service of food.

(2) The licensee shall make potentially hazardous appliances and sharp or pointed utensils inaccessible to the child when the child is not under direct supervision.

(3) The child may participate in food preparation as an educational activity.

(4) The licensee shall install and maintain kitchen equipment and clean re-usable utensils in a safe and sanitary manner by:

(a) Washing and sanitizing reusable utensils in a dishwasher or through use of a manual dishwashing procedure; and

(b) Using only single-use or clean cloths, used solely for wiping food service, preparation, and eating surfaces.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-250, filed 2/1/91, effective 3/4/91.]

WAC 388-155-260 Drinking and eating equipment. (1) The licensee shall provide the child individual drinking cups, glasses, or disposable single-use cups.

(2) The licensee shall provide the child durable eating utensils appropriate in size and shape for the child in care.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-260, filed 2/1/91, effective 3/4/91.]

WAC 388-155-270 Care of young children. (1) Diapering and toileting. The licensee shall ensure:

(a) The diaper-changing area is:

(i) Separate from food preparation areas; and

(ii) Easily accessible to a handwashing sink;

(iii) Sanitized between use for different children; or

(iv) Protected by a disposable covering discarded after each use.

(b) The diaper-changing area is impervious to moisture and washable.

(2) The licensee shall:

(a) Use reusable diapers, a commercial diaper service, or disposable diapers;

(b) Place soiled diapers without rinsing into a separate, cleanable, covered container provided with a waterproof liner before transporting to a laundry, parent, or acceptable disposal;

(c) Remove soiled diapers from the home daily or more often unless the licensee uses a commercial diaper service;

(d) Use disposable towels or clean, reusable towels laundered between use for different children for cleaning the child; and

(e) Wash hands after diapering the child or helping the child with toileting.

(3) The licensee shall:

(a) Consult with the child's parent regarding initiating toilet training;

(b) Locate potty chairs on washable, impervious surfaces when in use; and

(c) Sanitize toilet training equipment after each use.

(4) Feeding. The licensee and the infant's parent shall agree on a schedule for feedings:

(a) The licensee or parent may provide the child's bottle feeding in the following manner:

(i) A filled bottle brought from home;

(ii) Whole milk or formula in ready-to-feed strength; or

(iii) Formula requiring no preparation other than dilution with water, mixed on the premises.

(b) The licensee shall prepare the child's bottle and nipple in a sanitary manner in an area separate from the diapering area.

(c) The licensee shall sanitize the child's bottle and nipple between uses.

(d) The licensee shall label the bottle with the child's name and date prepared, if more than one bottle-fed child is in care.

(e) The licensee shall refrigerate a filled bottle if the child does not consume the contents immediately and discard the bottle's contents if the child does not consume the contents within twelve hours.

(f) To ensure safety and promote nurturing, the licensee and assistant shall:

(i) Hold in a semi-sitting position for feeding the child unable to sit in a high chair, unless such is against medical advice;

(ii) Interact with the child;

(iii) Not prop a bottle;

(iv) Not give a bottle to the reclining child; and

(v) Take the bottle from the child when the child finishes feeding.

(g) The licensee shall provide semi-solid food for the child, upon consultation with the parent, as recommended by the child's health care provider.

(5) Sleeping equipment. The licensee shall furnish the child a single-level crib, infant bed, bassinet, or play pen for napping until such time the parent and licensee agree

the child can safely use a mat, cot, or other approved sleep equipment.

(6) The licensee shall ensure the young child has a sturdy crib, infant bed, bassinet, or play pen:

(a) Made of wood, metal, or plastic with secure latching devices; and

(b) Constructed with two and three-eighths inches or less space between vertical slats when the crib is used for a child six months of age or younger; and

(c) Additionally supplied with crib bumpers or another effective method preventing the child's body from slipping between the slats.

(7) The licensee shall ensure the child's crib mattress, infant bed, bassinet, or play pen mattress is:

(a) Snug fitting, preventing the infant from being caught between the mattress and crib side rails; and

(b) Waterproof and easily sanitized.

(8) Activities and equipment. The licensee shall provide the young child a daily opportunity for:

(a) Large and small muscle development;

(b) Crawling and exploring;

(c) Sensory stimulation;

(d) Social interaction;

(e) Development of communication; and

(f) Learning self-help skills.

(9) The licensee shall provide the young child safe, noningestible, suitable toys and equipment for the child's mental and physical development.

[Statutory Authority: RCW 74.15.030, 91-04-048 (Order 3136), § 388-155-270, filed 2/1/91, effective 3/4/91.]

WAC 388-155-280 General safety, maintenance, and site. (1) The licensee shall operate the home on an environmentally safe site.

(2) The licensee shall maintain the indoor and outdoor premises in a safe and sanitary condition, free of hazards, and in good repair. The licensee shall ensure furniture and equipment are safe, stable, durable, and free of sharp, loose, or pointed parts.

(3) The licensee shall:

(a) Install handrails or safety devices at child height adjacent to steps, stairways, and ramps;

(b) Maintain a flashlight or other emergency lighting device in working condition;

(c) Ensure there is no flaking or deteriorating lead-based paint on interior and exterior surfaces, equipment, and toys accessible to the child;

(d) Finish rough or untreated wood surfaces; and

(e) Maintain one or more telephones in working order.

