

toilet room except where provided in an adjoining single resident room, dressing room, or locker room.

(2) **DRINKING FOUNTAINS.** Where drinking fountains are installed, the nursing home shall ensure the fountains are of the inclined jet, sanitary type.

(3) **MIXING VALVES.** The nursing home shall provide each fixture, except toilet fixtures and special use fixtures, with hot and cold water through a mixing valve.

(4) **SPOUTS.** The nursing home shall ensure all lavatories and sinks in resident rooms, resident toilet rooms, and utility and medication areas have gooseneck spouts.

(5) **WRIST BLADES.** The nursing home shall provide four inch wrist blade controlled faucets or their equivalent at all sinks and lavatories. The nursing home shall:

(a) Install the wrist blades to provide four inches clear in full open and closed position; and

(b) Color-code and label faucet handles to indicate "hot" and "cold."

(6) **BACKFLOW PREVENTION DEVICES.** The nursing home shall:

(a) Provide backflow prevention devices on the water supply to fixtures or group of fixtures where extension hoses are installed or are anticipated to be installed; and

(b) Prohibit all cross connections.

[Statutory Authority: RCW 18.51.070 and 74.42.620. 94-19-041 (Order 3782), § 388-97-480, filed 9/15/94, effective 10/16/94.]

Chapter 388-98 WAC

NURSING HOME LICENSURE PROGRAM ADMINISTRATION

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

| | |
|------------|---|
| 388-98-005 | Receivership. [Statutory Authority: Chapter 18.51 RCW. 88-06-086 (Order 2603), § 388-98-005, filed 3/2/88.] Repealed by 90-01-052 (Order 2917), filed 12/15/89, effective 1/15/90. Statutory Authority: 1989 c 372 § 8. |
| 388-98-800 | Applicability of civil fines. [Statutory Authority: 1987 c 476. 87-21-017 (Order 2546), § 388-98-800, filed 10/9/87. Statutory Authority: RCW 18.51.310. 80-08-027 (Order 1515), § 388-98-800, filed 6/25/80.] Repealed by 90-01-052 (Order 2917), filed 12/15/89, effective 1/15/90. Statutory Authority: 1989 c 372 § 8. |
| 388-98-850 | Imposition and payment of fines. [Statutory Authority: 1987 c 476. 87-21-017 (Order 2546), § 388-98-850, filed 10/9/87. Statutory Authority: RCW 18.51.310. 80-08-027 (Order 1515), § 388-98-850, filed 6/25/80.] Repealed by 90-01-052 (Order 2917), filed 12/15/89, effective 1/15/90. Statutory Authority: 1989 c 372 § 8. |

WAC 388-98-001 Definitions. (1) For purposes of this section, the following words or phrases shall have the following meanings unless the context clearly indicates otherwise:

(2) "Applicant" means an individual, partnership, corporation, or other legal entity seeking a license to operate a nursing home.

(3) "Deficiency" means a finding by the department of a violation of professional standards of practice, the requirements of chapters 18.51 or 74.42 RCW, or the standards, rules, and regulations established under them or in the case of a Medicaid contractor, violation of Medicaid requirements of Title XIX of the Social Security Act, as amended, and regulations promulgated thereunder.

(4) "Denial of payment" means a department decision not to pay for new Medicaid admissions to a nursing home.

(5) "Department" means the nursing home licensing agency of the state department of social and health services.

(6) "Director" means an individual elected or appointed as director of a corporation.

(7) "Emergency closure" means a department order to immediately close a nursing home.

(8) "Emergency transfer" means a department order to immediately transfer specified residents or all residents from a nursing home to safe settings.

(9) "Highest practicable physical, mental, or psychosocial well being" means the highest level of functioning and well being possible to be achieved for a resident limited by the resident's presenting functional status and potential for improvement or reduced rate of degeneration. Highest practicable is not a diagnostic, prospective, delineating determination made without aggressive, competent efforts to halt degenerative processes and to achieve or restore independent free choice functioning. It is achieved through functional assessment and aggressive, competent addressing of the individual's physical, mental, and psychosocial needs.

(10) "Licensed nursing home" means a nursing home licensed under chapter 18.51 RCW.

(11) "Licensee" means an individual, partnership, corporation, or other legal entity licensed to operate a nursing home or a person subject to licensure as determined by the department. This does not include an employee of a licensee or person unless that employee is an owner of five percent or more of the licensed entity assets.

(12) "Licensee's agent" means the designated nursing home administrator, or an individual designated to perform managerial functions in the administrator's absence.

(13) "Officer" means an individual appointed as an officer of a corporation.

(14) "Owner of five percent or more of the assets of a nursing home" means:

(a) In the case of a sole proprietorship, the owner, or if owned as community property, the owner and owner's spouse;

(b) In the case of a corporation, the owner of at least five percent of the capital stock of a corporation; or

(c) In the case of other types of business entities, the owner of a beneficial interest in at least five percent of the capital assets of an entity.

(15) "Partner" means an individual in a partnership owning or operating a nursing home.

(16) "Plan of correction" means a written statement specifying:

- (a) How the nursing home will correct the cited deficiencies;
- (b) The date by which the correction will be made; and
- (c) Who is responsible for assuring the correction.

(17) "Reasonable time" means a period of time determined by the department and noted in the plan of correction. In determining the length of time for correction of each deficiency, the department considers:

- (a) The gravity of the deficiency, including the severity and immediacy of the actual or potential harm to residents;
- (b) The required financial and personnel resources necessary to correct the deficiency; and
- (c) The minimum amount of time practicably required to correct the deficiency.

(18) "Receivership" means a court action resulting in the removal of a nursing home's current operator and the appointment of a substitute operator to temporarily manage and operate the nursing home.

(19) "Retaliate":

(a) Retaliate against a resident means an act including, but not limited to:

- (i) Verbal or physical harassment or abuse;
- (ii) Nonmedically indicated social, dietary, or mobility restriction;
- (iii) Lessening of the level of care not medically appropriate;
- (iv) A nonvoluntary relocation within a nursing home without appropriate medical, psychosocial, or nursing justification;

(v) Neglect or negligent treatment;

(vi) Withholding of privileges; or

(vii) Infringement on a resident's rights as described in WAC 248-14-247 and chapter 74.42 RCW.

(b) Retaliate against an employee means an act including, but not limited to, harassment, firing, demotion, disciplinary action, or nonvoluntary reassignment or rescheduling occurring as a result of employee actions described in section 220, chapter 18.51 RCW.

(c) A rebuttable presumption is raised that retaliation has occurred if a condition described in subsection 388-98-001 (14)(a) of this section definition occurs within one year of the resident's actions described in WAC 388-98-800 (2)(i).

(20) "Severity" means the seriousness of a deficiency as determined by the:

- (a) Actual or potential negative outcomes for residents or resident rights violations; or
- (b) Extent to which the resident's highest practicable physical, mental, or psychosocial well being is compromised or threatened.

(21) "Scope" means the frequency, incidence, or extent of the occurrence of a deficiency.

(22) "Stop placement" means action instituted by the department prohibiting nursing home admissions, readmissions, and transfers of patients.

(23) "Temporary management" means the department temporarily appoints a substitute manager or operator with authority to hire, terminate, or reassign staff, obligate current facility revenues, alter procedures as appropriate, or otherwise manage the facility as necessary to:

(a) Correct deficiencies; or

(b) Close the facility in a safe and orderly manner.

(24) "Termination" means a department decision to:

(a) Terminate or not renew a nursing home's Medicaid certification and contract; or

(b) Recommend the federal Health Care Financing Administration terminate or not renew a nursing home's Medicaid and/or Medicare certification and contracts.

[Statutory Authority: 1989 c 372 § 8. 90-01-052 (Order 2917), § 388-98-001, filed 12/15/89, effective 1/15/90. Statutory Authority: 1987 c 476. 87-21-017 (Order 2546), § 388-98-001, filed 10/9/87. Statutory Authority: RCW 18.51.070. 83-24-030 (Order 2052), § 388-98-001, filed 12/1/83. Statutory Authority: RCW 18.51.310. 80-08-027 (Order 1515), § 388-98-001, filed 6/25/80.]

WAC 388-98-003 Remedies. (1) The department may suspend, revoke, or refuse to renew a license, and/or assess civil monetary penalties when the department finds the licensee or partner, officer, director, or owner of five percent or more of the assets of the nursing home, licensee's agent, employee or individual providing nursing home care or services:

(a) Operates or operated a nursing home without a license or under a revoked or suspended license;

(b) Knowingly or with reason to know makes a false statement of a material fact in the application for license, in attached data, or in matters under department investigation;

(c) Refuses to allow department representatives or agents to inspect required books, records, and files or portions of the nursing home premises;

(d) Willfully prevents, interferes with, or attempts to impede the work of authorized department representatives and the lawful enforcement under provisions of this chapter or chapter 74.42 RCW;

(e) Willfully prevents or interferes with department representatives in the preservation of evidence of violations of provisions under this chapter or chapter 74.42 RCW;

(f) Fails to report patient abuse or neglect in violation of chapter 70.124 RCW;

(g) Fails to pay a civil monetary penalty the department assesses under this chapter within ten days after assessment becomes final;

(h) Retaliates against a patient or employee participating in proceedings specified under RCW 18.51.220; or

(i) Discriminates against Medicaid recipients as prohibited under RCW 74.42.055.

(2) When the department finds:

(a) A licensee or partner, officer, director, or owner of five percent or more of the assets of the nursing home, licensee's agent, employee, or individual providing nursing home care or services fails or refuses to comply with the requirements under chapter 18.51 or 74.42 RCW; or

(b) A Medicaid contractor licensee fails or refuses to comply with the Medicaid requirements of Title XIX of the Social Security Act, as amended; then

(c) The department may impose any or all of the following remedies:

(i) Suspend, revoke, or refuse to renew a license;

(ii) Order stop placement;

(iii) Assess civil monetary penalties;

(iv) Deny payment to a nursing home for Medicaid residents admitted after notice to deny payment. Medicaid

recipient residents shall not assume responsibility for payment when the department takes action under this subsection;

(v) Appoint temporary management as provided under section 300 of this chapter; and

(vi) Petition the court to establish receivership.

(3) The criteria set forth in this subsection implement the requirement under section 8, chapter 372, Laws of 1989, that the department establish criteria for the imposition of remedies. These criteria apply to the imposition of remedies under subsection (2) of this section for deficiencies directly impacting a nursing home resident's well being. The criteria do not substitute for standards set forth in section 8, chapter 372, Laws of 1989 for the mandatory imposition of stop placement and denial of payment.

CRITERIA

Deficiency

- (a) Actual or threatened harm or injury exists which minimally compromises or could compromise resident well being:
 - (i) Limited or isolated in scope
 - Required Remedy
Plan of Correction
 - Optional Remedy
Civil fine of \$500-\$1000
 - (ii) Moderate to systemic in scope
 - Required Remedy
Plan of Correction
 - Optional Remedy
Civil fine of \$500-\$1500
- (b) Actual or threatened harm or injury exists which moderately compromises or could compromise resident well being:
 - (i) Limited or isolated in scope
 - Required Remedy
Plan of Correction
 - Optional Remedy
Civil fine of \$1000-\$2000
 - (ii) Moderate in scope
 - Required Remedy
Civil fine of \$1000-\$3000
 - (iii) Systemic in scope
 - Required Remedies
Stop Placement
Termination
 - Optional Remedies
Civil fine of \$1000-\$3000 per day
License Revocation
Denial of payment for new Medicaid admissions
Dept. on-site monitoring
 - (iv) Uncorrected; or repeated after correction within 15-months:

(A) Limited or isolated in scope

Required Remedy

Civil fine of \$1500-\$2000

Optional Remedy

Civil fine of \$1500-\$2000 per day

(B) Moderate in scope

Required Remedy

Civil fine of \$2000-\$3000

Optional Remedies

Stop Placement

Termination

Denial of payment for new Medicaid admissions

Civil fine of \$1000 per day

Dept. on-site monitoring

(C) Systemic in scope

Required Remedies

Stop Placement

Termination

Civil fine of \$2000-\$3000

Optional Remedies

Civil fine of \$2000-\$3000 per day

License Revocation

Denial of payment for new Medicaid admissions

Dept. on-site monitoring

(c) Actual or threatened harm or injury existed which seriously compromised resident well being. The threat has been removed.

Required Remedy

Civil fine of \$1500-3000

Optional Remedy

Civil fine of \$1500-\$3000 per day

(d) Actual or threatened harm or injury exists which seriously compromises or could compromise resident well being:

(i) Limited or isolated in scope

Required Remedies

Termination

Stop Placement

Optional Remedies

Civil fine of \$1500-\$3000 per day

Denial of payment for new Medicaid admissions

Emergency transfer of individual residents

Temporary management or receivership

Dept. on-site monitoring

License Revocation

(ii) Moderate to systemic in scope

Required Remedies

- Termination
- Stop Placement
- License Revocation

Optional Remedies

- Civil fine of \$2500-\$3000 per day
- License Suspension
- Emergency closure or patient transfer
- Temporary management or receivership
- Denial of payment for new Medicaid admissions
- Dept. on-site monitoring

(iii) Uncorrected; or repeated after correction within 15 months:

(A) Limited or isolated in scope

Required Remedies

- Termination
- Stop Placement
- License Revocation
- Civil fine of \$2000-\$3000

Optional Remedies

- Civil fine of \$2000-\$3000 per day
- More severe optional remedies listed in (d)(i) may also be selected.

(B) Moderate to systemic in scope

Required Remedies

- Termination
- Stop Placement
- License Revocation
- Civil fine of \$3000

Optional Remedies

- Civil fine of \$3000 per day
- More severe optional remedies listed in (d)(ii) may also be selected.

(e) Emergency Crisis

Health and safety of a large percentage of the population is imminently threatened due to events such as:

- Structural damage
- Staff Walkout
- Natural disaster (not subject to optional remedies)

Required Remedies

- Emergency closure or emergency resident transfer

Optional Remedies

- A civil fine of \$3000 per day
- Termination
- License Revocation or suspension

beginning thirty days after the department serves the licensee with notice of the penalty.

[Statutory Authority: 1989 c 372. 90-06-031 (Order 2943), § 388-98-003, filed 3/1/90, effective 4/1/90.]

WAC 388-98-010 List of qualified receivers. (1)

The department may recruit individuals, partnerships, and corporations interested in serving as a receiver of a nursing home. Recruitment may be by personal letters, telephone, radio or television announcements, or advertisements in publications determined suitable by the department.

(2) Individuals, partnerships, or corporations interested in being appointed as a receiver shall complete designated sections of a nursing home license application.

(3) Individuals, partnerships, or corporations with experience in providing long-term health care and a history of satisfactory nursing home operation may submit a receiver application to the department at any time. Applicants shall be subject to the criteria established for licensees found in WAC 248-14-080, except the department may waive the requirement for having sixty days to review the application.

(4) The department shall maintain a list of potential receivers. The department shall add names of applicants to the list upon receipt of applications properly completed by applicants.

(5) The department shall not consider as a receiver any person, partnership, or corporation which:

(a) Is the licensee, administrator, or partner, officer, director, managing employee, or owner of five percent or more of the assets of the nursing home subject to receivership;

(b) Is affiliated with the nursing home subject to receivership;

(c) Has a financial interest in the nursing home before the time of appointment; or

(d) Has owned or operated a nursing home ordered into receivership or temporary management in any state.

(6) The department may recommend a receiver to the court. In making the recommendation, one or more of the following factors may be considered:

(a) Potential receiver's willingness to serve as a receiver for the nursing home in question;

(b) Amount and quality of the potential receiver's experience in long term care;

(c) Quality of care, as determined by prior survey reports, provided under the potential receiver's supervision or management;

(d) Potential receiver's prior performance as a receiver;

(e) How soon potential receiver is available to act as a receiver;

(f) Potential receiver's familiarity and past compliance with state and federal regulations applicable to nursing homes;

(g) Potential receiver's economic potential and interest in operating the nursing home on a permanent basis; and

(h) Preference may be given to potential receivers expressing an interest in the permanent operation of the nursing home.

[Statutory Authority: 1989 c 372 § 8. 90-01-052 (Order 2917), § 388-98-010, filed 12/15/89, effective 1/15/90. Statutory Authority: Chapter 18.51 RCW. 88-06-086 (Order 2603), § 388-98-010, filed 3/2/88.]

(4) Civil monetary penalties shall become due twenty days after the licensee is served with a notice of the penalty, unless the licensee requests a hearing. If a hearing is requested, the penalty becomes due ten days after a final decision in the department's favor is issued. Interest accrues

WAC 388-98-015 Duties and powers of receiver.

(1) The receiver shall protect the health, security, and welfare of the residents for the duration of the receivership. The receiver shall perform all acts reasonably necessary to ensure residents' needs are met. Such acts may include, but are not limited to:

- (a) Correcting deficiencies cited by the department;
- (b) Hiring, directing, managing, and discharging all consultants and employees for just cause, discharging the administrator of the nursing home, recognizing collective bargaining agreements, and settling labor disputes;
- (c) Receiving and expending in a prudent and business-like manner all revenues and financial resources of the home, provided that priority shall be given to debts and expenditures directly related to providing care and meeting residents' needs;
- (d) Making necessary purchases, repairs, and replacements, provided that expenditures for purchases, repairs, or replacements in excess of five thousand dollars are approved by the court;
- (e) Entering into contracts necessary for the operation of the nursing home: *Provided That*, contracts extending beyond the period of receivership shall be approved by the court;
- (f) Preparing all reports required by the department;
- (g) Planning with residents and their guardians, family, or significant others, required relocation;
- (h) Meeting regularly with staff, residents, and residents' families to inform them of:
 - (i) Plans for correcting the deficiencies;
 - (ii) Progress achieved in correction;
 - (iii) Plans for facility closure and relocation; or
 - (iv) Plans for continued operation of the nursing home including the identity of the permanent operator.

(2) The receiver shall consult the court in cases of extraordinary or questionable debts incurred prior to the receiver's appointment and shall not have the power to close the home or sell any of the nursing home's assets without prior court approval.

(3) The receiver shall comply with applicable state and federal laws and regulations. If the nursing home is certified and is providing care to medical assistance clients, the receiver shall become the Medicaid contractor for the duration of the receivership period.

[Statutory Authority: 1989 c 372 § 8. 90-01-052 (Order 2917), § 388-98-015, filed 12/15/89, effective 1/15/90. Statutory Authority: Chapter 18.51 RCW. 88-06-086 (Order 2603), § 388-98-015, filed 3/2/88.]

WAC 388-98-020 Termination of receivership. (1)

After receivership is established, the department may recommend to the court that all residents be relocated and the nursing home closed when:

- (a) Problems exist in the physical condition of the premises which cannot be corrected in an economically prudent manner; or
- (b) The department determines the former operator or owner:
 - (i) Is unwilling or unable to manage the nursing home in a manner ensuring residents' health, safety, and welfare; and

(ii) Has not entered into an enforceable agreement to sell the nursing home within three months of the court's decision to grant receivership.

(2) The department may recommend to the court an alternate receiver be appointed:

- (a) When the receiver is no longer willing to serve as a receiver; or
- (b) If a receiver is not making acceptable progress in correcting the deficiencies in the nursing home.

[Statutory Authority: 1989 c 372 § 8. 90-01-052 (Order 2917), § 388-98-020, filed 12/15/89, effective 1/15/90. Statutory Authority: Chapter 18.51 RCW. 88-06-086 (Order 2603), § 388-98-020, filed 3/2/88.]

WAC 388-98-300 Temporary management. (1)

When the department appoints a temporary manager, the:

- (a) Department shall order the licensee to cease operating the nursing home;
 - (b) Department shall order the licensee to turn over to the temporary manager possession and control of the nursing home including, but not limited to, all patient care records, financial records, and other records necessary for continued operation of the nursing home while temporary management is in effect; and
 - (c) Temporary manager shall have authority to temporarily relocate some or all residents if the:
 - (i) Temporary manager determines the resident's health, security, or welfare is jeopardized; and
 - (ii) Department concurs with the temporary manager's determination that relocation is necessary.
- (2) The department's authority to order temporary management is discretionary in all cases.

[Statutory Authority: 1989 c 372 § 8. 90-01-052 (Order 2917), § 388-98-300, filed 12/15/89, effective 1/15/90.]

WAC 388-98-320 Temporary managers—Application.

(1) The department may recruit individuals, partnerships, and corporations interested in serving as a temporary nursing home manager.

(2) Individuals, partnerships, or corporations interested in being appointed as a temporary manager shall complete and submit to the department designated sections of a nursing home license application.

(3) Individuals, partnerships, or corporations with experience in providing long-term health care and a history of satisfactory nursing home operation may submit an application to the department at any time. Applicants shall be subject to the criteria established for licensees found in WAC 248-14-080, except the department may waive the requirement for having sixty days to review the application.

(4) The department shall not consider as a temporary manager a person, partnership, or corporation which:

- (a) Is the licensee, administrator, or partner, officer, director, managing employee, or owner of five percent or more of the assets of the nursing home subject to temporary management;
- (b) Is affiliated with the nursing home subject to temporary management; or
- (c) Has owned or operated a nursing home ordered into temporary management or receivership in any state.

(5) The department, in appointing a temporary manager, may consider one or more of the following factors:

- (a) Potential temporary manager's willingness to serve as a temporary manager for the nursing home in question;
- (b) Amount and quality of the potential temporary manager's experience in long-term care;
- (c) Quality of care, as determined by prior survey reports, provided under the potential temporary manager's supervision or management;
- (d) Potential temporary manager's prior performance as a temporary manager or receiver;
- (e) How soon the potential temporary manager is available to act as a temporary manager;
- (f) Potential temporary manager's familiarity and past compliance with state and federal regulations applicable to nursing homes.

[Statutory Authority: 1989 c 372 § 8. 90-01-052 (Order 2917), § 388-98-320, filed 12/15/89, effective 1/15/90.]

WAC 388-98-330 Duties and powers of temporary manager. (1) The temporary manager shall protect the health, security, and welfare of the residents for the duration of the temporary management. The temporary manager shall perform all acts reasonably necessary to ensure residents' needs are met. Such acts may include, but are not limited to:

- (a) Correcting department-cited deficiencies;
 - (b) Hiring, directing, managing, and discharging all consultants and employees for just cause, discharging the administrator of the nursing home, recognizing collective bargaining agreements, and settling labor disputes;
 - (c) Receiving and expending in a prudent and business-like manner all current revenues of the home provided priority shall be given to debts and expenditures directly related to providing care and meeting residents' needs;
 - (d) Making necessary purchases, repairs, and replacements, provided such expenditures in excess of five thousand dollars are approved by the department;
 - (e) Entering into contracts necessary for the operation of the nursing home;
 - (f) Preparing all department-required reports;
 - (g) Planning required relocation with residents and residents' guardians, family, or significant others;
 - (h) Meeting regularly with and informing staff, residents, and residents' families of:
 - (i) Plans for correcting the deficiencies;
 - (ii) Progress achieved in correction;
 - (iii) Plans for facility closure and relocation; or
 - (iv) Plans for continued operation of the nursing home including the identity of the permanent operator.
- (2) The temporary manager shall make a detailed monthly accounting of all expenditures and liabilities to the department and to the owner of the nursing home.
- (3) The temporary manager shall comply with all applicable state and federal laws and regulations. If the nursing home is certified and is providing care to medical assistance clients, the temporary manager shall become the Medicaid contractor for the duration of the temporary management period.

(4) The temporary manager shall be responsible and liable only for the temporary manager's gross negligence, intentional wrongdoing, or breach of fiduciary duty to either

the nursing home residents or the current or former licensee or nursing home owner.

[Statutory Authority: 1989 c 372 § 8. 90-01-052 (Order 2917), § 388-98-330, filed 12/15/89, effective 1/15/90.]

WAC 388-98-340 Termination of temporary management. (1) The department shall terminate temporary management:

(a) After three months unless good cause is shown to continue the temporary management. Good cause for continuing the temporary management exists when returning the nursing home to its former operator would subject residents to a threat to health, safety, or welfare;

(b) When all residents are transferred and the nursing home is closed;

(c) When deficiencies threatening residents' health, safety, or welfare are eliminated and the former operator or owner agrees to department-specified conditions regarding the continued facility operation; or

(d) When a new, licensed operator assumes control of the nursing home.

(2) The department may appoint an alternate temporary manager:

(a) When the temporary manager is no longer willing to serve as a temporary manager;

(b) If a temporary manager is not making acceptable progress in correcting the nursing home deficiencies or in closing the nursing home; or

(c) If the department determines the temporary manager is not operating the nursing home in a financially responsible manner.

[Statutory Authority: 1989 c 372 § 8. 90-01-052 (Order 2917), § 388-98-340, filed 12/15/89, effective 1/15/90.]

WAC 388-98-700 Stop placement—Informal review. A nursing home licensee shall have the right to an informal review to present written evidence refuting the deficiencies cited as the basis for a stop placement. If an informal review is desired, the nursing home shall request the informal review, in writing, within ten days of the effective date of the stop placement. The request shall be made to the director, nursing home services, aging and adult services administration. The right to an informal review is in addition to the licensee's right to a hearing, as provided in section 750.

[Statutory Authority: 1989 c 372 § 8. 90-01-052 (Order 2917), § 388-98-700, filed 12/15/89, effective 1/15/90. Statutory Authority: 1987 c 476. 87-21-017 (Order 2546), § 388-98-700, filed 10/9/87. Statutory Authority: RCW 18.51.070. 83-24-030 (Order 2052), § 388-98-700, filed 12/1/83.]

WAC 388-98-750 Notice and hearing rights. (1) This subsection shall apply to the department's imposition of the following remedies:

- (a) License suspension, revocation, or nonrenewal;
- (b) Stop placement;
- (c) Civil monetary penalty;
- (d) Denial of payment;
- (e) Appointment of a temporary manager;
- (f) Emergency transfer of residents; and
- (g) Emergency closure.

(2) The department's notice of a decision to impose a remedy is governed by RCW 18.51.065 and 43.20A.XXX and section 96, chapter 175, laws of 1989. The licensee's or agent's right to an adjudicative proceeding is in the same law.

(a) A person contesting any decision described in subsection (1) of this section shall within twenty days of receipt of the decision:

(i) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and

(ii) Include in or with the application:

(A) A specific statement of the issue and law involved;

(B) The grounds for contesting the department decision; and

(C) A copy of the contested department decision.

(b) The proceeding shall be governed by the Administrative Procedure Act (chapter 34.05 RCW); RCW 18.51.065 and 43.20A.XXX; and section 96, chapter 175, Laws of 1989; this section; and chapter 388-08 WAC. If any provision in this section conflicts with chapter 388-08 WAC, the provision in this section governs.

(3) When a licensee fails to pay a fine when due under this chapter, the department may:

(a) Withhold an amount equal to the fine plus interest, if any, from the licensee's Medicaid payment;

(b) Suspend the licensee's nursing home license. Such license suspension shall continue until the fine is paid; or

(c) Impose an additional civil monetary penalty, under WAC 388-98-003 (1)(g).

[Statutory Authority: 1989 c 372 § 8. 90-01-052 (Order 2917), § 388-98-750, filed 12/15/89, effective 1/15/90.]

WAC 388-98-810 Civil penalty fund. The department shall use civil penalties, collected under RCW 18.51.060 (4)(a) or chapter 74.42 RCW, for the following purposes listed in order of priority:

(1) Issue a relocation allowance to the Medicaid-funded nursing home resident who must relocate because the department finds the resident's nursing home deficient to the point decertification occurs. The department may issue the resident a relocation allowance for the following purposes:

(a) Transportation to review potential relocation sites, including a nursing home, a congregate care facility, an adult family home, or independent housing;

(b) Cost of sending personal belongings to the resident's new location, including a residential setting or the resident's own residence; and

(c) Cost of obtaining or reestablishing independent housing when the resident is able to relocate to the resident's own residence. The department shall issue a relocation allowance if the resident meets the conditions for issuing a nursing home discharge allowance, as described under WAC 388-15-145. If the discharge allowance maximum of four hundred dollars does not sufficiently cover relocation costs, the department shall issue the relocation allowance in addition to the discharge allowance.

(2) Reimburse the Medicaid-funded nursing home resident for personal funds lost due to negligence or malfeasance by nursing home staff where the resident resides. The department shall use the civil penalty fund only if the

resident's personal funds cannot be recovered from the nursing home or other responsible party; and

(3) Pay the cost of maintaining the Medicaid-funded nursing home resident in the resident's nursing home which lost its Medicaid certification until the:

(a) Resident is relocated; or

(b) Nursing home corrects the deficiencies causing the facility's decertification; and

(c) Department reinstates the nursing home Medicaid certification.

[Statutory Authority: RCW 18.51.070. 90-12-048 (Order 2990), § 388-98-810, filed 5/31/90, effective 7/1/90.]

WAC 388-98-830 Notification of response time. (1) Department findings shall be documented in writing and presented to the licensee or licensee's agent.

(2) The department shall obtain a plan of correction from the licensee or licensee's agent.

(a) The department may require the licensee or licensee's agent to submit an acceptable plan of correction during the survey or complaint investigation for a specific deficiency presenting an immediate danger of death or serious physical harm to any resident in the nursing home or a substantial probability that death or serious physical harm would result. Such deficiency shall be abated or eliminated as soon as possible within twenty-four hours from notification to the licensee or licensee's agents.

(b) A licensee or licensee's agent participating in the Medicare or Medicaid program shall submit a complete and acceptable plan of correction during the exit interview when there are fewer than sixty days from the exit interview to the Medicare or Medicaid certification expiration date.

(c) All licensees or licensees' agents choosing to submit a complete plan of correction during the exit interview may do so.

(d) The licensee or licensee's agent not submitting a plan of correction at the exit interview shall submit a complete plan of correction by the time and date specified by the department. The department may allow the licensee or licensee's agent up to ten calendar days from the exit conference to submit an acceptable plan of correction for deficiencies presenting neither an immediate danger nor a substantial probability of death or serious physical harm. Such deficiency shall be corrected within a reasonable time determined by the department. In no event shall the time for correction exceed sixty days.

(e) When deficiencies involve facility alterations, physical plant plan development, construction review, or certificate of need, an interim plan of correction stating the steps planned and approximate time schedule is acceptable. Updated plans shall be submitted as agreed to and as progress occurs.

(3) Upon licensee's or licensee's agent's written petition, the department shall determine whether or not to grant a request for an extended correction time. Such a petition must be received by the department at the earliest possible date prior to the expiration of the correction time originally approved. The burden of proof is on the licensee or licensee's agent to show good cause for not being able to comply with the original correction time.

(4) The department shall notify the licensee or licensee's agent when the plan of correction is unacceptable. The licensee or licensee's agent shall return the revised plan of correction to the department by the date specified by the department.

[Statutory Authority: 1987 c 476. 87-21-017 (Order 2546), § 388-98-830, filed 10/9/87. Statutory Authority: RCW 18.51.310. 80-08-027 (Order 1515), § 388-98-830, filed 6/25/80.]

WAC 388-98-870 Separate violations. (1) Each separate finding of a violation of a statute, rule, or regulation shall constitute a separate violation.

(2) Following the notification of a deficiency described in WAC 388-98-800 (4), (5), or (6), each day upon which the same deficiency is present, or a substantially similar action occurs, shall constitute a separate violation subject to the assessment of a separate penalty.

[Statutory Authority: 1987 c 476. 87-21-017 (Order 2546), § 388-98-870, filed 10/9/87. Statutory Authority: RCW 18.51.310. 80-08-027 (Order 1515), § 388-98-870, filed 6/25/80.]

WAC 388-98-890 Reporting. All civil fines assessed against a nursing home which relate to the activities and responsibilities of a licensed nursing home administrator as defined in WAC 248-14-235 shall be reported to the professional licensing division, business and professions administration. The report shall include the name of the person, name of the facility, amount of fine, and date of fine.

[Statutory Authority: RCW 18.51.310. 80-08-027 (Order 1515), § 388-98-890, filed 6/25/80.]

Chapter 388-110 WAC

CONTRACTED RESIDENTIAL CARE SERVICES: ASSISTED LIVING SERVICES, ENHANCED ADULT RESIDENTIAL CARE, AND ADULT RESIDENTIAL CARE

WAC

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PART I

ALL CONTRACTED RESIDENTIAL CARE SERVICES

WAC 388-110-005 Authority. The following rules are adopted under RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.070, 74.39A.080, 74.39A.170, and 18.88A.210 through 18.88A.240.

[Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-240 and 70.129.040. 96-11-045 (Order 3979), § 388-110-005, filed 5/8/96, effective 6/8/96.]

WAC 388-110-010 Scope and applicability. (1) These rules apply only to boarding homes licensed under chapter 18.20 RCW, or boarding homes located within the boundaries of a federally recognized Indian reservation and licensed by a tribe, that contract with the department to provide assisted living services, enhanced adult residential care, or adult residential care.

(2) Only services provided to or on behalf of the assisted living services, enhanced adult residential care, or adult residential care resident, and paid for fully or partially by the department shall be subject to these rules.

[Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-240 and 70.129.040. 96-11-045 (Order 3979), § 388-110-010, filed 5/8/96, effective 6/8/96.]

WAC 388-110-020 Definitions. (1) "Adult residential care" is a package of services, including personal care services, that the department contracts with a licensed boarding home to provide in accordance with Parts I and IV of this chapter.

(2) "Aging in place" means being in a care environment that can accommodate a resident's progressive disability or changing needs without relocating. For aging in place to occur, needed services are adjusted to meet the changing needs of the resident.

(3) "Applicant" means the individual, partnership, corporation or other entity which has applied for a contract with the department to provide assisted living services, enhanced adult residential care, or adult residential care to state funded residents in a licensed boarding home.

(4) "Assisted living services" is a package of services, including personal care and limited nursing services, that the

department contracts with a licensed boarding home to provide in accordance with Parts I and II of this chapter. Assisted living services include housing for the resident in a private apartment-like unit.

(5) "Boarding home" means the same as the definition found in RCW 18.20.020(2), or a boarding home located within the boundaries of a federally recognized Indian reservation and licensed by the tribe.

(6) "Caregiver" means any person responsible for providing direct personal care services to a resident and may include but is not limited to the contractor, employee, volunteer, or student.

(7) "Case manager" means the department staff person or designee assigned to negotiate, monitor, and facilitate a service plan for residents receiving services fully or partially paid for by the department.

(8) "Contractor" means the individual, partnership, corporation, or other entity which contracts with the department to provide assisted living services, enhanced adult residential care, or adult residential care to state funded residents in a licensed boarding home.

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

(10) "Dignity" means the quality or condition of being esteemed and respected in such a way as to validate the self-worth of the resident.

(11) "Enhanced adult residential care" is a package of services, including personal care and limited nursing services, that the department contracts with a licensed boarding home to provide in accordance with Parts I and III of this chapter.

(12) "Frail elder or vulnerable adult" means the same as the definition found in RCW 74.34.020 or 43.43.830.

(13) "Homelike" means an environment having the qualities of a home, including privacy, comfortable surroundings, and the opportunity to modify one's living area to suit one's individual preferences. A homelike environment provides residents with an opportunity for self-expression, and encourages interaction with the community, family and friends.

(14) "Independence" means free from the control of others and being able to assert one's own will, personality and preferences.

(15) "Individuality" means the quality of being unique; the aggregate of qualities and characteristics that distinguishes one from others. Individuality is supported by modifying services to suit the needs or wishes of a specific individual.

(16) "Limited nursing services" means the same as the definition found in WAC 246-316-265.

(17) "Personal care services" means both physical assistance and/or prompting and supervising the performance of direct personal care tasks as determined by the resident's needs as defined in WAC 388-15-202(38). Personal care services do not include assistance with tasks that must be performed by a licensed health professional.

(18) "Resident" means a person residing in a boarding home for whom services are paid for, in whole or in part, by the department under a contract for assisted living services, enhanced adult residential care, or adult residential care. "Resident" includes former residents when examining complaints about admissions, re-admissions, transfers or discharges. For decision-making purposes, the term "resi-

dent" includes the resident's surrogate decision maker in accordance with state law or at the resident's request.

[Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-240 and 70.129.040. 96-11-045 (Order 3979), § 388-110-020, filed 5/8/96, effective 6/8/96.]

WAC 388-110-030 Contract application. (1) In order to apply for a contract with the department to provide assisted living services, enhanced adult residential care, or adult residential care, an applicant shall:

(a) Have a valid boarding home license for the facility at which the contracted services will be provided;

(b) Complete and submit a contract application on department provided forms at least sixty days before the requested effective date for the contract; and

(c) Provide information regarding any facilities the applicant, and any partner, officer, director, managerial employee, or owner of five percent or more of the applicant has been affiliated with in the last ten years.

(2) Within sixty days of the receipt of the application the department shall approve a contract, refuse to enter into a contract, or request additional information the department deems relevant from the applicant. The department may extend the sixty days to allow the applicant to supply or clarify information requested by the department. The department shall conduct an on-site review of the contracting facility before issuing a contract.

[Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-240 and 70.129.040. 96-11-045 (Order 3979), § 388-110-030, filed 5/8/96, effective 6/8/96.]

WAC 388-110-040 Contract qualifications. (1) The department shall consider separately and jointly as applicants each person and entity named in the application for a contract for assisted living services, enhanced adult residential care, or adult residential care. If the department finds any person or entity unqualified, the department shall deny the contract.

(2) In making a determination whether to grant a contract, the department shall review:

(a) The information in the application; and

(b) Other documents and information the department deems relevant, including inspection and complaint investigation findings for each facility with which the applicant or any partner, officer, director, managerial employee, or owner of five percent or more of the entity applicant has been affiliated.

(3) The applicant and the facility for which a contract is sought shall comply with all requirements established by chapter 74.39A RCW and this chapter. The department may deny a contract for noncompliance with any such requirements.

(4) The department shall deny a contract if an applicant or any partner, officer, director, managerial employee, or owner of five percent or more of the entity applicant applying for a contract has a history of significant noncompliance with federal or state regulations in providing care or services to frail elders, vulnerable adults or children. The department shall consider, at a minimum, the following as a history of significant noncompliance requiring denial of a contract:

- (a) Revocation or suspension of a license for the care of children, frail elders or vulnerable adults;
 - (b) Enjoined from operating a facility for the care of children, frail elders or vulnerable adults; or
 - (c) Termination, cancellation, suspension, or nonrenewal of a Medicaid or Medicare provider agreement, or any other agreement with a public agency for the care or treatment of children, frail elders or vulnerable adults.
- (5) The department shall deny, terminate, or refuse to renew a contract if an applicant or any partner, officer, director, managerial employee, an owner of fifty percent or more of the entity applicant, or an owner who exercises control over daily operations has been:
- (a) Convicted of a crime against a person as defined under RCW 43.43.830 or 43.43.842;
 - (b) Convicted of a crime related to financial exploitation as defined under RCW 43.43.830 or 43.43.842;
 - (c) Found by a court in a protection proceeding or in a civil damages lawsuit under chapter 74.34 RCW to have abused, neglected, abandoned or exploited a vulnerable adult;
 - (d) Found in any final decision issued by a disciplinary board to have sexually or physically abused, neglected, or exploited any minor or vulnerable adult;
 - (e) Found in any dependency action under chapter 13.34 RCW to have sexually assaulted, neglected, exploited, or physically abused any minor; or
 - (f) Found by a court in a domestic relations proceeding under Title 26 RCW to have sexually abused, exploited, or physically abused any minor.
- (6) The department may deny, terminate, or refuse to renew a contract if an applicant or any partner, officer, director, managerial employee, an owner of fifty percent or more of the entity applicant, or an owner who exercises control over daily operations has:
- (a) Obtained or attempted to obtain a license or contract by fraudulent means or misrepresentation;
 - (b) Been convicted of a felony or a crime against a person if the conviction reasonably relates to the competency of the person to contract with the department;
 - (c) Had sanction, corrective or remedial action taken by federal, state, county, or municipal health or safety officials related to the care or treatment of children, frail elders or vulnerable adults;
 - (d) A poor credit history;
 - (e) Engaged in the illegal use of drugs or the excessive use of alcohol;
 - (f) Operated a facility for the care of children or adults without a license;
 - (g) Failed to meet financial obligations as the obligations fell due in the normal course of business;
 - (h) Misappropriated property of residents;
 - (i) Filed for bankruptcy, reorganization, or receivership;
 - (j) Been denied a license or license renewal to operate a facility that was licensed for the care of children, frail elders or vulnerable adults;
 - (k) Relinquished or returned a license in connection with the operation of any facility for the care of children, frail elders or vulnerable adults, or did not seek the renewal of such license, following written notification of the licensing agency's initiation of denial, suspension, cancellation or revocation of the license; or

- (l) Had resident trust funds or assets of an entity providing care to children, frail elders or vulnerable adults seized by the IRS or a state entity for failure to pay income or payroll taxes.

[Statutory Authority: RCW 74.39A.010, 74.39A.020 and 74.39A.080. 96-21-050, § 388-110-040, filed 10/11/96, effective 11/11/96. Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-240 and 70.129.040. 96-11-045 (Order 3979), § 388-110-040, filed 5/8/96, effective 6/8/96.]

WAC 388-110-050 Change of contractor. (1) A change of contractor occurs when there is a substitution of the individual contractor or contracting entity ultimately responsible for the daily operational decisions of the assisted living service, enhanced adult residential care, or adult residential care, or a substitution of control of such contracting entity.

(a) Events which constitute a change of contractor 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) Assisted living services, enhanced adult residential care, or adult residential care contract rights and responsibilities are transferred by the initial contractor to another party regardless of whether ownership of some or all of the real property and/or personal property assets of the facility are also transferred;

(iii) If the contractor is a partnership, any event occurs which dissolves the partnership;

(iv) If the contractor is a corporation, and 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;

(v) If the contractor is a corporation and, whether by a single transaction or multiple transactions within any continuous twenty-four-month period, fifty percent or more of the stock is transferred to one or more:

(A) New or former stockholders; or

(B) Present stockholders each having held less than five percent of the stock before the initial transaction; or

(vi) Any other event or combination of events which results in a substitution or substitution of control of the individual contractor or the contracting entity.

(b) The contractor does not change when the following, without more, occur:

(i) A party contracts with the contractor to manage the assisted living, enhanced adult residential care, or adult residential care facility as the contractor's agent, i.e., subject to the contractor's general approval of daily operating and management decisions; or

(ii) The real property or personal property assets of the facility contractor change ownership or are leased, or a lease of the real property or personal property assets is terminated, without a substitution of individual operator or operating entity and without a substitution of control of the operating entity.

(2) When a change of contractor is contemplated, the current contractor shall notify the department and all residents at least sixty days prior to the proposed date of transfer. The notice shall be in writing and shall contain the following information:

- (a) Name of the present contractor and prospective contractor;
 - (b) Name and address of the facility being transferred; and
 - (c) Date of proposed transfer.
- (3) The operation or ownership of an assisted living services, enhanced adult residential care, or adult residential care contract shall not be transferred until the new operator has entered into a contract with the department. The new contractor shall comply with contract application requirements in WAC 388-110-030.

[Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-240 and 70.129.040. 96-11-045 (Order 3979), § 388-110-050, filed 5/8/96, effective 6/8/96.]

WAC 388-110-060 Resident rights. (1) The contractor shall comply with all requirements of chapter 70.129 RCW, Long-term care resident rights. The contractor shall promote and protect the resident's exercise of all rights granted under that law.

(2) The contractor shall provide care and services in compliance with the federal Patient self determination act and with applicable state statutes related to surrogate and health care decision making, including chapters 7.70, 70.122, 11.88, 11.92 and 11.94 RCW.

[Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-240 and 70.129.040. 96-11-045 (Order 3979), § 388-110-060, filed 5/8/96, effective 6/8/96.]

WAC 388-110-070 General service standards. The contractor shall:

- (1) Ensure residents have control over their time, space and lifestyle to the extent that the health, safety and well-being of other residents is not disturbed;
- (2) Promote the resident's right to exercise decision making and self-determination to the fullest extent possible;
- (3) Follow the informed consent process as required in chapter 7.70 RCW, when applicable, in the development of the negotiated service agreement;
- (4) Provide services for residents in a manner and in an environment that encourages maintenance or enhancement of each resident's quality of life, and promotes the resident's privacy, dignity, choice, independence, individuality, and decision-making ability; and
- (5) Provide a safe, clean and comfortable homelike environment, allowing residents to use their personal belongings to the extent possible.

[Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-240 and 70.129.040. 96-11-045 (Order 3979), § 388-110-070, filed 5/8/96, effective 6/8/96.]

WAC 388-110-080 Social and recreational activities.

(1) The contractor shall provide social and recreational activities that provide and promote opportunities for the resident to participate in ongoing and varied activities based on the resident's choice and consistent with identified resident needs and functional ability.

(2) The contractor shall support the participation of residents and the resident council, if there is one, in the development of recreational and activity programs that reflect the needs and choices of the residents.

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[Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-240 and 70.129.040. 96-11-045 (Order 3979), § 388-110-080, filed 5/8/96, effective 6/8/96.]

WAC 388-110-090 Administration. The contractor shall:

(1) Maintain substantial compliance with all requirements of chapter 18.20 RCW, Law for boarding homes and chapter 246-316 WAC, Boarding homes;

(2) Ensure all facility staff are knowledgeable about chapter 70.129 RCW, Long-term care resident rights;

(3) Provide residents, prior to move-in, a copy of the facility's admission agreement which clearly specifies the range of services the facility is able to provide to residents;

(4) Not require a resident to sign any admission contract or agreement that purports to waive any rights of the resident;

(5) Develop and implement a grievance procedure and process which is responsive to resident's complaints;

(6) Post in a place and manner clearly visible to residents and visitors the department's toll-free complaint telephone number;

(7) Comply with all federal and state statutory and regulatory requirements regarding nondiscrimination in all aspects of the facility's operation;

(8) Ensure resident rooms or resident units are not located in a separate unit within a facility that has exiting doors that restrict egress from the unit, such as, but not limited to automatic locking and unlocking exiting doors, unless the contractor is already providing services to residents in such a unit under a contract with the department for assisted living services, adult residential care, or enhanced adult residential care on the effective date of this chapter;

(9) Encourage residents and the resident council, if there is one, to provide input to the facility about residents' preferences for food choices, taking into account the cultural and religious needs of residents;

(10) Ensure all instances of suspected abuse, neglect, exploitation, or abandonment are reported to the department, as required in chapter 74.34 RCW, and to the local law enforcement agency;

(11) Not have any sexual contact with any resident and shall ensure that facility staff and students not have sexual contact with any resident;

(12) Notify the department within five business days when there is a change in the facility administrator; and

(13) Permit department representatives to enter the facility without prior notification in order to monitor the contract requirements under this chapter and to conduct complaint investigations, including but not limited to observing and interviewing residents, and accessing resident records.

[Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-240 and 70.129.040. 96-11-045 (Order 3979), § 388-110-090, filed 5/8/96, effective 6/8/96.]

WAC 388-110-100 Transfer and discharge, social leave, and bed hold. The contractor shall:

(1) Comply with chapter 70.129 RCW and chapter 246-316 WAC pertaining to transfer and discharge (move-out);

(2) Include the department's case manager in the development of a relocation or discharge (move-out) plan,

and have the case manager approve the plan before any notice required under subsection (1) of this section is issued to the resident, except in an emergency;

(3) Note an absence in a resident's record when a resident will be absent from the facility for more than seventy-two consecutive hours;

(4) Not be required to discharge (move-out) and readmit a resident for absences less than thirty-one consecutive days;

(5) Obtain department approval for payment for social leave in excess of fifteen consecutive days; and

(6) Retain a bed or unit for a resident hospitalized or temporarily placed in a nursing home for up to thirty days when the resident is likely to return, but if as part of the negotiated service agreement it is determined prior to the end of the thirty days that the resident will not return to the facility, the facility may discharge (move-out) the resident in accordance with subsections (1) and (2) above and release the bed or unit.

[Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-240 and 70.129.040. 96-11-045 (Order 3979), § 388-110-100, filed 5/8/96, effective 6/8/96.]

WAC 388-110-110 Caregiver education and training requirements. (1) The contractor shall ensure that:

(a) All caregivers hired on or after July 1, 1996 successfully complete the department designated fundamentals of caregiving training within one hundred twenty days of employment, unless he or she meets the requirements in subsection (2) below;

(b) All caregivers hired prior to July 1, 1996 successfully complete the department designated fundamentals of caregiving training prior to March 1, 1997, unless he or she meets the requirements in subsection (2) below; and

(c) All caregivers complete a minimum of ten hours of continuing education credits per calendar year, on topics relevant to caregiving:

(i) Topics include but are not limited to residents' rights, personal care, dementia, mental illness, developmental disabilities, depression, medication assistance, communication skills, alternatives to restraints, and activities for residents;

(ii) Caregivers must receive a certificate of completion to meet the requirement for continuing education credit and each hour of completed instruction will count as one hour of continuing education credit; and

(iii) The continuing education requirement begins the calendar year after the year in which the caregiver completes the fundamentals or modified fundamentals of caregiving training.

(2) A caregiver who is a registered or licensed practical nurse, a physical or occupational therapist, a nursing assistant certified, a home health aide from a Medicare-certified home health agency or who has successfully completed a department approved adult family home training, or department approved personal care training from an area agency on aging or its subcontractor, is exempt from the fundamentals of caregiving training in subsection (1) above if the caregiver successfully completes the department designated modified fundamentals of caregiving training in accordance with the dates specified in subsection (1) above.

(3) Contractors who meet the prescribed criteria may be approved by the department to provide the department's designated caregiver training programs within the facility.

(4) Volunteers are exempt from the training requirements listed above unless they provide unsupervised direct personal care to residents.

(5) The contractor shall document that caregivers have met the education and training requirements.

[Statutory Authority: RCW 74.39A.010, 74.39A.020 and 74.39A.080. 96-21-050, § 388-110-110, filed 10/11/96, effective 11/11/96. Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-240 and 70.129.040. 96-11-045 (Order 3979), § 388-110-110, filed 5/8/96, effective 6/8/96.]