(4) The licensee shall supply bathrooms and other rooms subject to moisture with washable, moisture-impervious flooring or routinely cleaned floor covering.

(5) The licensee shall equip child-accessible electrical outlets with nonremovable safety devices or covers preventing electrical injury.

(6) The licensee shall ensure staff can gain rapid access in an emergency to a bathroom or other room occupied by the child.

(7) The licensee shall keep the premises free from rodents, fleas, cockroaches, and other insects and pests.

(8) The licensee shall use an appropriate method for drawing clean mop water and disposing waste water.

(9) The licensee shall ensure a firearm or another weapon is kept in locked storage accessible only to an authorized person.

(10) The licensee shall ensure a person with current first aid and infant-child CPR training is on the premises at all times.

(11) The licensee shall store and make inaccessible to the child cleaning supplies, toxic substances, paint, poisons, aerosol containers, and items bearing warning labels.

(12) The licensee shall label a container filled from a stock supply to identify contents.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-280, filed 2/1/91, effective 3/4/91.]

WAC 388-155-290 Water supply, sewage, and liquid wastes. (1) The licensee shall obtain approval of a private water supply by the local health authority or department.

(2) The licensee shall ensure sewage and liquid wastes are discharged into:

(a) A public sewer system; or

(b) An independent sewage system approved by the local health authority or department.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-290, filed 2/1/91, effective 3/4/91.]

WAC 388-155-295 Water safety. (1) The licensee shall maintain the following water safety precautions when the child uses an on-premises swimming pool or wading pool. The licensee shall ensure:

(a) The on-premises pool is inaccessible to the child when not in use; and

(b) During the child's use of a wading pool or swimming pool, an adult with current CPR training supervises the child at all times.

(2) The licensee shall ensure a certified lifeguard is present during the child's use of an off-premises swimming pool.

(3) The licensee shall daily empty and clean a portable wading pool, when in use.

(4) The licensee shall not permit the child to use or access a heated tub, spa, whirlpool, tank, or similar equipment.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-295, filed 2/1/91, effective 3/4/91.]

WAC 388-155-310 First aid supplies. (1) The licensee shall maintain first aid supplies on the premises conforming with the home's first aid policies and procedures.

(2) The home's first aid supplies shall include unexpired syrup of ipecac which may be administered only on the advice of a physician or poison control center.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-310, filed 2/1/91, effective 3/4/91.]

WAC 388-155-320 Outdoor play area. (1) The licensee shall provide a safe and securely-fenced or department-approved, enclosed outdoor play area:

(a) Adjoining directly the indoor premises; or

(b) Reachable by a safe route and method; and

(c) Promoting the child's active play, physical development, and coordination; and

(d) Protecting the play area from unsupervised exit by the child; and

(e) Preventing child access to roadways and other dangers.

(2) The licensee shall ensure the home's activity schedule affords the child sufficient daily time to participate actively in outdoor play.

(3) The licensee shall provide a variety of age appropriate play equipment for climbing, pulling, pushing, riding, and balancing activities. The licensee shall arrange, design, construct, and maintain equipment and ground cover to prevent the child's injury. The licensee's quantity of outdoor play equipment shall offer the child a range of outdoor play options.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-320, filed 2/1/91, effective 3/4/91.]

WAC 388-155-330 Indoor play area. (1) The home's indoor premises shall contain adequate space for child play and sufficient space to house developmentally appropriate activities for the number and age range of children served. The licensee shall provide a minimum of thirty-five square feet of usable floor space per child, exclusive of a bathroom, hallway, and closet.

(2) The licensee may use and consider the napping area as child care space if mats and cots are removed when not in use. The licensee may consider the kitchen usable space if:

(a) Appliances and utensils do not create a safety hazard;

(b) Toxic or harmful substances are not accessible to the child;

(c) Food preparation and storage sanitation is maintained; and

(d) The space is used safely and appropriately as a child care activity area.

(3) The licensee may use a room for multiple purposes such as playing, dining, napping, and learning activities, provided:

(a) The room is of sufficient size; and

(b) The room's use for one purpose does not interfere with use of the room for another purpose.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-330, filed 2/1/91, effective 3/4/91.]

WAC 388-155-340 Toilets, handwashing sinks, and bathing facilities. (1) The licensee shall provide a minimum of one indoor flush-type toilet and one adjacent handwash sink.

(2) The licensee shall supply the child warm running water for handwashing at a temperature range no less than eighty-five degrees Fahrenheit and no more than one hundred and twenty degrees Fahrenheit.

(3) The licensee shall provide toileting privacy for the child of opposite sex six years of age and older and for other children demonstrating a need for privacy.

(4) The licensee shall provide toilets and handwashing sinks of appropriate height and size for the child in care or furnish safe, easily cleanable platforms impervious to moisture so the child can reach the toilet and handwashing sink.

(5) The licensee shall ensure a room used for toileting is ventilated.

(6) When a home serves the child not toilet-trained, the licensee shall provide developmentally appropriate equipment for the toileting and toilet training of the young child. The licensee shall sanitize the equipment after each child's use.

(7) The licensee shall provide the child with soap and individual cloth or paper towels for washing and drying the child's hand and face.