WAC 388-110-120 Resident personal funds. (1)

Upon the death of a resident, the facility shall promptly convey the resident's personal funds held by the facility with a final accounting of such funds to the department or to the individual or probate jurisdiction administering the resident's estate no later than forty-five calendar days after the date of the resident's death:

(a) When the personal funds of the deceased resident shall be paid to the state of Washington, those funds and the final accounting shall be made payable to the secretary, department of social and health services, and sent to the office of financial recovery, estate recovery unit, P.O. Box 9501, Olympia, Washington 98507-9501, or such address as may be directed by the department in the future;

(b) The check and final accounting accompanying the payment shall contain the name and social security number of the deceased individual from whose personal funds account the monies are being paid; and

(c) The department of social and health services shall establish a release procedure for use of funds necessary for burial expenses.

(2) In situations where the resident is absent from the facility for an extended time without notifying the facility, and the resident's whereabouts is unknown:

(a) The facility shall make a reasonable effort to find the missing resident; and

(b) If the resident cannot be located after ninety days, the facility shall notify the department of revenue of the existence of "abandoned property," outlined in chapter 63.29 RCW. The facility shall deliver to the department of revenue the balance of the resident's personal funds within twenty days following such notification.

(3) Prior to the change of contractor of the facility business, the contractor shall:

(a) Provide each resident with a written accounting of any personal funds held by the facility;

(b) Provide the new contractor with a written accounting of all resident funds being transferred; and

(c) Obtain a written receipt for those funds from the new operator.

[Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-240 and 70.129.040. 96-11-045 (Order 3979), § 388-110-120, filed 5/8/96, effective 6/8/96.]

**PART II
ASSISTED LIVING SERVICES**

WAC 388-110-140 Assisted living services facility structural requirements. (1) In a boarding home with an assisted living services contract, each resident shall have a private apartment-like unit with a private bathroom. Each unit shall have at least the following:

(a) In an existing facility, an individual unit with a minimum of one hundred eighty square feet including counters, closets and built-ins, and excluding the bathroom. In a new facility, an individual unit with a minimum of two hundred twenty square feet including counters, closets and built-ins, and excluding the bathroom;

(b) A separate private bathroom, which includes a sink, toilet, and a shower or bathtub. In a new facility, a minimum of fifty percent of resident bathrooms shall be wheelchair accessible and have a roll-in shower;

(c) A lockable entry door;

(d) A kitchen area equipped, at a minimum, with a refrigerator, a microwave oven or stovetop, and a counter or table for food preparation. In a new facility, a kitchen area must also be equipped with a sink and counter area, and storage space for utensils and supplies; and

(e) A living area wired for telephone and, where available in the geographic location, wired for television service.

(2) In a new facility, the contractor shall provide a private accessible mailbox in which the resident may receive mail.

(3) The contractor shall provide homelike smoke-free common areas with sufficient space for socialization designed to meet resident needs. Common areas shall be available for resident use at any time provided such use does not disturb the health or safety of other residents. When possible, access to outdoor areas shall be made available to all residents.

(4) The contractor shall provide a space for residents to meet with family and friends outside the resident's living unit.

(5)(a) For purposes of this section, a new facility is:

(i) A new building to be used as a boarding home or part of a boarding home, for which plans are submitted to the department of health for construction review, as required by WAC 246-316-070, on or after the effective date of this chapter; or

(ii) An addition, modification, or alteration to an existing building, for which plans are submitted to the department of health for construction review, as required by WAC 246-316-070, on or after the effective date of this chapter.

(b) All facilities that are not new facilities under subsection (5)(a) of this section, are existing facilities. An existing building, or portion thereof, that is converted to boarding home use shall be considered an existing facility unless there is an addition, modification or alteration to the existing building.

[Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-240 and 70.129.040. 96-11-045 (Order 3979), § 388-110-140, filed 5/8/96, effective 6/8/96.]

WAC 388-110-150 Assisted living service standards.

(1) The contractor shall ensure that both the physical environment and the delivery of assisted living services are designed to enhance autonomy in ways which reflect personal and social values of dignity, privacy, independence, individuality, choice and decision-making of residents. The contractor shall provide the resident services in a manner which:

(a) Makes the services available in a homelike environment for residents with a range of needs and preferences;

(b) Facilitates aging in place by providing flexible services in an environment that accommodates and supports the resident's individuality;

(c) Supports managed risk which includes the resident's right to take responsibility for the risks associated with decision-making; and

(d) Develops a formal written, negotiated plan to decrease the probability of a poor outcome when a resident's decision or preference places the resident or others at risk, leads to adverse consequences, or conflicts with other residents' rights or preferences.

(2) Building on the department's assessment and service plan completed before admission, the contractor shall complete a negotiated service agreement within thirty days of move-in. The contractor shall involve the following persons in the negotiation and renegotiation of the agreement:

(a) The resident to the greatest extent practicable;

(b) Appropriate facility staff;

(c) The department's case manager; and

(d) If the resident chooses, the resident's family or any other person the resident wants included.

(3) The contractor shall ensure the negotiated service agreement:

(a) Includes recognition of the resident's capabilities and choices, and defines the division of responsibility in the implementation of services;

(b) Addresses, at a minimum, the following elements: assessed health care needs; social needs and preferences; personal care tasks; and if applicable, limited nursing and medication services, including frequency of service and level of assistance;

(c) Is signed and approved by the resident, the contractor, and the department case manager; and

(d) Includes the date the agreement was approved.

(4) The contractor shall provide the resident and case manager with a copy of the agreement, and place a copy in the resident's record.

(5) The contractor shall update the agreement when there are changes in the services the resident needs and wants to receive. At a minimum, the contractor shall review and update the negotiated service agreement semiannually.

(6) The contractor shall provide personal care services based on the resident's negotiated service agreement.

(7) The contractor shall provide the range of services required to meet the increasing or changing needs of residents as they age in place to the maximum extent permitted by the boarding home regulations.

(8) The contractor shall provide or arrange for limited nursing services to meet the needs of residents who require nursing services, at no additional cost to the resident.

(9) The contractor shall provide written policies and procedures that ensure the facility will provide limited nursing services and will allow additional on-site health care services to the maximum extent allowed under chapter 246-316 WAC, and if requested, shall assist the resident to obtain the additional on-site health care services.

(10) If requested or needed by the resident, the contractor shall assist the resident to obtain, arrange, and coordinate services such as: transportation to medical services and recreational activities; ancillary services for medically related care (e.g., physician, pharmacist, mental health services, physical or occupational therapy, hospice, home health care, podiatry); barber/beauty services; and other services necessary to support and assist the resident in maintaining as much independence as possible.

(11) The contractor shall make available and offer at no additional cost to the resident generic personal care items needed by the resident such as soap, shampoo, toilet paper, toothbrush, toothpaste, deodorant, sanitary napkins, and disposable razors. This does not include items covered by medical coupons or preclude residents from choosing to purchase their own personal care items.

(12) The contractor shall provide all residents with access to an on-site washing machine and dryer for resident use.

(13) The contractor shall make beverages and snacks available to residents.

(14) The contractor shall develop written policies and procedures to be followed by staff and shared with residents which illustrate how employees shall deliver services to residents while ensuring resident's privacy, dignity, choice, independence, individuality and decision-making ability.

[Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-240 and 70.129.040. 96-11-045 (Order 3979), § 388-110-150, filed 5/8/96, effective 6/8/96.]

WAC 388-110-170 Education and training requirements. (1) Any administrator hired after the effective date of this chapter shall have completed forty hours of training regarding assisted living services, resident rights, and the social model of services within the first six months of employment. All administrators shall have ten hours of continuing education credits per calendar year.

(2) The contractor shall provide and document a minimum of five hours of training for all staff regarding assisted living services, resident rights, the social model of services, and service planning for residents.

[Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-240 and 70.129.040. 96-11-045 (Order 3979), § 388-110-170, filed 5/8/96, effective 6/8/96.]

WAC 388-110-180 Nurse delegation training and registration. Before performing any delegated nursing task, facility staff must:

(1) Be a nursing assistant certified or registered under chapter 18.88A RCW; and

(2) Attend and successfully complete department designated core delegation training.

[Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-240 and 70.129.040. 96-11-045 (Order 3979), § 388-110-180, filed 5/8/96, effective 6/8/96.]

WAC 388-110-190 Performance of delegated nursing care tasks. (1) Facility staff who have been delegated a nursing care task in compliance with requirements established by the nursing care quality assurance commission shall perform the task:

(a) In compliance with all requirements and protocols established by the commission in WAC 246-840-910 through 246-840-980;

(b) Only for the specific resident who was the subject of the delegation; and

(c) Only with the resident's consent.

(2) The delegated authority to perform the nursing care task is not transferrable to another nurse assistant.

(3) Facility staff may consent to perform a delegated nursing care task, and shall be responsible for their own actions with regard to the decision to consent to the performance of the delegated task.

[Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-240 and 70.129.040. 96-11-045 (Order 3979), § 388-110-190, filed 5/8/96, effective 6/8/96.]

WAC 388-110-200 Nurse delegation—Penalties. The department shall impose a civil fine on any contractor that knowingly performs or knowingly permits an employee to perform a nursing task except as delegated by a nurse pursuant to chapter 18.79 RCW and chapter 246-840 WAC as follows:

(a) Two hundred fifty dollars for the first time the department finds an unlawful delegation;

(b) Five hundred dollars for the second time the department finds an unlawful delegation; and

(c) One thousand dollars for the third time or more the department finds an unlawful delegation.

[Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-240 and 70.129.040. 96-11-045 (Order 3979), § 388-110-200, filed 5/8/96, effective 6/8/96.]

WAC 388-110-210 Client service eligibility. The contractor shall provide assisted living services only to persons eligible for COPES level of services under WAC 388-15-202 through 388-15-205 and WAC 388-15-600 through 388-15-620 as determined by the department or the department's designee.

[Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-240 and 70.129.040. 96-11-045 (Order 3979), § 388-110-210, filed 5/8/96, effective 6/8/96.]

PART III ENHANCED ADULT RESIDENTIAL CARE

WAC 388-110-220 Enhanced adult residential care service standards. (1) The contractor shall complete a negotiated service agreement within thirty days of move-in with participation from the resident and the department's case manager, consistent with the general service standards set forth in WAC 388-110-070.

(2) The agreement shall include what services shall be provided, who will provide the services, and when and how the services will be provided.

(3) The service agreement shall support the principles of dignity, privacy, choice in decision making, individuality, and independence.

(4) At a minimum, the contractor shall review and update the negotiated service agreement semi-annually, give a copy of the agreement to the resident and case manager, and keep a copy in the resident's record.

(5) The contractor shall provide personal care services based on the resident's negotiated service agreement.

(6) The contractor shall provide or arrange for limited nursing services to meet the needs of residents who require nursing services, at no additional cost to the resident.

(7) The contractor shall allow a maximum of two residents per room.

[Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-240 and 70.129.040. 96-11-045 (Order 3979), § 388-110-220, filed 5/8/96, effective 6/8/96.]

WAC 388-110-230 Client eligibility. The contractor shall provide enhanced adult residential care services only to persons eligible for COPES level of services under WAC 388-15-202 through 388-15-205 and WAC 388-15-600 through 388-15-620 as determined by the department or the department's designee.

[Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-240 and 70.129.040. 96-11-045 (Order 3979), § 388-110-230, filed 5/8/96, effective 6/8/96.]

PART IV ADULT RESIDENTIAL CARE

WAC 388-110-240 Adult residential care service standards. (1) The contractor shall complete a negotiated service agreement within thirty days of move-in with participation from the resident and the department's case manager, consistent with the general service standards set forth in WAC 388-110-070.

(2) The agreement shall include what services shall be provided, who will provide the services, and when and how the services will be provided.

(3) The service agreement shall support the principles of dignity, privacy, choice in decision making, individuality, and independence.

(4) At a minimum, the contractor shall review and update the negotiated service agreement semi-annually, give a copy of the agreement to the resident and case manager, and keep a copy in the resident's record.

(5) The contractor shall provide personal care services based on the resident's negotiated service agreement.

[Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-240 and 70.129.040. 96-11-045 (Order 3979), § 388-110-240, filed 5/8/96, effective 6/8/96.]

WAC 388-110-250 Client service eligibility. The contractor shall provide adult residential care services only to persons eligible for community-based services under WAC 388-15-562, 388-15-610, or 388-15-830 as determined by the department or the department's designee.

[Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-240 and 70.129.040. 96-11-045 (Order 3979), § 388-110-250, filed 5/8/96, effective 6/8/96.]

PART V REMEDIES FOR ASSISTED LIVING, ENHANCED ADULT RESIDENTIAL CARE, AND ADULT RESIDENTIAL CARE

WAC 388-110-260 Remedies. (1) The department may take one or more of the actions listed in subsection (3)(a) of this section in any case in which the department finds that a contractor of assisted living services, enhanced adult residential care services, or adult residential care services has:

(a) Failed or refused to comply with the applicable requirements of chapter 74.39A RCW, of chapter 70.129 RCW or of this chapter;

(b) Operated without a license or under a revoked license;

(c) Knowingly, or with reason to know, made a false statement of material fact on his or her application for a contract or any data attached thereto, or in any matter under investigation by the department; or

(d) Willfully prevented or interfered with any inspection or investigation by the department.

(2)(a) For failure or refusal to comply with any applicable requirements of chapter 74.39A RCW, of chapter 70.129 RCW or of this chapter, the department may provide consultation and shall allow the contractor a reasonable opportunity to correct before imposing remedies under subsection (3)(a) unless the violations pose a serious risk to residents, are recurring or have been uncorrected.

(b) When violations of this chapter pose a serious risk to a resident, are recurring or have been uncorrected, the department shall impose a remedy or remedies listed under subsection (3)(a). In determining which remedy or remedies to impose, the department shall take into account the severity of the impact of the violations on residents and which remedy or remedies are likely to improve resident outcomes and satisfaction in a timely manner.

(3)(a) Actions and remedies the department may impose include:

(i) Refusal to enter into a contract;

(ii) Imposition of reasonable conditions on a contract, such as correction within a specified time, training, and limits on the type of clients the provider may admit or serve;

(iii) Imposition of civil penalties of not more than one hundred dollars per day per violation;

(iv) Suspension, termination, or refusal to renew a contract; or

(v) Order stop placement of persons under the contract.

(b) When the department orders stop placement, the facility shall not admit any person under the contract until the stop placement order is terminated. The department may approve readmission of a resident to the facility from a hospital or nursing home during the stop placement. The department shall terminate the stop placement when the department determines that:

(i) The violations necessitating the stop placement have been corrected; and

(ii) The provider exhibits the capacity to maintain adequate care and service.

(c) Conditions the department may impose on a contract include, but are not limited to the following:

- (i) Correction within a specified time;
- (ii) Training related to the violations; and
- (iii) Discharge of any resident when the department determines discharge is needed to meet that resident's needs or for the protection of other residents.

(d) When a contractor fails to pay a fine when due under this chapter, the department may, in addition to other remedies, withhold an amount equal to the fine plus interest, if any, from the contract payment.

[Statutory Authority: RCW 74.39A.010, 74.39A.020 and 74.39A.080. 96-21-050, § 388-110-260, filed 10/11/96, effective 11/11/96. Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-240 and 70.129.040. 96-11-045 (Order 3979), § 388-110-260, filed 5/8/96, effective 6/8/96.]

WAC 388-110-270 Notice, hearing rights, effective dates relating to imposition of remedies. (1) Chapter 34.05 RCW applies to department actions under this chapter and chapter 74.39A RCW, except that orders of the department imposing contracts suspension, stop placement, or conditions for continuation of a contract are effective immediately upon notice and shall continue pending any hearing.

(2) Civil monetary penalties shall become due twenty eight days after the contractor is served with a notice of the penalty unless the contractor requests a hearing in compliance with chapter 34.05 RCW and RCW 43.20A.215. If a hearing is requested, the penalty becomes due ten days after a final decision in the department's favor is issued. Interest shall accrue beginning thirty days after the department serves the contractor with notice of the penalty at a rate of one percent per month in accordance with RCW 43.20B.695.

(3) A person contesting any decision by the department to impose a remedy shall within twenty-eight days of receipt of the decision:

(a) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, PO Box 2465, Olympia, WA 98504; and

(b) Include in or with the application:

(i) The grounds for contesting the department decision; and

(ii) A copy of the contested department decision.

(4) Administrative proceedings shall be governed by chapter 34.05 RCW, RCW 43.20A.215, where applicable, this section, and chapter 388-08 WAC. If any provision in this section conflicts with chapter 388-08 WAC, the provision in this section governs.

[Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-240 and 70.129.040. 96-11-045 (Order 3979), § 388-110-270, filed 5/8/96, effective 6/8/96.]

WAC 388-110-280 Dispute resolution. (1) When a contractor disagrees with the department's finding of a violation under this chapter, the contractor shall have the right to have the violation reviewed under the department's dispute resolution process. Requests for review shall be made to the department within ten days of receipt of the written finding of a violation.

(2) When requested by a contractor, the department shall expedite the dispute resolution process to review violations upon which a department order imposing contract suspension, stop placement, or a contract condition is based.

(3) Orders of the department imposing contracts suspension, stop placement, or conditions for continuation of a contract are effective immediately upon notice and shall continue pending dispute resolution.

[Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-240 and 70.129.040. 96-11-045 (Order 3979), § 388-110-280, filed 5/8/96, effective 6/8/96.]

Chapter 388-150 WAC

MINIMUM LICENSING REQUIREMENTS FOR CHILD DAY CARE CENTERS

WAC

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WAC 388-150-005 Authority. The following rules are adopted under chapters 74.12 and 74.15 RCW.

[Statutory Authority: RCW 74.12.340, 94-13-201 (Order 3745), § 388-150-005, filed 6/22/94, effective 7/23/94. 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 388-150-010 Definitions. As used and defined under this chapter:

(1) "Capacity" means the maximum number of children the licensee is authorized to have on the premises at a given time.

(2) "Center" means the same as "child day care center."

(3) "Child abuse or neglect" means the injury, sexual abuse, sexual exploitation, or negligent treatment or maltreatment of a child by any person under circumstances indicating the child's health, welfare, and safety is harmed thereby.

(4) "Child day care center" means a facility providing regularly scheduled care for a group of children one month of age through twelve years of age for periods less than twenty-four hours; except, a program meeting the definition of a family child care home shall not be licensed as a day care center without meeting the requirements of WAC 388-150-020 (5)(a).

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

(6) "Department of health" means the state department of health.

(7) "Infant" means a child eleven months of age and under.

(8) "License" means a permit issued by the department authorizing by law the licensee to operate a child day care center and certifying the licensee meets minimum requirements under licensure.

(9) "Licensee" means the person, organization, or legal entity responsible for operating the center.

(10) "Premises" means the building where the center is located and the adjoining grounds over which the licensee has control.

(11) "Preschool age child" means a child thirty months of age through five years of age not enrolled in kindergarten or an elementary school.

(12) "School-age child" means a child five years of age through twelve years of age enrolled in kindergarten or an elementary school.

(13) "Staff" means a child care giver or a group of child care givers employed by the licensee to supervise a child served at the center.

(14) "Toddler" means a child twelve months of age through twenty-nine months of age.

[Statutory Authority: RCW 74.15.020 and 74.15.030, 93-18-001 (Order 3623), § 388-150-010, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030, 90-23-078 (Order 3103), § 388-150-010, 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) RCW 74.15.020 (4)(c) exempts from licensing facilities where parents on a mutually cooperative basis exchange care of one another's children. To qualify for this cooperative exemption:

(a) At least one parent or guardian of each child attending the facility regularly shall be involved in the direct care of children at the facility;

(b) Parents or guardians shall be involved in the direct care of children on a relatively equal basis; and

(c) A person other than a parent or guardian of a child at the facility shall not be involved in the care of children or in the operation of the facility.

(4) 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.

(5) 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.

(6) 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.

(7)(a) The department may license the center located in a private family residence when the portion of the residence accessible to the child is:

(i) Used exclusively for the child during the center's operating hours or while the child is in care; or

(ii) Separate from the family living quarters.

(b) A child care facility in a separate building on the same premises as a private family residence is a child day care center.

(8) The person or organization desiring to serve state-paid children shall:

(a) Be licensed or certified;

(b) Follow billing policies and procedures in *Child Day Care Subsidies, A Booklet for Providers*, DSHS 22-877(X); and

(c) Bill the department at the person's or organization's customary rate or the DSHS rate, whichever is less.

[Statutory Authority: RCW 74.12.340. 94-13-201 (Order 3745), § 388-150-020, filed 6/22/94, effective 7/23/94. Statutory Authority: RCW 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-020, filed 8/18/93, effective 9/18/93. 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 388-150-040 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. The department shall notify the local planning office of the applicant's intention to operate a child care center within the local jurisdiction. Local officials shall be responsible for enforcing city ordinances and county codes, such as zoning and building regulations.

[Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-040, filed 11/20/90, effective 12/21/90.]

WAC 388-150-050 Waivers.

(1) In an individual case, the department, for good cause, may waive a specific requirement and may approve an alternate method for the licensee or applicant to achieve 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 licensee-delivered services.

(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 to a licensee or an applicant in conjunction with a waiver.

(4) The licensee shall maintain on the premises a copy of the department's written waiver approval.

(5) The department's denial of a licensee's or applicant's waiver request shall not be subject to appeal under chapter 34.05 RCW.

[Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-050, filed 11/20/90, effective 12/21/90.]

WAC 388-150-060 Dual licensure. The department may either:

(1) Issue a child day care center license to the applicant having a 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 services 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 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-060, filed 8/18/93, effective 9/18/93. Statutory Authority:

RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-060, filed 11/20/90, effective 12/21/90.]

WAC 388-150-070 Application and reapplication for licensing—Investigation. (1) The person or organization applying for a license or relicensure under this chapter and responsible for operating the center shall comply with application procedures the department prescribes and submit to the department:

(a) A completed department-supplied application for child care agency form, including required attachments, ninety or more days before the:

(i) Expiration of a current license;

(ii) Opening date of a new center;

(iii) Relocation of a center;

(iv) Change of the licensee; or

(v) Change of license category.

(b) A completed criminal history and background inquiry form for each staff person or volunteer having unsupervised or regular access to the child in care; and

(c) 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) An employment and education resume of the person responsible for the active management of the center and the program supervisor;

(b) Diploma or education transcript copies of the program supervisor; and

(c) Three professional references each for the licensee, director, and program supervisor.

(3) The applicant for a license under this chapter shall be twenty-one years of age or older.

(4) The applicant, licensee, and director shall attend department-provided orientation training.

(5) The department may, at any time, require additional information from the applicant, licensee, staff person, volunteer, member of their households, 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.

(6) The department may perform investigations of the applicant, licensee, staff person, volunteer, member of their households, and other person having access to the child in care as the department deems necessary, including accessing criminal histories and law enforcement files.

(7) The applicant shall conform to rules and regulations approved or 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, under chapter 212-12 WAC, "fire marshal standards."

(8) The department shall not issue a license to the applicant until the department of health and the state fire marshal's office have certified or inspected and approved the center.

[Statutory Authority: RCW 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-070, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-070, filed 11/20/90, effective 12/21/90.]

WAC 388-150-080 Licensed capacity. (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 center's premises, equipment, and physical accommodations;

(b) Number and skills of the licensee, staff, and volunteers; and

(c) Ages and characteristics of the children served.

(2) The department:

(a) Shall not issue the applicant or licensee a license to care for more children than permitted under this chapter; and

(b) May issue the applicant or licensee a license to care for fewer children than the center's maximum capacity.

[Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-080, filed 11/20/90, effective 12/21/90.]

WAC 388-150-085 Initial license. (1) The department may issue an initial license to an applicant not currently licensed to provide child day care when the applicant:

(a) Can demonstrate compliance with the rules contained in this chapter pertaining to the health and safety of the child in care; but

(b) Cannot demonstrate compliance with the rules pertaining to:

(i) Staff-child interactions,

(ii) Group size and staff-child ratios,

(iii) Behavior management and discipline,

(iv) Activity programs,

(v) Child records and information, and

(vi) Other rules requiring department observation of the applicant's ability to comply with rules.

(c) Can provide a plan, acceptable to the department, to comply with rules found in subsection (1)(b) of this section.

(2) The department may issue an initial license to an applicant for a period not to exceed six months, renewable for a period not to exceed two years.

(3) The department shall evaluate the applicant's ability to comply with all rules contained in this chapter during the period of initial licensure prior to issuing a full license.

(4) The department may issue a full license to the applicant demonstrating compliance with all rules contained in this chapter at any time during the period of initial licensure.

(5) The department shall not issue a full license to the applicant who does not demonstrate the ability to comply with all rules contained in this chapter during the period of initial licensure.

[Statutory Authority: RCW 74.15.030. 96-20-095, § 388-150-085, filed 10/1/96, effective 11/1/96.]

WAC 388-150-090 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:

(a) Shall consider the persons' qualifications separately and jointly; and

(b) 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) Has abused, neglected, or sexually exploited a child as those acts or omissions are defined in RCW 26.44.020 and WAC 388-15-130, is ineligible to provide care because of a criminal history under chapter 388-330 WAC, 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, state auditor's office, or department of health to inspect the premises; or

(g) Refuses to permit an authorized representative of the department, the department of health, or state auditor's office access to records related to operation of the center or to interview staff 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 center is licensed; or

(ii) Permitting on the premises a child of an age different from the ages for which the center 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 center;

(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 center 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 is governed under RCW 43.20A.205.

[Statutory Authority: RCW 74.15.030. 96-10-043 (Order 3974), § 388-150-090, filed 4/26/96, effective 5/27/96. Statutory Authority: RCW 74.12.340. 94-13-201 (Order 3745), § 388-150-090, filed 6/22/94, effective 7/23/94. Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-090, filed 11/20/90, effective 12/21/90.]

WAC 388-150-092 Civil penalties. (1) Before imposing a civil penalty, the department shall provide written notification by personal service, including by the licensor, or certified mail which shall include:

(a) A description of the violation and citation of the applicable requirement or law;

(b) A statement of what is required to achieve compliance;

(c) The date by which the department requires compliance;

(d) The maximum allowable penalty if timely compliance is not achieved;

(e) The means to contact any technical assistance services provided by the department or others; and

(f) Notice of when, where, and to whom a request to extend the time to achieve compliance for good cause may be filed with the department.

(2) The length of time in which to comply shall depend on:

(a) The seriousness of the violation;

(c) The potential threat to the health, safety and welfare of children in care; or

(c) Previous opportunities to correct the deficiency.

(3) The department may impose a civil penalty based on but not limited to these reasons:

(a) The child care center has previously been subject to an enforcement action for the same or similar type of violation of the same statute or rule; or

(b) The child care center has previously been given notice of the same or similar type of violation of the same statute or rule; or

(c) The violation represents a potential threat to the health, safety, and/or welfare of children in care.

(4) The department may impose a civil penalty in addition to or in conjunction with other disciplinary actions against a child care license including probation, suspension, or other action.

(5) The civil fine shall be payable twenty-eight days after receipt of the notice or later as specified by the department.

(6) The fine may be forgiven if the agency comes into compliance during the notification period.

(7) The center or person against whom the department assesses a civil fine has a right to an adjudicative proceeding as governed by RCW 43.20A.215.

[Statutory Authority: RCW 74.15.030. 96-20-095, § 388-150-092, filed 10/1/96, effective 11/1/96.]

(1997 Ed.)

WAC 388-150-093 Civil penalties—Amount of penalty. Whenever the department imposes a civil monetary penalty per WAC 388-150-092(3), the department shall impose a penalty of two hundred and fifty dollars per violation per day. The department may assess and collect the penalty with interest for each day of noncompliance.

[Statutory Authority: RCW 74.15.030. 96-20-095, § 388-150-093, filed 10/1/96, effective 11/1/96.]

WAC 388-150-094 Civil penalties—Posting of notice of penalty. (1) The licensee shall post the final notice of a civil penalty in a conspicuous place in the facility.

(2) The notice shall remain posted until payment is received by the department.

[Statutory Authority: RCW 74.15.030. 96-20-095, § 388-150-094, filed 10/1/96, effective 11/1/96.]

WAC 388-150-095 Civil penalties—Unlicensed programs. Where the department has determined that an agency is operating without a license, the department shall send written notification by certified mail or other means showing proof of service. This notification shall contain the following:

(1) Advising the agency of the basis of determination of providing child care without a license and the need to be licensed by the department;

(2) The citation of the applicable law;

(3) The assessment of seventy-five dollars per day penalty of each day unlicensed care is provided. The fine would be effective and payable within thirty days of receipt of the notification;

(4) How to contact the office of child care policy;

(5) The need to submit an application to the office of child care policy within thirty days of receipt of the notification;

(6) That the penalty may be forgiven if the agency submits an application within thirty days of the notification; and

(7) The right of an adjudicative proceeding as a result of the assessment of a monetary penalty and the appropriate procedure for requesting an adjudicative proceeding.

[Statutory Authority: RCW 74.15.030. 96-20-095, § 388-150-095, filed 10/1/96, effective 11/1/96.]

WAC 388-150-096 Civil penalties—Separate violations. Each violation of a law or rule constitutes a separate violation and may be penalized as such. A penalty may be imposed as a flat amount of the maximum allowable, or may be imposed for each day the violation continues.

[Statutory Authority: RCW 74.15.030. 96-20-095, § 388-150-096, filed 10/1/96, effective 11/1/96.]

WAC 388-150-097 Civil penalties—Penalty for nonpayment. Penalty for nonpayment. The department may suspend, revoke or not renew a license for failure to pay a civil monetary penalty it has assessed within ten days after such assessment becomes final.

[Statutory Authority: RCW 74.15.030. 96-20-095, § 388-150-097, filed 10/1/96, effective 11/1/96.]

WAC 388-150-098 Probationary license. (1) The department shall base the decision as to whether a probationary license will be issued upon the following factors:

- (a) Willful or negligent noncompliance by the licensee,
- (b) History of noncompliance,
- (c) Extent of deviation from the requirements,
- (d) Evidence of a good faith effort to comply,
- (e) Any other factors relevant to the unique situation.

(2) Where the negligent or willful violation of the licensing requirements does not present an immediate threat to the health and well-being of the children but would be likely to do so if allowed to continue, a probationary license may be issued as well as civil penalties or other sanctions. Such situations may include:

- (a) Substantiation that a child (or children) was abused or neglected while in the care of the center,
- (b) Disapproved fire safety or sanitation report,
- (c) Use of unauthorized space for child care,
- (d) Inadequate supervision of children,
- (e) Understaffing for the number of children in care,
- (f) Noncompliance with requirements addressing:
 - (i) Children's health,
 - (ii) Proper nutrition,
 - (iii) Discipline,
 - (iv) Emergency medical plan,
 - (v) Sanitation and personal hygiene practices.

(3) Licensee required to notify parents when a probationary licensed is issued:

(a) The licensee shall notify the parents or guardians of all children in care that it is in probationary status within five working days of receiving notification he or she has been issued a probationary license;

(b) The notification shall be in writing and shall be approved by the department prior to being sent;

(c) The licensee shall provide documentation to the department that parents or guardians of all children in care have been notified within ten working days of receiving notification that he or she has been issued a probationary license;

(d) The department may issue a probationary license for up to six months, and at the discretion of the department it may be extended for an additional six months.

[Statutory Authority: RCW 74.15.030. 96-20-095, § 388-150-098, filed 10/1/96, effective 11/1/96.]

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 388-150-110 Learning and play materials.

The licensee shall provide the child a variety of easily accessible, developmentally appropriate learning and play materials of sufficient quantity to implement the center's program. The licensee 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. 90-23-078 (Order 3103), § 388-150-110, filed 11/20/90, effective 12/21/90.]

WAC 388-150-120 Staff-child interactions. (1) The licensee shall furnish the child a nurturing, respectful, supportive, and responsive environment through frequent interactions between the child and staff:

(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 all children in care regardless of race, religion, culture, sex, and handicapping condition.

(2) The licensee shall furnish the child a pleasant and educational environment at meal and snack times. Staff shall provide good models for nutrition habits and social behavior by:

- (a) Sitting and eating with children, when possible; and
- (b) Encouraging conversation among children.

[Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-120, filed 11/20/90, effective 12/21/90.]

WAC 388-150-130 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. Staff 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 center. 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 biting, jerking, shaking, spanking, slapping, hitting, 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 staff person 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. 90-23-078 (Order 3103), § 388-150-130, filed 11/20/90, effective 12/21/90.]

WAC 388-150-140 Rest periods. (1) The licensee 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 licensee shall plan quiet activities for the child not needing rest.

(3) The licensee shall allow the child twenty-nine months of age or younger to follow an individual sleep schedule.

[Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-140, filed 11/20/90, effective 12/21/90.]

WAC 388-150-150 Evening and nighttime care. (1) For the center offering child care during evening and nighttime hours, the licensee shall adapt the program, equipment, and staffing pattern to meet the physical and emotional needs of the child away from home at night.

(1997 Ed.)

(2) The licensee shall maintain the same staff-to-child ratio in effect during daytime care. At all times, including sleeping hours, staff shall keep the child within continuous visual or auditory range.

(3) The licensee shall arrange child grouping so the sleeping child remains asleep during the arrival or departure of another child.

(4) The licensee shall ensure that staff in charge during evening and nighttime hours meet at least the requirements of a lead worker.

[Statutory Authority: RCW 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-150, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-150, filed 11/20/90, effective 12/21/90.]

WAC 388-150-160 Off-site trips. (1) The licensee may transport or permit the off-site travel of the child to attend school, participate in supervised field trips, or engage in other supervised off-site activities only with written parent 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 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-160, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-160, filed 11/20/90, effective 12/21/90.]

WAC 388-150-165 Transportation. When the licensee provides transportation for the child in care:

(1) The licensee shall ensure that the motor vehicle operated by the facility is maintained in a safe operating condition;

(2) The licensee shall ensure the motor vehicle in which the child rides during hours of care is equipped with appropriate safety devices and individual seat belts or safety seats for each child to use when the vehicle is in motion. The licensee shall assure that children less than two years of age are restrained in a restraint system that complies with standards of the United States department of transportation. Seat belts are not required for buses approved by the state patrol;

(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 liability and medical insurance. The driver shall have a current Washington driver's license, valid for the classification of motor vehicle operated;

(5) The driver or staff supervising the child in the motor vehicle shall have current first aid and cardiopulmonary resuscitation training, except that when the center uses more than one vehicle for a field trip, only one person in the group is required to have this training;

(6) The licensee shall ensure a minimum of one staff person, other than the driver, is present in the motor vehicle when:

(a) Seven or more preschool age and younger children are present; or

(b) Staff-to-child ratio guidelines require additional staff.

(7) Staff or driver shall not leave the child unattended in the motor vehicle.

[Statutory Authority: RCW 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-165, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-165, filed 11/20/90, effective 12/21/90.]

WAC 388-150-170 Parent communication. (1) The licensee shall orally:

(a) Explain to the parent the center's policies and procedures;

(b) Orient the parent to the center's philosophy, program, and facilities;

(c) Advise the parent of the child's progress and issues relating to the child's care and individual practices concerning the child's special needs; and

(d) Encourage parent participation in center 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 center areas used by the child;

(f) Signing in and signing out requirements;

(g) Child abuse reporting law requirements;

(h) Behavior management and discipline;

(i) Nondiscrimination statement;

(j) Religious activities, if any;

(k) Transportation and field trip arrangements;

(l) Practices concerning an ill child;

(m) Medication management;

(n) Medical emergencies; and

(o) If licensed for the care of an infant or toddler:

(i) Diapering;

(ii) Toilet training; and

(iii) Feeding.

[Statutory Authority: RCW 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-170, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-170, 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 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 the following number of college quarter credits or department-approved clock hours in early childhood education/child development, or possess an equivalent educational background, or be a certified child development associate:

(i) In centers licensed for twenty-five or more children, the director shall have completed forty-five or more credits;

(ii) In centers licensed for thirteen through twenty-four children, the director shall have completed twenty-five or more credits;

(iii) In centers licensed for twelve or fewer children, the director shall have completed ten or more credits; and

(iv) In (i), (ii) and (iii) above, one-third of the credits may be clock hours.

(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. In such a case, the director shall have had at least one three credit college class in early childhood development. The program supervisor shall:

(a) Be twenty-one years of age or older;

(b) Meet the education, experience, and competency qualifications specified under subsection (2)(e), (f), (g), and (h) of this section; and

(c) Discharge on-site program supervisory duties twenty hours or more a week.

(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 who meets the qualifications of a lead staff person.

(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 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-180, filed 8/18/93, effective 9/18/93. 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 388-150-190 Group size and staff-child ratios.

(1) In centers licensed for thirteen or more children, the licensee shall conduct group activities within the following group size and staff-to-child ratio requirements, according to the age of the children:

| AGE OF CHILDREN | STAFF-CHILD RATIO | MAXIMUM GROUP SIZE |
|---------------------------------------|-------------------|--------------------|
| 1 mo. through 11 mos. (infant) | 1:4 | 8 |
| 12 mos. through 29 mos. (toddler) | 1:7 | 14 |
| 30 mos. through 5 years (preschooler) | 1:10 | 20 |
| 5 years and older (school-age child) | 1:15 | 30 |

(2) In centers licensed for twelve or fewer children, the licensee may combine children of different age groups, provided the licensee:

- (a) Maintains the staff-to-child ratio designated for the youngest child in the mixed group; and
- (b) Provides a separate care area when four or more infants are in care. In such case the maximum group size shall be eight children.

(3) The licensee shall conduct activities for each group in a specific room or other defined space within a larger area.

(4) The licensee shall ensure each group is under the direct supervision of a qualified staff person or team of staff involved in directing the child's activities.

(5) The department may approve reasonable variations to group size limitations if the licensee maintains required staff-to-child ratios, dependent on:

- (a) Staff qualifications;
- (b) Program structure; and
- (c) Usable square footage.

(6) After consulting with the child's parent, the licensee may place the individual child in a different age group and serve the child within the different age group's required staff-to-child ratio based on the child's:

- (a) Developmental level; and
- (b) Individual needs.

(7) The licensee may briefly combine children of different age groups provided the licensee maintains the staff-to-child ratio and group size designated for the youngest child in the mixed group.

(8) In centers licensed for thirteen or more children, the licensee may group ambulatory children between one year, and two and one-half years of age with older children, provided:

- (a) The total number of children in the group does not exceed twelve; and
- (b) Two staff are assigned to the group.

(9) The licensee shall ensure the staff person providing direct care and supervision of the child is free of other duties at the time of care.

(10) The licensee shall maintain required staff-to-child ratios indoors, outdoors, on field trips, and during rest periods. During rest periods, staff may be involved in other activities if staff remain on the premises and each child is within continuous visual and auditory range of a staff person.

(11) The licensee shall ensure staff:

- (a) Attend the child or group of children at all times; and
- (b) Keep each child within continuous visual and auditory range, except when a toilet-trained child uses the toilet.

(12) When only one staff person is present, the licensee shall ensure a second staff person is readily available in case of an emergency.

[Statutory Authority: RCW 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-190, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-190, filed 11/20/90, effective 12/21/90.]

WAC 388-150-200 Staff development and training.

(1) The licensee shall have an orientation system making the employee and volunteer aware of program policies and practices. The licensee shall provide staff an orientation including, but not limited to:

- (a) Minimum licensing rules required under this chapter;
- (b) Goals and philosophy of the center;
- (c) Planned 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;
 - (i) Personnel policies, when applicable;
 - (j) Limited restraint techniques;
 - (k) Cultural relevancy; and
 - (l) Developmentally appropriate practices.
- (2) The licensee shall provide or arrange for regular training opportunities for the child care staff to promote ongoing employee education and enhance practice skills.
- (3) The licensee shall conduct periodic staff meetings for planning and coordination purposes.
- (4) The licensee shall ensure:
- (a) A staff person with basic, standard, current first aid and cardiopulmonary resuscitation (CPR) training, or department of health approved training, is present at all times and in all areas the child is in care; and
 - (b) Staff's CPR training includes methods appropriate for child age groups in care.
- (5) The licensee shall provide or arrange appropriate education and training for child care staff on the prevention and transmission of human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS).
- (6) The licensee shall ensure the staff person preparing full meals has a valid food handler permit.

[Statutory Authority: RCW 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-200, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-200, 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) In centers licensed for thirteen or more children, 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. This medical practitioner shall sign and date the health plan.

[Statutory Authority: RCW 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-210, filed 8/18/93, effective 9/18/93. 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 388-150-220 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 licensee shall have on file 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) Program. Staff shall daily observe and screen the child for signs of illness. The licensee shall care for or discharge home the ill child based on the center's policies concerning the ill child.

(a) When the child has a severe illness or is injured, tired, or upset, staff shall separate the child from other children and attend the child continuously until:

- (i) The child is able to rejoin the group;
- (ii) Staff return the child to the parent; or
- (iii) Staff secure appropriate health care for the child.

(b) The licensee shall provide a quiet, separate care room or area allowing the child requiring separate care an opportunity to rest.

(c) Staff shall sanitize equipment used by the child if staff 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) Staff shall wash, or assist the child to wash hands:

- (a) After the child's toileting or diapering;
- (b) Before the child eats; and
- (c) Before the child participates in food activities.

(8) Staff shall clean and disinfect toys, equipment, furnishings, and facilities according to the center's cleaning and disinfecting policies, as needed.

(9) The licensee shall have appropriate extra clothing available for the child who wets or soils clothes.

(10) Staff shall ensure the child does not share personal hygiene or grooming items.

(11) Staff. Each center employee, volunteer, and other person having regular contact with the child in care shall have a tuberculin (TB) skin test, by the Mantoux method, upon employment or 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 center or have contact with the child in care unless approved in writing by a health care provider.

(13) Staff shall wash hands:

- (a) After toileting and diapering the child;
- (b) After personal toileting;
- (c) After attending to an ill child; and
- (d) Before serving or preparing food.

[Statutory Authority: RCW 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-220, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-220, filed 11/20/90, effective 12/21/90.]

WAC 388-150-230 Medication management. The center may have a policy of not giving medication to the child in care. If the center's health care plan includes giving medication to the child in care, the licensee:

(1) 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;

(2) Shall give prescription medications:

(a) Only as specified on the prescription label; or
 (b) As authorized, in writing, by a physician or other person legally authorized to prescribe medication.

(3) 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:

- (a) Antihistamines;
- (b) Nonaspirin fever reducers/pain relievers;
- (c) Nonnarcotic cough suppressants;
- (d) Decongestants;
- (e) Anti-itching ointments or lotions, intended specifically to relieve itching;
- (f) Diaper ointments and powders, intended specifically for use in the diaper area of the child; and
- (g) Sun screen.

(4) Shall give other nonprescription medication:

(a) Not included in the categories listed in subsection (3) of this section; or

(b) Taken differently than indicated on the manufacturer's label; or

(c) Lacking labeled instructions, only when disbursement of the nonprescription medication is as required under subsection (4)(a), (b), and (c):

- (i) Authorized, in writing, by a physician; or
- (ii) Based on established medical policy approved, in writing, by a physician or other person legally authorized to prescribe medication.

(5) Shall accept from the child's parent, guardian, or responsible relative only medicine in the original container, labeled with:

- (a) The child's first and last names;
- (b) The date the prescription was filled; or
- (c) The medication's expiration date; and
- (d) Legible instructions for administration, such as manufacturer's instructions or prescription label.

(6) Shall keep medication, refrigerated or nonrefrigerated, in an orderly fashion, inaccessible to the child;

(7) Shall store external medication in a compartment separate from internal medication;

(8) Shall keep a record of medication disbursed;

(9) Shall return to the parent or other responsible party, or shall dispose of medications no longer being taken; and

(10) May, at the licensee's option, permit self-administration of medication by a child in care if the:

(a) Child is physically and mentally capable of properly taking medication without assistance;

(b) 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

(c) 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. 90-23-078 (Order 3103), § 388-150-230, filed 11/20/90, effective 12/21/90.]

WAC 388-150-240 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 younger except with 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 center 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:

- (a) Record food and portion sizes planned and served;
- (b) Prepare and date menus one week or more in advance, containing meals and snacks to be served, including parent-provided snacks; and
- (c) Specify on the menu a variety of foods enabling the child to consume adequate nutrients.

(7) The licensee shall provide two weeks or more of meal and snack menu variety before repeating the menu.

(8) The licensee shall only make nutrition substitutions of comparable nutrient value and record changes on the menu.

(9) 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 nine 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 nine 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 food at intervals not less than two hours and not more than three and one-half hours apart; and

(e) Allowing the occasional serving of party foods not meeting nutritional requirements.

(10) When serving food, the licensee shall provide the child the following:

(a) At a minimum, the child's breakfast must contain:

(i) A dairy product, including fluid milk, cheese, yogurt, or cottage cheese;

(ii) Cereal or bread, whole grain or enriched; and

(iii) Fruit or vegetable or juice containing a minimum of fifty percent real juice.

(b) At a minimum, the child's lunch or dinner must contain:

(i) A dairy product;

(ii) A protein food including lean meat, fish, poultry, egg, legumes, nut butters, or cheese;

(iii) Bread or bread alternate, whole grain or enriched; and

(iv) Fruit or vegetable, two total servings.

(c) In centers not serving full meals, the child's snacks must include one or more dairy or protein source provided daily, and contain a minimum of two of the following four components at each snack:

(i) A dairy product;

(ii) A protein food;

(iii) Bread or bread alternate; or

(iv) Fruit or vegetable or juice containing a minimum of fifty percent real juice.

(d) The child's food must contain:

(i) A minimum of one serving of Vitamin C fruit, vegetable, or juice, provided daily; and

(ii) Servings of food high in Vitamin A, provided three or more times weekly.

(11) The licensee shall provide:

(a) Dinner to the child in evening care when the child did not receive dinner at home before arriving at the center;

(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 center after the child's usual breakfast time.

(12) The licensee shall monitor sack lunches, snacks, and other foods brought from the child's home for consumption by the child, all children, or a group of children in care, ensuring safe preparation, storage, and serving and nutritional adequacy.

(13) For the center 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 home-supplied food.

[Statutory Authority: RCW 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-240, filed 8/18/93, effective 9/18/93. Statutory Authority:

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RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-240, filed 11/20/90, effective 12/21/90.]

WAC 388-150-250 Kitchen and food service. (1)

The licensee shall provide equipment for the proper storage, preparation, and service of food to meet program needs.

(2) The licensee shall meet food service standards by requiring:

(a) The staff person preparing full meals have a valid food handler permit;

(b) The staff person preparing and serving meals wash hands before handling food;

(c) Handwashing facilities be located in or adjacent to food preparation areas;

(d) Food be stored in a sanitary manner, especially milk, shellfish, meat, poultry, eggs, and other protein food sources;

(e) Food requiring refrigeration be stored at a temperature no warmer than forty-five degrees Fahrenheit;

(f) Frozen food be stored at a maximum temperature of zero degrees Fahrenheit;

(g) Refrigerators and freezers be equipped with thermometers and be regularly cleaned and defrosted;

(h) Food be cooked to correct temperatures;

(i) Raw food be washed thoroughly with clean running water;

(j) Cooked food to be stored be rapidly cooled and refrigerated after preparation;

(k) Food be kept in original containers or in clean, labeled containers and stored off the floor;

(l) Packaged, canned, and bottled food with a past expiration date be discarded;

(m) Food in dented cans or torn packages be discarded; and

(n) When food containing sulfiting agents is served, parents be notified.

(3) The child may participate in food preparation as an education activity. The licensee shall supervise the child when the child is in the kitchen or food preparation area.

(4) The licensee shall make kitchen equipment inaccessible to the child, except during planned and supervised kitchen activities. Staff shall supervise food preparation activities. The licensee shall make potentially hazardous appliances and sharp or pointed utensils inaccessible to the child when the child is not under direct supervision.

(5) The licensee shall install and maintain kitchen equipment and clean re-usable utensils in a safe and sanitary manner.

(6) The licensee shall sanitize reusable utensils in a dishwasher or through use of a three-compartment dishwashing procedure.

(7) The licensee shall use only single-use or clean cloths, used solely for wiping food service, preparation, and eating surfaces.

[Statutory Authority: RCW 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-250, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-250, filed 11/20/90, effective 12/21/90.]

WAC 388-150-260 Drinking and eating equipment. (1)

The licensee shall provide the child disposable single-use cups, individual drinking cups or glasses, or inclined jet-type drinking fountains.

(2) The department shall prohibit the center from using bubbler-type drinking fountains and common drinking cups or glasses.

(3) 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, 90-23-078 (Order 3103), § 388-150-260, filed 11/20/90, effective 12/21/90.]

WAC 388-150-270 Care of young children. (1) The licensee shall not accept for care a child under one month of age.

(2) Facility. The licensee shall:

(a) Provide a separate, safe play area for the child under one year of age, or the child not walking;

(b) In centers licensed for thirteen or more children, care for the child under one year of age in rooms or areas separate from older children, with:

(i) Not more than eight children under one year of age to a room or area; and

(ii) Handwashing facilities in or adjacent to each such room or area.

(3) Diapering and toileting. The licensee shall ensure:

(a) The diaper changing area is:

(i) Separate from food preparation areas;

(ii) Adjacent to a handwashing sink; and

(iii) Sanitized between use for different children; or

(iv) Protected by a disposable covering discarded after each use.

(b) The designated change area is impervious to moisture and washable;

(c) Diaper changing procedures are posted at the changing area;

(d) Disposable towels or clean, reusable towels, laundered between usage for different children, are used for cleaning the child;

(e) Staff wash hands after diapering the child or helping the child with toileting;

(f) Disposable diapers, a commercial diaper service, or reusable diapers supplied by the child's family are used;

(g) Soiled diapers are placed without rinsing into a separate, cleanable, covered container provided with a waterproof liner before transporting to the laundry, parent, or acceptable disposal;

(h) Soiled diapers are removed from the facility daily or more often unless the licensee uses a commercial diaper service;

(i) Toilet training is initiated when the child indicates readiness and in consultation with the child's parent;

(j) Potty chairs, when in use, are located on washable, impervious surfaces; and

(k) Toilet training equipment is sanitized after each use.