(8) If the home is equipped with a bathing facility, the licensee shall:

(a) Ensure the young child is supervised while using the bathing facility; and

(b) Equip the bathing facility with a conveniently located grab bar or other safety device such as a nonskid pad; or

(c) Make the bathing facility inaccessible to the child.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-340, filed 2/1/91, effective 3/4/91.]

WAC 388-155-350 Laundry. (1) The licensee shall maintain access to laundry washing and drying facilities, which may include using on-premises or off-site equipment.

(2) When washing and drying occurs on-site, the licensee shall locate equipment in an area inaccessible to the child, or make the equipment inaccessible to the child.

(3) The licensee shall use an effective method through temperature or chemical measures for adequately sanitizing the child's laundry contaminated with urine, feces, lice, scabies, or other infectious material.

(4) The licensee shall store the child's soiled laundry separately from clean laundry.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-350, filed 2/1/91, effective 3/4/91.]

WAC 388-155-360 Nap and sleep equipment. (1) The licensee shall provide a clean, separate, firm mat, cot, bed, mattress, play pen, or crib for each child five years of age and under remaining in care for six or more hours and for the child requiring a nap or rest period.

(2) The licensee shall ensure the child's mat is of sufficient length, width, and thickness to provide adequate comfort for the child to nap. The licensee may use a washable sleeping bag meeting the mat requirements for the toilet-trained child.

(3) The licensee shall ensure the child's cot is of sufficient length and width and constructed to provide adequate comfort for the child to nap. The licensee shall ensure the cot surface is of a material which can be

cleaned with a detergent solution, disinfected, and allowed to air dry.

(4) The licensee shall clean the child's nap equipment as needed and between use by different children.

(5) The licensee shall separate the child's nap equipment when in use to facilitate child comfort and staff access.

(6) The licensee shall ensure the child's bedding:

(a) Consists of a clean sheet or blanket to cover the sleeping surface and a clean, suitable cover for the child;

(b) Is laundered weekly or more often and between use by different children; and

(c) Is stored separately from bedding used by another child.

(7) The licensee shall not use the upper bunk of a double deck bed for a preschool age or younger child.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-360, filed 2/1/91, effective 3/4/91.]

WAC 388-155-370 Storage. (1) The licensee shall provide accessible individual space for the child to store clothes and personal possessions.

(2) The licensee shall provide sufficient space to store equipment, supplies, records, files, cots, mats, and bedding.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-370, filed 2/1/91, effective 3/4/91.]

WAC 388-155-380 Home atmosphere. (1) The licensee shall provide a cheerful learning environment for the child consistent with a family home environment by placing visually stimulating decorations, pictures, or other attractive materials at appropriate heights for the child.

(2) The licensee shall maintain a safe and developmentally appropriate noise level, without inhibiting normal ranges of expression by the child, so provider and child can be clearly heard and understood in normal conversation.

(3) The licensee shall locate light fixtures and provide lighting intensities promoting good visibility and comfort for the child in care.

(4) The licensee shall maintain the temperature within the home at:

(a) Sixty-eight degrees Fahrenheit or more during the child's waking hours; and

(b) Sixty degrees Fahrenheit or more during the child's napping or sleeping hours.

(5) The licensee shall ventilate the home for the health and comfort of the child in care.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-380, filed 2/1/91, effective 3/4/91.]

WAC 388-155-390 Discrimination prohibited. The licensee shall comply with federal and state regulatory and statutory requirements, defined under chapter 49.60 RCW, regarding nondiscrimination in employment practices and client services.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-390, filed 2/1/91, effective 3/4/91.]

WAC 388-155-400 Religious activities. (1) Consistent with state and federal laws, the licensee shall respect and facilitate the rights of the child in care to observe the tenets of the child's faith.

(2) The licensee shall not punish or discourage the child for exercising these rights.

(3) If the home conducts religious activities, the licensee shall maintain a written description of the home's religious policies and practices affecting the child in care.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-400, filed 2/1/91, effective 3/4/91.]

WAC 388-155-410 Special requirements regarding American Indian children. When one or more Indian child receives care at the home, the licensee shall develop social service resources and training designed to meet the special needs of such children through coordination with tribal, Indian Health Service, Bureau of Indian Affairs social service staff, and appropriate urban Indian and Alaskan native consultants.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-410, filed 2/1/91, effective 3/4/91.]

WAC 388-155-420 Child abuse, neglect, and exploitation. The licensee and assistant shall protect the child in care from child abuse, neglect, or exploitation as required under chapter 26.44 RCW.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-420, filed 2/1/91, effective 3/4/91.]

WAC 388-155-430 Prohibited substances. (1) During operating hours or when the child is in care, the licensee, assistant, and volunteers on the premises or caring for the child off-site shall not be under the influence of or consume an:

- (a) Alcoholic beverage; or
- (b) Illegal drug.

(2) The licensee shall prohibit smoking in:

- (a) All areas of the home used by the child during hours of operation when the child is in care; and
- (b) A motor vehicle when the licensee or assistant transports a child.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-430, filed 2/1/91, effective 3/4/91.]