(4) Feeding. The licensee and the infant's parent shall agree on a schedule for the infant's feedings.

(a) Bottle feedings.

(i) The licensee or parent may provide the child's bottle feeding in the following manner:

(A) A filled bottle brought from home;

(B) Whole milk or formula in ready-to-feed strength; or

(C) Formula requiring no preparation other than dilution with water, mixed on the premises.

(ii) The licensee shall prepare the child's bottle and nipple in a sanitary manner in an area separate from diapering areas.

(iii) The licensee shall sanitize the child's bottle and nipple between uses.

(iv) The licensee shall label the child's bottle with the child's name and date prepared.

(v) The licensee shall refrigerate a filled bottle if the child does not consume the content immediately and shall discard the bottle's content if the child does not consume the content within twelve hours.

(b) To ensure safety and promote nurturing, the licensee shall ensure staff:

(i) Hold in a semi-sitting position for feedings the infant unable to sit in a high chair, unless such is against medical advice;

(ii) Interact with the child;

(iii) Do not prop a bottle;

(iv) Do not give a bottle to the reclining child, unless the bottle contains water only;

(v) Take the bottle from the child when the child finishes feeding; and

(vi) Keep the child in continuous visual and auditory range.

(c) The licensee shall provide semi-solid food for the infant, upon consultation with the parent, not before the child is four months of age and not later than ten months of age, unless such is not recommended by the child's health care provider.

(5) Sleeping equipment. The licensee shall furnish the infant a single-level crib, infant bed, bassinet, or play pen for napping until such time the licensee and parent concur the infant can safely use a mat, cot, or other approved sleeping equipment.

(6) When the licensee furnishes the infant or child a crib, the licensee shall ensure the crib is:

(a) Sturdy and 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 an infant six months of age or younger. The licensee may allow an infant to use a crib not meeting the spacing requirement provided the licensee uses crib bumpers or another effective method preventing the infant's body from slipping between the slats.

(7) The licensee shall not allow the infant or child to use a stacked crib.

(8) The licensee shall ensure the infant's or child's crib mattress is:

(a) Snug fitting, preventing the infant from being caught between the mattress and crib side rails; and

(b) Waterproof and easily sanitized.

(9) Program and equipment. The licensee shall provide the infant 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.

(10) The licensee shall provide the infant safe, noningestible, and suitable toys and equipment for the infant's mental and physical development.

(11) Nursing consultation. The licensee licensed for the care of four or more infants shall arrange for regular nursing consultation to include one or more monthly on-site visits by a registered nurse trained or experienced in the care of young children.

(12) In collaboration with the licensee, the nurse shall advise the center on the:

- (a) Operation of the infant care program; and
- (b) Implementation of the child health program.

(13) The licensee shall obtain a written agreement with the nurse for consultation services.

(14) The licensee shall document the nurse's on-site consultations.

(15) The licensee shall ensure the nurse consultant's name and telephone number is posted or otherwise available on the premises.

[Statutory Authority: RCW 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-270, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-270, 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 on the premises in working order, accessible to staff.

(4) The licensee shall supply bathrooms and other rooms subject to moisture with washable, moisture-impervious 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.

(13) The licensee shall ensure that rooms or closets to be made inaccessible to children shall be equipped with a lock or approved safety latch.

[Statutory Authority: RCW 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-280, filed 8/18/93, effective 9/18/93. 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 388-150-290 Water safety. (1) The licensee shall maintain the following water safety precautions when the child uses an on-premises swimming pool, wading pool, or natural body of water, or enters the water on a field trip by ensuring:

(a) The on-premises pool or natural body of water is inaccessible to the child when not in use;

(b) During the child's use of a wading pool, an adult with current CPR training supervises the child at all times; and

(c) During the child's use of a swimming pool or open body of water, a certified lifeguard is present at all times, in addition to required staff.

(2) The licensee shall daily empty and clean portable wading pools when in use.

(3) The licensee shall not permit the child to use or access a hot tub, spa, whirlpool, tank, or similar equipment.

[Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-290, filed 11/20/90, effective 12/21/90.]

WAC 388-150-295 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 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-295, filed 8/18/93, effective 9/18/93.]

WAC 388-150-310 First-aid supplies. The licensee shall maintain on the premises adequate first-aid supplies, conforming with the center's first-aid policies and procedures. The licensee'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. 90-23-078 (Order 3103), § 388-150-310, filed 11/20/90, effective 12/21/90.]

WAC 388-150-320 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 or entry by the child; and
- (e) Preventing child access to roadways and other dangers.

(2) The licensee shall ensure the play area contains a minimum of seventy-five usable square feet per child. If the center uses a rotational schedule of outdoor play periods so only a portion of the child population uses the play area at one time, the licensee may reduce correspondingly the child's play area size. The licensee shall ensure appropriate child grouping by developmental or age levels, staff-to-child ratio adherence, and group size maintenance.

(3) At its discretion, the department may approve the licensee providing drop-in care only or operating in a densely developed area to use equivalent, separate, indoor space for the child's large muscle play.

(4) The licensee providing full-time care shall ensure the center's activity schedule affords the child sufficient daily time to participate actively in outdoor play.

(5) 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 child 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. 90-23-078 (Order 3103), § 388-150-320, filed 11/20/90, effective 12/21/90.]

WAC 388-150-330 Indoor play area. (1) The center's indoor premises shall contain adequate area for child play and sufficient space to house a developmentally appropriate program 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. If the staff removes mats and cots when not in use, the licensee may use and consider the napping area as child care space.

(2)(a) The licensee may consider the kitchen usable space if:

- (i) Appliances and utensils do not create a safety hazard;
- (ii) Toxic or harmful substances are not accessible to the child;
- (iii) Food preparation and storage sanitation is maintained; and
- (iv) The space is located safely and appropriately for use as a child care activity area.

(b) The department may allow the licensee the use of a kitchen for occasional activities, but not include the kitchen in calculating the center's capacity.

(c) The department may allow the licensee to count the kitchen in calculating the center's capacity if the kitchen is:

- (i) Adjacent to the care area;
- (ii) Available for more than an occasional activity; and

(iii) Large enough for group activities.

(3) The licensee shall provide a minimum of fifty square feet of usable floor space per child for the play and napping of the infant and other child requiring a crib.

(4) The licensee may use a room for multiple purposes such as playing, dining, napping, and learning activities, provided the:

- (a) Room is of sufficient size; and
- (b) Room's usage for one purpose does not interfere with usage of the room for another purpose.

[Statutory Authority: RCW 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-330, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-330, filed 11/20/90, effective 12/21/90.]

WAC 388-150-340 Toilets, handwashing sinks, and bathing facilities. (1) The licensee shall provide a minimum of one indoor flush-type toilet and one adjacent handwash sink for every fifteen children normally on site, except:

(a) The child eighteen months of age or younger and other children using toilet training equipment need not be included when determining the number of required flush-type toilets;

(b) If urinals are provided, the number of urinals shall not replace more than one-third of the total required toilets; and

(c) For the center serving the school age child only, the number of sinks and toilets for the child shall equal or exceed the number required by the local school district.

(2) The licensee shall supply the child warm running water for handwashing at a temperature range not less than eighty-five degrees Fahrenheit and not more than one hundred and twenty degrees Fahrenheit.

(3) The licensee shall locate the child's handwashing facilities in or adjacent to rooms used for toileting.

(4) 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.

(5) The licensee shall provide toilets, urinals, and handwashing sinks of appropriate height and size for the child in care or furnish safe, easily cleanable platforms impervious to moisture.

(6) The licensee shall provide a mounted toilet paper dispenser for each toilet.

(7) The licensee shall ensure rooms used for toileting are ventilated to the outdoors.

(8) When the center 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.

(9) The licensee shall provide the child with soap and individual towels or other appropriate devices for washing and drying the child's hands and face.

(10) If the center is equipped with a bathing facility, the licensee shall:

(a) Make the bathing facility inaccessible to the child;

or

(b) Ensure the preschool age and younger child is supervised while using the bathing facility; and

(c) Equip the bathing facility with a conveniently located grab bar or other safety device such as a nonskid pad.

[Statutory Authority: RCW 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-340, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-340, filed 11/20/90, effective 12/21/90.]

WAC 388-150-350 Laundry. (1) The licensee shall maintain access to laundry washing and drying facilities, which may include using on-premises or off-site equipment.

(2) 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.

(3) When washing or drying occurs on-site, the licensee shall locate equipment in an area separate from the kitchen and inaccessible to the child.

(4) The licensee shall store the child's soiled laundry separately from clean laundry.

[Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-350, filed 11/20/90, effective 12/21/90.]

WAC 388-150-360 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 another 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 another child.

(5) The licensee shall separate the child's nap equipment when in use to facilitate sanitation, 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. 90-23-078 (Order 3103), § 388-150-360, filed 11/20/90, effective 12/21/90.]

WAC 388-150-370 Storage. (1) The licensee shall provide accessible individual space for the child to store clothes and personal possessions.

(2) The licensee shall provide space separate from child care area to store play and teaching equipment and supplies, records and files, cots, mats, and bedding.

(3) The licensee shall store and make inaccessible to the child cleaning supplies, toxic substances, paint, poisons, aerosol containers, and items bearing warning labels.

(4) The licensee shall label a container filled from a stock supply to identify contents.

[Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-370, filed 11/20/90, effective 12/21/90.]

WAC 388-150-380 Program atmosphere. (1) The licensee shall provide a cheerful learning environment for the child by:

(a) Covering walls and ceilings with light or bright colors; and

(b) 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 staff 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 care.

(4) The licensee shall maintain the temperature within the center 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 regulate the temperature and ventilate the center for the health and comfort of the child in care.

[Statutory Authority: RCW 74.15.030. 90-23-078 (Order 3103), § 388-150-380, filed 11/20/90, effective 12/21/90.]

WAC 388-150-390 Discrimination prohibited. (1) Child day care centers are defined by state and federal law as places of public accommodation and shall not discriminate in employment practices and client services on the basis of race, creed, color, national origin, sex, age, or disability.

(2) Day care centers shall:

(a) Post a nondiscrimination poster;

(b) Have a nondiscrimination plan;

(c) Have a nondiscrimination policy; and

(d) Comply with the requirements of the Americans with Disabilities Act in respect to accessibility.

[Statutory Authority: RCW 74.15.020 and 74.15.030. 93-18-001 (Order 3623), § 388-150-390, filed 8/18/93, effective 9/18/93. 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 388-150-400 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 center conducts a religious activity program, the licensee shall maintain a written description of the center's religious policies and practices affecting the child in care.

[Statutory Authority: RCW 74.15.030, 90-23-078 (Order 3103), § 388-150-400, filed 11/20/90, effective 12/21/90.]

WAC 388-150-410 Special requirements regarding American Indian children. When five percent or more of the center's child enrollment consists of Indian children, the licensee shall develop social service resources and staff training programs designed to meet the special needs of such children through coordination with tribal, Indian health service, and Bureau of Indian Affairs social service staff, and appropriate urban Indian and Alaskan native consultants.

[Statutory Authority: RCW 74.15.030, 90-23-078 (Order 3103), § 388-150-410, filed 11/20/90, effective 12/21/90.]

WAC 388-150-420 Child abuse, neglect, and exploitation. The licensee and staff 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, 90-23-078 (Order 3103), § 388-150-420, filed 11/20/90, effective 12/21/90.]

WAC 388-150-430 Prohibited substances. (1) During operating hours or when the child is in care, the licensee, staff, and volunteers on center premises or caring for the child off-site shall not be under the influence of, consume, or possess an:

- (a) Alcoholic beverage; or
- (b) Illegal drug.

(2) The licensee shall prohibit smoking in the center when the child is present and in a motor vehicle when the licensee transports the child. The licensee may permit on premises smoking out doors, away from the building, where the child is not present.

[Statutory Authority: RCW 74.15.030, 90-23-078 (Order 3103), § 388-150-430, filed 11/20/90, effective 12/21/90.]

WAC 388-150-440 Limitations to persons on premises. (1) During center operating hours or while the child is in care, only the licensee, employee, or volunteer, or an authorized representative of a governmental agency, or parent 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, 90-23-078 (Order 3103), § 388-150-440, 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.]

WAC 388-150-460 Program records. The licensee shall maintain the following documentation on the premises:

(1) The daily attendance record:

(a) The parent, or other person authorized by the parent to take the child to or from the center, shall sign in the child on arrival and shall sign out the child at departure, using a full, legal signature; and

(b) When the child leaves the center to attend school or participate in off-site activities as authorized by the parent, the staff person shall sign out the child, and sign in the child on return to the center.

(2) A copy of the report sent to the licensor about the illness or injury to the child in care requiring medical treatment or hospitalization;

(3) Copies of meal and snack menus for a minimum of six months;

(4) The twelve-month record indicating the date and time the licensee conducted the required monthly fire evacuation drills;

(5) A written plan for staff development specifying the content, frequency, and manner of planned training;

(6) Activity program plan records;

(7) Nursing consultation records, if applicable, including:

- (a) A copy of the written agreement with the nurse; and
- (b) A summary of the nurse's on-site consultation activities.

(8) A record of:

- (a) Accidents;
- (b) Injuries; and
- (c) Incidents requiring restraint.

(9) Attendance records and invoices for state-paid children for at least five years.

[Statutory Authority: RCW 74.12.340, 94-13-201 (Order 3745), § 388-150-460, filed 6/22/94, effective 7/23/94. Statutory Authority: RCW 74.15.020 and 74.15.030, 93-18-001 (Order 3623), § 388-150-460, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030, 90-23-078 (Order 3103), § 388-150-460, filed 11/20/90, effective 12/21/90.]

WAC 388-150-470 Personnel policies and records.

(1) Each employee and volunteer having unsupervised or regular access to the child in care shall complete and submit to the licensee or director 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 employee's first day of employment, permitting a criminal and background history check.

(ii) The department shall discuss the inquiry information with the licensee or director, when applicable.

(2) The licensee employing five or more persons shall have written personnel policies describing staff benefits, if any, duties, and qualifications.

(3) The licensee shall maintain a personnel recordkeeping system, having on file, on the premises, for the licensee, staff person, and volunteer:

(a) An employment application, including work and education history;

(b) Documentation of criminal history and background inquiry form submission;

(c) A record of tuberculin skin test results, x-ray, or an exemption to the skin test or x-ray;

(d) Documentation of HIV/AIDS education and training;

(e) A record of participation in staff development training;

(f) Documentation of orientation program completion;

(g) Documentation of a valid food handler permit, when applicable; and

(h) Documentation of current first aid and CPR training, when applicable.

[Statutory Authority: RCW 74.15.020 and 74.15.030, 93-18-001 (Order 3623), § 388-150-470, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030, 90-23-078 (Order 3103), § 388-150-470, filed 11/20/90, effective 12/21/90.]

WAC 388-150-480 Reporting of death, injury, illness, epidemic, or child abuse. The licensee or staff 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 staff 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, 90-23-078 (Order 3103), § 388-150-480, filed 11/20/90, effective 12/21/90.]

WAC 388-150-490 Reporting of circumstantial changes. A child day care center license is valid only for the address, person, and organization named on the license. The licensee shall promptly report to the licensor any major changes in administrative staff, program, or premises affecting the center's classification, delivery of safe, developmentally appropriate services, or continued eligibility for licensure. A major change includes the:

(1) Center's address, location, space, 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 center's staffing pattern that may affect staff competencies to implement the specified program, including:

(a) Change of ownership, chief executive, director, or program supervisor; and

(b) The death, retirement, or incapacity of the licensee.

(4) Name of the licensed corporation, or name by which the center is commonly known, or changes in the center's articles of incorporation and bylaws;

(5) Occurrence of a fire, major structural change, or damage to the premises; and

(6) Plans for major remodeling of the center, including planned use of space not previously department approved.

[Statutory Authority: RCW 74.15.020 and 74.15.030, 93-18-001 (Order 3623), § 388-150-490, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030, 90-23-078 (Order 3103), § 388-150-490, filed 11/20/90, effective 12/21/90.]

WAC 388-150-500 Posting requirements. (1) The licensee shall post the following items, clearly visible to the parent and staff:

(a) The center's child care license issued under this chapter;

(b) A schedule of regular duty hours with the names of staff;

(c) A typical activity schedule, including operating hours and scheduled mealtimes;

(d) Meal and snack menus;

(e) Evacuation plans and procedures, including a diagram of exiting routes;

(f) Emergency telephone numbers near the telephone; and

(g) Nondiscrimination poster.

(2) For the staff, the licensee shall post:

(a) Dietary restrictions and nutrition requirements for particular children;

(b) Handwashing practices; and

(c) Diaper changing procedures, if applicable.

[Statutory Authority: RCW 74.15.020 and 74.15.030, 93-18-001 (Order 3623), § 388-150-500, filed 8/18/93, effective 9/18/93. Statutory Authority: RCW 74.15.030, 90-23-078 (Order 3103), § 388-150-500, filed 11/20/90, effective 12/21/90.]

Chapter 388-151 WAC

SCHOOL-AGE CHILD CARE CENTER MINIMUM LICENSING REQUIREMENTS

WAC

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WAC 388-151-010 Definitions. As used and defined under this chapter:

(1) "Capacity" means the maximum number of children the licensee is authorized to have on the premises at a given time.

(2) "Child abuse or neglect" means the injury, sexual abuse, sexual exploitation, or negligent treatment or maltreatment of a child by any person under circumstances indicating the child's health, welfare, or safety is harmed thereby.

(3) "Department" means the state department of social and health services (DSHS), the organization vested with the legal authority to regulate and certify school-age child care centers.

(4) "Department of health" means the state department of health.

(5) "License" means a permit issued by the department authorizing by law the licensee to operate a school-age child care center and affirming the licensee meets requirements under licensure.

(6) "Licensee" means the person, organization, or legal entity responsible for operating the center.

(7) "Licensor" means the person employed by the department to regulate and license a school-age child care center.

(8) "Premises" means the building where the center is located and the adjoining grounds over which the licensee has control.

(9) "School-age child" means a child five years of age through twelve years of age attending a public or private school.

(10) "School-age child care center" means a program operating in a facility other than a private residence, accountable for school-age children when school is not in session. It shall meet department licensing requirements, provide adult-supervised care, and a variety of developmentally appropriate activities.

(11) "Staff" means a child care giver or a group of child care givers employed by the licensee to supervise a child served at the center.

[Statutory Authority: Chapter 74.15 RCW. 93-02-020 (Order 3493), § 388-151-010, filed 12/30/92, effective 1/30/93.]

WAC 388-151-020 Scope of licensing. (1) The person or organization operating a school-age child care center shall be subject to licensing as authorized under chapter 74.15 RCW.

(2) The person or organization operating a school-age child 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 at the licensor's request.

[Statutory Authority: Chapter 74.15 RCW. 93-02-020 (Order 3493), § 388-151-020, filed 12/30/92, effective 1/30/93.]

WAC 388-151-040 Local ordinances and codes. (1) The department shall issue or deny a license on the basis of the applicant's compliance with school-age child care licensing and procedural requirements.

(2) The licensee or applicant shall be responsible for compliance with city ordinances and county codes, such as zoning and building regulations.

[Statutory Authority: Chapter 74.15 RCW. 93-02-020 (Order 3493), § 388-151-040, filed 12/30/92, effective 1/30/93.]

WAC 388-151-050 Waivers. (1) In an individual case, the department, for good cause, may waive a specific requirement and approve an alternate method for the licensee or applicant to achieve 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 licensee-delivered services.

(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 to a licensee or an applicant in conjunction with a waiver.

(4) The licensee shall maintain on the premises a copy of the department's written waiver approval.

(5) The department's denial of a licensee's or applicant's waiver request shall not be subject to appeal under chapter 34.05 RCW.

[Statutory Authority: Chapter 74.15 RCW. 93-02-020 (Order 3493), § 388-151-050, filed 12/30/92, effective 1/30/93.]

WAC 388-151-070 Applicant and reapplication for licensing-investigation. (1) The person or organization applying for a licensee or relicensure under this chapter and responsible for operating the center shall comply with application procedures the department prescribes and submit to the department:

(a) A completed department-supplied application for school-age child care center license, including attachments, ninety or more days before the:

- (i) Expiration of a current license;
- (ii) Opening date of a center;
- (iii) Relocation of a center; or
- (iv) Change of the licensee.

(b) A completed criminal history and background inquiry form for each staff person or volunteer having unsupervised or regular access to the child in care; and

(c) 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) An employment and education resume of the person responsible for the active management of the center and of the site coordinator;

(b) Diploma or education transcript copies of the director and site coordinator; and

(c) Three professional references each for the licensee, director, and site coordinator.

(3) The applicant for a license under this chapter shall be twenty-one years of age or older.

(4) The department may, at any time, require additional information from the applicant, licensee, staff person, volunteer, member of their household, and other persons 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, staff person, 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 approved or 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, under chapter 212-56A WAC.

(7) The department shall not issue a license to the applicant until the department of health and the state fire marshal's office have certified or inspected and approved the center.

(8) The department may exempt a school site possessing a fire safety certification signed by the local fire official within six months prior to licensure from the requirement to receive an additional fire safety inspection by the state fire marshal's office.

(9) The licensee shall submit a completed plan of deficiency correction to the department of health and the department licensor prior to issuance of the licensee, when required.

[Statutory Authority: Chapter 74.15 RCW. 93-02-020 (Order 3493), § 388-151-070, filed 12/30/92, effective 1/30/93.]

WAC 388-151-080 Licensed capacity. (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 center's premises, equipment, and physical accommodations;

(b) Number and skills of the licensee, staff, and volunteers; and

(c) Ages and characteristics of the children served.

(2) The department:

(a) Shall not issue the applicant or licensee a license to care for more children than permitted under this chapter; and

(b) May issue the applicant or licensee a license to care for fewer children than the center's maximum capacity.

[Statutory Authority: Chapter 74.15 RCW. 93-02-020 (Order 3493), § 388-151-080, filed 12/30/92, effective 1/30/93.]

WAC 388-151-085 Initial license. (1) The department may issue an initial license to an applicant not currently licensed to provide child day care when the applicant:

(a) Can demonstrate compliance with the rules contained in this chapter pertaining to the health and safety of the child in care; but

(b) Cannot demonstrate compliance with the rules pertaining to:

- (i) Staff-child interactions,
- (ii) Group size and staff-child ratios,
- (iii) Behavior management and discipline,
- (iv) Activity programs,
- (v) Child records and information, and
- (vi) Other rules requiring department observation of the applicant's ability to comply with rules.

(c) Can provide a plan, acceptable to the department, to comply with rules found in subsection (1)(b) of this section.

(2) The department may issue an initial license to an applicant for a period not to exceed six months, renewable for a period not to exceed two years.

(3) The department shall evaluate the applicant's ability to comply with all rules contained in this chapter during the period of initial licensure prior to issuing a full license.

(4) The department may issue a full license to the applicant demonstrating compliance with all rules contained in this chapter at any time during the period of initial licensure.

(5) The department shall not issue a full license to the applicant who does not demonstrate the ability to comply with all rules contained in this chapter during the period of initial licensure.

[Statutory Authority: RCW 74.15.030, 96-20-095, § 388-151-085, filed 10/1/96, effective 11/1/96.]

WAC 388-151-090 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:

(a) Shall consider their qualifications separately and jointly; and

(b) 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) Has abused, neglected, or sexually exploited a child as those acts or omissions are defined in RCW 26.44.020 and WAC 388-15-130, is ineligible to provide care because of a criminal history under chapter 388-330 WAC, 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's office, 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 center or to interview staff 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 center is licensed; or

(ii) Permitting on the premises a child of an age different from the ages for which the center 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 center;

(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 been denied, suspended, revoked, or not renewed a license to operate a facility for the care of the 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 center 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 43.20.205.

[Statutory Authority: RCW 74.15.030, 96-10-043 (Order 3974), § 388-151-090, filed 4/26/96, effective 5/27/96. Statutory Authority: Chapter 74.15 RCW, 93-02-020 (Order 3493), § 388-151-090, filed 12/30/92, effective 1/30/93.]

WAC 388-151-092 Civil penalties. (1) Before imposing a civil penalty, the department shall provide written notification by personal service, including by the licenser, or certified mail which shall include:

(a) A description of the violation and citation of the applicable requirement or law;

(b) A statement of what is required to achieve compliance;

(c) The date by which the department requires compliance;

(d) The maximum allowable penalty if timely compliance is not achieved;

(e) The means to contact any technical assistance services provided by the department or others; and

(f) Notice of when, where, and to whom a request to extend the time to achieve compliance for good cause may be filed with department.

(2) The length of time in which to comply shall depend on:

(a) The seriousness of the violation;

(b) The potential threat to the health, safety and welfare of children in care; or

(c) Previous opportunities to correct the deficiency.

(3) The department may impose a civil penalty based on but not limited to these reasons:

(a) The child care center has previously been subject to an enforcement action for the same or similar type of violation of the same statute or rule; or

(b) The child care center has previously been given notice of the same or similar type of violation of the same statute or rule; or

(c) The violation represents a potential threat to the health, safety, and/or welfare of children in care.

(4) The department may impose a civil penalty in addition to or in conjunction with other disciplinary actions against a child care license including probation, suspension, or other action.

(5) The civil fine shall be payable twenty-eight days after receipt of the notice or later as specified by the department.

(6) The fine may be forgiven if the agency comes into compliance during the notification period.

(7) The center or person against whom the department assesses a civil fine has a right to an adjudicative proceeding as governed by RCW 43.20A.215.

[Statutory Authority: RCW 74.15.030. 96-20-095, § 388-151-092, filed 10/1/96, effective 11/1/96.]

WAC 388-151-093 Civil penalties—Amount of penalty. Whenever the department imposes a civil monetary penalty per WAC 388-151-092(3), the department shall impose a penalty of two hundred and fifty dollars per violation per day. The department may assess and collect the penalty with interest for each day of noncompliance.

[Statutory Authority: RCW 74.15.030. 96-20-095, § 388-151-093, filed 10/1/96, effective 11/1/96.]

WAC 388-151-094 Civil penalties—Posting of notice of penalty. (1) The licensee shall post the final notice of a civil penalty in a conspicuous place in the facility.

(2) The notice shall remain posted until payment is received by the department.

[Statutory Authority: RCW 74.15.030. 96-20-095, § 388-151-094, filed 10/1/96, effective 11/1/96.]

WAC 388-151-095 Civil penalties—Unlicensed programs. Where the department has determined that an agency is operating without a license, the department shall send written notification by certified mail or other means showing proof of service. This notification shall contain the following:

(1) Advising the agency of the basis of determination of providing child care without a license and the need to be licensed by the department;

(2) The citation of the applicable law;

(3) The assessment of seventy-five dollars per day penalty for each day unlicensed care is provided. The fine would be effective and payable within thirty days of receipt of the notification;

(4) How to contact the office of child care policy;

(5) The need to submit an application to the office of child care policy within thirty days of receipt of the notification;

(6) That the penalty may be forgiven if the agency submits an application within thirty days of the notification; and

(7) The right of an adjudicative proceeding as a result of the assessment of a monetary penalty and the appropriate procedure for requesting an adjudicative proceeding.

[Statutory Authority: RCW 74.15.030. 96-20-095, § 388-151-095, filed 10/1/96, effective 11/1/96.]

WAC 388-151-096 Civil penalties—Separate violations. Each violation of a law or rule constitutes a separate violation and may be penalized as such. A penalty may be imposed for each day the violation continues.

[Statutory Authority: RCW 74.15.030. 96-20-095, § 388-151-096, filed 10/1/96, effective 11/1/96.]

WAC 388-151-097 Civil penalties—Penalty for nonpayment. Penalty for nonpayment. The department may suspend, revoke or not renew a license for failure to pay a civil monetary penalty it has assessed within ten days after such assessment becomes final.

[Statutory Authority: RCW 74.15.030. 96-20-095, § 388-151-097, filed 10/1/96, effective 11/1/96.]

WAC 388-151-098 Probationary license (1) The department shall base the decision as to whether a probationary license will be issued upon the following factors:

- (a) Willful or negligent noncompliance by the licensee,
- (b) History of noncompliance,
- (c) Extent of deviation from the requirements,
- (d) Evidence of a good faith effort to comply,
- (e) Any other factors relevant to the unique situation.

(2) Where the negligent or willful violation of the licensing law does not present an immediate threat to the health and well-being of the children but would be likely to do so if allowed to continue, a probationary license may be issued as well as civil penalties or other sanctions. Such situations may include:

- (a) Substantiation that a child (or children) was abused or neglected while in the care of the center,
- (b) Disapproved fire safety or sanitation report,
- (c) Use of unauthorized space for child care,
- (d) Inadequate supervision of children,
- (e) Understaffing for the number of children in care,
- (f) Noncompliance with requirements addressing:
 - (i) Children's health,
 - (ii) Proper nutrition,
 - (iii) Discipline,
 - (iv) Emergency medical plan,
 - (v) Sanitation and personal hygiene practices.

(3) Licensee required to notify parents when a probationary licensed is issued:

(a) The licensee shall notify the parents or guardians of all children in care that it is in probationary status within five working days of receiving notification he or she has been issued a probationary license;

(b) The notification shall be in writing and shall be approved by the department prior to being sent;

(c) The licensee shall provide documentation to the department that parents or guardians of all children in care have been notified within ten working days of receiving notification that he or she has been issued a probationary license;

(d) The department may issue a probationary license for up to six months, and at the discretion of the department it may be extended for an additional six months.

[Statutory Authority: RCW 74.15.030, 96-20-095, § 388-151-098, filed 10/1/96, effective 11/1/96.]

WAC 388-151-100 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.

[Statutory Authority: Chapter 74.15 RCW, 93-02-020 (Order 3493), § 388-151-100, filed 12/30/92, effective 1/30/93.]

WAC 388-151-110 Learning and play materials. The licensee shall provide the child a variety of easily accessible, developmentally appropriate equipment and materials of sufficient quantity to implement the center's program. The licensee shall ensure material is culturally relevant and promotes:

(1) Social development;

(2) Communication ability;

(3) Self-help skills;

(4) Large and small muscle development; and

(5) Creative expression.

[Statutory Authority: Chapter 74.15 RCW, 93-02-020 (Order 3493), § 388-151-110, filed 12/30/92, effective 1/30/93.]

WAC 388-151-120 Staff-child interactions. (1) The licensee shall furnish the child a nurturing, respectful, supportive, and responsive environment through frequent interactions between the child and staff:

(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 growth and development of the child's social and communication 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 all children in care regardless of race, religion, culture, sex, and handicapping condition.

(2) The licensee shall furnish the child a pleasant and social atmosphere at meal and snack times. Staff shall provide good models for nutrition habits and social behavior.

[Statutory Authority: Chapter 74.15 RCW, 93-02-020 (Order 3493), § 388-151-120, filed 12/30/92, effective 1/30/93.]

WAC 388-151-130 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 support 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 practice are fair, reasonable, consistent, and related to the child's behavior. Staff 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 center.

(4) The licensee shall prohibit and prevent by any person on the premises:

(a) Biting, jerking, shaking, spanking, slapping, hitting, striking, or kicking the child, or other means of inflicting physical or emotional pain, or causing bodily harm;

(b) The use of a physical restraint method injurious to the child;

(c) The use of a mechanical restraint, locked time-out room, or closet;

(d) The use of verbal abuse; or

(e) The withholding of food as a punishment.

(5) In emergency situations, the staff person 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: Chapter 74.15 RCW, 93-02-020 (Order 3493), § 388-151-130, filed 12/30/92, effective 1/30/93.]

WAC 388-151-150 Evening and nighttime care. (1) For the center offering school-age child care during evening and nighttime hours, the licensee shall, in addition to meeting daytime regulations, adapt the program, equipment, and staffing pattern to meet the physical and emotional needs of the child away from home at night.

(2) The licensee shall maintain the same staff-to-child ratio in effect during daytime care. At all times, staff shall keep the child within continuous visual or auditory range.

[Statutory Authority: Chapter 74.15 RCW. 93-02-020 (Order 3493), § 388-151-150, filed 12/30/92, effective 1/30/93.]

WAC 388-151-160 Off-site trips. (1) The licensee may transport or permit the supervised off-site travel of the child to participate in field trips or engage in other off-site activities only with written parent 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.

(3) For group field trips, the licensee shall ensure:

(a) Emergency information and medical treatment authorization for each child in the group is present;

(b) A first aid kit is available;

(c) A written list of children participating is maintained; and

(d) Required staff-child ratios are maintained.

[Statutory Authority: Chapter 74.15 RCW. 93-02-020 (Order 3493), § 388-151-160, filed 12/30/92, effective 1/30/93.]

WAC 388-151-165 Transportation. When the licensee furnishes transportation for the child in care:

(1) The licensee shall ensure that the motor vehicle is maintained in a safe operating condition and is approved by the Washington state patrol, when applicable;

(2) The licensee or driver shall carry liability and medical insurance;

(3) The driver shall have a current driver's license, valid for the classification of motor vehicle operated, and current first aid and CPR certification;

(4) The licensee shall ensure a minimum of one staff person other than the driver is present in the motor vehicle, when necessary, to ensure staff-to-child ratio compliance; and

(5) The licensee shall ensure the number of passengers does not exceed the seat belt capacity of the motor vehicle.

[Statutory Authority: Chapter 74.15 RCW. 93-02-020 (Order 3493), § 388-151-165, filed 12/30/92, effective 1/30/93.]

WAC 388-151-170 Parent communication. (1) The licensee shall orally:

(a) Explain to the parent the center's policies and procedures;

(b) Orient the parent to the center's philosophy, program, and facilities;

(c) Communicate to the parent issues relating to the child's care and individual practices concerning the child's special needs; and

(d) Encourage parent participation in center 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 bought from the child's home;

(e) Signing in and signing out requirements;

(f) Child abuse reporting law requirements;

(g) Behavior management and discipline;

(h) Nondiscrimination statement;

(i) Religious activities, if any;

(j) Transportation and field trip arrangements;

(k) Policy on homework, study time, and space necessary to accommodate these activities;

(l) Practices concerning an ill child;

(m) Medication management; and

(n) Medical emergencies.

[Statutory Authority: Chapter 74.15 RCW. 93-02-020 (Order 3493), § 388-151-170, filed 12/30/92, effective 1/30/93.]

WAC 388-151-180 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 harm to another person.

(2) Program director. 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 licensing requirements;

(c) Have knowledge of development of school-age children as evidenced by professional references, education, experience, and on-the-job performance;

(d) Have the management and supervisory skills necessary for the proper administration for the center including:

(i) Record maintenance;

(ii) Financial management; and

(iii) Maintenance of positive relationships with staff, children, parents, and the community.

(e) Employ, provide, or arrange for fulfillment of clerical, accounting, maintenance, transportation, and food service responsibilities so the child care staff is free to concentrate on program implementation and maintaining the required staff-to-child ratio;

(f) Have completed thirty or more college quarter credits in early childhood education/child development, elementary education, or possess an equivalent educational background in courses such as recreation, physical education, education, music, art, home economics, psychology, or social services;

(g) Have two or more years of successful experience working with school-age children as evidenced by professional references and on-the-job performance; and

(h) Have planning, coordination, and supervisory skills to implement a high quality, developmentally appropriate program.

(3) Site coordinator. The licensee may employ a site coordinator responsible for program planning and implemen-

tation. The site coordinator shall be under the regular supervision of the program director.

(4) The site coordinator and program director may be one and the same person when qualified for both positions. The site coordinator shall:

- (a) Be twenty-one years of age or older;
- (b) Have completed thirty or more college quarter credits in early childhood education/child development, elementary education, or possess an equivalent educational background in courses such as recreation, physical education, education, music, art, psychology, or social services;
- (c) Serve as staff supervisor;
- (d) Have demonstrated knowledge in:
 - (i) Behavior management skills specific to school-age children;
 - (ii) Program management skills; and
 - (iii) School-age child activity planning and coordinating skills.
- (e) Have a minimum of two years experience working with school-age children, or possess equivalent experience.

(5) The program director or site coordinator shall normally be on the premises while the child is in care. If temporarily absent from the center, the director and site coordinator shall leave a competent, designated staff person in charge.

(6) The director and site coordinator may also serve as child care staff when such role does not interfere with the director's or site coordinator's management and supervisory responsibilities.

(7) Center staffing. The licensee may employ a lead school-age child care staff person to be in charge of a child or a group of children. Lead school-age child care staff shall:

- (a) Be eighteen years of age or older;
- (b) Possesses a high school education or equivalent;
- (c) Have school-age child development knowledge and experience; and
- (d) Have the ability to implement the activity program.

(8) The licensee may employ a child care assistant, volunteer, or trainee. The assistant, volunteer, or trainee shall support staff. The school age child care assistant, volunteer, or trainee shall:

- (a) Be sixteen years of age or older; and
 - (b) Care for the child only under direct supervision.
- (9) The licensee shall ensure no person under eighteen years of age is assigned sole responsibility for a group of children. The assistant, eighteen years of age or older, may be assigned sole responsibility for a child or group of children for a brief period of time.

(10) The licensee may count the assistant, volunteer, or trainee in the staff-to-child ratio when that person meets staff requirements.

[Statutory Authority: Chapter 74.15 RCW. 93-02-020 (Order 3493), § 388-151-180, filed 12/30/92, effective 1/30/93.]

WAC 388-151-190 Group size and staff-child ratios.

(1) The licensee shall maintain, at minimum, a 1:15 staff-child ratio and a maximum group size of thirty or fewer children.

(2) The licensee shall conduct activities for each group in a specific classroom or other defined space within a larger area.

(3) The licensee shall ensure each group is under the supervision of a qualified staff person or team of staff.

(4) The department may approve reasonable variations to group size limitations if the licensee maintains required staff-to-child ratios, dependent on:

- (a) Staff qualifications;
 - (b) Program structure; and
 - (c) Usable space.
- (5) The licensee shall ensure staff keep each child within continuous visual or auditory range, except when the child uses the toilet.

(6) When only one staff person is present, the licensee shall ensure a second staff person is readily available in case of an emergency.

[Statutory Authority: Chapter 74.15 RCW. 93-02-020 (Order 3493), § 388-151-190, filed 12/30/92, effective 1/30/93.]

WAC 388-151-200 Staff development, orientation, and training. (1) The licensee shall have an orientation system making the employee, volunteer, and trainee aware of program policies and practices. The licensee shall provide staff an orientation including, but not limited to:

- (a) Licensing rules required under this chapter;
- (b) Goals and philosophy of the center;
- (c) Planned daily activities and routines;
- (d) Age-appropriate 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) Fire prevention and safety procedures; and
- (h) Personnel policies.

(2) The licensee shall provide or arrange regular training opportunities for the child care staff to:

- (a) Promote ongoing employee education;
- (b) Enhance practice skills;
- (c) Increase cultural awareness; and
- (d) Accommodate special health and developmental needs of the individual child.

(3) The licensee shall conduct periodic staff meetings for planning and coordination purposes.

(4) The licensee shall ensure:

- (a) A staff person with basic, standard, current first aid and cardiopulmonary resuscitation (CPR) training, or department of health approved training is present at all times while the child is in care; and
- (b) Staff's CPR training includes methods appropriate for school-age children in care.

(5) The licensee shall provide or arrange appropriate education and training for child care staff on the prevention and transmission of human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS).

(6) The licensee shall ensure the person preparing full meals for the center has a valid food handler permit.

[Statutory Authority: Chapter 74.15 RCW. 93-02-020 (Order 3493), § 388-151-200, filed 12/30/92, effective 1/30/93.]

WAC 388-151-210 Health care plan. (1) The licensee shall maintain current written health policies and procedures for staff orientation and use, and for the parent.

(2) The licensee shall ensure the health care plan includes, but is not 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) Hand washing practices; and
- (h) Food and food services.

(3) The licensee shall use the services of an advisory physician, physician's assistant, or registered nurse to assist in the development and approval of the center's health care plan.

[Statutory Authority: Chapter 74.15 RCW. 93-02-020 (Order 3493), § 388-151-210, filed 12/30/92, effective 1/30/93.]

WAC 388-151-220 Health supervision and infectious disease prevention. (1) Before or on the child's first day of attendance, the licensee shall have on file a record of immunization status.

(2) Staff shall observe the child daily for signs of illness. The licensee shall care for or discharge home the ill child based on the center's policies concerning the ill child.

(3) If a child becomes ill while in care:

- (a) The licensee shall furnish a separate care area with an appropriate rest surface and bedding, as needed; and
- (b) Staff shall sanitize equipment the child uses if staff suspects the child has a communicable disease.

(4) The licensee may use the separate care room or area for other purposes when not needed for separation of the child.

(5) Staff shall ensure the child washes hands:

- (a) Before the child eats;
- (b) Before the child participates in food activities; and
- (c) After the child's toileting.

(6) Staff shall follow the center's policies for cleaning and disinfecting the environment.

(7) The licensee shall have extra clothing available for circumstances arising during outdoor play.

(8) Staff shall ensure the child does not share personal hygiene or grooming items.

(9) Each center employee, volunteer, and other person having regular contact with the child in care shall have results of a negative tuberculin (TB) skin test, by the Mantoux method, or results of a chest x-ray, on file upon employment, unless such is against medical advice. Periodic retesting is not required.

(10) The licensee shall not permit the person with a reportable communicable disease to be on duty in the center or have contact with the child in care unless a health care provider approves this in writing.

(11) Staff shall wash hands:

- (a) After personal toileting;
- (b) After attending to an ill child;

- (c) After nose blowing;
- (d) After smoking; and
- (e) Before serving or preparing food.

[Statutory Authority: Chapter 74.15 RCW. 93-02-020 (Order 3493), § 388-151-220, filed 12/30/92, effective 1/30/93.]

WAC 388-151-230 Medication management. The center may have a policy of not giving medication to the child in care. If the center's health care plan includes giving medication to the child in care, the licensee:

(1) 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;

(2) Shall give prescription medications:

- (a) Only as specified on the prescription label; or
- (b) As authorized, in writing, by a physician or other person legally authorized to prescribe medication.

(3) 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:

- (a) Antihistamines;
- (b) Nonaspirin fever reducers/pain relievers;
- (c) Nonnarcotic cough suppressants;
- (d) Decongestants;
- (e) Anti-itching ointments or lotions, intended specifically to relieve itching;
- (f) Diaper ointments and powders, intended specifically for use in the diaper area of the child; and
- (g) Sun screen.

(4) Shall give other nonprescription medication:

- (a) Not included in the categories listed in subsection (3) of this section; or
- (b) Taken differently than indicated on the manufacturer's label; or
- (c) Lacking labeled instructions, only when disbursement of the nonprescription medication is as required under subsection (4) (a), (b), and (c) of this section:
 - (i) Authorized, in writing, by a physician; or
 - (ii) Based on established medical policy approved, in writing, by a physician or other person legally authorized to prescribe medication.

(5) Shall accept from the child's parent, guardian, or responsible relative only medicine in the original container, labeled with:

- (a) The child's first and last names;
- (b) The date the prescription was filled; or
- (c) The medication's expiration date; and
- (d) Legible instructions for administration, such as manufacturer's instructions or prescription label.

(6) Shall keep medication, refrigerated or nonrefrigerated, in an orderly fashion and inaccessible to the child;

(7) Shall store external medication in a compartment separate from internal medication;

(8) Shall keep a record of medication disbursed;

(9) Shall return to the parent or other responsible party, or shall dispose of medications no longer being taken; and

(10) May, at the licensee's option, permit self-administration of medication by a child in care if the:

(a) Child is physically and mentally capable of properly taking medication without assistance;

(b) Licensee includes in the child's file a parental or physician's written statement of the child's capacity to take medication with assistance; and

(c) 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: Chapter 74.15 RCW. 93-02-020 (Order 3493), § 388-151-230, filed 12/30/92, effective 1/30/93.]

WAC 388-151-240 Nutrition. (1) The licensee shall provide food meeting the nutritional needs of the child in care, taking into consideration the child's:

(a) Age and development level;

(b) Cultural background; and

(c) Handicapping condition.

(2) The licensee shall provide only pasteurized milk or pasteurized milk products.

(3) The licensee may serve the school-age child powdered Grade A milk, provided the licensee completes the dry milk mixture, service, and storage in a safe and sanitary manner.

(4) The licensee may furnish the child nutrient concentrates, nutrient supplements, a modified diet, or an allergy diet only with the written permission of the child's health care provider. The licensee shall obtain from the parent or the child's health care provider a written list of foods the child cannot consume.

(5) The licensee shall:

(a) Record food and portion sizes planned and served; and

(b) Post menus showing two weeks or more of food variety before repeating menus.

(6) The licensee may make nutritional substitutions of comparable nutrient value to the menu.

(7) The licensee shall use the following meal pattern to furnish food in age-appropriate servings, providing the child:

(a) Arrives on the premises before 7:00 a.m. access to a breakfast;

(b) In care for one to three hours before or after school a snack; and

(c) Food at intervals not less than two hours and not more than three and one-half hours apart.

(8) The licensee shall furnish the child in care food complying with the meal pattern of the United States Department of Agriculture Child and Adult Care Food Program or the National School Lunch Program.

(9) The child's snacks shall include one or more dairy or protein source provided daily, and contain a minimum of two of the following four components at each snack:

(a) A dairy product;

(b) A protein food;

(c) Bread or bread alternate; or

(d) Fruit or vegetable or juice containing a minimum of fifty percent real juice.

(10) The licensee shall have available food supplies to supplement food deficient in meeting nutrition requirements brought from the child's home.

[Statutory Authority: Chapter 74.15 RCW. 93-02-020 (Order 3493), § 388-151-240, filed 12/30/92, effective 1/30/93.]

WAC 388-151-250 Kitchen and food service. (1) The licensee shall ensure the proper storage, preparation, and service of food to meet program needs.

(2) The licensee shall meet food service standards by ensuring:

(a) The staff person preparing full meals has a valid food handler permit;

(b) The staff person preparing and serving meals washes hands before handling food;

(c) Handwashing facilities are located in or adjacent to food preparation areas;

(d) Food is stored in a sanitary manner; especially milk, shell-fish, meat, poultry, eggs, and other protein food sources;

(e) Food requiring refrigeration is stored at a temperature no warmer than forty-five degrees Fahrenheit;

(f) Frozen food is stored at a maximum temperature of zero degrees Fahrenheit;

(g) Refrigerators and freezers are equipped with thermometers and are regularly cleaned and defrosted;

(h) Food is cooked to correct temperatures;

(i) Raw food is washed thoroughly with clean running water;

(j) Cooked food to be stored is rapidly cooled and refrigerated after preparation;

(k) Food is kept in original containers or in clean, labeled containers and stored off the floor;

(l) Packaged, canned, and bottled food with a past expiration date is discarded;

(m) Food in dented cans or torn packages is discarded; and

(n) When food containing sulfiting agents is served, parents are notified.

(3) The child may participate in food preparation as an education activity when:

(a) The licensee makes kitchen equipment inaccessible to the child, except during planned and supervised kitchen activities; and

(b) Staff supervise food preparation activities.

(4) The licensee shall install and maintain kitchen equipment and clean reusable utensils in a safe and sanitary manner by:

(a) Sanitizing reusable utensils in a dishwasher or through use of a three-compartment dishwashing procedure; and

(b) Using only single-use of clean cloths, solely, for wiping food service, preparation, and eating surfaces.

[Statutory Authority: Chapter 74.15 RCW. 93-02-020 (Order 3493), § 388-151-250, filed 12/30/92, effective 1/30/93.]

WAC 388-151-260 Drinking and eating equipment. (1) The licensee shall provide the child single-use cups, individual drinking cups or glasses, or inclined jet-type drinking fountains.

(2) The licensee shall prohibit the center from using bubbler-type drinking fountains and common drinking cups or glasses.

(3) The licensee shall provide the child durable eating utensils appropriate in size and shape for the child in care.

[Statutory Authority: Chapter 74.15 RCW. 93-02-020 (Order 3493), § 388-151-260, filed 12/30/92, effective 1/30/93.]

WAC 388-151-280 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 health and emergency service.
- (2) The licensee shall ensure that indoor and outdoor premises are in a safe and sanitary condition, free of hazards, and in good repair;
- (3) The licensee shall ensure furniture and equipment is safe, stable, durable, and age-appropriate;
- (4) The licensee shall maintain a flashlight or other emergency lighting device in working condition;
- (5) The licensee shall finish or cover rough or untreated wood surfaces;
- (6) The licensee shall maintain one or more telephones in working order, readily accessible to staff and children;
- (7) The licensee shall supply bathrooms and other rooms subject to moisture with washable, moisture-impervious flooring;
- (8) The licensee shall ensure staff can gain rapid access in an emergency to a bathroom or other room the child occupies;
- (9) The licensee shall shield light bulbs and tubes in child-accessible areas;
- (10) The licensee shall keep the premises free from rodents, fleas, cockroaches, and other insects and pests;
- (11) The licensee shall ensure no firearm or other weapon is on the premises;
- (12) The licensee shall maintain adequate storage space for play and teaching equipment, supplies, records, and children's possessions and clothing;
- (13) The licensee shall safely store or make inaccessible to the child cleaning supplies, toxic substances, paint, poisons, aerosol containers, and items bearing warning labels;
- (14) The licensee shall label a container filled from a stock supply to identify contents;
- (15) The licensee shall comply with fire safety regulations adopted by the state fire marshal's office.

[Statutory Authority: Chapter 74.15 RCW. 93-02-020 (Order 3493), § 388-151-280, filed 12/30/92, effective 1/30/93.]