WAC 388-155-440 Limitations to persons on premises. (1) During home operating hours or while the child is in care, only the child's parent, the licensee, an employee, the licensee's family member, a volunteer, or an authorized representative of a governmental agency shall have unsupervised or regular access to the child in care.

(2) The licensee shall allow the parent of the child in care unsupervised access only to the parent's child.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-440, filed 2/1/91, effective 3/4/91.]

WAC 388-155-450 Child records and information. The licensee shall maintain on the premises organized confidential records and information concerning each

child in care. The licensee shall ensure the child's record contains, at a minimum:

(1) Registration data:

(a) Name, birthdate, dates of enrollment and termination, and other identifying information; and

(b) Name, address, and home and business telephone number of the parent and other person to be contacted in case of emergency.

(2) Authorizations:

(a) Name, address, and telephone number of the person authorized to remove from the home the child under care;

(b) Written parental consent for transportation provided by the home, including field trips and swimming, when the child participates in these activities. A parent-signed blanket consent form may authorize the child's off-site travel; and

(c) Written parental consent, or court order, for providing medical care and emergency surgery, except for such care authorized by law.

(3) Medical and health data:

(a) A health history, obtained when the licensee enrolls the child for care. The history includes:

(i) The date of the child's last physical examination;

(ii) Allergies;

(iii) Special health problems and other pertinent health information;

(iv) Immunization history as required under WAC 388-155-220;

(v) Name, address, and telephone number of the child's health care provider or facility; and

(vi) Special developmental problems.

(b) Date and kind of illness and injury occurring on the premises, including the treatment given by the licensee; and

(c) Medication given indicating dosage, date, time, and name of the dispensing person.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-450, filed 2/1/91, effective 3/4/91.]

WAC 388-155-460 Home records. The licensee shall maintain the following documentation on the premises:

(1) The attendance records, completed daily, including arrival and departure times;

(2) A copy of the report sent to the licenser about the illness or injury to the child in care requiring medical treatment or hospitalization;

(3) The twelve-month record indicating the date and time the licensee conducted the required monthly fire evacuation drills; and

(4) The twelve-month record indicating the date the licensee tested the battery-powered smoke detector monthly.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-460, filed 2/1/91, effective 3/4/91.]

WAC 388-155-470 Personnel records. (1) Each assistant and volunteer having unsupervised or regular access to the child in care shall complete and submit to the licensee by the date of hire:

(a) An application for employment on a department-prescribed form, or its equivalent; and

(b) A criminal history and background inquiry form.

(i) The licensee shall submit this form to the department for the employee and volunteer, within seven calendar days of the assistant's or volunteer's first day of employment, permitting a criminal and background history check.

(ii) The department shall discuss the result of the criminal history and background inquiry information with the licensee, when applicable.

(2) The licensee, assistant, and volunteer shall have on file at the home:

(a) An employment application, including work and education history;

(b) Documentation of criminal history and background inquiry form submission;

(c) A record of the tuberculin skin test results, x-ray, or an exemption to the skin test or x-ray;

(d) Documentation of HIV/AIDS education and training; and

(e) Documentation of current first aid and CPR training, when applicable.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-470, filed 2/1/91, effective 3/4/91.]

WAC 388-155-480 Reporting of death, injury, illness, epidemic, or child abuse. The licensee shall report immediately:

(1) A death, serious injury requiring medical treatment, or illness requiring hospitalization of a child in care, by telephone and in writing, to the parent, licensor, and child's social worker, if any;

(2) An instance when the licensee or assistant has reason to suspect the occurrence of physical, sexual, or emotional child abuse, child neglect, or child exploitation, as required under Chapter 26.44 RCW, by telephone, to child protective services or local law enforcement; or

(3) An occurrence of food poisoning or communicable disease, as required by the state board of health, by telephone, to the local public health department.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-480, filed 2/1/91, effective 3/4/91.]

WAC 388-155-490 Reporting of circumstantial changes. A family child care home license is valid only for the person and address named on the license. The licensee shall promptly report to the licensor major changes in premises, activities and routines, the assistant, or members of the household affecting the home's capacity classification, delivery of safe, developmentally appropriate services, or continued eligibility for licensure. A major change includes the:

(1) Home's address, location, or phone number;

(2) Maximum number and age ranges of children the licensee wishes to serve as compared to current license specifications;

(3) Number and qualifications of the home's staff that may affect competencies to implement the specified

activities and routines, including the death, retirement, or incapacity of a licensee;

(4) Name by which the home is commonly known;

(5) Occurrence of a fire, major structural change, or damage to the premises from any cause; and

(6) Plans for major remodeling of the home, including planned use of space not previously department-approved.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-490, filed 2/1/91, effective 3/4/91.]

WAC 388-155-500 Posting requirements. The licensee shall post the following items, clearly visible to the parents and the assistant:

(1) The home's child care license issued under this chapter;

(2) Evacuation plans and procedures; and

(3) Emergency telephone numbers.

[Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-500, filed 2/1/91, effective 3/4/91.]