WAC 388-151-290 Water safety. (1) The licensee shall maintain the following water safety precautions when the child uses an on-premises swimming pool, wading pool, or natural body of water, or enters the water on a field trip by ensuring;

- (a) The on-premises pool or natural body of water is inaccessible to the child when not in use;
- (b) During the child's use of a wading pool, an adult with current CPR training supervises the child at all times; and
- (c) During the child's use of a swimming pool or natural body of water, a certified lifeguard is present at all times, in addition to required staff.

(2) The licensee shall daily empty and clean portable wading pools, when in use.

(3) The licensee may permit the child to use or access a hot tub, spa tank, or whirlpool only under direct supervision and with written parental permission.

[Statutory Authority: Chapter 74.15 RCW. 93-02-020 (Order 3493), § 388-151-290, filed 12/30/92, effective 1/30/93.]

WAC 388-151-310 First aid supplies. (1) The licensee shall maintain on the premises adequate first aid supplies conforming with the center's first aid policies and procedures.

(2) The licensee's first aid supplies shall include unexpired syrup of ipecac which may be administered only on the advice of the physician or poison control center.

[Statutory Authority: Chapter 74.15 RCW. 93-02-020 (Order 3493), § 388-151-310, filed 12/30/92, effective 1/30/93.]

WAC 388-151-320 Outdoor play area. (1) The licensee shall provide a safe and equipped outdoor play area of sufficient size to meet the needs of the child in care:

- (a) Reachable by a safe route and method;
 - (b) Promoting the child's active play, physical development, and coordination;
 - (c) Free of any dangerous condition and affording safe child entry and exit; and
 - (d) Adaptable to the child with special needs.
- (2) The licensee shall ensure the center's activity schedule affords the child sufficient daily time to participate actively in outdoor play.

[Statutory Authority: Chapter 74.15 RCW. 93-02-020 (Order 3493), § 388-151-320, filed 12/30/92, effective 1/30/93.]

WAC 388-151-330 Indoor space. (1) The school-age child care center shall have adequate, usable space indoors, ensuring children are not crowded. The licensee shall ensure a minimum of thirty-five square feet per child of usable space is available.

(2) The school age child care center shall have an identifiable space of its own during hours of operation, which may include moveable furnishings and equipment.

(3) The licensee shall arrange indoor space to encourage a variety of developmentally appropriate activities including:

- (a) Interest areas for focused activities;
- (b) Open areas for large motor activities;
- (c) Areas where children can work individually, in small groups, and in large groups; and
- (d) Private spaces where children can rest, play, and work alone or with a friend.

[Statutory Authority: Chapter 74.15 RCW. 93-02-020 (Order 3493), § 388-151-330, filed 12/30/92, effective 1/30/93.]

WAC 388-151-340 Toilets and handwashing sinks.

(1) The licensee shall supply handwashing sinks and toilets for the child equal to, at minimum, the number the state or local building code requires. Minimum ratios shall be as follows: Toilets: 1:100 boys, 1:35 girls, Urinals: 1:30.

(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 twenty degrees Fahrenheit.

(3) The licensee shall locate the child's handwashing facilities in or adjacent to rooms used for toileting.

(4) The licensee shall provide toileting privacy for the child.

(5) The licensee shall ensure rooms used for toileting are ventilated to the outdoors.

(6) The licensee shall provide the child with soap and individual towels or other appropriate devices for washing and drying the child's hands and face.

[Statutory Authority: Chapter 74.15 RCW. 93-02-020 (Order 3493), § 388-151-340, filed 12/30/92, effective 1/30/93.]

WAC 388-151-380 Program atmosphere. (1) The licensee shall provide a cheerful environment for the child by placing visually stimulating decorations, pictures, or other attractive materials at appropriate heights for the child in care.

(2) The licensee shall maintain a safe and developmentally appropriate noise level.

(3) The licensee shall locate fixtures and provide lighting intensities promoting visibility and comfort for the child in care.

(4) The licensee shall maintain the temperature within the center at sixty-eight degrees Fahrenheit or more.

(5) The licensee shall regulate the temperature and ventilate the center for the health and comfort of the child in care.

[Statutory Authority: Chapter 74.15 RCW. 93-02-020 (Order 3493), § 388-151-380, filed 12/30/92, effective 1/30/93.]

WAC 388-151-390 Discrimination prohibited. (1) 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.

(2) Consistent with state and federal laws, the licensee shall respect and facilitate all rights of the child in care.

[Statutory Authority: Chapter 74.15 RCW. 93-02-020 (Order 3493), § 388-151-390, filed 12/30/92, effective 1/30/93.]

WAC 388-151-410 Special requirements regarding American Indian children. When five percent or more of the center's child enrollment consists of Indian children, the licensee shall develop social service resources and staff training programs designed to meet the special needs of such children through coordination with tribal, Indian health service, and Bureau of Indian Affairs social service staff and appropriate urban Indian and Alaskan native consultants.

[Statutory Authority: Chapter 74.15 RCW. 93-02-020 (Order 3493), § 388-151-410, filed 12/30/92, effective 1/30/93.]

WAC 388-151-420 Child abuse, neglect, and exploitation. The licensee and staff shall protect the child in care from child abuse, neglect, or exploitation, as required under chapter 26.44 RCW.

[Statutory Authority: Chapter 74.15 RCW. 93-02-020 (Order 3493), § 388-151-420, filed 12/30/92, effective 1/30/93.]

WAC 388-151-430 Prohibited substances. (1) During operating hours or when the child is in care, the

licensee, staff, and volunteers on center premises or caring for the child off-site shall not be under the influence of, consume, or possess an:

(a) Alcoholic beverage; or

(b) Illegal drug.

(2) The licensee shall prohibit smoking in the center and in the motor vehicle when the licensee transports the child. The licensee may permit on premises smoking outdoors, away from the building, when the child is not present.

[Statutory Authority: Chapter 74.15 RCW. 93-02-020 (Order 3493), § 388-151-430, filed 12/30/92, effective 1/30/93.]

WAC 388-151-440 Limitations to persons on premises. (1) During center operating hours or while the child is in care, only the licensee, employee, or volunteer, or an authorized representative of a governmental agency, school district, or an approved adult related to the child in care shall have unsupervised access to the child in care.

(2) The licensee shall allow the parent of a child in care unsupervised access only to the parent's child.

[Statutory Authority: Chapter 74.15 RCW. 93-02-020 (Order 3493), § 388-151-440, filed 12/30/92, effective 1/30/93.]

WAC 388-151-450 Child records and information. The licensee shall maintain, on the premises, organized and 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, birth date, dates of enrollment and termination, and other identifying information;

(b) Name, address, and home and business telephone numbers 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 another person authorized to remove the child in care from the center;

(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 or injury occurring on the premises including the treatment given by staff;

(b) Medication given by staff 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) Name, address, and telephone number of child's health care provider or facility; and

(v) A record of immunization status.

[Statutory Authority: Chapter 74.15 RCW. 93-02-020 (Order 3493), § 388-151-450, filed 12/30/92, effective 1/30/93.]

WAC 388-151-460 Program records. The licensee shall maintain the following documentation on the premises:

(1) The daily attendance record;

(a) The parent, or other person authorized by the parent to take the child to or from the center, shall sign in the child on arrival and shall sign out the child at departure, using a full, legal signature; and

(b) When the child leaves the center to attend school or other off-site activity as authorized by the parent, the staff person shall sign out the child and sign in the child on return to the center.

(2) A copy of the report sent to the department 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;

(4) A written plan for staff development specifying the content, frequency, and manner of planned training;

(5) Activity program plan records;

(6) A list of the child's allergies and dietary restrictions;

(7) Any incident involving the use of physical restraint;

(8) A record of medication staff gives to the child; and

(9) A record of accidents and injuries.

[Statutory Authority: Chapter 74.15 RCW. 93-02-020 (Order 3493), § 388-151-460, filed 12/30/92, effective 1/30/93.]

WAC 388-151-470 Personnel policies and records.

(1) Each employee and volunteer having unsupervised or regular access to the child in care shall complete and submit to the licensee or director 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 employee's first day of employment, permitting a criminal and background history check; and

(ii) The department shall discuss the inquiry information with the licensee or director, when applicable.

(2) The licensee shall have written personnel policies describing staff benefits, if any, duties, qualifications, grievance procedures, pay dates, and nondiscrimination policies.

(3) The licensee shall maintain a personnel record keeping system, having on file for the licensee, staff person, and volunteer:

(a) An employment application including work and education history;

(b) Documentation of criminal history and background inquiry form submission;

(c) A record of Mantoux method tuberculin skin test results, x-ray, or an exemption to the skin test or x-ray;

(d) Documentation on HIV/AIDS education and training;

(e) A record of participation in staff development training;

(f) Documentation of orientation program completion;

(g) Documentation of a valid food handler permit, when applicable; and

(h) Documentation of current first aid and CPR training, when applicable.

[Statutory Authority: Chapter 74.15 RCW. 93-02-020 (Order 3493), § 388-151-470, filed 12/30/92, effective 1/30/93.]

WAC 388-151-480 Reporting of death, injury, illness, epidemic, or child abuse. The licensee or staff 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 child's parent and the department;

(2) An instance when the licensee or staff 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; and

(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: Chapter 74.15 RCW. 93-02-020 (Order 3493), § 388-151-480, filed 12/30/92, effective 1/30/93.]

WAC 388-151-490 Reporting of circumstantial changes. A school-age child care center license is valid only for the address, person, and organization named on the license. The licensee shall promptly report to the department a major change affecting the center's classification, delivery of safe, developmentally appropriate services, or continued eligibility for licensure. A major change includes the :

(1) Center's address, location, space, or phone number;

(2) Maximum number and ages of children served as compared to current license specifications;

(3) Change of ownership, chief executive officer, licensee, director, or site coordinator;

(4) Name of the licensed corporation or name by which the center is commonly known or changes in the center's articles of incorporation and bylaws;

(5) Occurrence of a fire, major structural change, or damage to the premises; and

(6) Plans for major remodeling of the center including planned use of space not previously department-approved.

[Statutory Authority: Chapter 74.15 RCW. 93-02-020 (Order 3493), § 388-151-490, filed 12/30/92, effective 1/30/93.]

WAC 388-151-500 Posting requirements. (1) The licensee shall post the following items, clearly visible to the parent and staff:

(a) The center's child care license issued under this chapter;

(b) A list of staff names;

(c) A typical activity schedule including operating hours;

(d) Food menus;

(e) Evacuation plans and procedures including a diagram of exiting routes; and

(f) Emergency telephone numbers, including 911 and local law enforcement, highlighted and posted by the telephone with the center's address.

(2) For the staff, the licensee shall post:

- (a) Dietary restrictions for particular children; and
 (b) Handwashing practices.

[Statutory Authority: Chapter 74.15 RCW. 93-02-020 (Order 3493), § 388-151-500, filed 12/30/92, effective 1/30/93.]

Chapter 388-155 WAC
MINIMUM LICENSING REQUIREMENTS FOR
FAMILY CHILD DAY CARE HOMES

WAC

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| 388-155-410 | Special requirements regarding American Indian children. |
| 388-155-420 | Child abuse, neglect, and exploitation. |
| 388-155-430 | Prohibited substances. |
| 388-155-440 | Limitations to persons on premises. |
| 388-155-450 | Child records and information. |
| 388-155-460 | Home records. |
| 388-155-470 | Personnel records. |
| 388-155-480 | Reporting of death, injury, illness, epidemic, or child abuse. |
| 388-155-490 | Reporting of circumstantial changes. |
| 388-155-500 | Posting requirements. |

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| 388-155-600 | Occupancy restrictions. |
| 388-155-605 | Hazardous areas. |
| 388-155-610 | Single station smoke detectors. |
| 388-155-620 | Alternate means of sounding a fire alarm. |
| 388-155-630 | Fire extinguisher. |
| 388-155-640 | Fire prevention. |
| 388-155-650 | Sprinkler system maintenance. |
| 388-155-660 | Fire evacuation plan. |
| 388-155-670 | Fire evacuation drill. |
| 388-155-680 | Staff training. |

WAC 388-155-005 Authority. The following rules are adopted under chapters 74.12 and 74.15 RCW.

[Statutory Authority: RCW 74.12.340. 94-13-201 (Order 3745), § 388-155-005, filed 6/22/94, effective 7/23/94. 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)(a) RCW 74.15.020 (4)(c)(i) exempts from licensing persons who care for a neighbor's or friend's child or children, with or without compensation, where:

(i) Care is provided for less than twenty-four hours; and

(ii) Such activity is not conducted on an ongoing, regularly scheduled basis for the purpose of engaging in business, which includes, but is not limited to advertising such care.

(b) For purposes of this section:

(i) "Advertising" means attempting to solicit child care clients, either directly or indirectly, through written, or electronic means;

(ii) "Engaging in business" shall exclude those persons providing child care for only one family of children or who can demonstrate that their gross earnings from child care will not exceed \$1,000 in any one calendar year;

(iii) "Friend" means someone with whom the care provider had a personal relationship prior to the time care was sought, offered, or provided;

(iv) "Neighbor" means a person with whom the care provider has relationship by virtue to living in close proximity to the person;

(v) "Ongoing" means that care is provided for a number of consecutive weeks or months or there is no specific time frame for ending child care;

(vi) "Regularly scheduled" means that the child comes at usually planned times and/or days and/or the provider makes her/himself available to provide care at fixed or planned intervals.

(4) 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.

(5) 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.

(6) The person or organization desiring to serve state-paid children shall:

(a) Be licensed or certified;

(b) Follow billing policies and procedures in *Child Day Care Subsidies, A Booklet for Providers*, DSHS 22-877(X); and

(c) Bill the department at the person's or organization's customary rate or the DSHS rate, whichever is less.

[Statutory Authority: RCW 74.15.030. 96-20-095, § 388-155-020, filed 10/1/96, effective 11/1/96. Statutory Authority: RCW 74.12.340. 94-13-201 (Order 3745), § 388-155-020, filed 6/22/94, effective 7/23/94. 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 shall not issue a family child care home license to the applicant having a foster family home license or other license involving full-time care or permit simultaneous care for the child and adult on the same premises. An exception may be granted if the applicant or licensee:

(1) Demonstrates evidence that care of one client category will not interfere with the quality of care provided to another category of clients;

(2) Requests and obtains a waiver permitting dual licensure;

(3) Maintains the most stringent maximum capacity limitation for the client categories concerned; and

(4) Where the licensee desires to exceed the most stringent maximum capacity limitation, requests an additional waiver to subsection (3) above. This additional waiver

request may be written on one form with the request for dual licensing.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 96-10-042 (Order 9373), § 388-155-060, filed 4/26/96, effective 5/27/96. 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.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 96-10-042 (Order 9373), § 388-155-070, filed 4/26/96, effective 5/27/96. 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 388-155-085 Initial license. (1) The department may issue an initial license to an applicant not currently licensed to provide child day care when the applicant:

(a) Can demonstrate compliance with the rules contained in this chapter pertaining to the health and safety of the child in care; but

(b) Cannot demonstrate compliance with the rules pertaining to:

(i) Provider-child interactions,

(ii) Capacity,

(iii) Behavior management,

(iv) Activity and routines,

(v) Child records and information, and

(vi) Other rules requiring department observation of the applicant's ability to comply with rules.

(c) Can provide a plan, acceptable to the department, to comply with rules found in subsection (1)(b) of this section.

(2) The department may issue an initial license to an applicant for a period not to exceed six months, renewable for a period not to exceed two years.

(3) The department shall evaluate the applicant's ability to comply with all rules contained in this chapter during the period of initial licensure prior to issuing a full license.

(4) The department may issue a full license to the applicant demonstrating compliance with all rules contained in this chapter at any time during the period of initial licensure.

(5) The department shall not issue a full license to the applicant who does not demonstrate the ability to comply with all rules contained in this chapter during the period of initial licensure.

[Statutory Authority: RCW 74.15.030. 96-20-095, § 388-155-085, filed 10/1/96, effective 11/1/96.]

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:

(a) Shall consider the persons' qualifications separately and jointly; and

(b) 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) Has abused, neglected, or sexually exploited a child as those acts or omissions are defined in RCW 26.44.020 and WAC 388-15-130, is ineligible to provide care because of a criminal history under chapter 388-330 WAC, 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, department of health, or state auditor's office to inspect the premises; or

(g) Refuses to permit an authorized representative of the department, the department of health, or the state auditor's office 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.

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(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. 96-10-043 (Order 3974), § 388-155-090, filed 4/26/96, effective 5/27/96. Statutory Authority: RCW 74.12.340. 94-13-201 (Order 3745), § 388-155-090, filed 6/22/94, effective 7/23/94. Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), § 388-155-090, filed 2/1/91, effective 3/4/91.]

WAC 388-155-092 Civil penalties. (1) Before imposing a civil penalty, the department shall provide written notification by personal service, including by the licensor, or certified mail which shall include:

(a) A description of the violation and citation of the applicable requirement or law;

(b) A statement of what is required to achieve compliance;

(c) The date by which the department requires compliance;

(d) The maximum allowable penalty if timely compliance is not achieved;

(e) The means to contact any technical assistance services provided by the department or others; and

(f) Notice of when, where, and to whom a request to extend the time to achieve compliance for good cause may be filed with the department.

(2) The length of time in which to comply shall depend on:

(a) The seriousness of the violation;

(b) The potential threat to the health, safety and welfare of children in care; or

(c) Previous opportunities to correct the deficiency.

(3) The department may impose a civil penalty based on but not limited to these reasons:

(a) The child care home has previously been subject to an enforcement action for the same or similar type of violation of the same statute or rule; or

(b) The child care home has previously been given notice of the same or similar type of violation of the same statute or rule; or

(c) The violation represents a potential threat to the health, safety, and/or welfare of children in care.

(4) The department may impose a civil penalty in addition to or in conjunction with other disciplinary actions against a child care license including probation, suspension, or other action.

(5) The civil fine shall be payable twenty-eight days after receipt of the notice or later as specified by the department.

(6) The fine may be forgiven if the agency comes into compliance during the notification period.

(7) The center or person against whom the department assesses a civil fine has a right to an adjudicative proceeding as governed by RCW 43.20A.215.

[Statutory Authority: RCW 74.15.030. 96-20-095, § 388-155-092, filed 10/1/96, effective 11/1/96.]

WAC 388-155-093 Civil penalties—Amount of penalty. Whenever the department imposes a civil monetary penalty per WAC 388-155-092(3), the department shall impose a penalty of seventy-five dollars per violation per

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day. The department may assess and collect the penalty with interest for each day of noncompliance.

[Statutory Authority: RCW 74.15.030. 96-20-095, § 388-155-093, filed 10/1/96, effective 11/1/96.]

WAC 388-155-094 Civil penalty—Posting of notice of penalty. (1) The licensee shall post the final notice of a civil penalty in a conspicuous place in the facility.

(2) The notice shall remain posted until payment is received by the department.

[Statutory Authority: RCW 74.15.030. 96-20-095, § 388-155-094, filed 10/1/96, effective 11/1/96.]

WAC 388-155-095 Civil penalties—Unlicensed programs. Where the department has determined that an agency is operating without a license, the department shall send written notification by certified mail or other means showing proof of service. This notification shall contain the following:

(1) Advising the agency of the basis of determination of providing child care without a license and the need to be licensed by the department;

(2) The citation of the applicable law;

(3) The assessment of seventy-five dollars per day penalty for each day unlicensed care is provided. The fine would be effective and payable within thirty days of receipt of the notification;

(4) How to contact the office of child care policy;

(5) The need to submit an application to the office of child care policy within thirty days of receipt of the notification;

(6) That the penalty may be forgiven if the agency submits an application within thirty days of the notification; and

(7) The right of an adjudicative proceeding as a result of the assessment of a monetary penalty and the appropriate procedure for requesting an adjudicative proceeding.

[Statutory Authority: RCW 74.15.030. 96-20-095, § 388-155-095, filed 10/1/96, effective 11/1/96.]

WAC 388-155-096 Civil penalties—Separate violations. Each violation of a law or rule constitutes a separate violation and may be penalized as such.

[Statutory Authority: RCW 74.15.030. 96-20-095, § 388-155-096, filed 10/1/96, effective 11/1/96.]

WAC 388-155-097 Civil penalties—Penalty for nonpayment. The department may suspend, revoke or not renew a license for failure to pay a civil monetary penalty it has assessed within ten days after such assessment becomes final.

[Statutory Authority: RCW 74.15.030. 96-20-095, § 388-155-097, filed 10/1/96, effective 11/1/96.]

WAC 388-155-098 Probationary license (1) The department shall base the decision as to whether a probationary license will be issued upon the following factors:

(a) Willful or negligent noncompliance by the licensee,

(b) History of noncompliance,

(c) Extent of deviation from the requirements,

(d) Evidence of a good faith effort to comply,

(e) Any other factors relevant to the unique situation.

(2) Where the negligent or willful violation of the licensing requirements does not present an immediate threat to the health and well-being of the children but would be likely to do so if allowed to continue, a probationary license may be issued as well as civil penalties or other sanctions. Such situations may include:

(a) Substantiation that a child (or children) was abused or neglected while in the care of the center,

(b) Disapproved fire safety or sanitation report,

(c) Use of unauthorized space for child care,

(d) Inadequate supervision of children,

(e) Understaffing for the number of children in care,

(f) Noncompliance with requirements addressing:

(i) Children's health,

(ii) Proper nutrition,

(iii) Discipline,

(iv) Emergency medical plan,

(v) Sanitation and personal hygiene practices.

(3) Licensee required to notify parents when a probationary license is issued:

(a) The licensee shall notify the parents or guardians of all children in care that it is in probationary status within five working days of receiving notification he or she has been issued a probationary license;

(b) The notification shall be in writing and shall be approved by the department prior to being sent;

(c) The licensee shall provide documentation to the department that parents or guardians of all children in care have been notified within ten working days of receiving notification that he or she has been issued a probationary license;

(d) The department may issue a probationary license for up to six months, and at the discretion of the department it may be extended for an additional six months.

[Statutory Authority: RCW 74.15.030. 96-20-095, § 388-155-098, filed 10/1/96, effective 11/1/96.]

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

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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 reusable 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 licensor 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;

(4) The twelve-month record indicating the date the licensee tested the battery-powered smoke detector monthly; and

(5) Attendance records and invoices for state-paid children for at least five years.

[Statutory Authority: RCW 74.12.340. 94-13-201 (Order 3745), § 388-155-460, filed 6/22/94, effective 7/23/94. 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.]

WAC 388-155-600 Occupancy restrictions. (1) Any home used for child day care purposes for fewer than thirteen children is considered to be a Group R, Division 3 occupancy per the state building code. Family child day care homes must meet the minimum construction and fire and safety requirements for one and two family dwellings.

If a portion of the home is used for purposes other than a dwelling, such as a garage, automotive repair shop, cabinet and/or furniture making or refinishing or similar use, a fire wall is required between the dwelling and the other use.

(2) Only one exit door from a family child day care home need be of the pivoted or side hinged swinging type. Approved sliding doors may be used for other exits.

(3) In family child day care home, each floor level used for family child day care purposes shall be provided with two exits, usually located at opposite ends of the building or floor.

(4) Basements located more than four feet below grade level shall not be used for family child day care purposes unless one of the following conditions exists:

(a) Two exit stairways from the basement open directly to the exterior of the building without entering the first floor; or

(b) One of the two required exits discharges directly to the exterior from the basement level and the other exit is an interior stairway with a self-closing door installed at the top or bottom leading to the floor above; or

(c) One of the two required exits is an operable window or door, approved for emergency escape or rescue, that opens directly to a public street, public alley, yard or exit court and the other may be an approved interior or exterior stairway; or

(d) A residential sprinkler system is provided throughout the entire home in accordance with standards of the National Fire Protection Association.

(5) The family child care home licensee shall ensure that any floor located more than four feet above grade level is not occupied by children for family child day care purposes except for the use of toilet facilities while under supervision of a staff person.

Family child day care may be allowed on the second story if one of the following conditions exists:

(a) There are two exit stairways from the second story which open directly to the exterior of the building without entering the first floor; or

(b) There is an exit which discharges directly to the exterior from the second story level, and a second interior

stairway with a self-closing door installed at the top or bottom of the interior stair leading to the floor below; or

(c) A residential sprinkler system is provided throughout the entire building in accordance with standards of the National Fire Protection Association.

(6) The maximum travel distance from any point in the home to an exterior exit door shall not exceed one hundred fifty feet.

(7) Every room used for child care (except bathrooms) shall have:

(a) At least one operable window or door approved for emergency escape or rescue which shall open directly into a public street, public alley, yard or exit court. The units shall be operable from the inside to provide a full clear opening without the use of separate tools.

All escape or rescue windows shall have a minimum net clear openable area of 5.7 square feet. The minimum net clear openable height dimension shall be twenty-four inches. The minimum net clear openable width dimension shall be twenty inches. When windows are provided as a means of escape or rescue, they shall have a finished sill height of not more than forty-four inches above the floor; or

(b) Doors leading to two separate exit ways; or

(c) A door leading directly to the exterior of the building.

(8) A stationary platform may be used under a window to attain the forty-four inches above the floor.

(9) Exit doors shall be easy to open to the full open position.

(10) Exit doors and windows shall be able to be opened from the inside without having to use a key. Night latches, dead bolts, security chains, manually operated edge or surface mounted flush bolts and surface bolts are prohibited.

The locking arrangement on outside exit doors shall be such that they will automatically unlock when the doorknob is turned from the inside.

(11) The licensee shall ensure that obstructions are not placed in corridors, aisles, doorways, doors, stairways or ramps.

(12) No space which is accessible only by ladder, folding stairs or trap doors, shall be used for family child care purposes.

(13) Every bathroom door lock shall be designed to permit the opening of the locked door from the outside in an emergency. The opening device shall be readily accessible to the staff.

(14) Every closet door latch shall be such that children can open the door from inside the closet.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 96-10-042 (Order 9373), § 388-155-600, filed 4/26/96, effective 5/27/96.]

WAC 388-155-605 Hazardous areas. Rooms or spaces containing a commercial-type kitchen, boiler, maintenance shop, janitor closet, laundry, woodworking shop, flammable or combustible storage, painting operation, or parking garage shall be separated from the family child day care home or any exits by a fire wall.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 96-10-042 (Order 9373), § 388-155-605, filed 4/26/96, effective 5/27/96.]

WAC 388-155-610 Single station smoke detectors.

(1) Smoke detectors shall be located in all sleeping and napping rooms in family child day care homes.

(2) In family child day care homes with more than one story, and in family child day care homes with basements, a smoke detector shall be installed on each story and in the basement.

(3) In family child day care homes where a story or basement is split into two or more levels, the smoke detector shall be installed in the upper level, except that when the lower level contains a sleeping or napping area, a smoke detector shall be located on each level.

(4) When sleeping or napping rooms are on an upper level, the smoke detector shall be placed on the ceiling of the upper level in close proximity to the stairway and in each sleeping/napping room.

(5) In a family child day care home where the ceiling height of a room open to the hallway serving sleeping or napping rooms exceeds that of the hallway by twenty-four inches or more, smoke detectors shall be installed in both the hallway and the sleeping/napping room.

(6) Smoke detectors shall sound an alarm audible in all areas of the building.

(7) In new construction, required smoke detectors shall receive their primary power from the building wiring when such wiring is served from a commercial source. Wiring shall be permanent and without a disconnecting switch other than those required for overcurrent protection.

(8) Smoke detectors may be battery operated when installed in existing buildings or buildings without commercial power.

(9) Where battery operated smoke detectors are installed, at least one extra battery of the type and size specified for the battery operated smoke detector shall be maintained upon the premises.

(10) Single station smoke detectors shall be tested at monthly intervals or in a manner specified by the manufacturer. Records of such testing shall be maintained upon the premises.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 96-10-042 (Order 9373), § 388-155-610, filed 4/26/96, effective 5/27/96.]

WAC 388-155-620 Alternate means of sounding a fire alarm. In addition to single station smoke detectors, family child day care homes shall provide an alternate means for sounding a fire alarm. A police type whistle or similar device is adequate for meeting this requirement, provided that whatever method is selected is limited to an evacuation emergency only.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 96-10-042 (Order 9373), § 388-155-620, filed 4/26/96, effective 5/27/96.]

WAC 388-155-630 Fire extinguisher. (1) At least one approved 2A, 10B:C rated fire extinguisher shall be provided on each floor level occupied for day care use. Such extinguisher shall be located in the area of the normal path of egress. The maximum travel distance to an extinguisher shall not exceed seventy-five feet.

(2) Fire extinguishers shall be operationally ready for use at all times.

(3) Fire extinguisher shall be kept on a shelf or mounted in the bracket provided for this purpose so that the top of the extinguisher is not more than five feet above the floor.

(4) The licensee shall ensure that fire extinguishers receive annual maintenance certification by a firm specializing in and licensed to do such work. Maintenance means a thorough check of the extinguisher to include examination of:

- (a) Mechanical parts;
- (b) Extinguishing agent; and
- (c) Expelling means.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 96-10-042 (Order 9373), § 388-155-630, filed 4/26/96, effective 5/27/96.]

WAC 388-155-640 Fire prevention. (1) The licensee shall ensure that the local fire department is requested to visit the family child day care home to become familiar with the facility and to assist in planning evacuation or emergency procedures. Where a fire department does not provide this service, the licensee shall document this contact.

(2) Furnace rooms shall be maintained free of lint, grease and rubbish accumulations and other combustibles and suitably isolated, enclosed or protected.

(3) Flammable or combustible materials shall be stored away from exits and in areas which are not accessible to children. Combustible rubbish shall not be allowed to accumulate and shall be removed from the building or stored in closed, metal containers.

(4) The licensee shall keep all areas used for child care clean and neat, making sure that all waste generated daily is removed from the building and disposed of in a safe manner outside the building. All containers used for the disposal of waste material shall be of noncombustible materials with tops. Electrical motors shall be kept dust-free.

(5) Open-flame devices capable of igniting clothing shall not be left on, unattended or used in a manner which could result in an accidental ignition of children's clothing. Candles shall not be used.

(6) A flashlight shall be available for use as an emergency power source.

(7) All electrical circuits, devices and appliances shall be properly maintained. Circuits shall not be overloaded. Extension cords and multi-plug adapters shall not be used in lieu of permanent wiring and proper receptacles.

(8) The use of portable space heaters of any kind is prohibited.

(9) Approved numbers or addresses shall be placed on all new and existing homes and in the driveway to the house when the house is not visible from the road. The numbers or address shall be in such a position as to be plainly visible and legible from the street or road fronting the property. Said numbers shall contrast with their background.

(10) Fireplaces, woodstoves, similar devices and their connections shall be approved by the local building official. If the woodstove is used as a sole source of heat or is used during hours of operation, such devices shall be cleaned, maintained and inspected on at least an annual basis by a person or firm specializing in such work and licensed.

Where open flames and/or hot surfaces are accessible, approved barriers shall be erected to prevent children from coming in contact with the open flames and/or hot surfaces.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 96-10-042 (Order 9373), § 388-155-640, filed 4/26/96, effective 5/27/96.]

WAC 388-155-650 Sprinkler system maintenance. Sprinkler systems, if installed, shall be tested on an annual basis by a person or agency qualified by licensing. The results of the system test shall be documented on forms provided by the licensor and maintained at the home for inspection by the licensor.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 96-10-042 (Order 9373), § 388-155-650, filed 4/26/96, effective 5/27/96.]

WAC 388-155-660 Fire evacuation plan. Each home shall develop written fire evacuation plans. The evacuation plan shall include an evacuation floor plan, identifying exit doors and windows, that shall be posted at a point clearly visible to the assistant and parents. Plans shall include the following:

- (1) Action to be taken by the person discovering a fire;
- (2) Method to be used for sounding an alarm on the premises;
- (3) Action to be taken for evacuation of the building and assuring accountability of the children; and
- (4) Action to be taken pending arrival of the fire department.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 96-10-042 (Order 9373), § 388-155-660, filed 4/26/96, effective 5/27/96.]

WAC 388-155-670 Fire evacuation drill. A fire evacuation drill shall be conducted at least once each month. A written record, the fire safety record and evacuation plan, shall be maintained and posted on the premises indicating the date, time and other required entries on the form. Such forms are available from the office of child care policy.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 96-10-042 (Order 9373), § 388-155-670, filed 4/26/96, effective 5/27/96.]

WAC 388-155-680 Staff training. The licensee and each employee or assistant shall be familiar with all elements of the fire evacuation plan and must be capable of accomplishing the following:

- (1) Operation of fire extinguisher installed on the premises.
- (2) Testing smoke detectors (single station types).
- (3) Conducting frequent inspections of the home to identify fire hazards and take action to correct any hazards noted during the inspection. Such inspections should be conducted on a monthly basis and records kept on the premises for review by the licensor.

[Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 96-10-042 (Order 9373), § 388-155-680, filed 4/26/96, effective 5/27/96.]

Chapter 388-160 WAC

MINIMUM LICENSING REQUIREMENTS FOR OVERNIGHT YOUTH SHELTERS

WAC

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WAC 388-160-010 Authority. The following minimum licensing requirements for overnight youth shelter rules are adopted under chapter 74.15 RCW, Agencies for care of children, expectant mothers, developmentally disabled.

[Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-010, filed 7/21/93, effective 8/21/93.]

WAC 388-160-020 Definitions. (1) Terms defined under this chapter shall have the same meanings as definitions described under chapter 74.15 RCW, except as otherwise provided herein.

(2) "Capacity" means the maximum number of persons under care at a given moment in time.

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(3) "Child" and "juvenile" means any person under the chronological age of eighteen years of age.

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

(5) "Full-time care provider" or "full-time care facility" means a foster family home, group care facility, maternity home, crisis residential center, and juvenile detention facility for a child or expectant mothers.

(6) "Overnight youth shelter" means a licensed facility operated by a nonprofit agency providing overnight shelter to a homeless or runaway youth because of family problems or dysfunctions. Overnight youth shelters do not provide domiciliary care during daytime hours.

(7) "Youth" means a child or young adult through twenty years of age.

[Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-020, filed 7/21/93, effective 8/21/93.]

WAC 388-160-030 Exceptions to rules. (1) In individual cases the department, at its discretion for good cause, may waive specific requirements and may approve alternative methods of achieving the intent of specific requirements.

(2) The department may neither waive specific requirements nor approve alternate methods of achieving the content of specific requirements if it jeopardizes the safety or welfare of the person in care, as described under subsection (1) of this section.

(3) 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. The licensee may apply anew for the waiver when reapplying for a license.

(4) The department may limit or restrict a license issued to a licensee or applicant in conjunction with a waiver.

(5) The licensee or applicant applying for a waiver shall do so in writing and the licensee shall maintain a copy of the waiver.

(6) The department's denial of a licensee's or applicant's waiver request shall not be subject to appeal under chapter 34.05 RCW.

[Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-030, filed 7/21/93, effective 8/21/93.]

WAC 388-160-040 Effect of local ordinances. (1) The department shall issue or deny a license on the basis of an applicant's compliance with the department's minimum licensing requirements.

(2) The department shall not enforce local ordinances, such as zoning regulations and local building codes.

[Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-040, filed 7/21/93, effective 8/21/93.]

WAC 388-160-050 Fire standards. Overnight youth shelters shall conform to the rules and regulations adopted by the Washington state fire marshal's office establishing minimum standards for fire prevention and the protection of life and property against fire as required under RCW 74.15.050 and WAC 212-12-001. The Washington state fire marshal's standards are contained in the current state building code.

(1997 Ed.)

[Statutory Authority: RCW 74.15.030. 96-21-018, § 388-160-050, filed 10/4/96, effective 11/4/96. Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-050, filed 7/21/93, effective 8/21/93.]

WAC 388-160-060 Certification of exempt agency. An agency legally exempt from licensing may not be licensed. However, at the agency's request, the department may certify an agency as meeting licensing and other pertinent requirements to enable an agency to be eligible for the receipt of funds or for other legitimate purposes if the department's investigation finds the agency in compliance with the licensing requirements. In such cases, unless otherwise clearly evident from the text, the department's requirements and procedures for an agency's licensing apply equally to certification.

[Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-060, filed 7/21/93, effective 8/21/93.]

WAC 388-160-070 Application or reapplication for license or certification—Investigation. (1) A person or organization applying for a license or for certification under this chapter shall:

(a) Submit the application on forms prescribed by the department;

(b) Comply with department procedures;

(c) Initiate the application in the name of the person or legal entity responsible for the agency's operation; and

(d) Include with the application:

(i) Employment and educational history of the person charged with the active management of the agency;

(ii) Completed forms enabling the department to:

(A) Perform a criminal history check;

(B) Check the department's master files for each staff or volunteer of the agency having unmonitored access to the child, expectant mother, or developmentally disabled person; and

(C) Share this information with the applicant or licensee.

(2) The department may:

(a) Require additional information from the applicant, licensee, their staff, and persons having access to a child under care as the department deems necessary including, but not limited to:

(i) Sexual deviancy evaluations;

(ii) Substance and alcohol abuse evaluations;

(iii) Psychiatric evaluations;

(iv) Psychological evaluations; and

(v) Medical evaluations.

(b) Perform corollary investigations of the applicant, licensee, and their staff, and as the department deems necessary, including accessing of criminal histories and law enforcement files.

[Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-070, filed 7/21/93, effective 8/21/93.]

WAC 388-160-080 Limitations on licenses and dual licensure. The department shall not issue a license to an applicant for both an overnight youth shelter and another category of residential care which the department licenses or is licensed by another department. The department may authorize an exception only if it is clearly evident that care

of one category of client does not interfere with the safety and quality of care provided to other client categories.

[Statutory Authority: RCW 74.15.030. 96-21-018, § 388-160-080, filed 10/4/96, effective 11/4/96. Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-080, filed 7/21/93, effective 8/21/93.]

WAC 388-160-090 General qualifications of licensee, applicant, and persons on the premises. (1) The applicant, licensee, staff, and other person on the premises shall be a person of good character.

(2) The licensee or applicant shall demonstrate that the licensee or applicant, child care staff, volunteer, and other person having access to a person under care have the understanding, ability, physical health, emotional stability, and personality suited to meet the physical, mental, emotional, and social needs of the person under care.

(3) A person shall be disqualified from providing care if the department determines that the person is ineligible to provide care under chapter 388-330 WAC or that person has abused, neglected, or sexually exploited a child as those acts or omissions are defined in RCW 26.44.020 and WAC 388-15-130.

(4) The department may, at any time, require the licensee or person on the premises to provide additional information so the department can determine whether the licensee, adoptive applicant, child care staff, volunteer, and other person having access to a child in care meet the qualifications under subsections (1), (2), and (3) of this section. The department may require the licensee or person on the premises to provide additional information 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.

[Statutory Authority: RCW 74.15.030. 96-10-043 (Order 3974), § 388-160-090, filed 4/26/96, effective 5/27/96. Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-090, filed 7/21/93, effective 8/21/93.]

WAC 388-160-100 Age of licensee. An applicant for an overnight youth shelter license under this chapter shall be twenty-one or more years of age.

[Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-100, filed 7/21/93, effective 8/21/93.]

WAC 388-160-110 Posting of license. All licenses shall post the license issued under this chapter at the overnight youth shelter in a place accessible and conspicuous to the public.

[Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-110, filed 7/21/93, effective 8/21/93.]

WAC 388-160-120 Licensure—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 each applicant, licensee, and chief executive officer, if any, to operate the agency under the law and this chapter. The department shall consider such persons separately and jointly as applicants or licensees and

if any one be deemed disqualified by the department under chapter 74.15 RCW or this chapter, the department may deny, suspend, revoke, or not renew the license. The department shall deny, suspend, revoke, or not renew a license for the following reasons:

(a) The department shall disqualify any person engaging in illegal use of drugs or excessive use of alcohol;

(b) The department shall disqualify any person who has abused, neglected, or sexually exploited a child as those acts or omissions are defined in RCW 26.44.020 and WAC 388-15-130, is ineligible to provide care because of a criminal history under chapter 388-330 WAC, or allows such person on the premises;

(c) The department shall disqualify any person convicted of a felony or released from a prison within seven years of the date of application for the license because of the conviction, when:

(i) The person's conviction is reasonably related to the person's competency to exercise responsibilities for ownership, operation, or administration of an agency; and

(ii) The department determines, after investigation, the person has not been sufficiently rehabilitated to warrant public trust.

(d) The department shall not grant a license to an applicant who, in this state or elsewhere:

(i) Has been denied a license to operate an agency for the care of a child, an expectant mother, or a developmentally disabled adult; or

(ii) Had a license to operate such an agency suspended or revoked.

(2) An applicant of an overnight youth shelter may establish by clear, cogent, and convincing evidence the ability to operate an agency under this chapter. The department may waive the provision and license the applicant as described under subdivision (1)(d) of this section.

(3) The department may deny, suspend, revoke, or not renew a license for failure to comply with the provisions of chapter 74.15 RCW and rules contained in this chapter. The department shall deny, suspend, revoke, or not renew a license for the following reasons:

(a) Obtaining or attempting to obtain a license by fraudulent means or misrepresentation, including:

(i) Making materially false statements on the application; or

(ii) Material omissions which would influence appraisal of the applicant's or provider's suitability.

(b) Permitting, aiding, or abetting the commission of any illegal act on the premises;

(c) Permitting, aiding, or abetting the abuse, neglect, exploitation, or cruel or indifferent care to a person under care;

(d) Repeatedly:

(i) Providing insufficient personnel relative to the number and types of persons under care; or

(ii) Allowing a person unqualified by training, experience, or temperament to care for, or be in contact with, the person under care.

(e) Misappropriation of the property of a person under care;

(f) Failure or inability to exercise fiscal responsibility and accountability in respect to operation of the agency;

(g) Failure to provide adequate supervision to a person under care;

(h) Refusal to admit authorized representatives of the department, department of health, or state fire marshal to inspect the premises;

(i) Refusal to permit:

(A) Authorized representatives of the department and the department of health to have access to the records necessary for the operation of the agency; or

(B) The department representatives to interview agency staff and clients.

(j) Knowingly having an employee or volunteer on the premises who has made misrepresentation or significant omissions on the application for employment or volunteer service; and

(k) Refusal or failure to supply necessary additional department-requested information.

(4) The department may deny, suspend, revoke, or not renew or modify a license for violation of any condition or limitation upon licensure including, but not limited to, providing care for:

(a) More children than the number for which the agency is licensed; or

(b) Children of ages different from the ages for which the agency is licensed.

(5) The department shall deny, suspend, or revoke a licensee's license when the applicant, licensee, or person on the premises is a perpetrator of child abuse or has been convicted of a crime as listed under WAC 388-330-030(1). The department may grant a licensee or provider a waiver if it is demonstrated by clear, cogent, and convincing evidence that such person is rehabilitated and is able to comply with licensing requirements. In making this determination, the department shall consider:

(a) The seriousness and circumstances of the person's illegal act;

(b) The number of crimes of which the person was convicted;

(c) The amount of time passed since the person committed the illegal act;

(d) The age of the person at the time of convictions;

(e) Whether the person has entered and successfully completed all appropriate rehabilitative services, including those services ordered by a court;

(f) The behavior of the person since the illegal act was committed;

(g) Recommendations of persons closely associated with the person;

(h) The duties the person would perform at the agency, and the vulnerability of the persons under care; and

(i) Other evidence of rehabilitation.

If the department licenses or approves a person under this section, the department may place limitations or conditions on the person in the performance of the person's duties at the agency.

(6) The department's notice of a denial, revocation, suspension, or modification of a license shall be governed by RCW 43.20A.205. The provider's right to an adjudicative proceeding is in the same law.

(a) A provider contesting a department licensing decision shall within twenty-eight days of receipt of the decision:

(i) File a written application for an adjudicative proceeding by a method showing proof of receipt with the office of appeals; and

(ii) Include in or with the application:

(A) A specific statement of the issues and law involved;

(B) The grounds for contesting the department decision; and

(C) A copy of the department decision.

(b) The proceeding shall be governed by the Administrative Procedure Act chapter 34.05 RCW, RCW 43.20A.205, this chapter, and chapter 388-08 WAC. If any provision of this chapter conflicts with chapter 388-08 WAC, the provision in this chapter governs.

[Statutory Authority: RCW 74.15.030. 96-10-043 (Order 3974), § 388-160-120, filed 4/26/96, effective 5/27/96. Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-120, filed 7/21/93, effective 8/21/93.]

WAC 388-160-130 Licensed capacity. (1) The number of persons for whom the department will license an agency is dependent upon the evaluation of:

(a) The physical accommodations of the agency;

(b) The numbers and skills of the licensee, staff, family members and volunteers; and

(c) The ages and characteristics of the persons to be served.

(2) The department shall not license an agency for the care of more persons than permitted by the rules regarding the category of care for which the license is sought.

(3) The department may license an agency for the care of fewer persons than normally permitted by the rules based on the evaluation of items listed under subsection (1) of this section.

[Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-130, filed 7/21/93, effective 8/21/93.]

WAC 388-160-140 Discrimination prohibited. The licensee shall comply with federal and state statutory and regulatory requirements regarding nondiscrimination in employment practices and client services as described under chapter 49.60 RCW.

[Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-140, filed 7/21/93, effective 8/21/93.]

WAC 388-160-150 Religious activities. The overnight youth shelter licensee shall:

(1) Respect the rights of persons in care to observe the tenets of the person's faith and shall facilitate those rights consistent with state and federal laws;

(2) Not punish a person in care for exercising these rights;

(3) Submit to the department a written description of any religious policies and practices.

[Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-150, filed 7/21/93, effective 8/21/93.]

WAC 388-160-160 Discipline. (1) The overnight youth shelter licensee shall state disciplinary practices in writing. Discipline shall be a responsibility of the licensee or staff, and shall not be prescribed or administered by persons under care. Discipline shall be based on an under-

standing of the person's needs and stage of development. A person's discipline shall be designed to help the person develop inner control, acceptable behavior, and respect for the rights of others.

(2) The licensee shall ensure a person's discipline is fair, reasonable, consistent, and related to the person's behavior. A licensee shall not administer cruel and unusual discipline, discipline hazardous to health, and frightening or humiliating discipline.

[Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-160, filed 7/21/93, effective 8/21/93.]

WAC 388-160-170 Corporal punishment. (1) Corporal punishment is prohibited.

(2) Prohibited corporal punishment shall not include the use of such amounts of physical restraint as may be reasonable and necessary to:

(a) Protect a person on the premises from physical injury;

(b) Obtain possession of a weapon or other dangerous object; and

(c) Protect property from serious damage.

(3) The licensee of an overnight youth shelter shall not use mechanical restraints including, but not limited to:

(a) Handcuffs;

(b) Belt restraints; and

(c) Locked time-out rooms.

(4) The licensee shall not use physical restraints which could be injurious including, but not limited to:

(a) Large adult sitting on or straddling a small child;

(b) Sleeper holds;

(c) Arm twisting;

(d) Hair holds; and

(e) Throwing a child or youth against a wall, furniture, or other large immobile object.

(5) Staff employed in a facility where it may be necessary to restrain a child shall be trained in the use of appropriate restraining techniques.

[Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-170, filed 7/21/93, effective 8/21/93.]

WAC 388-160-180 Abuse, neglect, or exploitation. An overnight youth shelter licensee shall protect persons, while in the licensee's care, from child abuse or neglect as defined under RCW 26.44.020(12).

[Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-180, filed 7/21/93, effective 8/21/93.]

WAC 388-160-190 Site and telephone. An overnight youth shelter licensee shall locate the shelter on a well-drained site free from hazardous conditions and accessible to other facilities necessary to carry out its program. The licensee shall ensure the shelter has one or more telephones on the premises accessible for emergency use at all times.

[Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-190, filed 7/21/93, effective 8/21/93.]

WAC 388-160-200 Equipment, safety, and maintenance. (1) An overnight youth shelter licensee shall:

(a) Maintain the physical plant, premises, and equipment in a clean and sanitary condition, free of hazards, and in good repair;

(b) Provide handrails on stairs as determined necessary by the department;

(c) Have available one or more emergency light sources, such as a flashlight, in operational condition; and

(d) Provide toilet rooms and other rooms subject to moisture with washable, moisture impervious floors.

(2) Shelter staff members shall have a means to gain rapid access to any bedroom, toilet room, shower room, bathroom, or other room occupied by youth should an emergency need arise.

[Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-200, filed 7/21/93, effective 8/21/93.]

WAC 388-160-210 Firearms and other weapons.

An overnight youth shelter licensee shall ensure no firearms or other weapons are on the premises except those confiscated and secured from youth upon admission and these shall be locked up.

[Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-210, filed 7/21/93, effective 8/21/93.]

WAC 388-160-220 Prohibited substances. (1)

During operating hours when youth are in care, the overnight shelter licensee, staff, and volunteers on shelter premises or caring for youth off-site shall not be under the influence of, consume, or possess an:

(a) Alcoholic beverage; or

(b) Illegal drug.

(2) The overnight shelter licensee shall prohibit smoking in:

(a) A transport vehicle when shelter staff are transporting youth in care; and

(b) The shelter when youth are in care; except, the licensee may permit a person to smoke only in a designated smoking room which is ventilated to the outside in such a manner that passive tobacco smoke cannot contaminate the indoor shelter air.

[Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-220, filed 7/21/93, effective 8/21/93.]

WAC 388-160-230 Storage. An overnight youth shelter provider shall ensure a shelter provides:

(1) Suitable space as needed for the storage of:

(a) Clothing and personal possessions of youth in care;

(b) Records and files;

(c) Cots;

(d) Mats and bedding; and

(e) Cleaning supplies and other materials.

(2) A secure area for cleaning supplies, toxic substances, poisons, aerosols, and items bearing warning labels, which is inaccessible to youth. The provider shall ensure all containers filled from a stock supply bear a label identifying the product name and concentration.

[Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-230, filed 7/21/93, effective 8/21/93.]

WAC 388-160-240 Bedrooms and sleeping areas.