Chapter 388-320 WAC

PUBLIC RECORDS DISCLOSURE-- ADMINISTRATIVE PROCEDURES

WAC

388-320-010	Purpose.
388-320-020	Repealed.
388-320-030	Establishment of department.
388-320-035	Repealed.
388-320-040	Repealed.
388-320-045	Repealed.
388-320-050	Repealed.
388-320-080	Repealed.
388-320-090	Repealed.
388-320-092	Repealed.
388-320-100	Public records available.
388-320-130	Request for disclosure of a public record.
388-320-133	Approval or denial of request.
388-320-140	Fees—Inspection and copying.
388-320-180	Repealed.
388-320-184	Repealed.
388-320-185	Repealed.
388-320-220	Exemptions to public records disclosure.
388-320-230	Repealed.
388-320-450	Interpretive and policy statements roster and index.
388-320-460	Final adjudicative and declaratory order index.
388-320-470	Subscription to adjudicative orders involving nursing homes.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

388-320-020	Definitions. [Statutory Authority: RCW 34.05.220 and 42.17.250. 90-17-002 (Order 3048), § 388-320-020, filed 8/2/90, effective 9/2/90. Statutory Authority: RCW 42.17.250 through 42.17.340. 81-06-001 (Order 1609), § 388-320-020, filed 2/19/81; Order 899, § 388-320-020, filed 1/25/74.] Repealed by 91-24-047 (Order 3300), filed 11/27/91, effective 12/28/91. Statutory Authority: RCW 42.17.240, 34.05.220 and chapters 17.250 and 17.260 RCW.
388-320-035	Programs operated by department. [Order 899, § 388-320-035, filed 1/25/74.] Repealed by 91-24-047 (Order 3300), filed 11/27/91, effective 12/28/91. Statutory Authority: RCW 42.17.240, 34.05.220 and chapters 17.250 and 17.260 RCW.
388-320-040	Operations and procedure—Organization. [Order 899, § 388-320-040, filed 1/25/74.] Repealed by 91-

- 24-047 (Order 3300), filed 11/27/91, effective 12/28/91. Statutory Authority: RCW 42.17.240, 34.05.220 and chapters 17.250 and 17.260 RCW.
- 388-320-045 Operations and procedure—Office of secretary. [Order 899, § 388-320-045, filed 1/25/74.] Repealed by 91-24-047 (Order 3300), filed 11/27/91, effective 12/28/91. Statutory Authority: RCW 42.17.240, 34.05.220 and chapters 17.250 and 17.260 RCW.
- 388-320-050 Operations and procedure—Program divisions. [Order 899, § 388-320-050, filed 1/25/74.] Repealed by 91-24-047 (Order 3300), filed 11/27/91, effective 12/28/91. Statutory Authority: RCW 42.17.240, 34.05.220 and chapters 17.250 and 17.260 RCW.
- 388-320-080 Operations and procedure—Other organizational units. [Order 899, § 388-320-080, filed 1/25/74.] Repealed by 91-24-047 (Order 3300), filed 11/27/91, effective 12/28/91. Statutory Authority: RCW 42.17.240, 34.05.220 and chapters 17.250 and 17.260 RCW.
- 388-320-090 Operations and procedure—Rules adoption and publication. [Statutory Authority: RCW 42.17.250 through 42.17.340, 81-06-001 (Order 1609), § 388-320-090, filed 2/19/81; Order 899, § 388-320-090, filed 1/25/74.] Repealed by 91-24-047 (Order 3300), filed 11/27/91, effective 12/28/91. Statutory Authority: RCW 42.17.240, 34.05.220 and chapters 17.250 and 17.260 RCW.
- 388-320-092 Statements of policy. [Statutory Authority: RCW 42.17.250 through 42.17.340, 81-06-001 (Order 1609), § 388-320-092, filed 2/19/81; Order 899, § 388-320-092, filed 1/25/74.] Repealed by 91-24-047 (Order 3300), filed 11/27/91, effective 12/28/91. Statutory Authority: RCW 42.17.240, 34.05.220 and chapters 17.250 and 17.260 RCW.
- 388-320-180 Records index. [Statutory Authority: RCW 42.17.250 through 42.17.340, 81-06-001 (Order 1609), § 388-320-180, filed 2/19/81; Order 899, § 388-320-180, filed 1/25/74.] Repealed by 91-24-047 (Order 3300), filed 11/27/91, effective 12/28/91. Statutory Authority: RCW 42.17.240, 34.05.220 and chapters 17.250 and 17.260 RCW.
- 388-320-184 Interpretive and policy statements. [Statutory Authority: RCW 34.05.220 and 42.17.250, 90-17-002 (Order 3048), § 388-320-184, filed 8/2/90, effective 9/2/90.] Repealed by 91-24-047 (Order 3300), filed 11/27/91, effective 12/28/91. Statutory Authority: RCW 42.17.240, 34.05.220 and chapters 17.250 and 17.260 RCW.
- 388-320-185 Final adjudicative order index. [Statutory Authority: RCW 34.05.220 (1)(a), 90-13-054 (Order 3024), § 388-320-185, filed 6/15/90, effective 7/1/90.] Repealed by 91-24-047 (Order 3300), filed 11/27/91, effective 12/28/91. Statutory Authority: RCW 42.17.240, 34.05.220 and chapters 17.250 and 17.260 RCW.
- 388-320-230 Visitation rights of parents. [Statutory Authority: RCW 42.17.250 through 42.17.340, 81-06-001 (Order 1609), § 388-320-230, filed 2/19/81.] Repealed by 91-24-047 (Order 3300), filed 11/27/91, effective 12/28/91. Statutory Authority: RCW 42.17.240, 34.05.220 and chapters 17.250 and 17.260 RCW.