An overnight youth shelter licensee shall ensure the shelter:

(1) Provides sleeping areas not less than fifty square feet per occupant of unobstructed floor area with ceiling height of not less than seven feet, six inches;

(2) Not use hallways and kitchens as sleeping rooms;

(3) Maintains a space not less than thirty inches between sleeping youths;

(4) Provides sleeping areas separated by a visual barrier five or more feet high for each sex of youth in care; and

(5) In facilities caring for youth sixteen through twenty years of age, separates youths under eighteen years of age from youths eighteen through twenty years of age by a supervised open space or a physical barrier to prevent contact.

[Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-240, filed 7/21/93, effective 8/21/93.]

WAC 388-160-250 Kitchen facilities. An overnight youth shelter licensee shall ensure the shelter providing food service:

(1) Provides for the proper storage, preparation, and service of food to meet the needs of the program;

(2) Has facilities and implements practices as required under chapter 246-215 WAC, rules and regulations of the state board of health, which governs food service sanitation.

[Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-250, filed 7/21/93, effective 8/21/93.]

WAC 388-160-260 Housekeeping sink. An overnight youth shelter shall have and use:

(1) A method of drawing clean mop water; and

(2) An appropriate method of waste water disposal.

[Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-260, filed 7/21/93, effective 8/21/93.]

WAC 388-160-270 Laundry. An overnight youth shelter shall:

(1) Provide for separate storage of soiled linen and clean linen;

(2) Have access to laundry washing and drying facilities, which may include using on-premises or off-site equipment;

(3) Locate laundry equipment, if on the premises, in an area separate from the kitchen; and

(4) Sanitize laundry using a hot water temperature of at least one hundred thirty degrees Fahrenheit or an effective chemical method, or have the laundry done by a commercial service.

[Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-270, filed 7/21/93, effective 8/21/93.]

WAC 388-160-280 Toilets, handwashing sinks, and bathing facilities. An overnight youth shelter shall provide:

(1) Two or more indoor flush-type toilets, each with one nearby handwashing sink with hot and cold running water;

(2) Toilets and handwashing sinks in a ratio of one toilet and sink for each eight persons on the premises plus the major fraction thereof, allowing four additional persons before requiring additional fixtures;

(3) Privacy for persons of the opposite sex at toilets, and bathing facilities, if provided;

(4) Hot and cold running water not exceeding one hundred twenty degrees Fahrenheit at handwashing sinks, and bathing facilities, if provided;

(5) A conveniently located grab bar or nonslip floor surfaces in bathing facilities, if provided;

(6) Urinals in lieu of toilets only if the urinals do not replace more than one-third of the total required toilets; and

(7) Soap and individual towels, disposable towels, or other approved single-use hand drying devices at handwashing sinks, and any bathing facilities if bathing facilities are provided.

[Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-280, filed 7/21/93, effective 8/21/93.]

WAC 388-160-290 Lighting. An overnight youth shelter shall provide and locate fixtures for the comfort and safety of the youth in care.

[Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-290, filed 7/21/93, effective 8/21/93.]

WAC 388-160-300 Pest control. An overnight youth shelter shall keep the premises free from rodents, flies, cockroaches, and other insects.

[Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-300, filed 7/21/93, effective 8/21/93.]

WAC 388-160-310 Sewage and liquid wastes. An overnight youth shelter shall discharge sewage and liquid wastes into:

(1) A public sewer system; or

(2) A local health authority or department approved independent sewage system.

[Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-310, filed 7/21/93, effective 8/21/93.]

WAC 388-160-320 Water supply. An overnight youth shelter shall provide:

(1) A potable water supply approved by the local health authority or department; and

(2) Disposable paper cups, individual drinking cups or glasses, or inclined-jet drinking fountains.

[Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-320, filed 7/21/93, effective 8/21/93.]

WAC 388-160-340 Health and emergency policies and procedures. An overnight youth shelter shall have:

(1) Current written health policies and procedures including, but not limited to, first aid, infection control, care of minor illnesses, and general health practices and actions to be taken in event of medical and other emergencies;

(2) These health policies and procedures readily available for staff orientation and for implementation; and

(3) Emergency phone numbers posted next to the phone.

[Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-340, filed 7/21/93, effective 8/21/93.]

WAC 388-160-350 First aid. An overnight youth shelter shall:

(1) Have one or more persons having completed a current basic Red Cross first-aid course or a department-approved first-aid course, and current training in cardiopulmonary resuscitation (CPR) present at all times youth are in care;

(2) Maintain documentation of persons having completed the first aid and CPR training on the premises; and

(3) Keep first-aid supplies readily available to shelter staff.

[Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-350, filed 7/21/93, effective 8/21/93.]

WAC 388-160-360 Medication management. An overnight youth shelter shall:

(1) Secure any medication brought into the shelter by a youth so it is unavailable to other youth in care;

(2) Supervise self-administration of a medication according to the prescription or manufacturer's label on the original medication container; and

(3) Return a medication of a youth when the youth leaves the facility, or properly dispose of the medication if left behind by the youth.

[Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-360, filed 7/21/93, effective 8/21/93.]

WAC 388-160-370 Staff health. Each licensee, employee, adult volunteer, and other adult persons having regular contact with persons in care shall have a tuberculin skin test, by the Mantoux method, upon overnight youth shelter employment or licensing unless medically contraindicated.

(1) A person whose TB skin test is positive (ten millimeters or more induration) shall have a chest X-ray within ninety days following the skin test.

(2) A person shall not require a routine periodic retesting or X-ray (biennial or otherwise) after the entry testing.

(3) A person shall not require an entry test whose TB skin test has been documented as negative (less than ten millimeters) within the last two years, and such person shall not require a routine periodic retesting or biennial X-ray or otherwise.

[Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-370, filed 7/21/93, effective 8/21/93.]

WAC 388-160-380 HIV/AIDS education and training. An overnight youth shelter shall provide or arrange for appropriate education and training of employees on the prevention, transmission, and treatment of HIV and AIDS as prescribed by the department of health. Such education and training shall be consistent with the curriculum manual *KNOW-HIV/AIDS Prevention Education for Health Care Facility Employees*, January 1991, published by the Washington state HIV/AIDS program, department of health.

[Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-380, filed 7/21/93, effective 8/21/93.]

WAC 388-160-390 Nutrition. An overnight youth shelter providing meals shall consider the age, cultural

background, and nutritional requirements of youth served when preparing meals.

[Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-390, filed 7/21/93, effective 8/21/93.]

WAC 388-160-400 Bedding. An overnight youth shelter providing youth sleeping equipment and bedding shall maintain the equipment and bedding in good repair and in a clean and sanitary manner. The shelter shall accept the use of sleeping and bedding equipment personally provided by youth in care.

[Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-400, filed 7/21/93, effective 8/21/93.]

WAC 388-160-410 Overnight youth shelters—Purpose and limitations. The purpose of the overnight youth shelter shall be to provide youth an emergency sleeping arrangement. The overnight youth shelter shall make every effort to refer a youth to appropriate services. The overnight youth shelter providing shelter for a teen parent with child shall assure adequate quarters and services for infants and very young children. The overnight youth shelter may be licensed to provide care for either:

- (1) Children from thirteen through seventeen years of age; or
- (2) Youths sixteen through twenty years of age.

[Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-410, filed 7/21/93, effective 8/21/93.]

WAC 388-160-420 Governing body/citizens board for overnight youth shelters. (1) Every overnight youth shelter shall have a governing body/citizens board which shall comply with all laws and rules concerning nonprofit boards of directors.

(2) The shelter facility shall keep on file a list of the current membership of the governing body citizens board.

[Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-420, filed 7/21/93, effective 8/21/93.]

WAC 388-160-430 Intake. (1) An overnight youth shelter shall provide an intake consisting of an initial assessment of entering youth and shall include, but not be limited to:

- (a) Recent history;
- (b) Outstanding warrants;
- (c) Physical and medical needs, including medication;
- (d) Whether parents are aware of the youth's whereabouts and want the youth at home;
- (e) School status;
- (f) Adult to contact, if one is available;
- (g) Immediate need for counseling; and
- (h) Options for the near future.

(2) The overnight youth shelter shall notify the department of social and health services (DSHS) or the police of an unaccompanied child twelve years of age or younger who is requesting service.

[Statutory Authority: RCW 74.15.030. 96-21-018, § 388-160-430, filed 10/4/96, effective 11/4/96. Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-430, filed 7/21/93, effective 8/21/93.]

WAC 388-160-440 Groupings. (1) The overnight youth shelter shall provide sleeping areas for males and females which are separated by partitions.

(2) In facilities caring for youths sixteen through twenty years of age, sleep areas for those sixteen and seventeen years of age shall be spatially separated from those eighteen through twenty years of age to the extent permitted by the configurations of the facility.

[Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-440, filed 7/21/93, effective 8/21/93.]

WAC 388-160-460 Staffing. (1) An overnight youth shelter shall adhere to the following staff/child ratios:

(a) A shelter licensed for youths thirteen through seventeen years of age exclusively shall have a staff/child ratio of one staff person to every eight youth or major fraction (five or more) thereof;

(b) A shelter caring for youths sixteen through twenty years of age on the premises shall have a staff/child ratio of one staff person to every six youth or major fraction (four or more) thereof.

(2) Within the ratios in subsection (1) of this section:

(a) At least one fully trained lead counselor shall be on the premises at all times children are present; and

(b) At least one staff person shall remain awake while youths are asleep. Other staff persons may be asleep, but shall be available in the shelter in case of emergency;

(c) Whenever only one staff person is on duty, there shall be a second staff person on call.

[Statutory Authority: RCW 74.15.030. 96-21-018, § 388-160-460, filed 10/4/96, effective 11/4/96. Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-460, filed 7/21/93, effective 8/21/93.]

WAC 388-160-470 Supervision of youth. In an open or dormitory type setting, an overnight youth shelter staff person shall be within visual and auditory range of youths at all times when the youths are within the shelter.

[Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-470, filed 7/21/93, effective 8/21/93.]

WAC 388-160-480 Child care workers—Qualifications. (1) All overnight youth shelter child care staff and volunteers shall:

(a) Be eighteen years of age or older. Staff twenty years of age or younger shall be under the immediate supervision of staff twenty-one years of age or older;

(b) Have completed a criminal history check;

(c) Have completed a TB test, as required under WAC 388-73-142; and

(d) Have completed HIV/AIDS training as required under WAC 388-73-143 within sixty days of beginning employment or volunteer service at the shelter.

(2) Overnight youth shelter child care workers shall be of both sexes to reflect the population in care.

(3) One person with full training plus having one year's experience with high-risk adolescents shall be present at all times that youths are in care as described under section 500 (1) and (2) of this chapter.

[Statutory Authority: RCW 74.15.030. 96-21-018, § 388-160-480, filed 10/4/96, effective 11/4/96. Statutory Authority: Chapter 74.15 RCW. 93-15-124 (Order 3541), § 388-160-480, filed 7/21/93, effective 8/21/93.]

WAC 388-160-490 Program supervision. (1) The department shall require every overnight youth shelter to have a program supervisor.

(a) The program supervisor shall have a:

(i) Master's degree in social work or a related field and one year's experience with high-risk adolescents; or

(ii) Bachelor's degree and three years' experience with high-risk adolescents.

(b) The program supervisor shall provide two hours of supervision to youth shelter child care staff or volunteers for each forty hours that staff work.

(2) A master's degree level person with counseling experience with high-risk/troubled adolescents or a bachelor's degree level person with at least three years counseling experience with high-risk/troubled adolescents shall be on call at all times when the overnight youth shelter is open or when children are present. This person may be on staff, or on contract, or available by written agreement.

[Statutory Authority: RCW 74.15.030, 96-21-018, § 388-160-490, filed 10/4/96, effective 11/4/96. Statutory Authority: Chapter 74.15 RCW, 93-15-124 (Order 3541), § 388-160-490, filed 7/21/93, effective 8/21/93.]

WAC 388-160-500 Training. (1) All overnight youth shelter staff and volunteers shall receive training before providing care for youth. The overnight youth shelter shall ensure this training includes, but is not limited to:

- (a) Job responsibilities;
- (b) Agency administration;
- (c) Supervision of youths;
- (d) Basic behavior management;
- (e) Fire safety procedures; and
- (f) Handling emergency situations.

(2) The overnight youth shelter shall ensure that staff receive training in the following areas within sixty days of beginning employment or volunteer service:

- (a) AIDS/HIV;
- (b) Cultural sensitivity; and
- (c) Behavior management.

(3) New overnight youth shelter staff shall work shifts with fully trained staff until the new staff's own training has been completed.

(4) An overnight youth shelter shall offer or make available to staff and volunteers in-service training to cover policies appropriate to each position, to include supervisory skills, adolescent development and problems, and meeting the needs of youths. The shelter's training should include, but not be limited to:

- (a) Sexual abuse;
- (b) Predatory behavior;
- (c) Substance abuse;
- (d) Depression;
- (e) Mental health;
- (f) Teen suicide; and
- (g) Injurious or assaultive behavior toward oneself or others.

[Statutory Authority: RCW 74.15.030, 96-21-018, § 388-160-500, filed 10/4/96, effective 11/4/96. Statutory Authority: Chapter 74.15 RCW, 93-15-124 (Order 3541), § 388-160-500, filed 7/21/93, effective 8/21/93.]

WAC 388-160-510 Services. (1) At a minimum, all overnight youth shelters shall offer the following services to all clients:

(a) Client intake including demographic information and emergency contacts (phone number), presenting problems (school status, medical problems, family situation, suicide evaluation, history of assaultive/predatory behavior, and drug/alcohol involvement);

(b) Individual crisis intervention;

(c) Assistance in accessing emergency resources, including child protective services (CPS) and emergency medical services; and

(d) Resource information;

(2) An overnight youth shelter shall provide resource information as needed for appropriate educational, vocational, placement, housing, medical, substance abuse, mental health, other treatment agencies, and food program, or to DSHS office.

(3) If appropriate ancillary services are not provided by the licensed program, the overnight youth shelter licensee shall demonstrate working relationships with organizations providing services to targeted young people.

[Statutory Authority: Chapter 74.15 RCW, 93-15-124 (Order 3541), § 388-160-510, filed 7/21/93, effective 8/21/93.]

WAC 388-160-520 Client records and information—Overnight youth shelters. The overnight youth shelter shall maintain records and information concerning persons in care in such a manner as to preserve their confidentiality. The shelter shall maintain records giving the following information on each youth under care in the same shelter in which the youth is sheltered:

(1) Identifying information, including:

- (a) Name;
- (b) Birth date;
- (c) Date of admission;
- (d) Ethnicity; and
- (e) Other appropriate information.

(2) Names, addresses, and telephone numbers, if any, of parents' or other persons' home or business to contact in case of emergency;

(3) Dates and kinds of illnesses and accidents, medications and treatments prescribed, the time they are given, and by whom; and

(4) Daily log of attendance, admission, referrals, exit, and important information.

[Statutory Authority: Chapter 74.15 RCW, 93-15-124 (Order 3541), § 388-160-520, filed 7/21/93, effective 8/21/93.]

WAC 388-160-530 Personnel policies and records—Overnight youth shelters. (1) Each overnight youth shelter employee and volunteer having unsupervised or regular access to the youth or child in care shall complete and submit to the licensee or director by the date of hire:

(a) An employment application 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 employee's first day of employment, permitting a criminal and background history check.

(ii) The department shall discuss the inquiry information with the licensee or director, when applicable.

(2) The overnight youth shelter licensee employing five or more persons shall have written personnel policies describing staff benefits, if any, duties, and qualifications.

(3) The overnight youth shelter licensee shall maintain a personnel recordkeeping system, having on file for the licensee, staff person, and volunteer:

(a) An employment application, including work and education history;

(b) Documentation of criminal history and background inquiry form submission;

(c) A record of a negative Mantoux, tuberculin skin tests results, X-ray, or an exemption to the skin test or X-ray;

(d) Documentation of HIV/AIDS education and training;

(e) A record of participation in staff development training;

(f) Documentation of orientation program completion;

(g) Documentation of a valid food handler permit, when applicable;

(h) Documentation of current first aid and CPR training, when applicable; and

(i) Telephone number of "on-call" master or bachelor degree level person with other emergency telephone numbers.

[Statutory Authority: RCW 74.15.030, 96-21-018, § 388-160-530, filed 10/4/96, effective 11/4/96. Statutory Authority: Chapter 74.15 RCW, 93-15-124 (Order 3541), § 388-160-530, filed 7/21/93, effective 8/21/93.]

WAC 388-160-540 Reporting of death, injury, illness, epidemic, or child abuse. The overnight youth shelter licensee or staff 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 if contact information is known, licensor, and child's social worker, if any;

(2) An instance when the licensee or staff has reason to suspect the occurrence of physical, sexual, or emotional child abuse, neglect, or child exploitation, by telephone, to child protective services (CPS) or local law enforcement as required under chapter 26.44 RCW; and

(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: Chapter 74.15 RCW, 93-15-124 (Order 3541), § 388-160-540, filed 7/21/93, effective 8/21/93.]

WAC 388-160-550 Reporting runaway youth. (1) Within eight hours of learning a youth staying at the shelter is away from home without parental permission, shelter staff shall report the location of the youth to:

(a) The parent;

(b) The law enforcement agency having jurisdiction in the shelter's area; or

(c) The department.

(2) The shelter staff shall:

(a) Make the report by telephone or any other reasonable means; and

(b) Document the report in writing in the youth's file.

[Statutory Authority: RCW 74.15.030, 96-21-018, § 388-160-550, filed 10/4/96, effective 11/4/96.]

WAC 388-160-560 Reporting circumstantial changes. An overnight youth shelter's license shall be valid only for the address and organization named on the license. The overnight youth shelter licensee shall promptly report to the licensor major changes in staff, program, or premises affecting the shelter classification, delivery of safe and appropriate services, or continued eligibility for licensure. The overnight youth shelter licensee shall include as a major change:

(1) Shelter address, location, space, or phone number;

(2) Maximum number, age ranges, and sex of children the licensee wishes to serve as compared to current license specifications;

(3) Number or qualifications of the shelter's staffing pattern that may affect staff competencies to implement the specified program, including:

(a) Change in ownership, chief executive, director, or program supervisor; and

(b) The death, retirement, or incapacity of the licensee.

(4) Name of licensed corporations, or name by which the overnight youth shelter is commonly known, or changes in the shelter's articles of incorporation and bylaws;

(5) Occurrence of a fire, major structural change, or damage to the premises; and

(6) Plans for major remodeling of the shelter, including planned use of space not previously department approved.

[Statutory Authority: Chapter 74.15 RCW, 93-15-124 (Order 3541), § 388-160-560, filed 7/21/93, effective 8/21/93.]

Chapter 388-165 WAC

CONSOLIDATED EMERGENCY ASSISTANCE PROGRAM— SOCIAL SERVICES (CEAP-SS)

WAC

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WAC 388-165-005 Purpose. The consolidated emergency assistance program—social services (CEAP-SS) is a federally-matched program providing time-limited assistance and services to meet the emergent needs of children and their families.

[Statutory Authority: RCW 74.08.090, 74.04.660, 74.04.050 and 45 CFR 233.120 Title IV-A Section 406(e), 95-11-048 (Order 3850), § 388-165-005, filed 5/10/95, effective 6/10/95.]

WAC 388-165-010 General provisions. The department shall authorize CEAP-SS for the following person who meets the eligibility conditions established in this chapter:

(1) A child who is eligible for the department's child welfare services, child protective services, or family reconcil-

iation services as specified under chapter 388-70 WAC and WAC 388-15-130;

(2) A youth who is committed to the department's juvenile rehabilitation administration as specified in chapter 275-35 WAC; and

(3) A minor child or a parent with a minor child who is:

(a) Admitted to a domestic violence or sexual assault shelter; or

(b) At risk of such an admission as specified in chapter 248-554 WAC.

(4) A minor child or a parent with a minor child not meeting the eligibility conditions established in this chapter may be eligible for emergency assistance (CEAP) as specified in chapter 388-225 WAC.

[Statutory Authority: RCW 74.08.090, 74.04.660, 74.04.050 and 45 CFR 233.120 Title IV-A Section 406(e). 95-11-048 (Order 3850), § 388-165-010, filed 5/10/95, effective 6/10/95.]

WAC 388-165-020 Application procedure. The department shall accept and promptly act upon a CEAP-SS application made by:

(1) A parent or legal guardian on behalf of a child;

(2) A public agency staff on behalf of a child; or

(3) A department staff on behalf of a child.

[Statutory Authority: RCW 74.08.090, 74.04.660, 74.04.050 and 45 CFR 233.120 Title IV-A Section 406(e). 95-11-048 (Order 3850), § 388-165-020, filed 5/10/95, effective 6/10/95.]

WAC 388-165-030 Application form. Department staff shall ensure the CEAP-SS application is on a form approved by the department and includes:

(1) Paper application form; or

(2) Electronic application form, such as provided by division of children and family services (DCFS).

[Statutory Authority: RCW 74.08.090, 74.04.660, 74.04.050 and 45 CFR 233.120 Title IV-A Section 406(e). 95-11-048 (Order 3850), § 388-165-030, filed 5/10/95, effective 6/10/95.]

WAC 388-165-040 Assistance unit. (1) The department shall authorize the following person as the assistance unit:

(a) A single child; or

(b) A child or a parent with a child who is:

(i) Admitted to a domestic violence or sexual assault shelter; or

(ii) At risk of such shelter admission.

(2) A child receiving SSI, AFDC, or other entitlement benefits shall not be excluded from the assistance unit.

(3) For services to children, youth and families, the receipt of CEAP-SS by one child of a sibling group in a twelve-month period shall not exclude any other child of the sibling group from receiving CEAP-SS independently in the same twelve-month period.

[Statutory Authority: RCW 74.08.090, 74.04.660, 74.04.050 and 45 CFR 233.120 Title IV-A Section 406(e). 95-11-048 (Order 3850), § 388-165-040, filed 5/10/95, effective 6/10/95.]

WAC 388-165-050 Eligibility conditions—Emergent need. To be eligible for CEAP-SS, an applicant shall meet the following conditions:

(1) A child removed from the child's own home into publicly funded care or supervision, or a child at risk of such removal as determined by the department worker or worker's designee; or

(2) A child or a parent with a child who is:

(a) Admitted to a domestic violence or sexual assault shelter; or

(b) At risk of such admission.

[Statutory Authority: RCW 74.08.090, 74.04.660, 74.04.050 and 45 CFR 233.120 Title IV-A Section 406(e). 95-11-048 (Order 3850), § 388-165-050, filed 5/10/95, effective 6/10/95.]

WAC 388-165-060 Eligibility conditions—Income and resource eligibility. An applicant shall earnestly ensure an annual income of less than eighty-eight thousand six hundred eight dollars.

[Statutory Authority: RCW 74.08.090, 74.04.660, 74.04.050 and 45 CFR 233.120 Title IV-A Section 406(e). 95-11-048 (Order 3850), § 388-165-060, filed 5/10/95, effective 6/10/95.]

WAC 388-165-070 Eligibility conditions—Living with a relative of a specified degree. Before approving CEAP-SS assistance, the department shall ensure the child is living or has lived in the past six months with a:

(1) Parent as specified under WAC 388-215-1060; or

(2) Relative as specified under WAC 388-215-1080.

[Statutory Authority: RCW 74.08.090, 74.04.660, 74.04.050 and 45 CFR 233.120 Title IV-A Section 406(e). 95-11-048 (Order 3850), § 388-165-070, filed 5/10/95, effective 6/10/95.]

WAC 388-165-080 Eligibility conditions—Job refusal. The applicant shall not have refused a bona fide job offer of employment or training for employment, without good cause, within thirty days before application.

(1) The department shall determine if the applicant's conditions which constitute good cause for refusal of employment are the same conditions as described in WAC 388-225-0090(2).

(2) Additional conditions may constitute "good cause" based on the discretion of the department staff.

[Statutory Authority: RCW 74.08.090, 74.04.660, 74.04.050 and 45 CFR 233.120 Title IV-A Section 406(e). 95-11-048 (Order 3850), § 388-165-080, filed 5/10/95, effective 6/10/95.]

WAC 388-165-090 Eligibility conditions—Residency and alien status. (1) To be eligible for CEAP-SS:

(a) An applicant shall be a resident of Washington state. "Resident" means a person:

(i) Voluntarily living in the state with the intention of making and maintaining a home in the state; and

(ii) Not residing in the state for a temporary purpose.

(b) If not a resident of Washington state, an applicant shall be:

(i) Detained in Washington state for reasons beyond the household's control as a result of events which could not have been reasonably anticipated; or

(ii) A migrant. "Migrant" means a person who moves from one region to another to perform work or a duty.

(2) An alien granted lawful temporary resident status under sections 210A and 245A of the Immigration and Nationality Act shall be ineligible. Disqualification due to

this provision applies for a period of five years from the date the temporary resident status was granted.

[Statutory Authority: RCW 74.08.090, 74.04.660, 74.04.050 and 45 CFR 233.120 Title IV-A Section 406(e). 95-11-048 (Order 3850), § 388-165-090, filed 5/10/95, effective 6/10/95.]

WAC 388-165-100 Payment limitations. (1) The department shall authorize CEAP-SS to an eligible applicant for a period of twelve months, not to exceed one authorization per eligible applicant in a twelve-month period. The department shall ensure the eligible applicant's CEAP-SS application constitutes authorization for all services and assistance as determined appropriate and necessary for the entire twelve-month period.

(2) The department shall ensure CEAP-SS services and assistance provided under this provision do not grant direct cash assistance to the child or family. Vendors or the department staff or the designee shall provide services and assistance. Services and assistance include, but are not limited, to the following subject to department determination and approval:

- (a) Substitute care, including placement in juvenile facilities;
- (b) Family preservation or family reconciliation services;
- (c) Home-based services;
- (d) Medical or mental health services; and
- (e) Support services to normalize individual or family functioning.

[Statutory Authority: RCW 74.08.090, 74.04.660, 74.04.050 and 45 CFR 233.120 Title IV-A Section 406(e). 95-11-048 (Order 3850), § 388-165-100, filed 5/10/95, effective 6/10/95.]

Chapter 388-200 WAC

FINANCIAL AND MEDICAL ASSISTANCE— GENERAL PROVISIONS

WAC

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| 388-200-1100 | Grievance procedure. |
| 388-200-1150 | Exception to rule. |
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| 388-200-1250 | Gifts, bequests by will, and contributions. |
| 388-200-1300 | Necessary supplemental accommodation services (NSA). |
| 388-200-1350 | Dispute resolution for clients needing supplemental accommodations. |

WAC 388-200-1050 Department and client responsibilities. (1) The department and the client shall:

(a) Have a dual responsibility to determine and maintain eligibility for public assistance in the initial or redetermination of eligibility for assistance;

(b) Further, the department shall provide accommodation services to clients who have a mental, neurological, physical or sensory impairment or who otherwise have limitations which seriously affect their abilities to access programs in the same manner as those who are unimpaired.

(2) The department shall have the responsibility to:

(a) Treat a client with dignity and courtesy;

(b) Give a client sufficient opportunity to make pertinent needs and accommodation needs known to the department;

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(c) Inform a client what the department can, or cannot, do for the client;

(d) Respect the rights of a client under the U.S. Constitution, the Social Security Act, Title VI of the Civil Rights Act of 1964, Title II of the Americans with Disabilities Act of 1990 and all other relevant provisions of federal and state law when:

- (i) Taking an application;
- (ii) Determining eligibility;
- (iii) Administering financial and medical assistance programs; and

(iv) Providing accommodation to individuals who have a mental, neurological, sensory, or physical impairment.

(e) Avoid practices which violate the client's privacy or subject the client to harassment;

(f) Inform a client of:

(i) The client's rights and responsibilities concerning eligibility for, and receipt of, assistance;

(ii) All factors which may affect the client's continuing eligibility for assistance;

(iii) Changes of law or rule which affect the client's eligibility; and

(iv) His or her right to reasonable accommodations.

(g) Act promptly and correctly on all known changes which affect the client's eligibility for assistance;

(h) Offer voter registration assistance to clients during face-to-face interviews at:

(i) Application;

(ii) Eligibility review or recertification; and

(iii) Change of address.

(i) Accommodate clients per WAC 388-200-1300(7).

(3) The client has the responsibility to:

(a) Report all changes in the client's circumstances which affect eligibility for assistance. The client must report changes in writing promptly and accurately; and

(b) Take any reasonable action to develop resources which will reduce or eliminate the client's need for public assistance.

[Statutory Authority: RCW 74.04.050, 43.20A.550 and 74.08.090. 97-02-047, § 388-200-1050, filed 12/30/96, effective 1/30/97. Statutory Authority: RCW 74.04.050 and 1993 National Voter Registration Act, SSA Sect. 402 (a)(9) and 403 (a)(3). 94-23-128 (Order 3807), § 388-200-1050, filed 11/23/94, effective 1/1/95. Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-200-1050, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-38-030, 388-38-250, 388-38-255 and 388-38-260.]

WAC 388-200-1100 Grievance procedure. (1) If a client is aggrieved by a department decision, the client has the right to present a written grievance to the supervisor. The supervisor shall:

(a) Make a decision on the client's grievance; and

(b) Send the client written notification of the supervisor's decision within ten days of receipt of the grievance.

(2) If a client is not satisfied with the decision of the supervisor, the client has the right to present a written grievance to the supervisor's administrator. The administrator shall:

(a) Make a decision on the client's grievance within ten days of receipt of the grievance; and

(b) Send the client written notification of the administrator's decision within ten days of receipt of the grievance.

(3) The written notice from the administrator terminates the grievance procedure.

(4) The client's right to pursue a grievance shall not in any way prevent the client from requesting a fair hearing under chapter 388-08 WAC. Accommodation shall be provided to all NSA designees requesting a fair hearing under WAC 388-200-1300(7).

(5) The department may respond to the client's grievance by informing the client that the department prefers that the fair hearing or judicial review process resolve the matter, if the client has a fair hearing or judicial review pending on the same issue.

(6) The department shall provide accommodation services to clients designated NSA to access the grievance process and to understand the outcomes under WAC 388-200-1300(7).

[Statutory Authority: RCW 74.04.050, 43.20A.550 and 74.08.090. 97-02-047, § 388-200-1100, filed 12/30/96, effective 1/30/97. Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-200-1100, filed 5/3/94, effective 6/3/94. Formerly WAC 388-33-389.]

WAC 388-200-1150 Exception to rule. (1) Rules for determining eligibility and amount of payment are based on federal and state law and are designed to permit the department to grant necessary assistance considering the client's requirements and resources.

(2) State rules are based on living conditions which the department considers to apply to the majority of client situations. Individual circumstances may exist for clients, including those individuals needing accommodation services, where application of a particular rule works in opposition to the desired objective stated in subsection (1) of this section.

(3) The department cannot make an exception to a specific provision of federal or state law. However, the secretary, or designee, can authorize an individual case exception to a rule when:

(a) The rule is not specifically enunciated in federal or state law; and

(b) Granting an exception appears to be in the best interest of overall economy and the client's welfare.

(4) The department may grant an exception when:

(a) The client's situation differs from that of the majority; or, the client's circumstances are peculiar;

(b) It would ease the conditions the client would face without the assistance; and

(c) It would increase opportunities for the client to function effectively.

(5) The client does not have a right to a fair hearing as specified under chapter 388-08 WAC for an exception decision.

(6) An exception to the rule shall also be considered when the client's impairment or limitation has substantially interfered in the normal conduct of activities leading to determining or redetermining benefit or program eligibility.

[Statutory Authority: RCW 74.04.050, 43.20A.550 and 74.08.090. 97-02-047, § 388-200-1150, filed 12/30/96, effective 1/30/97. Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-200-1150, filed 5/3/94, effective 6/3/94. Formerly WAC 388-20-010.]

WAC 388-200-1160 Notification of exception to rule request and decision. The department shall notify a client

in writing as well as other effective means of communication. The notification must be given within ten days of:

(1) A decision as to whether the department will initiate an exception to rule request when requested by the client; and

(2) Of the approval or denial of an exception to rule which was requested by the department.

[Statutory Authority: RCW 74.04.050, 43.20A.550 and 74.08.090. 97-02-047, § 388-200-1160, filed 12/30/96, effective 1/30/97. Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-200-1160, filed 5/3/94, effective 6/3/94. Formerly WAC 388-23-387.]

WAC 388-200-1200 Translation of written communications with a limited English proficient client. The department shall fully translate the following written communications into the primary language of the limited English proficient client:

(1) A notice requesting information or action which requires a response from the client to determine:

(a) Initial eligibility; or

(b) Continuing eligibility for assistance;

(2) A notice of approval, denial, or withdrawal of an application for assistance;

(3) A notice of termination, suspension or reduction of assistance;

(4) A notice describing client rights and responsibilities;

(5) A notice requiring a client's signature or informed consent; and

(6) A notice of an overpayment of public assistance benefits.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-200-1200, filed 5/3/94, effective 6/3/94. Formerly WAC 388-38-045.]

WAC 388-200-1250 Gifts, bequests by will, and contributions. (1) The department may accept a gift, bequest, or contributions in cash, or otherwise, from an association or corporation.

(2) The department shall not accept a gift or contribution from a person applying for, or receiving, public assistance.

(3) The department shall not advise any person desiring information or assistance regarding the preparation of a will. The department shall advise the person to contact an attorney, or the local legal aid society.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-200-1250, filed 5/3/94, effective 6/3/94.]

WAC 388-200-1300 Necessary supplemental accommodation services (NSA). (1) "NSA clients" are individuals, who have a mental, neurological, physical or sensory impairment or who otherwise have limitations which seriously affect their abilities to access programs in the same manner as those who are unimpaired.

(2) All department staff have a continuing responsibility to identify and assist NSA clients. Also see, WAC 388-200-1050(2)(b), and WAC 388-200-1050 (2)(d)(iv), regarding client rights to self-identification and accommodation.

(3) The department shall screen all applicants with whom its staff come into direct contact in order to identify NSA clients.

(a) The department shall provide an explanation of NSA services to all clients upon initiation of the NSA screening.

(b) The department shall initially identify all individuals included in subsections (i) and (ii) below as NSA, unless the client declines NSA services.

(i) Clients who identify themselves as requiring NSA services in order to access the department's services and programs.

(ii) Clients in the following categories:

(A) Identified as having or claiming to have a mental health impairment;

(B) Having a developmental disability;

(C) Disabled by drug addiction or alcoholism;

(D) Unable to read or write in any language;

(E) A minor not residing with parents.

(c) The department shall initially identify as NSA all individuals who are observed to have cognitive limitations, regardless of the presence or absence of an underlying disability, which are likely to prevent them from understanding the nature of NSA services and affect their ability to access department programs.

Cognitive limitations include limitations on ability to communicate, understand, remember, process information, exercise judgement and make decisions, perform routine tasks or relate appropriately with others.

(4) The department shall mark all cases identified as NSA with a uniform NSA identifier.

(5) Clients initially identified as NSA under subsection (3)(b)(ii) and (c) above will be assessed to confirm the NSA designation.

(6) Based on client request or changes in the client's needs, the NSA designation and/or accommodation plan may be assessed and revised.

(7) An accommodation plan which specifies the auxiliary aids and services to be provided the client to improve the client's access to department programs and services will be developed for clients determined NSA.

(8) The following NSA services shall be included in the accommodation plan of clients determined NSA under subsections (3)(b)(ii) and (c) above.

(a) Arranging for or providing assistance with completion and submission of forms;

(b) Assisting in obtaining information necessary to determine eligibility or to maintain current benefits;

(c) Explaining the department's adverse actions, see WAC 388-245-1000;

(d) Assisting with requests for fair hearings;

(e) Assisting with requests for continuing benefits;

(f) Providing follow-up contact on missed appointments or deadlines;

(g) Providing notification to the NSA individual's known advocate when informational requests or adverse action notices are pending;

(h) Providing protective payments as appropriate, in accordance with WAC 388-265-1250 (3) and (6).

(9) The department shall redirect and hold warrants for NSA clients through the twentieth day of the month following the month that adverse action notice was given, when the department is unable to determine eligibility. If eligibility is determined within the twenty-day period, the department will release to the client the correct grant amount the client

would have been eligible to receive for the month in which redirection occurred. See WAC 388-245-1350;

(10) The department shall consider the effects of the NSA client's limitation or impairment on the client's ability to: accept or pursue required medical treatment, accept or pursue referrals to other agencies, provide timely monthly income reports, voluntarily quit employment, participate in food stamp employment and training, or participate in the job opportunities and basic skills (JOBS) program. The department shall find the client has good cause for refusal or failure to comply with these requirements and shall take no adverse action when the effects of the client's limitation or impairment substantially contributed to the client's noncompliance.

[Statutory Authority: RCW 74.04.050, 43.20A.550 and 74.08.090. 97-02-047, § 388-200-1300, filed 12/30/96, effective 1/30/97.]

WAC 388-200-1350 Dispute resolution for clients needing supplemental accommodations. (1) An applicant or recipient has the right to file a grievance with the department in accordance with the grievance procedures provided in WAC 388-200-1100, regarding any aspect of NSA services. The department shall offer to assist a client who expresses dissatisfaction with NSA services with filing and pursuing a grievance.

(2) Department decisions as to NSA designations, accommodation plans or NSA services do not in themselves provide a basis for a fair hearing until the client has first completed the grievance process. This provision does not limit the client's rights to raise NSA designations, accommodation plans and NSA services in a fair hearing where they are relevant to other issues which are the subject of the fair hearing.

(3) Failure to follow NSA requirements does not in itself invalidate department actions, except where the applicant or recipient was denied benefits for which he/she could have established eligibility had the department followed NSA requirements.

(4) The department shall review the decision to terminate, suspend or reduce financial assistance to NSA recipients upon request. The department shall reinstate financial assistance for those months for which the department can determine that the client met program eligibility requirements and the adverse action:

(a) Was taken because of the client's failure to comply with a department requirement;

(b) The failure to comply was substantially related to the client's impairment; and

(c) Was taken no more than ninety days prior to the request.

(5) The department may reinstate assistance when the adverse action was taken more than ninety days prior to the request where administratively feasible and not prohibited by state or federal law.

[Statutory Authority: RCW 74.04.050, 43.20A.550 and 74.08.090. 97-02-047, § 388-200-1350, filed 12/30/96, effective 1/30/97.]

Chapter 388-201 WAC

SUCCESS THROUGH EMPLOYMENT PROGRAM
(STEP)

WAC

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WAC 388-201-100 General provisions. (1) The success through employment program (STEP) is enacted under RCW 74.12.036, 420, 425, and 901 and section 1115 of the Social Security Act (42 U.S.C. 1315).

(2) The STEP program is a ten-year demonstration project designed to encourage family unity and to increase labor market participation of families receiving AFDC.

(3) Except as provided in this chapter, recipients in the STEP treatment and control groups shall be subject to and covered by the Washington administrative code applicable to the aid to families with dependent children (AFDC) program.

[Statutory Authority: RCW 74.12.036, 74.12.420, 74.12.425, 74.12.901 and Social Security Act Section 1115. 95-24-014 (Order 3925), § 388-201-100, filed 11/22/95, effective 1/1/96.]

WAC 388-201-200 Definitions. (1) "Child-only assistance unit" means AFDC cases in which there are no adults in the assistance unit.

(2) "Hundred-hour control group" means a valid random sample of all AFDC-E cases.

(3) "Hundred-hour treatment group" means all AFDC-E cases not assigned to the hundred-hour control group.

(4) "Length-of-stay grant reduction" means a grant reduction resulting from the assistance unit's length of stay on AFDC.

(5) "Length-of-stay control group" means a valid random sample of all AFDC cases with adults in the assistance unit.

(6) "Length-of-stay earned income adjustment" means grant adjustments which allow members of the assistance unit to offset length-of-stay grant reductions with their earned income.

(7) "Length-of-stay treatment group" means all remaining AFDC cases with an adult in the assistance unit, not assigned to the length-of-stay control group.

[Statutory Authority: RCW 74.12.036, 74.12.420, 74.12.425, 74.12.901 and Social Security Act, Section 1115. 96-07-021 (Order 3955), § 388-201-200,

filed 3/13/96, effective 4/13/96; 95-24-014 (Order 3925), § 388-201-200, filed 11/22/95, effective 1/1/96.]

WAC 388-201-300 Participation. (1) Effective July 1, 1996, the department shall assign all AFDC-E assistance units at random to either the hundred-hour treatment group or the hundred-hour control group as the case is converted into the automated client eligibility system (ACES).

(a) AFDC-E child-only assistance units shall be included in STEP's hundred-hour demonstration.

(b) Pursuant to WAC 388-201-400, recipients in the hundred-hour treatment group shall not be subject to the definition of unemployment in WAC 388-215-1375.

(2) Effective January 1, 1999, the department shall assign all AFDC recipients with an adult in the assistance unit at random to either the length-of-stay treatment group or the length-of-stay control group.

(a) Child-only assistance units (AFDC-R and AFDC-E) shall be exempt from participation in STEP's length-of-stay demonstration.

(b) Recipients in the length-of-stay control group shall not be subject to any of the length-of-stay provisions, as delineated in WAC 388-201-410 through 388-201-480.

(c) Recipients in the length-of-stay treatment group shall be subject to the length-of-stay provisions delineated in WAC 388-201-410 through 388-201-480.

(3) For the purposes of assigning the assistance unit to a child-only, hundred-hour treatment or control group or a length-of-stay treatment or length-of-stay control group, the department shall consider adults who are required to be in the assistance unit but are excluded due solely to JOBS or IV-D sanction as adult members of the assistance unit.

(4) When an adult enters or leaves an AFDC assistance unit, the department shall redetermine the assistance unit's child-only, hundred-hour treatment or control status, and length-of-stay treatment or length-of-stay control status.

[Statutory Authority: RCW 74.12.036, 74.12.420, 74.12.425, 74.12.901 and Social Security Act, Section 1115. 96-07-021 (Order 3955), § 388-201-300, filed 3/13/96, effective 4/13/96; 95-24-014 (Order 3925), § 388-201-300, filed 11/22/95, effective 1/1/96.]

WAC 388-201-400 Hundred-hour treatment group—Elimination of the one-hundred-hour rule. Effective July 1, 1996, the department shall extend the definition of unemployed parent to include recipients in the hundred-hour treatment group who are employed and working one hundred hours or more a month for longer than the six-month period delineated in WAC 388-215-1390(2).

[Statutory Authority: RCW 74.12.036, 74.12.420, 74.12.425, 74.12.901 and Social Security Act, Section 1115. 96-07-021 (Order 3955), § 388-201-400, filed 3/13/96, effective 4/13/96; 95-24-014 (Order 3925), § 388-201-400, filed 11/22/95, effective 1/1/96.]

WAC 388-201-410 Length-of-stay treatment group—Assessment of past AFDC receipt. Beginning January 1, 1996, the department shall determine the history of AFDC receipt for all assistance units on a monthly basis. For the purposes of this section:

(1) The department shall not count any months of AFDC receipt prior to January 1, 1996;

(2) If there is more than one parent in the assistance unit, the department shall calculate the assistance unit's

months on AFDC based on the parent with the longer history of AFDC receipt;

(3) The department shall only include months of AFDC receipt in which the assistance unit:

(a) Received an AFDC grant payment; or

(b) Did not receive a grant payment because the amount of the monthly grant following the budgeting of income or grant reductions was less than ten dollars per month, as specified in WAC 388-245-1400(1).

(4) Months of AFDC receipt shall not include any month in which the assistance unit's grant was suspended because the department has reason to believe ineligibility caused by income or other change of circumstance in the report month would be for one month only, as specified in WAC 388-245-1400(3).

[Statutory Authority: RCW 74.12.036, 74.12.420, 74.12.425, 74.12.901 and Social Security Act, Section 1115. 96-07-021 (Order 3955), § 388-201-410, filed 3/13/96, effective 4/13/96; 95-24-014 (Order 3925), § 388-201-410, filed 11/22/95, effective 1/1/96.]

WAC 388-201-420 Length-of-stay treatment group—Initial length-of-stay grant reductions. (1) The department shall apply the following provisions to any assistance unit in the length-of-stay treatment group in which an adult has received AFDC benefits for forty-eight months of the last sixty months:

(a) The family shall be subject to an initial length-of-stay grant reduction;

(b) For each month the family is not exempt, as provided in WAC 388-201-450, the department shall impose the initial length-of-stay grant reduction, which is an amount equal to ten percent of the assistance unit's payment standard; and

(c) The department shall not apply a JOBS sanction to a family that is subject to length-of-stay grant reductions.

(2) For the purposes of determining the effect of length-of-stay grant reductions on the assistance unit's AFDC eligibility, the department shall:

(a) Treat length-of-stay grant reductions in the same manner as mandatory grant deductions; and

(b) As specified in WAC 388-270-1400(7), suspend a person's grant when the monthly length-of-stay grant reduction is equal to or more than the grant which would have been paid had no grant reduction occurred.

[Statutory Authority: RCW 74.12.036, 74.12.420, 74.12.425, 74.12.901 and Social Security Act, Section 1115. 96-07-021 (Order 3955), § 388-201-420, filed 3/13/96, effective 4/13/96; 95-24-014 (Order 3925), § 388-201-420, filed 11/22/95, effective 1/1/96.]

WAC 388-201-430 Length-of-stay treatment group—Additional length-of-stay grant reductions. Except as provided in WAC 388-201-450, once a family is subject to length-of-stay grant reductions:

(1) The department shall reduce monthly AFDC benefits by an additional length-of-stay grant reduction for each additional twelve months the assistance unit receives AFDC.

(2) Each additional length-of-stay grant reduction shall be equal to ten percent of the assistance unit's payment standard.

(3) The department shall only count months in which a length-of-stay grant reduction has been imposed toward the assistance unit's additional twelve months of AFDC receipt.

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[Statutory Authority: RCW 74.12.036, 74.12.420, 74.12.425, 74.12.901 and Social Security Act, Section 1115. 96-07-021 (Order 3955), § 388-201-430, filed 3/13/96, effective 4/13/96; 95-24-014 (Order 3925), § 388-201-430, filed 11/22/95, effective 1/1/96.]

WAC 388-201-440 Length-of-stay treatment group—Redetermination of length-of-stay grant reductions. When a family that is subject to length-of-stay grant reductions terminates from AFDC for one calendar month or more and subsequently reapplies for AFDC, the department shall:

(1) Rescind any previously existing length-of-stay grant reductions; and

(2) Determine whether the re-applicant is subject to an initial length-of-stay grant reduction, based on the re-applicant's AFDC receipt during the last sixty months.

[Statutory Authority: RCW 74.12.036, 74.12.420, 74.12.425, 74.12.901 and Social Security Act, Section 1115. 96-07-021 (Order 3955), § 388-201-440, filed 3/13/96, effective 4/13/96; 95-24-014 (Order 3925), § 388-201-440, filed 11/22/95, effective 1/1/96.]

WAC 388-201-450 Length-of-stay treatment group—Families exempt from length-of-stay grant reductions. The department shall not impose length-of-stay grant reductions during any month in which an adult assistance unit member is:

(1) Unable to participate in job opportunities and basic skills (JOBS) training program due to incapacity, as specified in WAC 388-300-400(2)(g);

(2) Needed in the home to care for an incapacitated household member;

(3) Needed in the home to care for a child who is two years of age or younger;

(4) Participating satisfactorily in JOBS and no present full-time, part-time, or unpaid work experience job is offered; or

(5) Participating in an unpaid work experience program.

[Statutory Authority: RCW 74.12.036, 74.12.420, 74.12.425, 74.12.901 and Social Security Act, Section 1115. 96-07-021 (Order 3955), § 388-201-450, filed 3/13/96, effective 4/13/96; 95-24-014 (Order 3925), § 388-201-450, filed 11/22/95, effective 1/1/96.]

WAC 388-201-460 Length-of-stay treatment group—Length-of-stay earned income adjustments. An assistance unit subject to a length-of-stay grant reduction shall be entitled to a length-of-stay earned income adjustment, which is:

(1) Added to the assistance unit's grant to offset the length-of-stay grant reduction with the earned income of assistance unit members; and

(2) Equal to the amount of the length-of-stay grant reduction or the net nonexempt earned income, whichever is less.

[Statutory Authority: RCW 74.12.036, 74.12.420, 74.12.425, 74.12.901 and Social Security Act, Section 1115. 96-07-021 (Order 3955), § 388-201-460, filed 3/13/96, effective 4/13/96; 95-24-014 (Order 3925), § 388-201-460, filed 11/22/95, effective 1/1/96.]

WAC 388-201-470 Length-of-stay treatment group—Advance notice of impending length-of-stay grant reductions. Prior to the imposition of any length-of-stay grant reductions, the department shall give notice of potential

length-of-stay grant reductions to recipient households in the length-of-stay treatment group, which have received AFDC for thirty-six of the last sixty months, as follows:

- (a) Send advance written notice of impending length-of-stay grant reductions; and
- (b) Discuss potential length-of-stay grant reductions with the recipient during a face-to-face interview which is conducted during the recipient's periodic eligibility review.

[Statutory Authority: RCW 74.12.036, 74.12.420, 74.12.425, 74.12.901 and Social Security Act, Section 1115. 96-07-021 (Order 3955), § 388-201-470, filed 3/13/96, effective 4/13/96; 95-24-014 (Order 3925), § 388-201-470, filed 11/22/95, effective 1/1/96.]

WAC 388-201-480 Length-of-stay treatment group—Reducing the impact of cumulative length-of-stay grant reductions. As an assistance unit approaches imposition of a length-of-stay grant reduction of thirty percent or more, the department shall take steps to reduce the impact of the reduced grant on the children in the assistance unit, as follows:

- (1) Offer the services of a social worker to discuss the grant reduction or for referrals to emergency food, housing, utility, or clothing resources;
- (2) Remind recipients of their option to request a fair hearing to contest imposition of the length-of-stay grant reduction;
- (3) Provide a needy nonparental caretaker relative with the option to remove oneself from the assistance unit;
- (4) Assess whether a protective payee is required to ensure the needs of the child are met; and
- (5) Review the case to determine whether the department needs to take further action to avoid harm to the children in the household.

[Statutory Authority: RCW 74.12.036, 74.12.420, 74.12.425, 74.12.901 and Social Security Act, Section 1115. 96-07-021 (Order 3955), § 388-201-480, filed 3/13/96, effective 4/13/96; 95-24-014 (Order 3925), § 388-201-480, filed 11/22/95, effective 1/1/96.]

**Chapter 388-210 WAC
APPLICATIONS FOR ASSISTANCE**

WAC

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WAC 388-210-1000 Who may apply. The department shall accept and promptly act upon an application from

any person wishing to apply for assistance. An application may be made by:

- (1) A person making the request in the person's own behalf or for the person's dependent;
- (2) A legal guardian or a person legally eligible to make application on behalf of a minor or incompetent person;
- (3) Any other person acting in behalf of the applicant when the applicant cannot make application under one of the preceding methods. Such person shall indicate the reason for initiating the application.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-210-1000, filed 5/3/94, effective 6/3/94. Formerly WAC 388-38-030 (part).]

WAC 388-210-1010 Application form. (1) An applicant shall make a written request for assistance on a department designated form.

- (2) The department shall make the form as brief as administratively feasible and request only information ordinarily known to the applicant.
- (3) The department may designate different forms for reapplication.
- (4) The department shall inform an applicant at the time of signing that the application contains:
 - (a) A written declaration made under penalty of perjury; and
 - (b) That such declaration is made in lieu of any oath otherwise required.
- (5) The department shall give each applicant a written acknowledgement of receipt of an application at the time of making application.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-210-1010, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-38-010, 388-38-030 and 388-38-040.]

WAC 388-210-1020 Completion of application form. (1) Each applicant shall complete and submit application forms as provided for under WAC 388-210-1010.

- (2) The department shall assist an applicant in the completion of application forms when necessary.
- (3) The applicant's written statement of application for AFDC must include all children under nineteen years of age, whether or not financial assistance is being requested for such children, who are:
 - (a) Living in the household; and
 - (b) Full brothers or full sisters; or
 - (c) Half brothers or half sisters; or
 - (d) Stepbrothers or stepsisters.
- (4) The parent or stepparent applying on behalf of their dependent children must declare the total resources and income available for all siblings living in the home.
- (5) Both parents shall sign all application forms for AFDC, if living together.
- (6) The applicant and spouse must sign all application forms for general assistance or medical assistance irrespective of whether the spouse is included in the application as a dependent.

(7) An applicant's signature by mark requires two witnesses. The signatures of witnesses shall appear on the form and be identified by the department as witnesses.

(8) The applicant may change a signed application for assistance only when the incorrect entry is stricken and the

corrected entry is initialed and dated by the applicant. The applicant shall also initial any addition to the application.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-210-1020, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-38-040, 388-38-045 and 388-38-050.]

WAC 388-210-1050 Interview. (1) The department shall include at least one face-to-face interview at each application for financial assistance with:

(a) An applicant; or
(b) Someone representing an applicant, if direct contact with an applicant is impractical.

(2) An applicant shall complete a written application before the department undertakes an investigation.

(3) An applicant shall apply and interview for assistance at a site specified by the department, unless the department determines an interview in the applicant's home is necessary.

(4) The department shall fully inform each applicant of the applicant's legal rights and responsibilities in connection with public assistance.

(5) The department shall provide an applicant written information about the applicant's right to a fair hearing and a brief explanation of the procedures pertaining to fair hearings.

(6) The department shall record pertinent facts about each application so that the department can audit the records to determine whether:

(a) Department policies are followed;
(b) Continuity of service can be carried out;
(c) Case planning can be achieved; and
(d) The department can ascertain what services are needed and given.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-210-1050, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-38-030, 388-38-040 and 388-38-200.]

WAC 388-210-1100 Applicant to provide information. (1) The department shall allow an applicant a reasonable time of not less than ten calendar days to provide information necessary to determine eligibility. This includes additional application forms, documents and statements needed for the department to verify eligibility.

(2) The department shall extend the allowed time when:

(a) The applicant has provided some, but not all, of the available information. In such a case, the department shall:
(i) Provide the applicant with written notification of the specified information required; and

(ii) Allow an additional ten calendar days, or a longer time, depending upon the specific circumstances.

(b) The department has previously completed the initial interview, or requested specific information, and subsequently determines the need for different or additional information. In such a case, the department shall:

(i) Provide the applicant with written notification of the specific additional information required; and

(ii) Allow an additional ten calendar days, or a longer time, depending upon the specific circumstances.

(c) The applicant has requested, orally or in writing, additional time to provide statements in support of the application.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-210-1100, filed 5/3/94, effective 6/3/94. Formerly WAC 388-38-045 (part).]

WAC 388-210-1200 Time limit on disposition of application. (1) The time limit from the date of application to the date of disposal action as specified in subsection (2) of this section is thirty days for Aid to Families with Dependent Children (AFDC) and forty-five days for General Assistance (GA). The department shall count as day one, the date following the date of application in applying this rule.

(2) The date of application shall be the date a written request as specified in WAC 388-210-1010(1) is received by the department.

(3) The department shall consider the date an application is disposed of as:

(a) For approvals, the date the department correctly processes a document authorizing assistance; and

(b) For denials and withdrawals, the date written notice of the decision is given or mailed to the client.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-210-1200, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-38-010, 388-38-110 and 388-38-120.]

WAC 388-210-1220 Good cause for disposition delay. (1) The department shall act on each application as quickly as possible, and within applicable time limits as specified under WAC 388-210-1200, unless exceptional circumstances require a longer period of time.

(2) Exceptional circumstances, subject to WAC 388-210-1230, considered good cause for delay in disposing of an application may include, but are not limited to:

(a) An applicant not providing requested verification within ten days of a written request;

(b) An eligibility decision depends on medical reports and there is delay in obtaining the reports or in securing medical information;

(c) An eligibility determination depends on correspondence with out-of-state or intercity contacts and no other verification is available for the eligibility factor; or

(d) An eligibility decision depends on extensive property appraisals.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-210-1220, filed 5/3/94, effective 6/3/94.]

WAC 388-210-1230 Good cause for disposition delay—Department responsibility for an AFDC application. Good cause for delay in processing an application for AFDC exists only when an exceptional circumstance exists. Good causes exist only if the department:

(1) Notifies the applicant in writing of specific information needed to determine eligibility within twenty days of the date of application; and

(2) Notifies the applicant in writing of the need for additional information or action within five calendar days; and

(3) Determines eligibility and disposes of the application within five working days of receiving all information necessary to determine eligibility; and

(4) Determines if good cause exists and documents the decision in the case record on, or before, the time limit for processing the application for AFDC has expired.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-210-1230, filed 5/3/94, effective 6/3/94. Formerly WAC 388-38-110 (part).]

WAC 388-210-1250 Evaluation of available information. When the applicant fails to provide requested statements within the initially specified, or extended period, as provided under WAC 388-210-1100, the department shall:

- (1) Evaluate all available information; and
- (2) Dispose of the application for assistance according to WAC 388-210-1300.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-210-1250, filed 5/3/94, effective 6/3/94. Formerly WAC 388-38-045 (part).]

WAC 388-210-1300 Disposition action. The department shall dispose of an application for assistance by:

- (1) Approval;
- (2) Denial; or
- (3) Withdrawal.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-210-1300, filed 5/3/94, effective 6/3/94. Formerly WAC 388-38-120 (part).]

WAC 388-210-1310 Basis of withdrawal. (1) The department shall dispose of an application by withdrawal if the applicant:

- (a) Voluntarily requests, orally or in writing, that the department give no further consideration to the application;
- (b) Fails to report for a scheduled interview and has not contacted the department to reschedule an interview within thirty days from the date of application; or
- (c) Died before the department completed a determination of eligibility.

(2) The department shall note in the case record for all withdrawal requests that:

- (a) The application has been withdrawn at the applicant's request; and
- (b) Notice has been sent to the applicant as specified in WAC 388-210-1420.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-210-1310, filed 5/3/94, effective 6/3/94. Formerly WAC 388-38-120 (part).]

WAC 388-210-1320 Basis of denial. (1) The department shall deny an application for benefits only when the department has not been able to establish the applicant's eligibility. See WAC 388-212-1200.

(2) The department shall not deny an application solely on the basis that an applicant failed to provide requested statements:

- (a) In support of the application; or
- (b) Within a reasonably allowed period.
- (3) When the department cannot determine eligibility based on the information provided by the applicant, the denial notice must include the information specified under WAC 388-210-1420.

(4) If an applicant requests a fair hearing to contest the department's denial for inability to establish eligibility, the issue in the de novo hearing shall be whether the applicant can provide evidence to establish eligibility.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-210-1320, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-38-120 and 388-38-200.]

WAC 388-210-1330 Limitations on denial. (1) The department shall not deny assistance based on a delay in obtaining medical information essential to a determination of eligibility, if obtaining the information is beyond the control of both the applicant and the department.

(2) The department shall not deny assistance to the entire assistance unit under WAC 388-210-1320(2) unless information required to establish eligibility of the entire assistance unit is lacking.

(3) The department shall deny assistance only to an applicant, or applicants, affected when information is not provided, and the requested information affects only the eligibility of that applicant, or applicants, in the assistance unit.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-210-1330, filed 5/3/94, effective 6/3/94. Formerly WAC 388-38-120 (part).]

WAC 388-210-1340 Reconsideration of denied applications. (1) The department shall allow the applicant thirty days from the date of the denial notice to provide all specified information that was not provided when assistance is denied according to WAC 388-210-1320(2).

(2) The department shall determine eligibility based on the specified information if the applicant, within such thirty-day period:

- (a) Provides the specified information; and
- (b) The applicant's circumstances have not changed to the extent additional information is needed to determine eligibility.

(3) The department shall rescind the denial and approve assistance based on the denied application if eligibility is established.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-210-1340, filed 5/3/94, effective 6/3/94. Formerly WAC 388-38-120 (part).]

WAC 388-210-1350 Effective date of eligibility for approved applications. (1) The effective date of eligibility for federally matched assistance is the date of authorization, or the thirtieth day after application, if the department requires more than thirty days to determine eligibility.

(2) The effective date for state funded assistance is the date of authorization, or the forty-fifth day after application, if the department requires more than forty-five days to determine eligibility.

(3) The department shall not count the day application was made in determining the thirtieth or forty-fifth day.

(4) The effective date of eligibility for an applicant, except as provided under WAC 388-245-1210, who applies prior to the occurrence of an event which makes the applicant eligible, shall be the date the event occurs, if eligibility otherwise exists on that date.

(5) The department shall complete the authorization the first working day following the day the special event occurred when such event occurs on a nonworking day. The effective date of eligibility is the day the event occurred. The department shall apply this rule when:

(a) The effective date of a reinstated grant occurs on a nonworking day as described under WAC 388-245-1410; or

(b) The thirtieth day after date of application if the event occurs on a nonworking day.

[Statutory Authority: RCW 74.08.065 (Order 3732), § 388-210-1350, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-33-085, 388-33-115 and 388-33-120.]

WAC 388-210-1400 Notification of application disposition. The department's decision on an application is definite and conclusive and the department shall make this known to the applicant, together with the reasons for the decision, see WAC 388-210-1410 and 388-210-1420.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-210-1400, filed 5/3/94, effective 6/3/94. Formerly WAC 388-38-030 (part).]

WAC 388-210-1410 Approval notice. (1) The department shall notify an applicant in writing when the department authorizes payment.

(2) The department shall notify an applicant residing in an institution of grant approval according to chapter 388-95 WAC.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-210-1410, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-33-125 and 388-38-150.]

WAC 388-210-1420 Denial or withdrawal notice. (1) The department shall give written notice to an applicant when the department denies or withdraws an application, except for a withdrawal due to an applicant's death.

(2) The department shall include in the notice the following information:

- (a) The reason or reasons for denial and the rules to support the denial action;
- (b) The date of the decision; and
- (c) The right to a fair hearing. The letter need not include notice of right to a fair hearing when the applicant gives written notice of withdrawal including a statement to that effect on the application form.

(3) When the application is denied due to insufficient information to determine eligibility, the notice shall also include:

- (a) What information was requested and not provided, including the date of the request;
- (b) That eligibility for financial assistance has not been established based upon information which was provided by the applicant;
- (c) That the department shall redetermine eligibility and, if eligibility is established, rescind the denial and approve assistance if, within thirty days from the date of the denial notice, the applicant:
 - (i) Provides all specified information previously requested but not provided; and
 - (ii) The applicant's circumstances have not changed.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-210-1420, filed 5/3/94, effective 6/3/94. Formerly WAC 388-38-172.]

Chapter 388-212 WAC VERIFICATION OF ELIGIBILITY

WAC

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| 388-212-1000 | Eligibility determined on a factual and objective basis. |
| 388-212-1050 | Verification of eligibility. |
| 388-212-1100 | Client responsibility to provide verification. |
| 388-212-1140 | Verification of age by affidavit. |
| 388-212-1150 | Obtaining verification from collateral sources. |
| 388-212-1200 | Determination of eligibility using available verification. |
| 388-212-1250 | Verification of eligibility after initial eligibility determination. |

WAC 388-212-1000 Eligibility determined on a factual and objective basis. (1) The department shall determine a client's eligibility for assistance on a factual and objective basis in accordance with department rules and procedures.

(2) The department shall support each eligibility decision for assistance based on information in the case record showing:

- (a) The client met each eligibility requirement; or
- (b) The client did not meet one or more eligibility requirements.

(3) The information in the case record shall include, but is not limited to:

- (a) Documents supporting a client's eligibility; and
- (b) A statement of the reason or reasons for the department's eligibility decision.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-212-1000, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-38-030 and 388-38-200.]

WAC 388-212-1050 Verification of eligibility. (1) The department shall consider the client's statement of circumstances as the first source of information in determining the client's eligibility for financial assistance.

(2) The department shall require verification of all factors of eligibility, unless the department determines eligibility can be accurately determined without verifying one or more of the factors.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-212-1050, filed 5/3/94, effective 6/3/94. Formerly WAC 388-38-200 (part).]

WAC 388-212-1100 Client responsibility to provide verification. (1) The department shall fully inform the client of:

- (a) The corroborating documentation needed to establish eligibility; and
- (b) The client's obligation to:
 - (i) Secure the corroborating documentation whenever reasonably possible; or
 - (ii) Assist the department in obtaining sufficient information to establish the client's eligibility; and
 - (iii) The availability of the department to assist the client to secure the corroborating documentation if necessary.

(2) The department shall state the time frame and notice requirement when requesting verification for:

- (a) Applicants, in chapter 388-210 WAC; and
- (b) Recipients, in chapter 388-245 WAC.

(3) The department shall request the client to provide verification documents based on the availability of the documents.

(4) The department shall request documents which can be obtained within three full working days first, if the department anticipates that the documents would be sufficient to determine the client's eligibility.

(5) The department shall not require a client to provide a verification document for which a fee is charged unless the department authorizes payment for such fees.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-212-1100, filed 5/3/94, effective 6/3/94. Formerly WAC 388-38-200 (part).]

WAC 388-212-1140 Verification of age by affidavit.

(1) Any person is permitted by law to make an affidavit before a judge of the superior court or the supreme court of the state of Washington to verify the person's birth date.

(2) The department shall accept such an affidavit as verification of age.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-212-1140, filed 5/3/94, effective 6/3/94. Formerly WAC 388-26-040.]

WAC 388-212-1150 Obtaining verification from collateral sources. (1) When the client is unable to provide verification necessary to establish eligibility, the department shall obtain substantiating evidence from other sources.

(2) The client's signature on the application, eligibility review form, or change of circumstance form attests to the client's consent for the department to obtain substantiating evidence from collateral sources.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-212-1150, filed 5/3/94, effective 6/3/94. Formerly WAC 388-38-200 (part).]

WAC 388-212-1200 Determination of eligibility using available verification. (1) The department shall not deny, delay, or terminate financial assistance because of a client's failure to provide a specific type or form of verification.

(2) The department shall accept and consider all alternative verification for an eligibility factor when determining a client's eligibility.

(3) The department shall determine eligibility for assistance based on all available evidence when verification for one or more factors is not obtained.

(4) The department shall deny or terminate assistance if the department cannot reasonably establish eligibility with the information provided by the client.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-212-1200, filed 5/3/94, effective 6/3/94. Formerly WAC 388-38-200 (part).]

WAC 388-212-1250 Verification of eligibility after initial eligibility determination. (1) The department shall not reverify previously verified factors which are not subject to change at a:

- (a) Subsequent application;
- (b) Reinstatement; or
- (c) Redetermination of eligibility.

(2) The department may request a higher form of verification, subsequent to approval and authorization of assistance, if eligibility was established on available verifica-

tion. A client has a right to a fair hearing if aggrieved by the department's request.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-212-1250, filed 5/3/94, effective 6/3/94. Formerly WAC 388-38-200 (part).]

Chapter 388-215 WAC

AID TO FAMILIES WITH DEPENDENT CHILDREN—CATEGORICAL ELIGIBILITY

WAC

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WAC 388-215-1000 Summary of eligibility conditions. (1) The department shall grant AFDC on behalf of a child who:

(a) Meets the age requirements under WAC 388-215-1025; and

(b) Is living in the home of a relative of specified degree including a parent or another relative as defined under WAC 388-215-1050 through 388-215-1080. For temporary absences, see WAC 388-215-1100 through 388-215-1110; and

(c) Is a citizen or an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States (see WAC 388-215-1200); and

(d) Is a resident of the state of Washington, or resides with a parent or other relative who is a resident of the state of Washington (see WAC 388-215-1225); and

(e) Is in financial need (see chapters 388-216 through 388-219 WAC); and

(f) Is deprived of parental support or care because of the death (see WAC 388-215-1300), continued absence (see WAC 388-215-1320 through 388-215-1335), incapacity (see WAC 388-215-1340 through 388-215-1360), or unemployment (see WAC 388-215-1370 through 388-215-1385) of a parent. A parent is a person meeting the criteria in WAC 388-215-1060.

(2) Each client of AFDC shall:

(a) Assign to the division of child support any rights to support in his or her own behalf or in behalf of the other assistance unit members as required under WAC 388-215-1400; and

(b) Cooperate with the division of child support as required under WAC 388-215-1400 through 388-215-1490.

(3) The department shall require each applicant for, or recipient of assistance to furnish a Social Security number as specified in WAC 388-215-1500.

(4) The department shall require adult AFDC recipients or payees to cooperate in a review of eligibility as part of a quality control review as specified in WAC 388-215-1510.

(5) All AFDC applicants and recipients shall be subject to job opportunities and basic skills program (JOBS) participation requirements as specified under WAC 388-215-1520.

(6) All AFDC clients are subject to the rules regarding participation in strikes as specified under WAC 388-215-1540.

(7) Certain AFDC recipients shall return a completed monthly report to the department as required under WAC 388-215-1560.

(8) The department shall establish assistance units of children and caretaker relatives eligible for AFDC as specified under WAC 388-215-1600 through 388-215-1620.

(9) The department shall determine eligibility for a minor child applying for oneself as required under WAC 388-215-1650.

[Statutory Authority: RCW 74.04.015, 74.04.055, 74.04.057 and 45 CFR 233.10 (a)(1)(ii)(B). 95-14-048 (Order 3860), § 388-215-1000, filed 6/28/95, effective 7/29/95. Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-215-1000, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-24-055, 388-24-125 and 388-26-050.]

WAC 388-215-1025 Age requirement. (1) The department shall grant AFDC on behalf of an otherwise eligible needy child who meets the following age requirements:

(a) Is under age eighteen; or

(b) Is under age nineteen and a full-time student 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 the child reaches age nineteen; or

(c) Is unborn and there are no other eligible children in the household. In this case, the department shall grant AFDC only to the unborn's mother, provided:

(i) There is medical confirmation the woman is in the third trimester of pregnancy (the three calendar months preceding the expected month of birth); and

(ii) If the child were born and living in the same household as the woman, in the month of payment, they would otherwise be eligible for AFDC.

(2) Prior to authorizing AFDC, the department shall determine the birthdate of a minor child in whose behalf aid is requested, except:

(a) An otherwise eligible child may receive AFDC temporarily when it is obvious that the child's age is within the AFDC limits. The department shall determine the birthdate as soon as possible for continuing eligibility.

(b) When only the year of birth is determined, the department shall assign the arbitrary birthdate of July 1.

[Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-215-1025, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-24-040 and 388-26-025.]

WAC 388-215-1050 Living in the home of a relative of specified degree—Determination. (1) The department shall determine a child is living with a relative of specified degree if the child's home is with a parent as specified under WAC 388-215-1060 or other relative as specified under WAC 388-215-1080.

(2) A home is the family setting maintained or in the process of being established, as evidenced by assumption and continuation of responsibility for day to day care of the child by the relative with whom the child is living. A family setting shall include households in temporary shelter and households without shelter.

(3) A home exists so long as the relative exercises responsibility for the care and control of the child, even though either the child or the relative is temporally absent from the customary family setting as specified under WAC 388-215-1100 through 388-215-1120.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-215-1050, filed 5/3/94, effective 6/3/94. Formerly WAC 388-24-125 (parts)]

WAC 388-215-1060 Living in the home of a relative of specified degree—Child's parent defined. The department defines a child's parent as:

- (1) A natural parent, including:
 - (a) The natural mother; and
 - (b) The natural father as:
 - (i) Established under a judgment or order determining parent and child relationship entered pursuant to RCW 26.26.130; or
 - (ii) Presumed pursuant under the Uniform Parentage Act (see WAC 388-215-1070);
 - (c) A natural parent is no longer considered to be a parent for the purposes of determining eligibility for AFDC when parental responsibility has been terminated by the entry of decree of adoption. A natural parent whose rights are so terminated remains a nonparental relative of specified degree (see WAC 388-215-1080);

(2) A person who legally adopts a child; or

(3) A stepfather or stepmother. A stepfather or stepmother is no longer considered to be a parent for the purposes of determining eligibility for AFDC when parental responsibility has been terminated by death or the entry of decree of divorce or dissolution, but remains a nonparental relative of specified degree (see WAC 388-215-1080).

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-215-1060, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-24-055 and 388-24-125.]

WAC 388-215-1070 Living in the home of a relative of specified degree—Presumption of paternity. A man is presumed to be the natural father of a child if:

(1) While the child is under the age of majority, he receives the child into his home and openly holds out the child as his child; or

(2) He acknowledges his paternity of the child:

(a) By an affidavit which he and the child's mother complete at the time of the child's birth and which is filed with the local registrar pursuant to RCW 70.58.080; or

(b) In a writing filed with the state office of vital statistics, which shall promptly inform the mother of the filing of the acknowledgement, if she does not dispute the acknowledgement within a reasonable time after being informed thereof, in a writing filed with the registrar of vital statistics; or

(3) The United States Immigration and Naturalization Service made or accepted a determination that he was the father of the child at the time of the child's entry into the United States and he had the opportunity at the time of the child's entry into the United States to admit or deny the paternal relationship; or

(4) He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within three hundred days after the marriage is

terminated by death, annulment, declaration of invalidity, divorce, or dissolution, or after a decree of separation is entered by a court; or

(5) Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and the child is born within three hundred days after the termination of cohabitation; or

(6) After the child's birth, he and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

(a) He has acknowledged his paternity of the child in writing filed with the registrar of vital statistics; and

(b) With his consent, he is named as the child's father on the child's birth certificate; or

(c) He is obligated to support the child under a written voluntary promise or by court order.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-215-1070, filed 5/3/94, effective 6/3/94. Formerly WAC 388-24-125 (part).]

WAC 388-215-1080 Living in the home of a relative of specified degree—Nonparental relative defined. Nonparental relatives of specified degree include:

(1) Blood relatives (including those of half-blood); brother, sister, uncle, aunt, grandparent, great-grandparent, first cousin, first cousin once removed, nephew, niece, great-great-grandparent, great-uncle, great-aunt, great-great-uncle, great-great-aunt, or great-great-great-grandparent;

(2) A stepbrother or stepsister even though the marriage of the parent of the stepbrother or stepsister to the child's natural parent is terminated by death, divorce or dissolution;

(3) A natural parent when the parental relationship has been terminated by the entry of a decree of adoption;

(4) A stepparent when the marriage to the child's natural or adoptive parent is terminated by death, divorce or dissolution; and

(5) A person identified in a court judgment or order as the child's relative as specified in subsections (1) through (4) of this section.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-215-1080, filed 5/3/94, effective 6/3/94. Formerly WAC 388-24-125 (part).]

WAC 388-215-1100 Living in the home of a relative of specified degree—Temporary absence of child or caretaker relative. The department shall determine a child is living with a relative of specified degree even though circumstances may require the temporary absence of either the child or the caretaker relative from the customary family setting, as long as the requirements in WAC 388-215-1050 are met. Such temporary separations include:

(1) The child or caretaker relative receives temporary care in a hospital or public or private institution when the illness is such that the department expects a return to the family within ninety days. If the temporary care exceeds ninety days, the monthly grant standard is as specified under WAC 388-250-1550.

(2) The child or caretaker relative receives temporary care in an alcohol or drug treatment facility when the

department expects a return to the family within ninety days. If the care exceeds ninety days, the monthly grant standard shall be as specified under WAC 388-250-1600.

(3) Visits in which the child or caretaker relative plans to be away for ninety days or less, including visits of a child to a parent residing away from the child's customary family setting. If the caretaker relative or child leaves for more than ninety days, eligibility is redetermined in accordance with the new circumstances.

(4) The child is placed in foster care while the parent is temporarily receiving care in a residential treatment facility, when such absences do not exceed ninety days and the foster care payments are not made under the AFDC-FC program.

(5) The child is a ward of the juvenile court, or other agency to whom the court has delegated authority.

(6) The child has been placed in temporary foster care, provided the division of children and family services has verified:

(a) The foster care payments are not made under the AFDC-FC program; and

(b) The child is expected to return to the relative's home within ninety days of the date of the foster care placement.

(7) The child or caretaker relative attend school or vocational training as specified under WAC 388-215-1110.

(8) The caretaker relative is applying for AFDC on behalf of the child and the child is temporarily in foster care or with another relative as specified in WAC 388-215-1120.

[Statutory Authority: RCW 74.08.090 and ESSB 6244, Section 206. 94-23-132 (Order 3811), § 388-215-1100, filed 11/23/94, effective 1/1/95. Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-215-1100, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-24-040 and 388-24-125.]

WAC 388-215-1110 Living in the home of a relative of specified degree—Temporary absence—Attendance in school or training. As long as the requirements in WAC 388-215-1050 are met the department shall determine a child is living with a relative of specified degree even though the child or caretaker relative is temporarily absent to attend school or vocational training under the following circumstances:

(1) The caretaker relative attends a department-approved vocational training program, as described under WAC 388-47-120, for the period of time required to complete the training program; or

(2) The child attends school when:

(a) The caretaker relative retains full responsibility for the child and the child returns during a year's period, at least for summer vacation; and

(b) The child needs specialized education or training which is not available in the child's home community, and the education is recommended by local school authorities; or

(c) Isolation of the child's residence makes it necessary for him or her to be away from the relative to attend school; or

(d) The child is enrolled in an Indian boarding school administered through the Bureau of Indian Affairs.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-215-1110, filed 5/3/94, effective 6/3/94. Formerly WAC 388-24-125 (part).]

WAC 388-215-1120 Living in the home of a relative of specified degree—Application for AFDC when child is

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in foster care or another relative's home. As long as the requirements in WAC 388-215-1050 are met the department shall determine a child is living with a relative of specified degree who applies for AFDC on behalf of the child even though the child is temporarily in foster care or with another relative, provided:

(1) The child is returned to the applying relative's care within thirty days subsequent to the authorization of AFDC; and

(2) No AFDC payments are being made for the child, either in another relative's home or through AFDC-FC in the same thirty-day period.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-215-1120, filed 5/3/94, effective 6/3/94. Formerly WAC 388-24-125 (part).]

WAC 388-215-1130 Living in the home of a relative of specified degree—Notification to parent of AFDC authorization. When AFDC has been authorized on behalf of a dependent child who is living with a nonparental relative of specified degree, the department shall make reasonable efforts to notify the parent with whom the child most recently resided that an application for AFDC on behalf of the child has been approved unless good cause exists not to do so based on a substantiated claim that the parent has abused or neglected the child.

(1) The department shall notify the parent as soon as reasonably possible but no later than seven calendar days after the date of AFDC approval.

(2) The notification shall advise the parent of:

(a) The provisions of the family reconciliation act under chapter 13.34A RCW; and

(b) The right of the parent to be notified of the address and location of the child as provided under WAC 388-215-1140.

[Statutory Authority: RCW 74.08.090 and 1995 c 401. 95-19-002 (Order 3889), § 388-215-1130, filed 9/6/95, effective 10/7/95.]

WAC 388-215-1140 Living in the home of a relative of specified degree—Request for address disclosure by child's parent. When AFDC has been approved for a child who is living with a nonparental caretaker relative, the address and location of the child may be given to the parent with whom the child most recently resided if the parent has legal custody of the child or a court has granted the parent visitation rights or residential time with the child.

(1) The department shall not release the address if:

(a) The department has determined, under WAC 388-215-1410, that the nonparental caretaker relative has good cause for refusing to cooperate with the department's child support agency in regard to enforcing the address requesting parent's child support obligation;

(b) A court order exists which restricts or limits the address requesting parent's right to contact or visit the child or the nonparental caretaker relative by imposing conditions to protect the caretaker relative or the child from harm;

(c) There is a current investigation or pending case involving abuse or neglect of any child by the address requesting parent under chapter 13.34 RCW; or

(d) There is a substantiated claim that the address requesting parent has abused or neglected any child.

(2) The department shall apply the following additional conditions with regard to the disclosure of a child's address and location under this section:

(a) The address requesting parent must comply with the requirements of WAC 388-215-1150 when submitting a request for disclosure;

(b) The department shall notify the child's caretaker relative of the request for disclosure and provide the relative an opportunity to demonstrate why the disclosure request should be denied following the requirements in WAC 388-215-1160; and

(c) The department shall respond to the address disclosure request following the requirements in WAC 388-215-1170.

[Statutory Authority: RCW 74.08.090 and 1995 c 401. 95-19-002 (Order 3889), § 388-215-1140, filed 9/6/95, effective 10/7/95.]

WAC 388-215-1150 Living in the home of a relative of specified degree—Requirements for submitting a request for disclosure of a child's address. A parent requesting disclosure of a child's address and location under WAC 388-215-1140 shall submit the request in writing and in person, with satisfactory evidence of identity, at the department's community services office which is currently maintaining the child's case record.

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

(2) If the parent resides outside the state of Washington, the department shall waive the provision requiring submission in person if the parent:

(a) Submits a notarized request for disclosure; and

(b) Complies with the requirements of subsection (3) of this section.

(3) If the request for disclosure is based upon a court order which grants the parent legal custody of the child or visitation rights or residential time with the child, the parent shall include the following with a request for disclosure of an address:

(a) A copy of the court order; and

(b) A sworn statement that the order has not been modified.

[Statutory Authority: RCW 74.08.090 and 1995 c 401. 95-19-002 (Order 3889), § 388-215-1150, filed 9/6/95, effective 10/7/95.]

WAC 388-215-1160 Living in the home of a relative of specified degree—Notifying the caretaker relative of a request for disclosure of a child's address. Prior to disclosing the address and location of a child to the child's parent under WAC 388-215-1140, the department shall mail a notice to the last known address of the nonparental caretaker relative advising the relative that:

(1) A request for disclosure has been made by the child's parent; and

(2) The office will disclose the address to the parent after thirty days from the date of the notice, unless the caretaker relative:

(a) Provides proof of a pending court case involving abuse or neglect of a child by the parent requesting disclosure;

(b) Provides proof of a current investigation of allegations of abuse or neglect of a child by the parent requesting disclosure;

(c) Provides a copy of a court order which enjoins disclosure of the address or restricts the address requesting party's right to contact or visit the caretaker relative or the child by imposing conditions to protect the nonparental relative or the child from harm, including, but not limited to, temporary orders for protection under chapter 26.50 RCW; or

(d) Requests a fair hearing under chapter 388-08 WAC which ultimately results in a decision that disclosure must be denied because of the existence of one or more of the conditions listed in WAC 388-215-1140(1).

[Statutory Authority: RCW 74.08.090 and 1995 c 401. 95-19-002 (Order 3889), § 388-215-1160, filed 9/6/95, effective 10/7/95.]

WAC 388-215-1170 Living in the home of a relative of specified degree—Responding to a request for disclosure of a child's address. The department shall respond to a parent's request for disclosure of a child's address made under WAC 388-215-1170 within thirty-five days of receiving the request. The response will notify the parent:

(1) Of the child's address and location if such information may be disclosed under the requirements of WAC 388-215-1140;

(2) That the child's address and location may not be disclosed under the requirements of WAC 388-215-1140, including the reasons for denying the parent's request; or

(3) That a decision on address disclosure has not been made because:

(a) The nonparental caretaker relative has requested a fair hearing and a final hearing decision has not been entered; or

(b) The nonparental caretaker relative is claiming good cause for refusing to cooperate with the department's child support agency with regard to enforcing the address requesting parent's child support obligation and the department has not made a final determination on the relative's claim.

(4) When a decision on address disclosure has been delayed because of a pending fair hearing decision or good cause claim, the department shall notify the parent of the decision on address disclosure within ten calendar days of the date of the fair hearing decision or good cause claim determination.

[Statutory Authority: RCW 74.08.090 and 1995 c 401. 95-19-002 (Order 3889), § 388-215-1170, filed 9/6/95, effective 10/7/95.]

WAC 388-215-1200 Citizenship and alienage. The department shall grant AFDC to a person otherwise eligible under this chapter who is:

(1) A United States citizen; or

(2) A Canadian Indian (a North American Indian born in Canada) considered the same as a United States citizen because he or she:

(a) Has at least fifty percent Indian blood; or

(b) Has less than fifty percent Indian blood and entered the United States prior to December 24, 1952; and

(c) Has maintained residence since entry; or

(3) An alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under

color of law, including any alien who is lawfully present in the United States as a result of the application of the provisions of Section 203 (a)(7), Section 207(c), Section 208, or Section 212 (d)(5) of the Immigration and Nationality Act; or

(4) An alien attaining temporary resident status (TRS) or permanent resident status (PRS) under the Immigration Reform and Control Act of 1986 (IRCA); and

(a) A Cuban or Haitian entrant as defined in paragraph (1) or (2)(a) of Section 501(e) of Public Law 96-422; or

(b) Not a Cuban or Haitian entrant as defined under this section and adjusted to lawful temporary status more than five years prior to the application for AFDC.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-215-1200, filed 5/3/94, effective 6/3/94. Formerly WAC 388-26-120 (part).]

WAC 388-215-1225 Washington residence—Establishing. (1) A resident is a person who:

(a) Voluntarily lives in the state of Washington; and

(b) Intends to maintain his or her home in the state; or

(c) Is not receiving assistance from another state; and

(d) Entered the state with a job commitment or seeking employment in the state whether or not currently employed.

(2) Children reside in the state of Washington if they make their home in the state.

(3) The department is not required to find that an applicant is a resident of Washington if the department determines the applicant is a resident of another state and is only temporarily absent from that state.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-215-1225, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-26-055, 388-26-070 and 388-26-080.]

WAC 388-215-1230 Washington residence—Maintaining. (1) A person has maintained his or her residence in Washington if, since establishing it, the person has not left the state except as specified in subsection (2) of this section.

(2) Absences from the state prior to application do not interrupt residence when:

(a) The absences were enforced or beyond the control of the person; or

(b) The absences were for temporary periods and occurred for specific purposes not involving an intent to change residence and including a plan for return at a future date.

(3) Applicants meeting the residence requirements and otherwise eligible may not be disqualified from receiving assistance solely because they have received assistance from another state or political subdivision. The department may not use the fact that persons received assistance from another state as the basis to determine they are not residents of Washington.

(4) Persons who move out of the state of Washington for more than a temporary visit are assumed to no longer reside in the state of Washington unless they can present positive evidence to the contrary.

(a) The department shall not grant assistance to persons not residing in the state of Washington according to this assumption. See WAC 388-245-1000 pertaining to "visit."

(b) Recipients remaining out of the state for more than one month must supply adequate information to overcome

the assumption they no longer intend to reside in the state of Washington.

(5) Assistance can only be continued to recipients temporarily absent from the state who:

(a) Remain in need; and

(b) Fulfill all eligibility requirements.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-215-1230, filed 5/3/94, effective 6/3/94. Formerly WAC 388-26-060 (part).]

WAC 388-215-1245 Washington residence—Authorizing return of Washington resident. When an inquiry is received regarding whether or not a person is a resident of the state of Washington, or should move to the state of Washington, the department shall:

(1) Investigate the pertinent facts relative to the inquiry;

(2) Furnish the other state with pertinent information;

(3) When appropriate, give social facts indicating whether residence in the state of Washington is or is not in the interest of the person's welfare; and

(4) Inform the inquiring state that the department has no legal authority to authorize the return of a person to the state or to pay costs of such return.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-215-1245, filed 5/3/94, effective 6/3/94. Formerly WAC 388-26-105.]

WAC 388-215-1300 Deprivation—Death. If either or both parents are deceased, a child is considered as deprived of parental support or care except that: Deprivation of parental support or care due to death is overcome by marriage or remarriage of the remaining parent. A stepparent is legally responsible for providing support and care to a stepchild except as specified in WAC 388-215-1060(3).

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-215-1300, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-24-055 and 388-24-060.]

WAC 388-215-1320 Deprivation—Absence—Requirement. (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 388-250-1250; 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 department shall assume that one or more of the elements of parental functioning as specified in subsection (2)(b) of this section are interrupted sufficiently

to establish deprivation. 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 in subsection (2)(b) of this section. If the department determines that one or more of the elements of parental functioning is reduced due to the parent's absence, it shall establish that deprivation due to continued absence exists.

(4) A child who lives with a natural or adoptive parent and that person's spouse is not considered deprived of parental care and support due to absence.

[Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-215-1320, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-24-055 and 388-24-070.]

WAC 388-215-1325 Deprivation—Absence—Maintenance, physical care and guidance defined. The following definitions shall apply:

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

- (a) Child support;
- (b) Food;
- (c) Clothing; and
- (d) Other necessities.

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

- (a) Providing clean clothing and dressing the child;
- (b) Preparing meals and feeding;
- (c) Supervising bedtime; and
- (d) Assisting with other personal care needs.

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

- (a) Accompanying the child to doctor visits;
- (b) Attending school conferences;
- (c) Disciplining; and
- (d) Participating in decisions concerning the child's well-being and extracurricular activities.

[Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-215-1325, filed 5/3/94, effective 6/3/94. Formerly WAC 388-24-070 (part).]

WAC 388-215-1330 Deprivation—Absence—Exceptions. The department shall not establish deprivation due to absence if:

(1) 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

(2) For applicants, the department's best estimate based on available evidence is that an absent parent will return to live 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

(3) 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.

[Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-215-1330, filed 5/3/94, effective 6/3/94. Formerly WAC 388-24-070 (part).]

WAC 388-215-1335 Deprivation—Absence—Parent serving jail sentence at home. Deprivation due to continued absence exists when a parent convicted of an offense is permitted to live in the family home, but is required by the court to perform unpaid work or unpaid community service. In this situation, the department shall:

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

(2) Allocate income earned by the convicted parent outside of the hours of sentenced unpaid work or community service as required under WAC 388-218-1640.

[Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-215-1335, filed 5/3/94, effective 6/3/94. Formerly WAC 388-24-070 (part).]

WAC 388-215-1340 Deprivation—Incapacity—Requirement. The department shall consider a child deprived of parental support and care due to parental incapacity when:

(1) The child lives with two parents as defined under WAC 388-215-1050 and 388-215-1060; and

(2) One or both parents are substantially incapacitated as defined under WAC 388-215-1345.

[Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-215-1340, filed 5/3/94, effective 6/3/94. Formerly WAC 388-24-065 (part).]

WAC 388-215-1345 Deprivation—Incapacity—Definition of incapacity. To establish deprivation due to incapacity, the physical or mental incapacity of a parent shall be:

(1) Supported by competent medical evidence; and

(2) Expected to last at least thirty days; and

(3) Of such a debilitating nature as to substantially reduce or eliminate the parent's ability to support or care for the child. In making the determination of ability to support, the department shall consider:

(a) The limited employment opportunities of the handicapped parent;

(b) The reason employers refuse to employ the parent for work the parent could do. Reasons may include behavioral disorders or impairments that interfere with securing and maintaining employment;

(c) Limitations that prevent the parent from working full time at a job he or she has been customarily engaged in or is equipped for by education, training, or experience, or can be learned by on-the-job training;

(d) If the parent, even though working full time, is paid on a reduced basis for accomplishing less on a job as a regular employee;

(e) If the parent qualifies for, and is placed in, a non-competitive full-time job that is rehabilitative, therapeutic, or in a sheltered workshop; and

(f) A parent's ability to engage in activities necessary to carry on full-time specified responsibilities, such as employment, home management, and/or adequate care of children. Inability to understand, remember, follow instructions, or

communicate appropriately with others may be sufficient to establish incapacity.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-215-1345, filed 5/3/94, effective 6/3/94. Formerly WAC 388-24-065 (part).]

WAC 388-215-1350 Deprivation—Incapacity—Medical evidence. The department shall consider medical evidence as follows:

(1) The primary source for a physical incapacity shall be a written report from:

(a) A physician;
(b) A certified registered nurse (CRN) within the area of certification; or

(c) The chief of medical administration, or designee, of the Veterans' Administration.

(2) The primary source for mental incapacity shall be a report from:

(a) A psychiatrist;
(b) A clinical psychologist;
(c) A mental health professional designated by the local community mental health agency as defined in RCW 71.05.020; or

(d) A physician at the department's discretion.

(3) The primary source for incapacity due to alcoholism or drug addiction shall be any of those listed in subsections (1) and (2) of this section;

(4) Supplemental sources of evidence include:

(a) A chiropractor;
(b) Nurse;
(c) Physician's assistant; or
(d) DSHS institution or agency from which the parent has received services.

(5) Evidence shall include:

(a) A diagnosis and prognosis for the incapacitating condition; and
(b) The effect of the condition on the individual's ability to function; and
(c) Relevant medical history and documentation to support a conclusion of incapacity.

(6) The department shall review medical evidence and complete an objective appraisal of all factors relevant to the parent's situation. These include age, emotional health, aptitudes, adjustment to the incapacity, family circumstances, employment history, education, and ability to carry out responsibilities of employment or homemaking. Social or educational deficiencies do not establish incapacity but may impact the parent's ability to overcome an incapacity.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-215-1350, filed 5/3/94, effective 6/3/94. Formerly WAC 388-24-065 (part).]

WAC 388-215-1355 Deprivation—Incapacity—Review process. To determine deprivation based on incapacity, the department shall:

(1) Confirm or deny the existence of incapacity within thirty days of the date of application, except in circumstances beyond the control of the agency;

(2) Request additional information when necessary;

(3) Consult with the medical consultant as necessary for evaluation of medical data;

(4) Determine how long the incapacity may be expected to last, based on the prognosis and supported by medical

evidence. Duration shall not exceed twelve months without a redetermination of incapacity;

(5) Deny eligibility if the parent fails to cooperate in obtaining medical evidence for incapacity;

(6) Pay the cost of necessary medical reports, provided payment for such reports shall not be made to DSHS agencies; and

(7) Establish incapacity without further medical documentation if the parent is eligible for veteran's benefits based on disability of at least fifty percent or for any Social Security Administration disability benefit.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-215-1355, filed 5/3/94, effective 6/3/94. Formerly WAC 388-24-065 (part).]

WAC 388-215-1360 Deprivation—Incapacity—Medical treatment. The department shall require the incapacitated parent to accept referrals for evaluation and available medical treatment, which include medical, surgical, psychiatric therapy, treatment in an alcoholism or drug treatment center, or any combination thereof.

(1) If a parent, whose incapacity deprives a child of parental support or care, refuses without good cause to accept available medical treatment which would reasonably be expected to render the parent employable, the department shall remove that parent's needs from the grant.

(2) The department shall determine if the recommended treatment can be expected to restore or substantially improve the parents' to carry out the responsibilities of employment or homemaking.

(3) The department shall determine that the parent is justified in refusing recommended medical treatment if the refusal is based on one or more of the following conditions:

(a) The parent is genuinely fearful of undergoing the treatment even if the fear seems to be unrealistic or irrational;

(b) The parent could lose a faculty, or use of a faculty, and refuses to accept the risk;

(c) The parent will not accept treatment because of religious beliefs;

(d) The parent is unable to participate in treatment due to another incapacity.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-215-1360, filed 5/3/94, effective 6/3/94. Formerly WAC 388-24-065 (part).]

WAC 388-215-1365 Deprivation—Unemployment—Requirement. The department shall determine a child to be deprived of parental care or support due to the unemployment of a parent when the child lives with two parents, one of whom being a qualifying parent as determined under WAC 388-215-1370, if that qualifying parent:

(1) Is unemployed, as defined under WAC 388-215-1375; and

(2) Has been unemployed for at least thirty days or meets the exceptions under WAC 388-215-1380, and during the same thirty-day period the qualifying parent has not:

(a) Refused a bona fide offer of employment; or

(b) Refused training for employment; or

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

(3) Meets the work history requirements under WAC 388-215-1385; and

(4) Participates, as required, in the JOBS program as required under WAC 388-215-1520 or, if exempt due to remoteness as provided under WAC 388-47-100 and not participating in JOBS, registered with the employment agency of the state; and

(5) Has not refused to apply for or accept unemployment compensation.

[Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-215-1365, filed 5/3/94, effective 6/3/94. Formerly WAC 388-24-074 (part).]

WAC 388-215-1370 Deprivation—Unemployment—Qualifying parent. If either parent may be deemed the qualifying parent under WAC 388-215-1365, 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. In so designating, the department shall:

(1) Use the best evidence available for computing income;

(2) Calculate income over the full twenty-four month period, regardless of when the relationship began;

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

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

[Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-215-1370, filed 5/3/94, effective 6/3/94. Formerly WAC 388-24-074 (part).]

WAC 388-215-1375 Deprivation—Unemployment—Defined. The department shall consider the qualifying parent to be unemployed when the qualifying parent:

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

(2) Is employed one hundred hours or more for a particular month if:

(a) The qualifying parent was employed less than one hundred hours for each of the two previous months; and

(b) Is expected to be employed less than one hundred hours during the next month; or

(3) Is a recipient who works one hundred hours or more a month for up to eighteen consecutive months; or

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

[Statutory Authority: RCW 74.08.090 and 74.12.036, 96-23-021, § 388-215-1375, filed 11/12/96, effective 12/13/96. Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-215-1375, filed 5/3/94, effective 6/3/94. Formerly WAC 388-24-074 (part).]

WAC 388-215-1380 Deprivation—Unemployment—Exception to thirty-day rule. The requirement that the qualifying parent be unemployed for a minimum of thirty days prior to grant authorization shall be waived when:

(1) A prior AFDC-E grant is terminated due to employment of the qualifying parent;

(2) That employment ends within thirty days of the date the grant is terminated; and

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

[Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-215-1380, filed 5/3/94, effective 6/3/94. Formerly WAC 388-24-074 (part).]

WAC 388-215-1385 Deprivation—Unemployment—Work quarters. The qualifying parent shall have one of the following:

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

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

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

(2) Receipt of or eligibility for unemployment compensation within one year of application for assistance.

[Statutory Authority: RCW 74.04.050 and 74.04.055, 97-01-043, § 388-215-1385, filed 12/11/96, effective 1/11/97. Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-215-1385, filed 5/3/94, effective 6/3/94. Formerly WAC 388-24-074 (part).]

WAC 388-215-1390 Deprivation—Redetermination of eligibility when deprivation ceases. When deprivation due to death, absence, incapacity, or unemployment ceases and the child remains in need, the department shall determine if another basis for deprivation exists.

(1) If it appears that another basis for deprivation may exist, but additional information or verification is needed to establish eligibility, the department shall:

(a) Request the necessary information or verification from the client following rules in chapter 388-212 WAC; and

(b) Continue assistance during the eligibility redetermination process.

(2) If no other basis for deprivation exists, the department shall:

(a) Determine the child ineligible for AFDC according to WAC 388-245-1510; and

(b) Terminate assistance following rules in chapter 388-245 WAC.

[Statutory Authority: RCW 74.08.090 and 74.12.036, 96-23-021, § 388-215-1390, filed 11/12/96, effective 12/13/96. Statutory Authority: RCW 74.12.036, 96-10-045 (Order 3971), § 388-215-1390, filed 4/26/96, effective 5/27/96. Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-215-1390, filed 5/3/94, effective 6/3/94.]

WAC 388-215-1400 Support enforcement—Assignment of support rights—Cooperation with office of support enforcement. (1) As a condition of eligibility, each client of AFDC shall assign to the office of support enforcement any rights to support in his or her own behalf or in behalf of the other assistance unit members, and any rights to support which has accrued prior to the time assignment is made.

(a) The department shall require the client to promptly remit to the office of support enforcement any support received directly after assignment is made.

(b) The department shall consider the client's signed application as an assignment of support rights. The client's acceptance of an AFDC payment shall constitute an agreement to the assignment of support rights.

(2) As a condition of eligibility, the department shall require each AFDC client to cooperate with the office of support enforcement as specified under WAC 388-14-200 unless the department has established good cause as specified under WAC 388-215-1440. Department IV-A staff shall base the determination of client cooperation on all evidence in its possession.

(3) If the relative with whom the child lives fails to comply with the requirements in this section, the department shall deny eligibility to that relative and provide any assistance payment the child is eligible for by protective payment as described under WAC 388-265-1350.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-215-1400, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-24-108 and 388-24-109.]