WAC 388-320-010 Purpose. The purpose of this chapter is to ensure compliance by the department of social and health services with RCW 42.17.250 through 42.17.340, 34.05.220 through 34.05.240, and 34.05.330.

[Statutory Authority: RCW 42.17.240, 34.05.220 and chapters 17.250 and 17.260 RCW. 91-24-047 (Order 3300), § 388-320-010, filed 11/27/91, effective 12/28/91. Statutory Authority: RCW 42.17.250 through 42.17.340, 81-06-001 (Order 1609), § 388-320-010, filed 2/19/81; Order 899, § 388-320-010, filed 1/25/74.]

WAC 388-320-020 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-320-030 Establishment of department.
(1) The department of social and health services was created by chapter 43.20A RCW.

(2) The department was established to integrate and coordinate most of those activities of the state of Washington which involve provision of care for individuals who, because of economic, social, or health conditions, require financial assistance, institutional care, or rehabilitative or other social or health services. Programs the department administers include:

- (a) Aging and adult services;
- (b) Alcohol and substance abuse;
- (c) Children and family services;
- (d) Deaf and hard of hearing;
- (e) Developmental disabilities;
- (f) Income assistance;
- (g) Juvenile rehabilitation;
- (h) Medical assistance;
- (i) Mental health;
- (j) Refugee assistance; and
- (k) Vocational rehabilitation.

(3) The department's basic organizational structure is built around major functions. Responsibility for program development is assigned to staff in state administrative offices located in Olympia. Responsibility for program operation is assigned to staff in regional and local units located throughout the state. An organization chart is available upon request from Media Relations, PO Box 45110, Olympia WA 98504.

[Statutory Authority: RCW 42.17.240, 34.05.220 and chapters 17.250 and 17.260 RCW. 91-24-047 (Order 3300), § 388-320-030, filed 11/27/91, effective 12/28/91; Order 899, § 388-320-030, filed 1/25/74.]

WAC 388-320-035 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-320-040 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-320-045 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-320-050 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-320-080 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-320-090 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-320-092 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-320-100 Public records available. (1) All public records of the department are available for disclosure except as otherwise provided by law.

(2) The department shall take the most reasonably timely possible action on requests for disclosure. If the

department does not respond in writing within ten working days of receipt of the request for disclosure, the person seeking disclosure shall be entitled to consider the request denied and petition the public records officer under WAC 388-320-210.

[Statutory Authority: RCW 42.17.240, 34.05.220 and chapters 17.250 and 17.260 RCW. 91-24-047 (Order 3300), § 388-320-100, filed 11/27/91, effective 12/28/91. Statutory Authority: RCW 42.17.250 through 42.17.340, 81-06-001 (Order 1609), § 388-320-100, filed 2/19/81; Order 899, § 388-320-100, filed 1/25/74.]

WAC 388-320-130 Request for disclosure of a public record. (1) A request for disclosure of a public record may be oral or written. A request need merely identify with reasonable certainty the record sought to be disclosed.

(2) A request for disclosure shall be made during customary business hours and may be made at my office of the department. A request for research purposes should be made at the human research section (mailing address: in care of the Office of the Secretary, P.O. Box 45010, Olympia WA 98504).

(3) When the law makes a record disclosable to a specific person, a requestor may be required to provide personal identification.

[(7) Nothing in this section or elsewhere in this chapter shall be construed to require the department to compile statistics or other information from material contained in public records, where doing so would unduly interfere with other essential functions of the department and is not required for litigation by rules of pretrial discovery.]

[Statutory Authority: RCW 42.17.240, 34.05.220 and chapters 17.250 and 17.260 RCW. 91-24-047 (Order 3300), § 388-320-130, filed 11/27/91, effective 12/28/91. Statutory Authority: RCW 42.17.250 through 42.17.340, 81-06-001 (Order 1609), § 388-320-130, filed 2/19/81; Order 899, § 388-320-130, filed 1/25/74.]

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

WAC 388-320-133 Approval or denial of request.

(1)(a) A request for a record which does not contain exempt information shall be granted and the record disclosed.

(b) A request for a record which contains information that is exempt shall be granted in part when the exempt information can be deleted so release of the remainder does not violate privacy or vital government interest. When a record is released with exempt information deleted, notations which protect privacy and vital government interests should be made so the nature of the deleted information is made known.

(c) A request for a record which contains information that is exempt shall be denied when the exempt information can not be deleted and the remainder released without violating privacy or vital government interest.

(2) A request for a list of individuals requested for commercial purposes shall be denied except as disclosure is authorized under RCW 42.17.260(6).

(3) A denial of a request for disclosure shall be accompanied by a written statement of the specific exemption authorizing the withholding of the record, or part of the record, and a brief explanation of how the exemption applies to the record withheld.

[Statutory Authority: RCW 42.17.240, 34.05.220 and chapters 17.250 and 17.260 RCW. 91-24-047 (Order 3300), § 388-320-133, filed 11/27/91, effective 12/28/91.]