WAC 388-215-1410 Good cause not to cooperate with support enforcement—Good cause claims. When a client claims good cause for noncooperation due to one of the circumstances listed under WAC 388-215-1440, the department shall:

(1) Determine:

(a) If evidence supplied by the client corroborates that cooperation would be against the best interest of the child; or

(b) Whether an investigation of the claimed circumstances can or should be conducted to confirm that cooperation would be against the best interest of the child.

(2) Not deny or delay assistance for a pending good cause determination if the client has provided corroborative evidence and information;

(3) Waive the requirement for client cooperation under WAC 388-215-1400 if the department determines cooperation would not be in the best interest of the child for whom support is sought; and

(4) When the department determines that good cause does not exist:

(a) Notify the client and afford the client an opportunity to cooperate, withdraw the application, or request a fair hearing; and

(b) If the client continues to refuse to cooperate, the client shall lose AFDC eligibility as specified under WAC 388-215-1400.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-215-1410, filed 5/3/94, effective 6/3/94. Formerly WAC 388-24-111 (part).]

WAC 388-215-1420 Good cause not to cooperate with support enforcement—Department responsibilities. The department shall:

(1) Inform all clients of:

(a) How establishing paternity, collecting support, and collecting third-party medical coverage may benefit the child; and

(b) The client's right to claim good cause not to cooperate.

(2) Determine good cause as quickly as possible within thirty days from the day the good cause claim is made. The

department may have additional time when the information required to verify the claim cannot be obtained within thirty days or when the client needs more than twenty days to provide corroborative evidence;

(3) Notify the client, in writing, of the department findings and basis of determination;

(4) Document the determination, department findings, and the basis for the determination in the client's record; and

(5) Review, at least every six months, all active good cause cases. If good cause no longer exists, the department shall require the client to cooperate.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-215-1420, filed 5/3/94, effective 6/3/94. Formerly WAC 388-24-111 (part).]

WAC 388-215-1430 Good cause not to cooperate with support enforcement—Client responsibilities. The burden to substantiate the good cause claim shall be upon the client. The department shall deny a client's good cause claim when the client fails to take the following required actions:

(1) Specify the circumstances which may constitute a valid basis for a good cause claim;

(2) Provide at least some corroborative evidence supporting the existence of these circumstances within twenty days from the date the good cause claim was made, except the department shall:

(a) Give the client a reasonable additional period of time, when the department determines the client will have exceptional difficulty in obtaining corroborative evidence;

(b) Waive the requirement to provide corroborative evidence if the client meets the conditions in WAC 388-215-1470; and

(3) If requested by the department, provide enough information to permit the department to investigate the circumstance involved in the client's good cause claim.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-215-1430, filed 5/3/94, effective 6/3/94. Formerly WAC 388-24-111 (part).]

WAC 388-215-1440 Good cause not to cooperate with support enforcement—Good cause circumstances. The department shall only determine cooperation is against the best interest of the child for whom support is sought if one of the following circumstances exists:

(1) The client's cooperation can reasonably be anticipated to result in serious physical or emotional harm which is detrimental to the:

(a) Child; or

(b) Caretaker relative to the extent the impairment reduces the caretaker relative's capacity to adequately care for the child; or

(2) Establishing paternity or securing support would be detrimental to the child for whom support is sought and:

(a) The child was conceived as a result of incest or forcible rape;

(b) Legal adoption proceedings of the child are pending before a superior court; or

(c) The parent is working with a public or licensed child placement agency to decide whether to keep or relinquish the child for adoption and the discussions have not gone on for more than three months.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-215-1440, filed 5/3/94, effective 6/3/94. Formerly WAC 388-24-111 (part).]

WAC 388-215-1450 Good cause not to cooperate with support enforcement—Evidence of good cause. (1) The client may corroborate a good cause claim with the following types of evidence:

(a) Birth, medical, or law enforcement records which show the child was conceived as the result of incest or forcible rape;

(b) Court or other records which show proceedings for adoption are pending before a superior court;

(c) Court, medical, criminal, child protective services, social services, psychological, or law enforcement records which indicate that the absent parent might inflict emotional or physical harm on the caretaker relative or the child for whom support is sought;

(d) Medical records or written statements from a mental health professional, with a diagnosis or prognosis concerning the emotional health of the caretaker relative or the child for whom support is sought;

(e) Child placement agency verification, including the dates of counseling, regarding the issue of whether to keep or relinquish the child for adoption; or

(f) Sworn statements from persons other than the client, who have knowledge of the circumstances which provide the basis of the good cause claim.

(2) The department shall not approve good cause based on a claim of emotional harm until the department:

(a) Considers and documents whether the client's cooperation is reasonably anticipated to result in emotional harm that substantially affects the functioning of a child or the caretaker relative; and

(b) Obtains the following information:

(i) Past and present emotional state of the person subject to emotional harm;

(ii) Degree and probable duration of the emotional upset;

(iii) Degree of cooperation required; and

(iv) Extent of the child's involvement in the paternity establishment or support enforcement activity.

(3) When the client requests, the department shall assist the client in obtaining any required evidence which the client cannot reasonably be expected to obtain without assistance.

(4) The department shall only approve good cause for noncooperation, based on the evidence supplied by the client, after such evidence has been examined and found to actually verify the client's good cause claim.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-215-1450, filed 5/3/94, effective 6/3/94. Formerly WAC 388-24-111 (part).]

WAC 388-215-1460 Good cause not to cooperate with support enforcement—Inconclusive evidence of good cause. When the client provides evidence, but the client's claim and the evidence the client provides do not give the department sufficient basis for making a good cause determination, the department may:

(1) Request additional evidence from the client. The department shall notify the client of the specific type of document which is needed; or

(2) Conduct an investigation, if necessary.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-215-1460, filed 5/3/94, effective 6/3/94. Formerly WAC 388-24-111 (part).]

WAC 388-215-1470 Good cause not to cooperate with support enforcement—No evidence of good cause. When a good cause claim is based on the anticipation of physical harm to the child or to the caretaker relative and corroborative evidence of the claim is not provided by the client, the department shall:

(1) Investigate the claim when the department believes:

(a) The claim is credible without evidence; and

(b) No evidence is available.

(2) Find good cause if the client's statement and the conducted investigation satisfies the department that the client has good cause for refusing to cooperate; and

(3) Subject good cause approved under these circumstances to supervisory approval.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-215-1470, filed 5/3/94, effective 6/3/94. Formerly WAC 388-24-111 (part).]

WAC 388-215-1480 Good cause not to cooperate with support enforcement—Investigating good cause claims. When the department conducts an investigation of a client's good cause claim, the department shall:

(1) Contact the absent parent if such contact is necessary to establish the good cause claim; and

(2) Before such contact, notify the client and give the client the opportunity to:

(a) Present additional evidence or information that makes contact unnecessary;

(b) Have the application for assistance withdrawn or assistance terminated; or

(c) Have the good cause claim denied.

(3) Allow the client to request a fair hearing if the client chooses to have the good cause claim denied.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-215-1480, filed 5/3/94, effective 6/3/94. Formerly WAC 388-24-111 (part).]

WAC 388-215-1490 Good cause not to cooperate with support enforcement—Coordination with support enforcement. (1) The department shall promptly report to the office of support enforcement staff those cases in which:

(a) A client claims good cause and a determination is pending;

(b) A determination of good cause exists;

(c) A determination that good cause does not exist; and

(d) A client requests a fair hearing to contest a good cause determination.

(2) Before a final determination of good cause, the department shall:

(a) Give the office of support enforcement staff the opportunity to review and comment on the finding and basis for the proposed determination;

(b) Consider the office of support enforcement staff comments or recommendations; and

(c) Provide the office of support enforcement staff the opportunity to participate in any fair hearing based on a good cause claim.

(3) The department shall determine if the office of support enforcement can proceed to collect support without involving the child or caretaker relative and without posing

a risk or a detriment to the child or caretaker relative. If so, the department shall:

- (a) Document this decision in the case file;
- (b) Notify the client of this decision so the client may withdraw the application; and
- (c) If the application is not withdrawn, provide available information about the absent parent to the office of support enforcement staff.
- (4) If the department determines that any collection activity is reasonably anticipated to place the child or caretaker relative at risk, the office of support enforcement staff shall not attempt to establish paternity or secure support.

[Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-215-1490, filed 5/3/94, effective 6/3/94. Formerly WAC 388-24-111 (part).]

WAC 388-215-1500 Enumeration. (1) As a condition of eligibility, the department shall require each applicant for, or recipient of assistance to:

- (a) Furnish a Social Security number; or
- (b) Apply for a Social Security number if the number is unknown or has not been issued; and
- (c) Report any new or previously unknown Social Security number following its receipt.
- (2) The department shall not deny, delay, or terminate assistance pending issuance of Social Security numbers.
- (3) If any person in the assistance unit fails to furnish or apply for a Social Security number, the department shall determine such person to be ineligible.
- (4) If a client needs help in obtaining a Social Security number, the department shall:
 - (a) Refer the client to the nearest Social Security office; and
 - (b) Furnish requested verification from department records.

[Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-215-1500, filed 5/3/94, effective 6/3/94. Formerly WAC 388-24-052.]

WAC 388-215-1510 Cooperation with quality control. (1) As a condition of eligibility, the department shall require adult AFDC recipients or payees to cooperate in the review of eligibility as part of a quality control review.

- (2) The department shall determine ineligibility for the assistance unit when a recipient or payee fails to cooperate with the quality control review process until the earlier of the following:
 - (a) Quality control requirements are met; or
 - (b) One hundred twenty days from the end of the annual quality control review period.
- (3) The department shall require an applicant to provide verification of all eligibility requirements if the applicant:
 - (a) Was terminated from assistance for refusal to cooperate in a quality control review; and
 - (b) Reapplies after one hundred twenty days from the end of the annual quality control review period.

[Statutory Authority: RCW 74.04.015, 74.04.055, 74.04.057 and 45 CFR 233.10 (a)(1)(ii)(B), 95-14-048 (Order 3860), § 388-215-1510, filed 6/28/95, effective 7/29/95.]

WAC 388-215-1520 Employment or training. (1) All AFDC applicants and recipients shall be subject to job opportunities and basic skills program (JOBS) participation as provided in WAC 388-47-100.

(2) A mandatory JOBS participant failing to cooperate in appraisal shall be subject to provisions of chapter 388-47 WAC, unless the participant:

- (a) Is exempt from JOBS participation;
- (b) Has not been notified of nonexempt status for JOBS participation; or
- (c) Is a JOBS program volunteer participant.
- (3) A child's eligibility shall not be affected by the JOBS program participation requirement for the parent or needy caretaker relative.

(4) The eligibility of a nonqualifying parent not participating in JOBS shall be affected by the program participation requirements of the qualifying parent in the AFDC-E program.

(5) An individual determined exempt from participation in JOBS on the basis of documented incapacity shall be referred to DVR as described under WAC 388-52-150 through 388-52-155.

[Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-215-1520, filed 5/3/94, effective 6/3/94. Formerly WAC 388-24-090.]

WAC 388-215-1540 Strikers—Requirement. (1) The department shall determine:

- (a) As ineligible, any AFDC or refugee assistance unit in which the parent(s) or only eligible child participates in a strike on the last day of the month; or
- (b) As eligible, only the otherwise eligible parent and sibling(s) of a child in the home who participates in a strike on the last day of the month.

(2) Strike shall mean any concerted stoppage, slow-down, or other interruption of work by employees, including a stoppage by reason of the expiration of a collective-bargaining agreement.

[Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-215-1540, filed 5/3/94, effective 6/3/94. Formerly WAC 388-24-042.]

WAC 388-215-1560 Mandatory monthly reporting—Requirement. As a condition of continuing eligibility for AFDC, certain recipients must return a completed monthly report to the department by the fifth day of the month following the month for which the report describes the household circumstances, as required in WAC 388-245-2010 through 388-245-2040.

[Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-215-1560, filed 5/3/94, effective 6/3/94.]

WAC 388-215-1600 Assistance units. Except as specified under WAC 388-215-1620, the department shall include, in a single assistance unit, the following persons living together:

- (1) A woman in her third trimester of pregnancy who has no other child; or
- (2) Except as specified under WAC 388-215-1610, the child, including all full, half, or adopted brothers and sisters of such child; and

(3) The parent, adoptive parent, or stepparent with whom the child lives as defined under WAC 388-215-1050; and

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

- (a) The minor parent;
- (b) The minor parent's child; or
- (c) The minor parent's full or half brother or half sister.

[Statutory Authority: RCW 74.04.050 and Section 406(a) and 407(a) of the Social Security Act - Definitions. 96-06-045 (Order 3950), § 388-215-1600, filed 3/5/96, effective 4/5/96. Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-215-1600, filed 5/3/94, effective 6/3/94. Formerly WAC 388-24-050 (part).]

WAC 388-215-1610 Assistance units—Optional members. Except as specified under WAC 388-215-1620, the department may include in the assistance unit at the option of the family:

(1) One needy nonparental caretaker relative of specified degree as defined under WAC 388-215-1080 whose eligibility depends solely on caring for the eligible child(ren), if a parent does not reside in the family home. For the purpose of determining the eligibility of the nonparental caretaker relative under this section, the department shall:

(a) Consider a child who receives SSI or federal, state or local foster care benefits as an eligible child when no other AFDC eligible child lives in the home; and

(b) Not include the income, resources or needs of the child who receives SSI or federal, state or local foster care when determining the need and the amount of the assistance payment of the assistance unit.

(2) The stepbrothers or stepsisters of a child included in the assistance unit, except as required in WAC 388-215-1600;

(3) The sibling(s) of an SSI child;

(4) For recipient assistance units, the child of unmarried parents when the child is living with both parents.

[Statutory Authority: RCW 74.04.050 and Section 406(a) and 407(a) of the Social Security Act - Definitions. 96-06-045 (Order 3950), § 388-215-1610, filed 3/5/96, effective 4/5/96. Statutory Authority: RCW 74.08.090. 94-23-040 (Order 3806), § 388-215-1610, filed 11/9/94, effective 12/10/94; 94-10-065 (Order 3732), § 388-215-1610, filed 5/3/94, effective 6/3/94. Formerly WAC 388-24-050 (part).]

WAC 388-215-1620 Assistance unit—Persons excluded due to factors not related to need. 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:

(1) A recipient of SSI benefits;

(2) A child who is not deprived of parental support or care as defined under WAC 388-215-1300 through 388-215-1390;

(3) An alien not meeting the citizenship and alienage requirements (see WAC 388-215-1200);

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

(5) Children who receive Title IV-E, state and local foster care maintenance payments except as provided for under WAC 388-215-1100 and 388-215-1120;

(6) A person under sanction for noncooperation with:

(a) The job opportunities and basic skills training (JOBS) program (see WAC 388-215-1520); or

(b) The department's division of child support (see WAC 388-215-1400).

(7) A child who does not live with a relative of specified degree as defined under WAC 388-215-1060 and 388-215-1080.

[Statutory Authority: RCW 74.08.090. 94-22-031 (Order 3799), § 388-215-1620, filed 10/26/94, effective 11/26/94; 94-10-065 (Order 3732), § 388-215-1620, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-24-050 and 388-26-145.]

WAC 388-215-1650 Assistance to a minor child. (1)

A minor is a person seventeen years of age and younger.

(2) Under state law, (chapter 74.13 RCW, Child welfare services), the department shall protect and care for homeless, dependent, or neglected children or children in danger of becoming delinquent.

(3) If a minor applies for assistance for himself or herself, the department shall determine eligibility for AFDC as required under this chapter. If an unmarried pregnant minor is requesting an abortion, parental consent is not required. The decision to proceed with an abortion rests solely with the minor. Involvement and/or consultation with parents in reaching this decision should be a matter of individual case judgment.

(4) Prior to authorizing assistance for a minor, the department shall determine the parent's ability to financially support and willingness to contribute. See WAC 388-506-0610 (1) and (2) for responsibility for medical care. Parental contact is not required when the minor applicant:

(a) Is married;

(b) Is in the military service;

(c) Has been declared emancipated by a court of competent jurisdiction prior to the application for assistance; or

(d) Is applying for medical assistance related to pregnancy.

(5) The minor's emancipation status is not an eligibility factor. The identification of emancipation status is necessary to determine if there is parental responsibility for support.

(6) The department shall inform the minor applicant that there will be communication with the minor's parents during the eligibility determination process in order to determine the parents' willingness to contribute to the support of the minor.

(7) If a minor parent and his or her child live with such minor's parent or parents, the department shall establish the assistance unit of the minor according to WAC 388-215-1600 through 388-215-1610. If the minor parent's parent is not included in the assistance unit of the minor parent, the department shall consider the income of such parent available to meet the needs of the minor parent as specified under WAC 388-218-1660 and 388-218-1680.

(8) If a minor parent's legal guardian has a court-ordered responsibility for the support of such minor parent, the department shall treat such legal guardian's income, with respect to determining the availability of such income to meet the needs of the minor parent, the same as the income of a minor parent's parent as specified in subsection (7) of this section.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-215-1650, filed 5/3/94, effective 6/3/94. Formerly WAC 388-24-550.]

Chapter 388-216 WAC
RESOURCE ELIGIBILITY

WAC

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WAC 388-216-2000 Resources—Eligibility. (1) To be eligible for financial benefits, a client must be in financial need. When determining financial need, the department shall consider resources which are:

- (a) Owned by the client; and
- (b) Available to the client.

(2) A client may own and keep exempt resources, or the exempt portion of a resource, and be eligible for assistance. However, financial need is affected by any income produced by the use of the exempt resource.

(a) The resources listed in WAC 388-216-2450 and 388-216-2500 are totally exempt, regardless of the value of that resource.

(b) The resources listed in WAC 388-216-2650 are partially exempt, within a ceiling value.

- (c) All other resources are nonexempt.

(3) The possession of available nonexempt resources affect eligibility, to the extent those resources decrease the need for public assistance.

(a) When determining financial need, the department shall:

(i) Treat any proceeds from the lease or rental of a nonexempt resource as income;

(ii) Treat excess real property as specified in WAC 388-216-2600; and

(iii) For nonexempt resources, other than excess real property, use the value of the client's nonexempt resources. The value of a nonexempt resource includes any proceeds from the sale or pledge of that nonexempt resource.

(b) A household may own available nonexempt resources up to the resource standard of one thousand dollars and remain eligible for assistance; and

(c) If the value of a client's nonexempt resources are in excess of the one thousand dollar standard, the client shall be ineligible.

(4) The department shall phase in any change to the one thousand dollar resource standard at the first opportunity, when the department first:

- (a) Takes a case action;
- (b) Determines eligibility; or
- (c) Redetermines eligibility.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-216-2000, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-28-005, 388-28-400, 388-28-410, 388-28-415, 388-28-435, 388-28-438 and 388-28-450.]

WAC 388-216-2050 Resources—Ownership. (1) The department shall consider a client to be the owner of a resource when the client:

(a) Holds record title to real or personal property; or

(b) Is in possession of real or personal property which has no record title.

(2) The department shall presume the owner or title holder has the right and ability to use, dispose of, and control real or personal property.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-216-2050, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-400 (part).]

WAC 388-216-2075 Resources—Clarifying ownership or value. (1) Unless a client can provide definite evidence to the contrary, the department shall presume the following types of evidence establishes the ownership of a resource:

- (a) Legally executed bills of sale;
- (b) Purchasing contracts;
- (c) Official tax records; or
- (d) Documents which specify an individual either as owner or as carrying the obligation attendant upon ownership.

(2) The client shall have the opportunity to rebut the presumption that he or she is the owner of a resource by producing additional evidence to clarify ownership.

(3) If there is evidence a client owns a resource but there is also some doubt about the ownership or value of that resource:

(a) Upon request by the department, a client shall, to the extent of his or her ability, clarify ownership or value of a resource;

(b) If a client is incapable of clarifying ownership or value, the department shall help the client do so;

(c) If the client cannot clarify the ownership or value of a resource within a reasonable period of time, as set by the department, continuing eligibility cannot be established; and

(d) If the client produces unreliable or inconclusive evidence regarding the ownership or value of a resource, the department shall attempt to directly obtain conclusive evidence.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-216-2075, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-28-385 and 388-28-400.]

WAC 388-216-2100 Resources—Community and separate property—Effect on ownership of a resource.

(1) The department shall presume real or personal property to be community property when the real or personal property is:

(a) Held in the name of either the husband or wife or both; or

(b) Subject to the disposition of either the client or his or her spouse.

(2) Resources which are community property constitute a resource owned by both or either spouse and the family unit for the purpose of determining eligibility. Both spouses shall have his or her eligibility determined on the basis of a family unit and on the basis of the total community property resource holdings, regardless of whether one or both are clients.

(3) The presumption that community property is owned by and an available resource to the family unit and both spouses shall stand until overcome by positive evidence to the contrary.

(4) The department shall consider real or personal property to be separate property, rather than community property, when the department establishes that the real or personal property:

(a) Was acquired and paid for by either spouse before marriage;

(b) Was acquired by one of the spouses as a result of a gift or inheritance; or

(c) Was acquired and paid for entirely out of income from separate property.

(5) The department shall presume that the status of separate property is destroyed when a commingling of community and separate property occurs in the purchase or improvement of real or personal property.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-216-2100, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-28-360 and 388-28-365.]

WAC 388-216-2150 Resources—Jointly owned resources. When a client and another person jointly own a resource, the department shall determine the client's ownership interest as described below. The department shall use any portion of a resource which is owned by and available to a client to determine eligibility.

(1) When a client has less than full ownership or full title to real or personal property, the department shall use the client's share of the equity value of the resource to determine eligibility.

(2) A client has less than full title to real or personal property when the title is shared with some person other than a spouse, contract vendor, mortgage, or lien holder.

(3) The department shall determine whether a client owns part or all of any cash funds which are held by the client or held jointly by the client and any other person.

(a) Since the entire amount of the cash fund is at the client's disposal, the department shall presume a client owns all funds in:

(i) A joint account;

(ii) An account held by the client on behalf of another person; or

(iii) Funds held by the client in the behalf of another person.

(b) The client shall have the opportunity to rebut the presumption of full ownership when the client can show that all or a portion of the cash fund is:

(i) Derived from funds belonging exclusively to the other holder; and

(ii) Held and/or utilized solely for the benefit of that holder.

(c) The department shall not consider any cash fund as actually owned by or available to the client if the client can verify that the funds belong to and are held for the use of another person.

(4) The department shall exclude a bank account jointly owned by an AFDC recipient and an SSI recipient (i.e., both names are on the account) if the funds in the account are counted for SSI purposes and the SSI recipient cannot rebut presumption of the availability of the funds.

[Statutory Authority: RCW 74.08.090, P.L. 103-286 and Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act. 95-14-049 (Order 3862), § 388-216-2150, filed 6/28/95, effective 7/29/95. Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-216-2150, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-28-380 and 388-28-438.]

WAC 388-216-2200 Resources—Availability. (1) The department shall determine whether any resource owned, in whole or in part, by a client is available to meet the needs of the assistance unit. The department shall consider a resource available when the client has:

(a) A legal interest in the resource; and

(b) The legal ability to make the resource available for support and maintenance.

(2) Only resources which are actually available to meet the needs of the assistance unit shall affect current eligibility for public assistance.

(3) The department shall consider a resource available when any of the following criteria are met:

(a) The resource is actually at hand for current use by the client;

(b) The client is actually able to dispose of the resource by:

(i) Direct transfer to a buyer;

(ii) Conversion into cash; or

(iii) A pledge of the resource;

(c) The client has actual title to the resource; or

(d) The client has actual control over and can legally dispose of the resource.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-216-2200, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-400 (part).]

WAC 388-216-2250 Resources—Making resources available. (1) To be eligible for assistance, a client must proceed to make available any resource potential which will reduce need.

(2) The department shall consider the factors involved in individual situations in deciding whether a client is proceeding with reasonable diligence to make a resource potential available to meet need.

(3) When a client has taken reasonable action to make a resource potential available, but without success:

(a) The client's current eligibility is not affected; and

(b) If there is reason to believe the resource potential will be available later, the client's continued eligibility is conditional and subject to review.

(4) The client is responsible for submitting evidence that the resource potential is unavailable, in the form of statements or letters. These statements or letters shall indicate:

- (a) The factors involved; and
- (b) The approximate time a final decision regarding the release of the potential resource could be expected.

(5) Based on the evidence provided by the client, the department shall:

- (a) Establish and record a definite date to review whether the resource continues to be unavailable; and
- (b) Make this review date known to the client.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-216-2250, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-400 (part).]

WAC 388-216-2300 Resources—Trusts as unavailable resources. (1) If a lump sum is placed in trust for a client and is not under the client's control, the following rules apply:

(a) Funds kept in trust are not considered an available resource. However, the client must take reasonable action to make this resource potential available.

(b) For general assistance only, the department shall treat as a resource the first disbursement, if made within thirty days of the date the lump sum was received by the client. This may be done once for each lump sum placed in trust.

(2) Real property held in trust for an individual Native American is not an available resource.

(a) The department shall not require a Native American applying for or receiving public assistance to sell or attempt to sell allotted trust property as a condition of eligibility.

(b) Property which has lost its trust status is an available resource.

(3) The superintendent of a Native American agency may be authorized, under Title 25, Code of Federal Regulations, Part 115 to control disbursement of a Native American client's trust funds.

(a) Funds held in trust by the superintendent and not disbursed to the client are not available to meet need.

(b) The department shall determine whether any of the trust fund will be disbursed by the superintendent to meet the client's public assistance needs.

(i) When the trust is set up under 25 CFR 115(b), the trust funds cannot be disbursed by the superintendent until the client's eighteenth birthday.

(ii) When the trust is set up under 25 CFR 115(a), the trust funds may be disbursed, at the discretion of the superintendent.

(c) Disbursed 25 CFR 115 trust funds affects eligibility in the following manner:

(i) Any trust funds disbursed directly to the client are treated as newly acquired income.

(ii) Funds disbursed by the superintendent to third parties in payment for goods or services are not under the client's control, but may be available to meet need, depending on whether the disbursement duplicates basic requirements.

(A) Disbursements to third parties for items duplicating "basic requirements," as defined in WAC 388-22-030, are available to meet need as newly acquired income.

(B) Disbursements to third parties for items not duplicating basic requirements are available to meet need as a newly acquired resource.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-216-2300, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-28-440 and 388-28-650.]

WAC 388-216-2350 Resources—Availability of alien sponsor's resources. (1) The department shall apply the rules of this section to a sponsored alien who is applying for AFDC or GA and to the sponsor of that alien, unless the alien:

(a) Meets the definition of an asylee, Amerasian, or refugee in WAC 388-55-010;

(b) Is a Cuban or Haitian entrant, as defined in section 501(3) of the Refugee Education Assistance Act of 1980; or

(c) Is the dependent child of the sponsor or sponsor's spouse.

(2) A sponsor is defined as any person or public or private organization executing an affidavit or affidavits of support or similar agreement on behalf of an alien (who is not the child of the sponsor or the sponsor's spouse) as a condition of the alien's entry into the United States.

(3) Sponsorship shall affect the eligibility of an alien for a period of three years from the date of entry for permanent residence into the United States. When the sponsor of an alien is:

(a) A public or private agency or organization, the sponsored alien shall be ineligible for assistance throughout the sponsorship period, unless the agency or organization is either no longer in existence or has become unable to meet the alien's needs; or

(b) A private individual, the department shall deem the resources of the sponsor (and the sponsor's spouse if living with the sponsor) to be the resources of the sponsored alien throughout the sponsorship period.

(4) The alien who is sponsored by an individual shall:

(a) Provide the department with any information and documentation necessary to determine the resources of the sponsor that can be deemed available to the alien; and

(b) Obtain any cooperation necessary from the sponsor.

(5) The department shall calculate the monthly resources deemed available to the sponsored alien, as follows:

(a) Use the total amount of the resources of the sponsor, determined as if the sponsor was applying for AFDC in the alien's state of residence; minus

(b) One thousand five hundred dollars.

(6) In any case where a person is the sponsor of two or more aliens who are subject to the provisions in this section, the deemable resources of the sponsor shall be divided equally among the aliens.

(7) Resources which are deemed to a sponsored alien shall not be considered in determining the need of other unsponsored members of the alien's family except to the extent the resources are actually available.

(8) Any sponsor of an alien and the alien shall be jointly and individually liable for any overpayment of assistance made to the alien during the three years after the alien's entry for permanent residence into the United States due to the sponsor's failure to provide correct information,

except where such sponsors were without fault or where good cause existed.

(a) When the department finds a sponsor has good cause or is without fault for not providing information to the agency, the sponsor shall not be held liable for the overpayment and recovery will not be made from the sponsor.

(b) Good cause and no fault shall be defined as any circumstance beyond the control of the sponsor.

[Statutory Authority: RCW 74.04.050 and 74.08.090. 95-19-006 (Order 3891), § 388-216-2350, filed 9/6/95, effective 10/7/95. Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-216-2350, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-570 (part).]

WAC 388-216-2450 Resources—Exempt or disregarded income which is also exempt as a resource. The department shall exempt or disregard as income all the funds listed in this section. The department shall also consider these funds as an exempt resource:

(1) The resources of a supplemental security income (SSI) recipient. The department shall not consider nonrecurring lump sum SSI retroactive payments made to an AFDC client as income or as a resource in the month paid nor in the next following month;

(2) The monthly child support incentive payment from the division of child support (DCS);

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

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

(5) Adoption support payments if the adopted child is excluded from the assistance unit;

(6) Bona fide loans as specified in WAC 388-216-6230 and 388-216-7100. The department shall consider loans bona fide when the loan is a debt the borrower has an obligation to repay;

(7) Educational assistance, in the form of grants, loans, or work study, issued to a student from the following sources:

(a) Title IV-A of the Higher Education Amendments; or

(b) Bureau of Indian Affairs student assistance programs;

(8) Grants or loans made or insured under any programs administered by the department of education to an undergraduate student for educational purposes;

(9) Educational assistance in the form of grants, loans, or work study, issued under the Carl D. Perkins Vocational and Applied Technology Education Act (P.L. 100-391), for attendance costs as identified by the institution. For a student attending school:

(a) At least half-time, attendance costs include tuition, fees, costs for purchase or rental of equipment, materials, or supplies required of all students in the same course of study, books, supplies, transportation, dependent care, and miscellaneous personal expenses; or

(b) Less than half-time, attendance costs include tuition, fees, and costs for purchase or rental of equipment, materials, or supplies required of all students in the same course of study;

(10) Educational assistance in the form of grants, work study, scholarships, or fellowships, from sources other than those identified in subsections (7), (8), and (9) of this section for attendance costs as identified by the institution. Atten-

dance costs include tuition, fees, costs for purchase or rental of equipment, materials, or supplies required of all students in the same course of study, books, supplies, transportation, dependent care, and miscellaneous personal expenses;

(11) Any remaining educational assistance, in the form of grants, work study, scholarships, or fellowships, not disregarded in subsections (7), (8), (9), or (10) of this section, as allowed under WAC 388-218-1540;

(12) The earned income disregards in WAC 388-218-1430 through 388-218-1480 for AFDC and WAC 388-219-1500 for GA-U to any work study earnings received and not disregarded in subsections (7), (8), (9), (10), and (11) of this section;

(13) Payment under Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646, section 216);

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

(15) Compensation to volunteers under the Domestic Volunteer Act of 1973 (P.L. 93-113, Titles I, II, and III);

(16) Benefits under Women, Infants and Children program (WIC);

(17) Food service program for children under the National School Lunch Act of 1966 (P.L. 92-433 and 93-150);

(18) Energy assistance payments;

(19) Indian trust funds or lands held in trust (including interest and investment income accrued while such funds are held in trust) by the Secretary of the Interior for an Indian Tribe, including but not limited to funds issued under the Maine Indian Claims Settlement Act of 1980 (P.L. 96-420);

(20) Per capita judgment funds under P.L. 97-408 to members of the:

(a) Blackfeet Tribe of the Blackfeet Indian Community, Montana;

(b) Gros Ventre Tribe of the Fort Belknap Reservation, Montana; and

(c) Assiniboine Tribe of the Fort Belknap Indian Community;

(21) Indian judgment funds or funds held in trust by the Secretary of the Interior distributed per capita under P.L. 93-134, as amended by P.L. 103-66, 94-114, 97-458, or 98-64. In addition:

(a) Real or personal property purchased directly with funds from the per capita payments, up to the amount of the funds from the per capita payment, are referred to as initial investments. These initial investments are exempt;

(b) Income derived either from the per capita payment or the initial investments shall be treated as newly acquired income;

(c) Appreciation in value of the initial investment shall be treated as a nonexempt resource at the time of eligibility review, unless the initial investment is a type of resource which is listed as exempt under WAC 388-216-2500 or 388-216-2650;

(d) The disregard does not apply to per capita payments or initial investments from per capita payments which are transferred or inherited;

(e) The department shall not consider up to two thousand dollars per year of income received by individual Indians, derived from leases or other uses of individually owned trust or restricted lands;

(22) Two thousand dollars per person per calendar year received under the Alaska Native Claims Settlement Act (P.L. 92-203 and 100-241);

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

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

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

(26) A previous underpayment of assistance under WAC 388-260-1550 in the month paid nor in the next following month;

(27) 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. In addition:

(a) 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, are referred to as initial investments. These initial investments are exempt;

(b) Income derived either from the annuity fund payment or the initial investments shall be treated as newly acquired income;

(c) Appreciation in value of the initial investment shall be treated as a nonexempt resource at the time of eligibility review, unless the initial investment is a type of resource which is listed as exempt under WAC 388-216-2500 or 388-216-2650;

(d) Proceeds from the transfer of the initial investments are treated as a transfer of exempt property, as specified in WAC 388-217-3350;

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

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

(30) Payments made under the Disaster Relief Act of 1974 (P.L. 93-288), as amended by disaster Relief and Emergency Assistance amendments of 1988 (P.L. 100-707). This applies to assistance issued by federal, state, or local governments or by a disaster assistance organization;

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

(32) Payments made to victims of nazi persecution under Public Law 103-286. The effective date of the disregard is retroactive to August 1, 1994;

(33) Payments made from the Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act trust fund, pursuant to P.L. 93-134. Funds paid, interest or investment income earned on such funds, and any payment authorized by the tribe or the Secretary of the Interior are not counted as a resource; and

(34) Income specifically excluded by any other federal statute from consideration as income and a resource.

[Statutory Authority: RCW 74.08.090, P.L. 103-286 and Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act. 95-

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14-049 (Order 3862), § 388-216-2450, filed 6/28/95, effective 7/29/95. Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-216-2450, filed 5/3/94, effective 6/3/94.]

WAC 388-216-2500 Resources—Exempt as a resource with no ceiling value. "Goodwill" means the reputation and patronage of a company. Goodwill can generally be valued as the amount a company would sell for over the value of its physical property, money owed it, and other assets.

(1) Irrespective of value, the department shall exempt the following resources:

(a) The client's home, subject to the conditions specified in sections WAC 388-216-2550 through 388-216-2590.

(b) 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.

(c) One cemetery plot for each member of the assistance household.

(2) The department may declare real and personal property which will be used in a self-employment enterprise as an exempt resource:

(a) On the basis of an agreed plan; and

(b) When the department determines that the real or personal property:

(i) Is necessary to restore the client's independence; or

(ii) Will aid in rehabilitating the client or the client's dependents by providing self-employment experience which can reasonably be expected to lead to full or partial self-support.

(3) The department shall consider any increase in value to exempted stock, raw materials, or inventory as:

(a) Exempt, when the increase is necessary to the health of the enterprise; or

(b) Income, when such increase might reasonably be used towards the client's self-support.

(4) In the absence of an agreed plan, the department shall consider the business assets of a self-employment enterprise, if available and nonexempt, as available to the owner in the amount of the sale value minus encumbrances.

(5) Under an agreed plan, the department shall consider accounts receivable as:

(a) An exempt resource when:

(i) The client makes a diligent effort to collect; or

(ii) If efforts to collect are unsuccessful, the client turns the accounts over to a collection agency;

(b) A nonexempt resource when the client does not meet the requirements in (a) of this subsection; and

(c) Earned income from self-employment, when payment is received.

(6) The department shall consider goodwill as an unavailable resource until the business is sold.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-216-2500, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-28-420, 388-28-435 and 388-28-439.]

WAC 388-216-2550 Resources—Home. (1) A home is defined as real property owned and used by a client as a place of residence, together with a reasonable amount of land surrounding and contiguous to the residence, including

land normally considered and used as part of a home, such as:

(a) Yard and home garden space;
 (b) Road to get to the home;
 (c) Right of way to and land holding a water supply;
 (d) Outbuildings and the land on which they are located, if they serve a normal and useful function of the home. Examples of these outbuildings include a garage, woodshed, chicken house, barn, or a pasture for a cow. In this connection, the use of necessary land and buildings to produce self-consumed products is considered as a reasonable part of the land surrounding the home.

(2) The department shall apply WAC 388-216-2000 or 388-216-2600 to any additional real or personal property which is not covered in subsection (1) of this section.

(3) The home is an exempt resource when used as a place of residence by the client or by his or her dependents.

(a) "**Dependents**" as used in this section means the client's spouse, the client's minor children and/or the client's disabled sons or daughters.

(b) "**Disabled sons or daughters**" means sons or daughters of the client who are:

(i) Unmarried;
 (ii) Either natural, step, or adopted children;
 (iii) Either minor or adult children;
 (iv) Dependent on the client for their livelihood; and
 (v) Disabled with a medically verified disability which significantly handicaps them in performing employment or homemaking activities.

(4) The department shall consider a home as a nonexempt resource when the home is not being used for residential purposes by either the client or by his or her dependents, subject to the exceptions in WAC 388-216-2560 through 388-216-2590.

[Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-216-2550, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-420 (part).]

WAC 388-216-2560 Resources—Temporary absence from home. (1) The department shall consider a client who is absent from his or her home for temporary periods, as continuing to reside in his or her home, unless he or she expresses his or her intent to abandon the home as a residence.

(2) A temporary absence is defined as an absence that lasts ninety days or less.

[Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-216-2560, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-420 (part).]

WAC 388-216-2570 Resources—Absence from home over ninety days. (1) The department shall presume that a client absent from his or her home for more than ninety days without good cause has abandoned the home for residential purposes, except when the absence is due to:

(a) Natural disaster; or
 (b) Hospitalization; or
 (c) Other health reasons.

(2) When the client is absent from his or her home for more than ninety days due to the exceptions listed in subsection (1) of this section, the department shall make a rebuttable assumption that the home is a nonexempt resource when:

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(a) There is reason to believe that the client will be unable to return to his or her home; and

(b) The home is not occupied by the client's dependents; and

(c) The following conditions are met:

(i) The client provides a written statement that he or she does not intend to return to the home, to use the home as his or her place of residence, or to use the home as a residence for his or her dependents; or

(ii) The client does not meet the conditions listed in WAC 388-216-2580 for medical absences or in WAC 388-216-2590 for absences in response to a natural disaster.

[Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-216-2570, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-420 (part).]

WAC 388-216-2580 Resources—Medical absence from home. For medical absences, the department shall:

(1) Obtain an evaluation from three doctors, one of which may be the attending doctor to:

(a) Review the existing medical findings and history; and

(b) Provide the department with a signed statement indicating if, in their professional belief and opinion, the client's health will make the client unable to return to his or her home.

(2) The department shall continue to consider the home as an exempt resource if any of the three doctors indicates it is their medical opinion the client will be able to return to his or her home during his or her lifetime.

(3) The department shall consider the home as a nonexempt resource which can be made available to meet need if:

(a) The home is not occupied by the client's dependents; and

(b) The doctors unanimously indicate in their evaluations it is their medical opinion the individual will be unable to return to his or her home during the remainder of his or her lifetime.

[Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-216-2580, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-420 (part).]

WAC 388-216-2590 Resources—Absence from home due to natural disaster. (1) For absences resulting from natural disaster, the department shall determine whether the residence is accessible and inhabitable.

(2) When a home that is determined inaccessible or uninhabitable could, in the judgment of the department, become accessible and inhabitable with reasonable effort and expense to the client, the home is presumed to be a nonexempt resource.

[Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-216-2590, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-420 (part).]

WAC 388-216-2600 Resources—Excess real property. "Excess real property" means real property which:

Is not exempt as the client's home or under a self-employment plan; and

Has a net equity value in excess of the resource standard.

"Good-faith effort" means:

Listing real property with a multiple listing realtor; or

Using other reasonable means to sell real property, when a multiple listing is unavailable or the realtor refuses to list the real property.

"Net sale proceeds" means sale price less encumbrances and costs incurred in selling the real property.

(1) A client who owns excess real property may receive public assistance for a period not to exceed nine months provided the client:

(a) Is making a good-faith effort to sell the excess real property; and

(b) Signs a repayment agreement to repay the lesser of the amount of assistance received or the net proceeds of such sale.

(2) If public assistance is approved and the owner of excess real property ceases to make good-faith efforts to sell the excess real property:

(a) The entire amount of public assistance may become an overpayment; and

(b) The department shall advise clients of their right to a fair hearing and afford them the opportunity to challenge a decision that good-faith efforts to sell have ceased, prior to assessment of an overpayment under this section.

(3) At the time public assistance is authorized, the department shall file a lien without a sum certain on the specific excess real property.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-216-2600, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-425.]

WAC 388-216-2650 Resources—Exempt within a ceiling value. (1) The department shall exempt the equity value of the resources listed below up to the specified ceiling value. Consider any excess value as a nonexempt resource and apply to the resource limit of one thousand dollars:

(a) Term or burial insurance, up to a ceiling value of one thousand five hundred dollars per household member;

(b) One vehicle up to a ceiling value of one thousand five hundred dollars per household;

(c) When a vehicle is jointly owned by an AFDC recipient and an SSI recipient, the equity value of the vehicle is prorated between the owners:

(i) The portion of equity value owned by the SSI recipient is not counted for AFDC;

(ii) Do not count the portion of equity value owned by the AFDC client, up to the ceiling value of one thousand five hundred dollars;

(iii) Consider any portion of the equity value owned by the AFDC client in excess of the ceiling value as a nonexempt resource. Per provisions in WAC 388-216-2000 (3)(b) consider nonexempt resources up to the resource limit of one thousand dollars.

(2) The department shall phase in changes to the ceiling values at the first opportunity, when the department first:

(a) Takes a case action;

(b) Determines eligibility; or

(c) Redetermines eligibility.

[Statutory Authority: RCW 74.08.090, P.L. 103-286 and Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act. 95-14-049 (Order 3862), § 388-216-2650, filed 6/28/95, effective 7/29/95. Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-216-2650, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-28-435 and 388-28-438.]

WAC 388-216-2800 Resources—Value. "Equity value" means fair market value minus encumbrances (legal debts).

(1) The department shall determine the value of all nonexempt resources according to the resource's equity value. When a vehicle is jointly owned by an AFDC recipient and an SSI recipient, the equity value of the vehicle is prorated between the owners:

(a) The portion of equity value owned by the SSI recipient is not counted for AFDC;

(b) Do not count the portion of equity value owned by the AFDC client, up to the ceiling value of one thousand five hundred dollars, for the first vehicle. Do not apply this rule to additional vehicles;

(c) Consider any portion of the equity value owned by the AFDC client in excess of the ceiling value as a nonexempt resource. Per provisions in WAC 388-216-2000 (3)(b) consider nonexempt resources up to the resource limit of one thousand dollars.

(2) The department shall reassess the fair market value if the client provides acceptable evidence that:

(a) A good-faith effort has been made to sell the resource at the fair market value determined by the department; and

(b) The current worth of the resource is less than the resource standard.

(3) The department shall:

(a) Use the *National Automobile Dealers Association Official Used Car Guide* to determine the resource value of automobiles. For automobiles listed in this guide, the department shall presume the "average loan" value in the current edition represents the resource value.

(b) Use the *Kelley Bluebook R.V. Guide* to determine the resource value of recreational vehicles. For vehicles listed in this guide, the department shall presume the "wholesale" value in the current edition represents the resource value.

(c) Document the method used to determine the resource value in the case record for vehicles not listed in these guides.

(d) Document evidence in the case record when the values listed in these guides can be overcome by positive evidence to the contrary.

(4) The equity value in the cash discount value of a chattel mortgage or sales contract represents the value of the resource.

[Statutory Authority: RCW 74.08.090, P.L. 103-286 and Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act. 95-14-049 (Order 3862), § 388-216-2800, filed 6/28/95, effective 7/29/95. Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-216-2800, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-28-400, 388-28-438 and 388-28-450.]

WAC 388-216-2850 Resources—Accumulation and depletion of allowable cash resource reserves. (1) Clients may spend their cash reserves and rebuild these reserves with succeeding public assistance grants, with funds from other exempt sources, or other income which has been considered in computing financial need.

(2) Clients may place grants in accounts along with cash reserves and then spend out of those accounts during the month.

(3) A recipient's cash on hand may exceed the specified limits for a maximum of thirty days if the cash on hand has already been considered in computing financial need.

(4) For general assistance clients, see WAC 388-219-2500 for treatment of allowable cash reserves from nonrecurrent cash lump sum sources.

[Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-216-2850, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-440 (part).]

WAC 388-216-2900 Resources—Newly acquired resources. When a client obtains a newly acquired resource, the department shall:

(1) Apply the resource exemptions to newly acquired resources.

(2) Treat income tax refunds as follows:

(a) The department shall consider an income tax refund as a nonexempt resource in the month of receipt; and

(b) The department shall consider the Earned Income Tax Credit (EITC) portion of an income tax refund as an exempt resource in the month of receipt and in the month following the month of receipt. The department shall consider the EITC as a nonexempt resource in the second month following the month of receipt.

(3) Add the value of the client's newly acquired resources to the client's existing nonexempt resources. If the recipient's total nonexempt resources are in excess of the resource standard, the recipient is ineligible.

(4) Any increase in the value of a resource (such as interest on a savings account, stock dividends, or livestock births) affects eligibility only to the extent the increased value causes the total value of the client's nonexempt resources to exceed the resource standard. The excess is considered income.

[Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-216-2900, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-28-435 and 388-28-482.]

Chapter 388-217 WAC TRANSFER OF PROPERTY

WAC

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| 388-217-3000 | Transfer of property—Definitions. |
| 388-217-3050 | Transfer of property—Assessing property transfers. |
| 388-217-3100 | Transfer of property—Adequate consideration. |
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| 388-217-3300 | Transfer of property—Adjustment in period of ineligibility. |
| 388-217-3350 | Transfer of property—Exempt resource transfers by recipients. |

WAC 388-217-3000 Transfer of property—Definitions. (1) "Need under normal conditions of living" means the Washington state gross median income adjusted for family size, as promulgated by the secretary of Health and Human Services (HHS).

(2) "Reasonable value" means the quick-sale value of the property at the time of the property's transfer.

(3) "Transfer" means any intentional 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. Transfer includes delivery of personal property, bills of sale, deeds, mortgages, pledges or any other instrument conveying or relinquishing an interest in or control over property. Transfer of title to a resource occurs by:

(a) An intentional act or transfer; or

(b) Intentional failure to act to preserve title to the resource.

[Statutory Authority: RCW 74.08.335, 94-04-043 (Order 3696), § 388-217-3000, filed 1/27/94, effective 2/27/94.]

WAC 388-217-3050 Transfer of property—Assessing property transfers. (1) The department shall determine whether a client transferred property:

(a) Within two years immediately prior to application;

(b) During the application process; or

(c) While the client is on assistance.

(2) When a transfer occurred within the time frames above, the department shall determine whether the client received adequate consideration for the transferred property as specified in WAC 388-217-3100 (1) and (2) or had a valid reason for receiving less than adequate consideration as specified under WAC 388-217-3100(3):

(a) If the client received adequate consideration or had a valid reason for receiving less than adequate consideration, the department shall not presume that the client transferred the property to qualify for assistance nor shall the department establish a period of ineligibility for such transfer; or

(b) If the client received less than adequate consideration without a valid reason, the department shall presume the client transferred the property with intent to qualify for assistance as specified under WAC 388-217-3150 and establish a period of ineligibility as specified under WAC 388-217-3150.

(3) The transfer of separate property by a spouse who is not included in the assistance unit does not affect the eligibility of the other spouse.

[Statutory Authority: RCW 74.04.050 and 74.98.335, 95-24-015 (Order 3924), § 388-217-3050, filed 11/22/95, effective 12/23/95. Statutory Authority: RCW 74.08.335, 94-04-043 (Order 3696), § 388-217-3050, filed 1/27/94, effective 2/27/94.]

WAC 388-217-3100 Transfer of property—Adequate consideration. (1) Adequate consideration exists when the reasonable value of the property transferred is equal to the reasonable value of the goods or services received in exchange for the transferred property.

(2) The market value of the transferred item acts as a guide to the reasonable value of the transferred property. However, less than market value shall be considered adequate consideration if, in view of all existing circumstances and factors, the individual's plan in regard to the transfer had any reasonable basis.

(a) Settlement or transfer of an unresolved claim (such as a claim for damages) by the transfer of property of approximately equal value is regarded as adequate consideration in the absence of evidence indicating fraud or collusion. (The advice of the applicant's attorney suggesting settlement would be substantiating evidence.)

(b) A transfer of property in settlement of a legally enforceable debt approximately equal to the current fair

market value of the property transferred represents adequate consideration.

(c) The existence of a debt must be established by any of the following types of evidence:

(i) A legally recorded instrument evidencing the existence of the debt and executed at or about the time the debt was allegedly incurred;

(ii) Other documentary evidence, for example, canceled checks, receipts, notes, mortgages, or written agreements executed by the principals at or about the time the debt was allegedly incurred;

(iii) The sworn affidavits or testimony of at least two disinterested persons not parties to the transaction or directly or indirectly benefiting therefrom, who were in a position to have first-hand knowledge of the situation and arrangements between the principals at the time the debt was allegedly incurred and whose statement corroborates the sworn statement or testimony of the principals;

(iv) Such other evidence as would be accepted by a court of law to establish a debt; or

(v) Debts incurred from the services of a minor child or for loans from a minor child are not recognized as legal obligations.