WAC 388-320-140 Fees--Inspection and copying.

(1) No fee shall be charged for the inspection of public records.

(2) The department shall collect the following fees to reimburse itself for costs incident to providing copies of public records:

(a) The actual cost of printing manuals and manual revisions;

(b) The actual cost of copying blueprints and like materials involving an extraordinary expense;

(c) Twenty-five cents per page for black and white photocopies; and

(d) The cost of postage if any.

(3) When the department is a party in an administrative hearing, the department shall authorize free copying of records from a department file when the records are demonstrated to be relevant and the client is indigent.

(4) Nothing contained in this section shall preclude the department from agreeing to exchange or provide copies of manuals or other public records with other government agencies when doing so is in the best interest of the department.

(5) The secretary of the department, the secretary's designee, and disclosure coordinators are authorized to waive any of the foregoing costs. Factors considered in deciding whether to waive costs include: Providing the copy will facilitate administering the program and/or the expense of processing the payment exceeds the copying and postage cost.

[Statutory Authority: RCW 42.17.240, 34.05.220 and chapters 17.250 and 17.260 RCW. 91-24-047 (Order 3300), § 388-320-140, filed 11/27/91, effective 12/28/91. Statutory Authority: RCW 42.17.250 through 42.17.340, 81-06-001 (Order 1609), § 388-320-140, filed 2/19/81; Order 899, § 388-320-140, filed 1/25/74.]

WAC 388-320-180 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-320-184 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-320-185 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-320-220 Exemptions to public records disclosure. (1) Personal information in any file maintained for clients of public institutions or welfare recipients, to the extent required by RCW 42.17.310 (1)(a).

(2) Information regarding applicants and recipients of public assistance to the extent required by RCW 74.04-.060[.] However, disclosure may be made to the client or the client's representative, except as otherwise prohibited by law;

(3) Vocational rehabilitation records to the extent required by 34 C.F.R. 361.49;

(4) Juvenile justice or juvenile care records to the extent required by chapter 13.50 RCW;

Juvenile justice or juvenile care records to the extent required by chapter 13.50 RCW;

(5) Alcohol and drug abuse patient records to the extent required by 42 C.F.R. chapter 1 part II or other federal law and regulations;

(6) Records concerning applicants or recipients of support enforcement activities to the extent required by 45 C.F.R. 302.18 or RCW 26.23.120;

(7) Office of support enforcement information regarding location of parents to the extent required by RCW 74.20.280;

(8) Adoption and voluntary termination of parent-child relationship records to the extent required by chapter 26.32 RCW and financial information received from adoptive parents to the extent required by RCW 74.13.121;

(9) Mental illness and inebriacy records to the extent required by RCW 71.05.390;

(10) The central registry of reported cases of child abuse or abuse of developmentally disabled persons to the extent required by RCW 26.44.070;

(11) Records of patients and inmates of state institutions to the extent required by RCW 72.01.290;

(12) Nursing home records to the extent required by RCW 18.51.190, 70.124.010, and 74.46.820;

(13) Records maintained by rape crisis centers to the extent required by RCW 70.125.065;

(14) Competitive contract procurement instruments, such as a request for proposals or an invitation for bids, prior to the release to potential bidders; proposals and bids received in response to competitive contract procurement instruments until either the public opening of bids or, for proposals, the contractor and the department have signed the contract, under RCW 43.20A.050;

(15) Personal information in files maintained for an employee or volunteers of the department to the extent required by RCW 42.17.310 (1)(b) and (u);

(16) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy under RCW 42.17.310 (1)(d). Under the rules set forth in chapter 388-08 WAC, administrative law and review judges may make determinations in the following program areas only: Public assistance and/or food stamp programs as to whether the circumstances of a particular case, when weighing the public interest in protecting the flow of information against the individual's right to prepare his or her defense, necessitates nondisclosure of particular intelligence or investigative information: *Provided further*, That nothing in this regulation shall be deemed to deny adequate opportunity to the appellant or his or her representative, to examine any intelligence or investigative

information to be used by the agency at the hearing. As used in these regulations, intelligence and investigative information includes the following:

(a) Allegations or complaints of suspected criminal activity;

(b) Identification of informants, complainants, any person whose physical safety or property may be endangered by such disclosure, and potential witnesses regarding alleged criminal activity;

(c) Identification of and reports concerning criminal suspects other than the person who is the subject of the fair hearing;

(d) Assessments, reports, notes or voice recordings of law enforcement officials or officials of a criminal justice agency, as defined in RCW 10.97.030, concerning the person who is the subject of the fair hearing, informants or potential witnesses; and

(e) Criminal history information relating to persons or organizations other than the person or persons who are the subject of the fair hearing.

(17) Information revealing the identity of persons who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any persons's life, physical safety, or property. If at the time the complaint is filed the complainant indicates a desire for disclosure or nondisclosure, such desire shall govern pursuant to RCW 42.17.310 (1)(e);

(18) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended, except that a specific record shall not be exempt when publicly cited by the department in connection with any action under RCW 42.17.310 (1)(i); and

(19) Records relevant to a controversy to which the department is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts under RCW 42.17.310 (1)(j).

[Statutory Authority: RCW 42.17.240, 34.05.220 and chapters 17.250 and 17.260 RCW. 91-24-047 (Order 3300), § 388-320-220, filed 11/27/91, effective 12/28/91. Statutory Authority: RCW 34.04.020, 83-03-021 (Order 1938), § 388-320-220, filed 1/13/83. Statutory Authority: RCW 42.17.250 through 42.17.340. 81-06-001 (Order 1609), § 388-320-220, filed 2/19/81.]

WAC 388-320-230 Repealed. See Disposition Table at beginning of this chapter.

WAC 388-320-450 Interpretive and policy statements roster and index. (1) Legal authority for this rule is RCW 34.05.220 and 42.17.260 (4)(d) and (e).

(2) The department's index of interpretive and policy statements is administered by the Office of Issuances. Statements in existence July 1, 1990 were made part of the index and new statements are added to the index upon issuance. The index is revised approximately every two years.

(3) The index is available for public inspection at the Office of Issuances located in Office Building No. 2, Olympia WA.

(4) A person wishing to inspect or receive copies of interpretive and policy statements issued by the department shall submit a written request to: Office of Issuances, PO Box 45805, Olympia WA 98504-5805.

[Statutory Authority: RCW 42.17.240, 34.05.220 and chapters 17.250 and 17.260 RCW. 91-24-047 (Order 3300), § 388-320-450, filed 11/27/91, effective 12/28/91.]

WAC 388-320-460 Final adjudicative and declaratory order index. (1) Legal authority for this rule is RCW 42.17.260 (4)(b) and (c). Each state agency is required to, by rule, establish and implement a system of indexing for the identification and location of final adjudicative orders and declaratory orders that contain an analysis or decision of substantial importance to the agency, in carrying out its duties. The requirement applies to orders entered after June 30, 1990.

(2) The department's adjudicative and declaratory order indexing system is administered by the office of appeals.

(3) The system of indexing is as follows:

(a) Separate indices may be established by program category, including but not limited to benefits, (such as public assistance and food stamps); child support; and license, rate, and similar programs;

(b) Staff of the office of appeals select the orders to be indexed. Review final adjudicative and declaratory orders in all programs are evaluated and those orders which have substantial importance are selected for inclusion in the index;

(c) Any person may nominate a final adjudicative order or declaratory order to be evaluated for indexing by writing the Office of Appeals, PO Box 2465, Olympia WA 98504-2465 and attaching a copy of the nominated order;

(d) Selected orders are indexed by a phrase describing the issue or holding and by a citation to the law involved; and

(e) The index contains a copy or a synopsis of the order.

(4) The index is available for public inspection at the Office of Appeals located in Office Building No. 2, Olympia Washington.

(5) Requests to be on the mailing list of indexed orders shall be made to: Office of Appeals, PO Box 2465, Olympia WA 98504-2465.

[Statutory Authority: RCW 42.17.240, 34.05.220 and chapters 17.250 and 17.260 RCW. 91-24-047 (Order 3300), § 388-320-460, filed 11/27/91, effective 12/28/91.]

WAC 388-320-470 Subscription to adjudicative orders involving nursing homes. (1) The department maintains a list of subscribers who have asked to receive copies of all initial and review decisions in adjudicative proceedings involving nursing homes, including but not limited to, licensing and survey sanctions.

(2) An application to become a subscriber shall be made to the Office of Appeals, PO Box 2465, Olympia WA 98504-2465. The application shall contain the name, address, and telephone number of the applicant and include the fee described in subsection (3).

(3) Subscribers shall be charged a fee to offset the costs of copying, postage, and other related administrative costs. The fee shall be adjusted yearly to reflect the costs for the prior year. An application to become a subscriber shall include a deposit of forty dollars. Subscriber shall be billed yearly for the subscription fee for the prior year, and if payment is not received within fourteen days after the billing, the subscription shall be canceled and the deposit applied against the unpaid balance.

[Statutory Authority: RCW 42.17.240, 34.05.220 and chapters 17.250 and 17.260 RCW. 91-24-047 (Order 3300), § 388-320-470, filed 11/27/91, effective 12/28/91.]

Title 390 WAC

PUBLIC DISCLOSURE COMMISSION

Chapters

390-05	General policies and definitions.
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390-16	Forms for campaign financing reporting-- Contributions.
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Chapter 390-05 WAC

GENERAL POLICIES AND DEFINITIONS

WAC

390-05-210 Definition--Contribution.

WAC 390-05-210 Definition--Contribution. (1) The term "contribution" as defined in RCW 42.17.020(10) shall be deemed to include, among other things, furnishing services or property or rights on a discriminatory basis or at less than their fair market value as defined in WAC 390-05-235, for the purpose of assisting any candidate or political committee. When such in-kind contribution of goods or services is provided, it shall be reported at its fair market value, per WAC 390-05-235.

(2) The following activities are not considered to be contributions or independent campaign expenditures reportable under RCW 42.17.090 or 42.17.100:

(a) News, feature, or editorial comment in a broadcast media program or in a regularly scheduled issue of a printed periodical (including periodicals published by businesses and organizations for their respective employees or members) to communicate ratings, evaluations, endorsements, or recommendations for or against a candidate or ballot proposition;