(3) When a client does not receive adequate consideration for transferred property, the department shall determine whether the client had a valid reason for accepting less than adequate consideration. The department shall take the following factors into account when determining whether a client had a valid reason for accepting less than adequate consideration in exchange for the client's property:

(a) Circumstances necessitating the transaction, including the forced sale of assets;

(b) The business experience or acumen of the seller. One with little experience in business will probably not make as advantageous a deal as one who is experienced and knows how to get the best possible trade;

(c) The market demand for the type of resource transferred. Certain property, such as some securities, automobile, etc., can be readily sold; whereas other property can only be sold on forced sale to speculators, who presumably would pay very little. This might apply to real estate in a locality where there is little demand for real property;

(d) The transfer of property due to a legally enforceable foreclosure procedure; or

(e) The transfer of property by an accelerated sale due to necessity to relocate to accept employment or training or to retain a cohesive family unit.

[Statutory Authority: RCW 74.08.335. 94-04-043 (Order 3696), § 388-217-3100, filed 1/27/94, effective 2/27/94.]

WAC 388-217-3150 Transfer of property—Establishing intent to qualify for public assistance. (1) The client shall have the opportunity to demonstrate that the transfer was for reasons other than to qualify or maintain eligibility for public assistance.

(2) Reasons (noninclusive) below shall, if verified, establish that the transfer was not for the purpose of qualifying or maintaining eligibility for public assistance:

(a) The client was the victim of fraud, misrepresentation or coercion and the transfer was based upon such fraud, misrepresentation or coercion; provided that the client has

been attempting and continues to attempt to recover the property or its equivalent value;

(b) At the time of the transfer, the client was not receiving assistance and did not consider any probable need for assistance in the foreseeable future;

(c) The property was transferred to a spouse pursuant to a divorce or legal separation settlement approved by or ordered by a court of competent jurisdiction;

(d) The client held title only as a trustee for the use and benefit of another person with no beneficial interest himself or herself;

(e) The transfer was to clear title to a resource in which the client had no real beneficial enforceable interest;

(f) The client can show that his or her eligibility for assistance would not have been affected if he or she had retained, rather than transferred, the transferred property; or

(g) Within an assistance unit, up to four thousand dollars of each child's income or resources may be transferred or accumulated into one irrevocable educational trust per child without penalty when the educational trust is adequately earmarked for that child's future educational use. The department shall provide the client with clear and simple information regarding the creation of irrevocable educational trusts, including all relevant state and federal regulations governing the creation of such trusts.

[Statutory Authority: RCW 74.12.350. 94-16-046 (Order 3763), § 388-217-3150, filed 7/27/94, effective 8/27/94. Statutory Authority: RCW 74.08.335. 94-04-043 (Order 3696), § 388-217-3150, filed 1/27/94, effective 2/27/94.]

WAC 388-217-3200 Transfer of property—Effect on need. (1) The transfer shall not affect the client's eligibility for assistance if the department determines that the transfer occurred for reasons other than with intent to qualify for assistance.

(2) If the department determines a client transferred property with intent to qualify for public assistance, the department shall:

(a) Consider the property available to meet the client's needs; and

(b) Establish a period of ineligibility.

(3) There is no effect on the client's eligibility for public assistance if the department determines a client received adequate consideration for the transferred resource.

[Statutory Authority: RCW 74.04.050 and 74.98.335. 95-24-015 (Order 3924), § 388-217-3200, filed 11/22/95, effective 12/23/95. Statutory Authority: RCW 74.08.335. 94-04-043 (Order 3696), § 388-217-3200, filed 1/27/94, effective 2/27/94.]

WAC 388-217-3250 Transfer of property—Period of ineligibility. (1) The department shall determine the amount of uncompensated value for property which was improperly transferred. "Uncompensated value" means the reasonable value of the transferred property, minus:

(a) Encumbrances; and

(b) The amount received; or

(c) The reasonable value of the consideration received.

(2) The department shall calculate the duration of a period of ineligibility by dividing the uncompensated value of the improperly transferred property by the monthly need under normal conditions of living as defined under WAC 388-217-3000.

(3) The period of ineligibility shall start:

(a) For applicants, from the first of the month in the month that the improper transfer occurred; or

(b) For recipients, from the first of the month following the month that the improper transfer occurred.

(4) The department may shorten the period of ineligibility as required under WAC 388-217-3300.

(5) When an improper transfer is taken into account after assistance is authorized, the department shall determine how the improper transfer affects a recipient's eligibility for the assistance the recipient received.

(a) The department shall consider any assistance received by the assistance unit during the period of ineligibility as an overpayment, as defined under WAC 388-44-010.

(b) The department shall not determine the assistance unit as eligible to receive further assistance until the period of ineligibility has expired, unless the period of ineligibility is shortened as described under WAC 388-217-3300.

[Statutory Authority: RCW 74.08.335. 94-04-043 (Order 3696), § 388-217-3250, filed 1/27/94, effective 2/27/94.]

WAC 388-217-3300 Transfer of property—Adjustment in period of ineligibility. (1) The department may reduce the period of ineligibility, as determined under WAC 388-217-3250, when:

(a) The client secures a return of some or all of the transferred property, or the equivalent value of the transferred property. Under these circumstances, the department shall reduce the period of ineligibility to reflect the value of the recovered property; or

(b) During the period of ineligibility:

(i) The client has demonstrable, unusual nonrecurrent expenses from a major unforeseen change in circumstances, such as extensive hospitalization; or

(ii) Undue hardship would exist from the denial of public assistance.

(2) Public assistance paid under this rule shall be the full grant amount and shall not be considered an overpayment.

[Statutory Authority: RCW 74.08.335. 94-04-043 (Order 3696), § 388-217-3300, filed 1/27/94, effective 2/27/94.]

WAC 388-217-3350 Transfer of property—Exempt resource transfers by recipients. (1) Exempt resources which a recipient may retain and remain eligible for assistance must continue to be retained to remain exempt.

(2) If a recipient transfers previously exempt resources contrary to the rules in this section or if the proceeds from the transfer are used for purposes other than described under this chapter, the department shall consider the value of the transferred resources as available to meet need and shall establish a period of ineligibility, as specified under WAC 388-217-3250.

(3) A recipient may transfer exempt personal property without affecting financial need when the recipient:

(a) Saves, spends, or reinvests the proceeds from the transfer; and

(b) Brings the recipient's resources below the department's resource limits within sixty days from the date of the transfer.

(4) A recipient may transfer exempt real property or any interest in such property, without penalty, when the recipient meets the following conditions:

(a) The proceeds of the transfer are used to:

(i) Buy a home or to buy a life estate in a home;

(ii) Make necessary repairs or improvements on the recipient's home; or

(iii) Purchase any exempt personal property.

(b) The recipient receives adequate consideration for the transferred real property and for the proceeds reinvested;

(c) The recipient starts to reinvest the proceeds from the transfer within sixty days; and

(d) The recipient brings his or her resources below the department's resource limits when the exempt real property transfer and reinvestment are completed.

(5) The department may allow a reasonable delay beyond sixty days when the recipient is prevented from carrying out a reinvestment plan of exempt resources because of illness or complications involving the mechanics of the transaction.

[Statutory Authority: RCW 74.08.335. 94-04-043 (Order 3696), § 388-217-3350, filed 1/27/94, effective 2/27/94.]

Chapter 388-218 WAC AID TO FAMILIES WITH DEPENDENT CHILDREN—INCOME POLICIES

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

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| 388-218-1515 | Time-loss compensation—Unmarried parents. [Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-218-1515, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-392(part).] Repealed by 95-14-047 (Order 3861), filed 6/28/95, effective 7/29/95. Statutory Authority: RCW 74.08.090 and Section 402 (A)(38) of the Social Security Act. |
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WAC 388-218-1010 Financial need—Rules and procedures. (1) To be eligible for public assistance a client must be in financial need.

(2) Financial need exists when:

(a) The client's payment level plus authorized additional requirements exceeds the amount of the client's nonexempt recurrent and nonrecurrent income. The difference thus computed represents the extent of need which exists; and

(b) The client's total nonexempt resources are within applicable program ceiling values.

(3) The rules in chapter 388-218 WAC governing determination of an applicant's financial need for assistance also govern the determination of the continuing need of a recipient unless specifically stated otherwise.

(4) Need is subject to change whenever the client's financial circumstances change in such a way that the appropriate payment level or the client's income is increased or decreased in relation to the standards for assistance.

(5) The department shall take into account the net recurrent or nonrecurrent nonexempt income in cash or in-kind known at the time of application in computing eligibility for payment for an applicant and when determining the continuing grant amount of the recipient.

[Statutory Authority: RCW 74.08.090, 94-16-044 (Order 3759), § 388-218-1010, filed 7/27/94, effective 9/1/94; 94-10-065 (Order 3732), § 388-218-1010, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-28-005 and 388-28-481.]

WAC 388-218-1050 Definitions. (1) "Allocation" means the process of determining the amount of income possessed by someone outside the AFDC assistance unit

considered available to meet the needs of legal dependents in the assistance unit, or the process of determining the amount of income possessed by the assistance unit considered available to meet the needs of legal dependents outside the assistance unit.

(2) "Available income" means any income which a client possesses and can currently use to supply all or part of the clients' requirements.

(3) "Budget month" means the second calendar month preceding the payment month.

(4) "Deeming" means the process of determining the amount of an alien sponsor's income available to the alien.

(5) "Earned income" means income in cash or in-kind earned as wages, salary, commissions, or profit from activities in which the client is engaged as a self-employed person or as an employee. Earned income may be derived from self-employment (such as business enterprise or farming), or derived from wages or salary received as an employee. Earned income also includes earnings over a period of time for which settlement is made at one time, for example, sale of farm crops, livestock, or poultry. Income from rentals is earned income, provided the client has managerial responsibility for the rental property.

(6) The definition of "earned income" includes:

(a) Earnings under Title I of the Elementary and Secondary Education Act;

(b) All earnings received under the Economic Opportunity Act;

(c) Wages from on-the-job training and work experience; and

(d) Wages paid under the Job Training Partnership Act (JTPA) and the National and Community Service Trust Act of 1993 (Americorps).

(7) The definition of "earned income" excludes:

(a) Returns from capital investment with respect to which the client is not actively engaged, as in a business. For example, under most circumstances, dividends and interest are excluded from "earned income."

(b) Benefits accruing as compensation or reward for service, or as compensation for lack of employment, for example, pensions and benefits from labor organizations, veterans' benefits, unemployment compensation, Social Security, etc.

(c) Income from incentive payments and training-related expenses derived from institutional or work experience training.

(d) Income received under the Job Training Partnership Act and Americorps for training allowances, payments for support services, etc.

(8) "Earned income in-kind" means the in-kind item is earned by work performed for another person by the client such as earning rent from a landlord, etc.

(9) "Entitlement" means any claim or interest, payable in cash or in-kind, a client may have in the following:

(a) Benefit;

(b) Compensation;

(c) Insurance;

(d) Pension (retirement, military, etc.);

(e) Bonus;

(f) Allotment; and

(g) Allowance, etc.

(10) "**Gross income**" means all income not specifically exempted by rule or regulation before applicable program disregards are applied.

(11) "**Income**" shall include, but is not limited to, all types of:

(a) Income from the lease or rental of real or personal property;

(b) Support from parent, stepparent, or other nonrelated adult;

(c) Interest or dividends from stocks and bonds as specified in WAC 388-218-1920 (3)(a);

(d) Wages, including garnished wages;

(e) Income from farming;

(f) Benefits and entitlements from private and public agencies, such as OASDI, veterans' agencies, and U.C.;

(g) Gifts and prizes in the form of cash or marketable securities; and

(h) Lump sum payments.

(12) "**Initial investments**" means real or personal property purchased directly with funds from an annuity fund or per capita payment up to the amount of the funds from the annuity fund or per capita payment.

(13) "**Lump sum payment**" means a nonrecurring unearned income. Lump sum payments may include, but are not limited to:

(a) Lottery, bingo, or gambling winnings;

(b) An inheritance;

(c) Personal injury award;

(d) Workers compensation awards; or

(e) Social Security back payments.

(14) "**Minor parent**" means a person who:

(a) Is seventeen years of age or younger; and

(b) Is the parent of a minor child living in the home; and

(c) Resides in the same household with an adult responsible for the minor parent's support.

(15) "**Net income**" means gross income less applicable disregards and deductions for which the client is eligible.

(16) "**Newly acquired income**" means any previously unreported or undiscovered income a client possesses or controls in whole or in part.

(17) "**Payment month**" means the calendar month for which payment is made.

(18) "**Process month**" means the calendar month between the budget month and the payment month.

(19) "**Self-produced**" means an item produced by a client, as opposed to an item purchased by a client, given to a client, or earned by a client in lieu of wages.

(20) "**Student**" means a client attending a school, college or university, or a course of vocational or technical training designed to fit the client for gainful employment. A full-time student must have a school schedule equal to a full-time curriculum. A part-time student must have a school schedule equal to at least one-half of a full-time curriculum. A student enrolled during the school term just completed and planning to return to school when school reopens shall retain status as a student during the summer vacation.

(21) "**Supplied**" means the in-kind item is furnished to the client without work or cost.

(22) "**Unearned income**" means income not directly resulting from a client's employment or self-employment.

[Statutory Authority: RCW 74.08.090 and Section 402 (A)(38) of the Social Security Act. 95-14-047 (Order 3861), § 388-218-1050, filed 6/28/95, effective 7/29/95. Statutory Authority: RCW 74.08.090 and Public Law 103-82, 45 CFR 233.20 (a)(6)(iii) and (vi) and 233.20 (a)(11). 95-04-048 (Order 3829), § 388-218-1050, filed 1/25/95, effective 2/25/95. Statutory Authority: RCW 74.08.090. 94-16-044 (Order 3759), § 388-218-1050, filed 7/27/94, effective 9/1/94; 94-10-065 (Order 3732), § 388-218-1050, filed 5/3/94, effective 6/3/94. Formerly parts of 388-28-390, 388-28-400, 388-28-475, 388-28-480, 388-28-482, 388-28-483, 388-28-484, 388-28-515, 388-28-535, 388-28-570, 388-28-575 and 388-28-600.]

WAC 388-218-1100 Income—Ownership and use of income and income potentials. (1) The department shall consider all income owned or possessed by the client as available to meet current need, including amounts garnished to pay debts. See also WAC 388-218-1130 Community income, and WAC 388-218-1140 Separate income.

(2) WAC 388-218-1010 through 388-218-1940 cover policies and procedures used in computing income to determine financial need.

(3) The department shall compare the total nonexempt net income values with the appropriate payment level plus authorized additional requirements to determine financial need and, if it exists, the amount of the grant for which the client is eligible.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1100, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-475 (part).]

WAC 388-218-1110 Income availability—Reduction of need. (1) Income shall be considered available only when the income is actually at hand for current use and/or disposition by the client.

(2) A client must proceed to make available any income potential which will reduce need.

(3) In determining whether a client is proceeding with reasonable diligence to make an income potential available to meet need, the department is governed by the factors involved in individual situations.

(4) The client is responsible for submitting evidence in the form of statements or letters indicating the factors involved and the approximate time a final decision could be expected. A definite period of time is determined by the department, made known to the client, and recorded.

(5) When a client has taken reasonably required action to make an income potential available but without success, current eligibility is not affected.

(6) When there is reason to believe the income potential will be available later:

(a) Continued eligibility is conditional; and

(b) Subject to review at such later period at which time the appropriate policy herein is utilized.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1110, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-400 (part).]

WAC 388-218-1120 Entitlements. The department shall:

(1) Determine the interest a client may have in any entitlement;

(2) Refer the client to the proper agency to apply for such benefits;

(3) Assist the client, when requested to do so, in obtaining such benefits; and

(4) Deny or terminate the assistance unit when a member refuses to:

(a) Establish the existence of an entitlement and its value; or

(b) Receive an existing entitlement.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1120, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-390 (part).]

WAC 388-218-1130 Community income. (1) The department shall presume the following to be community income:

(a) All income held in the name of either the husband or wife or both;

(b) Any income received by either the husband or wife; or

(c) The earnings of the husband, or wife, or both, if not legally separated.

(2) The department shall presume income subject to the disposition of either the client or the client's spouse, to be community income for the purpose of determining eligibility. This presumption stands until overcome by positive evidence to the contrary.

(3) Community income is considered to constitute a benefit available to the family unit and hence to both or either spouse.

(4) Each member of the marital community shall have eligibility determined on the basis of a family unit and on the basis of the total community income, regardless of whether one or both are clients.

[Statutory Authority: RCW 74.08.090. 94-16-044 (Order 3759), § 388-218-1130, filed 7/27/94, effective 9/1/94; 94-10-065 (Order 3732), § 388-218-1130, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-360 (part).]

WAC 388-218-1140 Separate income. (1) The department shall consider income to be separate when the department establishes the income:

(a) Was received by either spouse before marriage;

(b) Was received as a result of a gift or inheritance; or

(c) Was received from separate property.

(2) A commingling of community income and separate income destroys the status of separate income.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1140, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-365 (part).]

WAC 388-218-1200 Exempt income types. The department shall exempt the following from consideration as income when determining need:

(1) The income of a supplemental security income recipient. The department shall not count nonrecurring lump sum SSI retroactive payments made to an AFDC client as income in the month paid nor in the next following month;

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

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

(4) Adoption support payments if the adopted child is excluded from the assistance unit;

(5) Payment under Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, P.L. 91-646, section 218;

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

(7) Compensation to volunteers under the Domestic Volunteer Act of 1973, P.L. 93-113, Titles I, II, and III;

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

(9) Food service program for children under the National School Lunch Act of 1966, P.L. 92-433 and 93-150;

(10) Energy assistance payments;

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

(12) 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;

(13) A previous underpayment of assistance under WAC 388-33-195. The department shall not consider such retroactive corrective AFDC payments as income in the month paid nor in the next following month;

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

(15) Payments made under the Disaster Relief Act of 1974, P.L. 93-288, as amended by Disaster and Relief and Emergency Assistance Amendments of 1988, P.L. 100-707. This applies to assistance issued by federal, state, or local governments or by a disaster assistance organization;

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

(17) Earned income tax credit;

(18) Payments made to victims of Nazi persecution, under public law P.L. 103-286; and

(19) Payments made from the Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act trust fund, pursuant to P.L. 93-134. Funds paid, interest or investment income earned on such funds, and any payment authorized by the tribe or the Secretary of the Interior are not counted as income.

(20) Income specifically excluded by any other federal statute from consideration as income.

[Statutory Authority: P.L. 103-286, RCW 74.08.090 and The Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act. 95-11-124 (Order 3857), § 388-218-1200, filed 5/24/95, effective 6/24/95. Statutory Authority: RCW 74.08.090. 94-16-044 (Order 3759), § 388-218-1200, filed 7/27/94, effective 9/1/94; 94-10-065 (Order 3732), § 388-218-1200, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-575 (part).]

WAC 388-218-1210 Exempt and disregarded income—Educational assistance. (1) The department shall exempt from consideration as income when determining need educational assistance, in the form of grants, loans, or work study, issued to a student from the following sources:

(a) Title IV of the Higher Education Amendments; or

(b) Bureau of Indian Affairs student assistance programs.

(2) The department shall disregard the following types of income when determining need:

(a) Grants or loans made or insured under any programs administered by the department of education to an undergraduate student for educational purposes.

(b) Educational assistance in the form of grants, loans, or work study, issued under the Carl D. Perkins Vocational and Applied Technology Education Act, P.L. 101-391, for attendance costs as identified by the institution. For a student attending school:

(i) At least half-time, attendance costs include tuition, fees, costs for purchase or rental of equipment, materials, or supplies required of all students in the same course of study, books, supplies, transportation, dependent care, and miscellaneous personal expenses; or

(ii) Less than half-time, attendance costs include tuition, fees, and costs for purchase or rental of equipment, materials, or supplies required of all students in the same course of study.

(c) Educational assistance in the form of grants, work study, scholarships, or fellowships, from sources other than those identified in subsections (1), (2)(a) and (b) of this section for attendance costs as identified by the institution. Attendance costs include tuition, fees, costs for purchase or rental of equipment, materials, or supplies required of all students in the same course of study, books, supplies, transportation, dependent care, and miscellaneous personal expenses.

(d) Any remaining educational assistance, in the form of grants, work study, scholarships, or fellowships, not disregarded in subsections (1), (2)(a), (b), and (c) of this section, as allowed under WAC 388-218-1540 Assistance from other agencies and organizations.

(e) Apply any applicable earned income disregards to any work study earnings received and not disregarded in subsections (1), (2)(a), (b), (c), and (d) of this section.

(f) Veterans' Administration educational assistance for the student's educational expenses and child care necessary for school attendance. Attendance costs include tuition, fees, costs for purchase or rental of equipment, materials, or supplies required of all students in the same course of study, books, supplies, transportation, dependent care, and miscellaneous personal expenses.

[Statutory Authority: RCW 74.08.090, 94-16-044 (Order 3759), § 388-218-1210, filed 7/27/94, effective 9/1/94; 94-10-065 (Order 3732), § 388-218-1210, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-575 (part).]

WAC 388-218-1220 Disregarded income—Native American benefits. The department shall disregard the following types of income when determining need:

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

(2) Indian trust funds or lands held in trust (including interest and investment income accrued while such funds are held in trust) by the Secretary of the Interior for an Indian tribe or individual tribal member;

(3) Indian judgment funds or funds held in trust by the Secretary of the Interior distributed per capita under P.L. 93-134 as amended by P.L. 97-458 and 98-64. In addition:

(a) Income derived either from the per capita payment or the initial investments shall be treated as newly acquired income.

(b) When the initial investments are nonexempt resources see WAC 388-216-2000.

(c) The disregard does not apply to per capita payments or initial investments from per capita payments which are transferred or inherited.

(4) Income received by Native Americans which is derived from leases or other uses of individually owned trust or restricted lands up to two thousand dollars per person per year (P.L. 103-66).

(5) 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.

(a) The department shall treat the income derived either from the annuity fund payment or the initial investments as newly acquired income.

(b) When the initial investments are nonexempt resources see WAC 388-216-2000.

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

[Statutory Authority: RCW 74.08.090, 94-16-044 (Order 3759), § 388-218-1220, filed 7/27/94, effective 9/1/94; 94-10-065 (Order 3732), § 388-218-1220, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-575 (part).]

WAC 388-218-1230 Disregarded income types. The department shall disregard the following types of income when determining need:

(1) Child's earned income. Earned income of a child when student eligibility conditions in WAC 388-218-1410 Earned income of a child, have been met.

(2) Foster care payments. Disregard as income a foster care payment made for the care of a child. See WAC 388-218-1400 Earned income types, for the treatment of foster care retainer fees.

(3) Gifts:

(a) Cash gifts. Nonrecurring cash gifts up to thirty cumulative dollars received by each member of the AFDC assistance unit per calendar quarter. The department, unless otherwise specified by the donor, shall determine an individual's share in a gift to more than one person by dividing the amount of the gift by the number of persons receiving the gift.

(b) Noncash gifts. Gifts other than cash as defined under chapter 388-22 WAC provided such gifts are within the allowable program resource limits.

(4) Household cost funds. Funds representing another person's or family's share of household costs.

(5) Loans.

(a) Bona fide loans. The department shall consider a loan bona fide when the loan is a debt the borrower has an obligation to repay.

(b) Loan repayments. The department shall not consider as income to a client money received from loan repayment; however, the department shall consider any interest paid in the loan as newly acquired income.

(6) Office of support enforcement pass-through payments. The monthly child support incentive payment from the office of support enforcement (OSE);

(7) Overpayments recovered by source agency. Any overpayment amount withheld from a client's benefit in order to recover an overpayment by the source agency.

(8) Per diem and transportation. Per diem and transportation funds paid to AFDC advisory committee members.

(9) Settlements. Settlements for destroyed, stolen exempt property, or back medical bills when conditions in, WAC 388-218-1530 Determining net income—Other income, have been met.

(10) Self-produced or supplied items. The value of self-produced or supplied items except as specified in, WAC 388-218-1340 Self-produced or supplied items, when:

- (a) Self-produced items are sold for cash; or
- (b) The household's requirement for shelter is supplied.

[Statutory Authority: RCW 74.08.090. 94-16-044 (Order 3759), § 388-218-1230, filed 7/27/94, effective 9/1/94; 94-10-065 (Order 3732), § 388-218-1230, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-28-480, 388-28-532 and 388-28-575.]

WAC 388-218-1300 Self-employment income. (1) Earned income from self-employment is the amount left after deducting allowable business expenses from gross business income.

(2) Applicable earned income disregards are further deducted from self-employment earned income to determine the net amount available to meet need.

(3) In order to establish eligibility for public assistance, a self-employed client must maintain and make available to the department a record clearly documenting all business expenses and income.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1300, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-520 (part).]

WAC 388-218-1310 Adult family home income. The department shall consider adult family home payments as self-employment income when a public assistance client operates an adult family home.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1310, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-532 (part).]

WAC 388-218-1320 Board, room rental, board and room income. (1) The department shall determine the adjusted gross self-employment income from the operation of a rooming, boarding, or boarding and rooming home as follows:

- (a) Boarder income. Consider the board payment received minus the current thrifty food plan for an assistance unit size equal to the number of boarders;
- (b) Roomer income. Consider the room rental received minus expenses of maintaining the room;
- (c) Boarder and roomer income. Consider the board and room payment received minus the current thrifty food plan for an assistance unit size equal to the number of boarders and expenses of maintaining the room.

(2) The department shall treat the adjusted gross income as computed in accordance with subsection (1) of this section as earned income.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1320, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-530.]

WAC 388-218-1330 Lease or rental of property. The department shall treat income from lease or rental of property as self-employment income when the client per-

forms regularly scheduled ongoing managerial labor in obtaining the income.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1330, filed 5/3/94, effective 6/3/94.]

WAC 388-218-1340 Self-produced or supplied items. The department shall disregard the value of self-produced or supplied items except when:

(1) Self-produced items are sold for cash. When such a sale is made, the department shall treat the cash sale value as self-employment income; or

(2) The assistance unit's requirement for shelter is supplied. When the assistance unit's shelter is supplied, the department shall establish the payment level for the assistance unit as indicated in chapter 388-250 WAC.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1340, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-600 (part).]

WAC 388-218-1350 Deductible self-employment expenses. The department shall consider the following items as deductible business expenses in a self-employment enterprise:

- (1) Rental of business equipment or property.
- (2) Utilities.
- (3) Postage.
- (4) Telephone.
- (5) Office supplies.
- (6) Advertising.
- (7) Insurance.
- (8) Legal, accounting, and other professional fees.
- (9) The cost of goods sold, including wages paid to employees producing salable goods, raw materials, stock, and replacement or reasonable accumulation of inventory, provided inventory has been declared exempt on the basis of an agreed plan pursuant to WAC 388-216-2500.
- (10) Interest on business indebtedness.
- (11) Wages and salaries paid to employees not producing salable goods.
- (12) Commissions paid to agents and independent contractors.

(13) Documented and verified costs of self-employment business-related transportation. These costs are limited to gas, oil, and fluids; necessary services and repairs; replacement of worn items such as tires; registration and licensing fees; and interest on automobile loans.

- (a) The client may choose:
 - (i) To itemize the actual operating cost of a vehicle; or
 - (ii) A cost per mile established by the department using a prevailing rate based on market standards.

(b) The cost of tolls and parking related to the business shall be deducted as a business expense.

(c) If a vehicle is needed for both business and private purposes, the mileage and expenses attributable to the business must be documented in a daily log and is subject to verification by the department.

(d) Transportation to and from the place of business is not a business expense, but is a personal work expense and is covered by the work expense deduction.

(14) Nonpersonal taxes on the business and business property, including the employer's share of federal Social Security taxes on business employees and state and federal

unemployment insurance contributions, if any. The self-employed person's personal income taxes and self-employment taxes are not business deductions, but are work expenses covered by the work expense deduction.

(15) Repairs to business equipment and property, excluding vehicles. An expenditure to maintain property in its usual working condition is deductible as a repair.

(16) Other expenditures reasonable and necessary to the efficient and profitable operation of the self-employment enterprise.

[Statutory Authority: P.L. 103-286, RCW 74.08.090 and The Confederated Tribes of the Colville Reservation Grand Coule Dam Settlement Act. 95-11-124 (Order 3857), § 388-218-1350, filed 5/24/95, effective 6/24/95. Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1350, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-520 (part).]

WAC 388-218-1360 Nondeductible self-employment expenses. The department shall not consider the following items as deductible business expenses in a self-employment enterprise:

(1) Capital expenditures. Capital expenditures are those made to acquire or increase the value of fixed assets. Fixed assets are items normally in use for one year or longer, such as land, buildings, vehicles, boats, machinery, tools, office equipment, furniture, and fixtures.

(2) Payments on the principal of loans to the business.

(3) Amounts claimed as depreciation.

(4) Any amount claimed as a net loss sustained in any prior period.

(5) Entertainment expenses.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1360, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-520 (part).]

WAC 388-218-1400 Earned income types. The department shall consider the following income types as earned income and treat accordingly:

(1) Employment partnership program wages.

(2) Foster care retainer fees received to reserve beds for foster children when a public assistance client operates a foster home for children.

(3) Earned income in-kind items shall be evaluated in terms of their cash equivalent.

(4) Self-employment income from the management and operation of a rooming, boarding, or boarding and rooming home. See WAC 388-218-1320 Board, room rental, board and room income, to determine net income.

(5) Wages, salary, commissions, or profit from activities in which a client is engaged as a self-employed person or as an employee earned in cash or in-kind.

(6) State temporary disability insurance payments and temporary worker's compensation payments which are analogous to sick pay when such payments are employer funded and made to an individual who remains employed during recuperation from a temporary illness or injury pending return to the job. Recurrent time loss benefits from the department of labor and industries are examples of benefits meeting this criteria.

[Statutory Authority: RCW 74.08.090 and Public Law 103-82, 45 CFR 233.20 (a)(6)(iii) and (vi) and 233.20 (a)(11). 95-04-048 (Order 3829), § 388-218-1400, filed 1/25/95, effective 2/25/95. Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1400, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-28-532 and 388-28-600.]

WAC 388-218-1410 Earned income of a child. The department shall apply the following rules when determining the amount of a child's earned income available to meet the current need of the assistance unit of which the child is a member:

(1) The department shall disregard all of the child's monthly earned income when the following circumstances apply:

(a) When determining whether total family income exceeds one hundred and eighty-five percent of the need standard for a child who is a full-time student. This disregard is limited to six months per calendar year;

(b) When determining whether total family income exceeds one hundred percent of the need standard for:

(i) An applicant child, who is a full-time student, provided that such income is also disregarded under (a) of this subsection; or

(ii) A recipient child, who is a full-time student or a part-time student who is not a full-time employee;

(c) When determining the payment amount for an applicant or recipient child who is a full-time student or a part-time student who is not a full-time employee.

(2) A child earning income by working in a sheltered workshop or other training facility for handicapped children shall be considered, for purposes of income exemption, as being at least a part-time student working less than full time.

(3) To be employed full time, a child must be working thirty-five hours a week or the number of hours considered full time by the industry for which he or she works, whichever is less.

(4) Summer employment of students shall not be considered as full-time employment due to the temporary nature of such employment, even though the hours worked may exceed thirty-five hours a week.

(5) In determining the amount of a nonstudent child's earned income available to meet the current needs of the assistance unit, net income shall be computed without application of the disregards specified in this section.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1410, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-535 (part).]

WAC 388-218-1420 Earned income disregards—General. (1) For rules on treatment of the earned income of a full-time or part-time student, see WAC 388-218-1410 Earned income of a child. For rules on the treatment of income from training, see WAC 388-218-1520 Income from employment or training programs. For rules on the treatment of other income, see WAC 388-218-1530 Determining net income—Other income.

(2) When payment of income earned over a period of more than one month is delayed, the earned income disregards apply to the period during which the income was earned.

(3) Earned income disregards shall be deducted from the monthly gross earned income of each individual member of the AFDC assistance unit except as provided in WAC 388-218-1480 Circumstances where earned income disregards are not allowed.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1420, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-570 (part).]

WAC 388-218-1430 Earned income disregards—Deduction sequence. Earned income disregards shall be applied in the following sequence:

- (1) Work expense disregard;
- (2) Thirty dollars and one-third disregard; or
- (3) Thirty-dollar disregard; and
- (4) Dependent care disregard.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1430, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-570 (part).]

WAC 388-218-1440 Work expense disregard. Disregard the first ninety dollars of gross earned income for work expenses, regardless of the number of hours worked per month.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1440, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-570 (part).]

WAC 388-218-1450 Thirty dollars and one-third disregard. (1) For each nonstudent dependent child and adult found otherwise eligible to receive assistance or having received assistance in one of the four prior months, disregard thirty dollars and one-third of the remainder not already disregarded.

(2) The thirty dollars and one-third disregard shall be applied for a maximum of four consecutive months and cannot be applied again until the client has been a nonrecipient for twelve consecutive months.

(3) For clients participating in a work supplementation program, such as EPP, the thirty dollars and one-third disregard shall be applied for a maximum of nine consecutive months and cannot be applied again until the client has been a nonrecipient for twelve consecutive months.

(4) Months in which the client received the thirty dollars and one-third exemption in another state shall not apply toward the applicable time limits.

[Statutory Authority: P.L. 103-286, RCW 74.08.090 and The Confederated Tribes of the Colville Reservation Grand Coule Dam Settlement Act. 95-11-124 (Order 3857), § 388-218-1450, filed 5/24/95, effective 6/24/95. Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1450, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-570 (part).]

WAC 388-218-1460 Thirty-dollar disregard. (1) After expiration of the disregard in WAC 388-218-1450 Thirty dollars and one-third disregard, disregard thirty dollars for a maximum of eight consecutive months, whether or not the client has earnings or is receiving assistance.

(2) The thirty-dollar disregard cannot be applied again until the client has been a nonrecipient for twelve consecutive months.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1460, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-570 (part).]

WAC 388-218-1470 Dependent care disregard. Disregard the actual cost for care of each dependent child or incapacitated adult living in the same home and receiving AFDC provided:

- (1) Conditions under WAC 388-51-110 (1)(c) are met for each dependent child;
- (2) No disregard will be allowed for care provided by a parent or stepparent;
- (3) The provider verifies the cost incurred;

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(4) The cost is incurred for the month of employment being reported; and

(5) The cost for each dependent child or incapacitated adult, depending on the number of hours worked per month does not exceed the following:

| Hours Worked per month | Dependent Care Maximum Deductions | Dependent Care Maximum Deductions |
|------------------------|-------------------------------------|-----------------------------------|
| | Dependent Two Years of Age or Older | Dependent Under Two Years of Age |
| 0 - 40 | \$ 43.75 | \$ 50.00 |
| 41 - 80 | 87.50 | 100.00 |
| 81 -120 | 131.25 | 150.00 |
| 121 or More | 175.00 | 200.00 |

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1470, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-570 (part).]

WAC 388-218-1480 Circumstances where earned income disregards are not allowed. (1) Earned income disregards shall not be applied for any month if the client within a period of thirty days preceding the month in which the income was received:

(a) Terminated the client's employment or reduced the client's earned income without good cause; or

(b) Refused without good cause to accept employment in which the client is able to engage which is offered through an employment security department, or is otherwise offered by an employer if the offer of such employment is determined by the department to be a bona fide offer of employment.

(2) Earned income disregards shall not be applied for any month the client failed without good cause to make a timely report of income. When a timely report is made under these circumstances, the thirty dollars and one-third exemption shall be counted in the applicable time limits. Good cause shall be determined by the department. Any circumstance beyond the control of the client shall constitute good cause.

(3) To be considered timely, a report must be received by the department:

(a) On or before the eighteenth day of the month following the month in which the income was received; or

(b) By the first following work day if the eighteenth day of the month falls on a weekend or holiday.

(4) If a client requests termination in order to break the consecutiveness of the applicable time limits for the thirty dollars plus one-third exemption, and would have been eligible, the months of voluntary nonreceipt of assistance shall be counted toward the applicable time limits.

(5) If a client quits work without good cause, the thirty dollars and one-third exemption shall be deemed to have been received and shall be counted toward the applicable time limits.

(6) The following conditions when verified shall constitute good cause for refusal of an offer of employment or refusal to continue employment:

- (a) Physical, mental, or emotional inability of the client to satisfactorily perform the work required;
- (b) Inability of the client to get to and from the job without undue cost or hardship to the client;
- (c) The nature of the work would be hazardous to the client;
- (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 to the AFDC household.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1480, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-570 (part).]

WAC 388-218-1500 Unearned income types. (1) Unearned income shall include but is not limited to the following types:

- (a) Child support when not a pass-through payment or DCS assignment has not been completed;
- (b) Gate money from adult corrections;
- (c) Labor and industries benefits, except those worker's compensation payments which are treated as earned income in WAC 388-218-1400(6);
- (d) Railroad retirement;
- (e) Social Security disability and retirement;
- (f) Unemployment compensation; and
- (g) Veteran administration benefits.

(2) Unless specifically exempt or disregarded from consideration when determining need, unearned income shall be deducted in its entirety from the payment standard plus authorized additional requirements.

[Statutory Authority: RCW 74.08.090 and Public Law 103-82, 45 CFR 233.20 (a)(6)(iii) and (vi) and 233.20 (a)(11). 95-04-048 (Order 3829), § 388-218-1500, filed 1/25/95, effective 2/25/95. Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1500, filed 5/3/94, effective 6/3/94.]

WAC 388-218-1510 Time-loss compensation—Lien.

(1) The department shall file a lien and notice to withhold and deliver, with labor and industries or the self-insurer, to recover time-loss compensation payable to a public assistance client, for injury or illness.

(2) The department shall mail a copy of the notice to the client no later than the following work day.

(3) By accepting public assistance, adult and minor clients shall subrogate to the department the clients' right to recover time-loss compensation.

(4) When an assistance unit consists of unmarried parents, the department shall:

(a) Recover time-loss benefits as though the injured worker and the injured worker's dependents comprise a separate assistance unit; and

(b) Consider any common children to be part of the injured worker's assistance unit; and

(c) Recover from time-loss compensation only the portion of AFDC received by the injured worker and the injured worker's natural, adoptive or stepchildren.

(5) The department shall compute payments for time-loss compensation and public assistance paid for less than a full month on the actual number of days paid.

(6) The department shall not make a further claim under this lien when:

(a) Duplicated benefits terminate; or

(b) Continued assistance is required to supplement time-loss compensation to bring the assistance unit up to the grant standard.

(7) When the client or client's attorney claims allowable attorney fees and costs, incidental to an increased award, the office of financial recovery, department of social and health services shall:

(a) Request an itemized billing from the attorney;

(b) Determine what portion of the award, if any, resulted directly from the attorney's involvement;

(c) Determine the department's proportionate share of attorney fees and costs applicable to the duplicate coverage period; and

(d) Deduct the department's share of cost in (c) of this subsection from the lien for duplicated assistance; or

(e) Issue the proportionate share refund to the attorney with a copy of the account summary to the client.

(8) The department shall advise a client of the provisions in this section when the client may be eligible for time-loss compensation.

(9) The department shall advise a client of the client's right to a fair hearing as provided in chapter 388-08 WAC.

[Statutory Authority: RCW 74.04.050 and 43.20B.720. 96-03-040 (Order 3940), § 388-218-1510, filed 1/10/96, effective 2/10/96. Statutory Authority: RCW 74.08.090 and Section 402 (A)(38) of the Social Security Act. 95-14-047 (Order 3861), § 388-218-1510, filed 6/28/95, effective 7/29/95. Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1510, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-392(part).]

WAC 388-218-1520 Income from employment or training programs. (1) Payments issued under the Job Training Partnership Act (JTPA) and the National and Community Service Trust Act of 1993 (AmeriCorps) shall be treated as follows:

(a) Wages paid under the Job Training Partnership Act (JTPA) and living allowances or stipends paid under the National and Community Service Trust Act of 1993 (AmeriCorps) shall be considered earned income and treated accordingly. See WAC 388-218-1690 Allocation of the income of an ineligible child, for the treatment of the income of a child excluded from the grant. See WAC 388-218-1410 Earned income of a child, for the treatment of the income of a student.

AmeriCorps/VISTA stipends and living allowances are paid to VISTA volunteers under the Domestic Volunteer Act of 1973. These payments are exempt as earned or unearned income.

(b) Needs based payments issued under the JTPA and AmeriCorps shall be evaluated as follows:

(i) Payments which cover special needs not covered in the department need standard shall be disregarded as duplication of need does not exist.

(ii) Payments which duplicate items contained in the department need standard shall be treated in accordance with the policies contained in WAC 388-218-1540 Assistance from other agencies and organizations.

(2) Wages paid from on-the-job training or work experience are considered earned income and treated accordingly.

[Statutory Authority: RCW 74.08.090 and Public Law 103-82, 45 CFR 233.20 (a)(6)(iii) and (vi) and 233.20 (a)(11). 95-04-048 (Order 3829), § 388-218-1520, filed 1/25/95, effective 2/25/95. Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1520, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-515 (part).]

WAC 388-218-1530 Determining net income—Other income. (1) Net income from any other nonexempt source shall be the gross amount less any cost of securing or maintaining the income.

(2) The department shall consider any payments on mortgages or contracts as income less any cost of securing or maintaining the income.

(3) The department shall consider a settlement covering destroyed or stolen exempt property as newly acquired nonexempt income unless the client, within sixty days of receipt:

(a) Expends the funds to repair or replace the destroyed or stolen exempt property for which the settlement was intended; or

(b) Pays medical bills for which the settlement was intended.

(4) The department shall consider funds deposited into a joint account or into an account held for another, or funds held for others as the income of the client since the entire amount is at the client's disposal, except when the client can show that all or a portion of the funds are:

(a) Derived from funds belonging exclusively to the other holder; and

(b) Held and/or utilized solely for the benefit of that holder. The department shall not consider all funds so verified as actually available to the client.

(5) When appointment of a legal guardian is required by the Social Security Administration or the Veterans Administration as a condition for receipt of a benefit from either agency, the necessary costs of securing a guardian shall be deducted from the benefit received to determine the client's net income.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1530, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-28-438, 388-28-474, 388-28-555 and 388-28-580.]

WAC 388-218-1540 Assistance from other agencies and organizations. (1) Assistance from other agencies and organizations shall not be deducted when determining the amount of assistance to be paid provided that no duplication shall exist between such other assistance and that provided by the department.

(2) To assure nonduplication, aid from other agencies will be considered in relation to:

(a) The different purposes for which such aid is granted;

(b) The provision of goods and services not included in the department's standards; and

(c) Conditions that preclude its use for current living costs.

(3) If the assistance is available to meet need, the assistance shall be exempted up to the difference between the need standard and the payment standard.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1540, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-578 (part).]

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WAC 388-218-1600 Allocation of income—General. The department shall allocate nonexempt net income to the assistance unit of which a person is a member. See:

(1) WAC 388-218-1605 for allocation of income to multiple assistance units.

(2) WAC 388-218-1610 for allocation of parental income and support.

(3) WAC 388-218-1620 for allocation of stepparent income for support.

(4) WAC 388-218-1630 for allocation of assistance unit income for support of legal dependents.

(5) WAC 388-218-1640 for allocation of nonassistance unit income for support of legal dependents.

(6) WAC 388-218-1650 for allocation of support for stepchildren.

(7) WAC 388-218-1660 for allocation of support for children by a nonresponsible adult.

(8) WAC 388-218-1670 for allocation of parental income to a minor parent.

(9) WAC 388-218-1680 for allocation of income to women in the third trimester of pregnancy.

(10) WAC 388-218-1690 for allocation of the income of an ineligible child.

(11) WAC 388-218-1695 for deeming the income of an alien's sponsor.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1600, filed 5/3/94, effective 6/3/94.]

WAC 388-218-1605 Allocation of income—Multiple assistance units. (1) The department shall allocate all nonexempt net income possessed by an assistance unit member to meet the needs of the assistance unit, except when families are comprised of two or more assistance units.

(2) The department shall allocate an equal portion of the total nonexempt net community income, including income in-kind, to meet the needs of each assistance unit unless:

(a) The family prefers some other division; and

(b) The preferred division does not increase the total amount of assistance, excluding medical care.

[Statutory Authority: P.L. 103-286, RCW 74.08.090 and The Confederated Tribes of the Colville Reservation Grand Coule Dam Settlement Act. 95-11-124 (Order 3857), § 388-218-1605, filed 5/24/95, effective 6/24/95. Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1605, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-500 (part).]

WAC 388-218-1610 Allocation of parental income and support. (1) Support payments made by or in behalf of an absent parent are income to the child(ren) and are to be treated in accordance with WAC 388-14-210 Support payments to office of support enforcement.

(2) When the custodial parent is not included in the assistance unit because of noncompliance with WAC 388-215-1400 Support enforcement—Assignment of support rights—Cooperation with office of support enforcement or WAC 388-47-210, JOBS program—Sanctions for refusal or failure to participate:

(a) The income of such parents is budgeted according to WAC 388-218-1630 Allocation of income for support of legal dependents;

(b) Support payments paid directly to the parent and not forwarded to the office of support enforcement are income

to the child(ren) and are to be taken into account in determining the need of the assistance unit.

[Statutory Authority: P.L. 103-286, RCW 74.08.090 and The Confederated Tribes of the Colville Reservation Grand Coule Dam Settlement Act. 95-11-124 (Order 3857), § 388-218-1610, filed 5/24/95, effective 6/24/95. Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1610, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-485.]

WAC 388-218-1620 Allocation of stepparent income and support. (1) The income of a stepparent is allocated to meet the requirements of the stepchild and its parent in the same manner as the income of the natural or adoptive parent. See WAC 388-218-1610 Allocation of parental income and support.

(2) The stepparent's responsibility for support ceases when the marriage is terminated by death or divorce.

(3) The natural parent of the dependent child is not relieved of a legal obligation to support the child by this provision.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1620, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-350.]

WAC 388-218-1630 Allocation of assistance unit income for support of legal dependents. (1) The department shall budget the income of a parent or stepparent included in the assistance unit to meet the needs of the assistance unit after allocating an amount for:

(a) Support of other dependents not eligible for inclusion in the assistance unit for factors other than sanction or noncooperation, not to exceed the appropriate payment standard for an assistance unit of the same composition;

(b) Court or administratively ordered support for a legal dependent, not to exceed the lesser of the amount actually paid or the appropriate need standard for each dependent;

(2) The department shall consider a dependent to be one who:

(a) Is or could be claimed for federal income tax purposes by the parent or stepparent; or

(b) The parent or stepparent is legally obligated to support.

[Statutory Authority: P.L. 103-286, RCW 74.08.090 and The Confederated Tribes of the Colville Reservation Grand Coule Dam Settlement Act. 95-11-124 (Order 3857), § 388-218-1630, filed 5/24/95, effective 6/24/95. Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1630, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-500 (part).]

WAC 388-218-1640 Allocation of nonassistance unit income for support of legal dependents. The department shall allocate the income of an excluded assistance unit member to meet the needs of the assistance unit after deducting:

(1) Ninety dollars per month for each employed excluded person to meet the cost of employment.

(2) An amount for the support of the parent or stepparent and other dependents, ineligible for inclusion in the assistance unit for factors other than sanction or noncooperation, not to exceed the appropriate payment standard for an assistance unit of the same composition; and

(3) An amount for court or administratively ordered support for a legal dependent not living in the parent's or stepparent's home, not to exceed the lesser of the amount actually paid or the appropriate need standard for each

dependent. The department shall consider a dependent to be one who:

(a) Is or could be claimed for federal income tax purposes by the parent or stepparent; or

(b) The parent or stepparent is legally obligated to support.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1640, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-560 (part).]

WAC 388-218-1650 Allocation of support for stepchildren. (1) A stepchild may receive income as specified in WAC 388-218-1690 Allocation of the income of an ineligible child.

(2) According to WAC 388-215-1620 Assistance units—Persons excluded due to factors not related to need, when the assistance unit does not include a stepchild's sibling or half-sibling, the family shall have the option to:

(a) Include the stepchild as a member of the assistance unit with all of the stepchild's income considered as available to the assistance unit; or

(b) Exclude the stepchild from the assistance unit, with none of the stepchild's income considered as available to the assistance unit.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1650, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-535 (part).]

WAC 388-218-1660 Allocation of support for child by nonresponsible adult. (1) When a dependent child lives with one parent and another person who is not legally responsible to support the child:

(a) The parent must declare those portions of the income of the nonresponsible adult provided voluntarily for the support of the child or children and the parent.

(b) Only such income which has been stipulated by the parent to be actually available on a regular basis to meet the needs of the parent and child or children shall be considered in determining the income available to the parent and child or children.

(2) Unwillingness of the nonresponsible adult to contribute does not affect the child's eligibility for assistance.

(3) The needs of the nonresponsible adult may not be included in the assistance unit. See chapter 388-215 WAC Aid to Families with Dependent Children Categorical Eligibility.

(4) The natural parent is not relieved of a legal obligation to support his/her child by contributions from the nonresponsible adult toward the child's support.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1660, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-355.]

WAC 388-218-1670 Allocation of parental income to a minor parent. The department shall allocate the income of a nonapplying parent or stepparent to meet the needs of the minor parent's assistance unit after deducting:

(1) Ninety dollars per month for each employed parent or stepparent to meet the costs of employment;

(2) An amount equal to the need standard under WAC 388-250-1200 of an assistance unit comprised of the nonapplying parent or stepparent and any other individuals who:

(a) Are living in the home but whose needs are not taken into consideration when determining eligibility for AFDC, excluding sanctioned individuals or individuals who refuse to cooperate; and

(b) Are or could be claimed by the nonapplying parent or stepparent for federal income tax purposes;

(3) Amounts actually paid by the nonapplying parent or stepparent to meet the needs of individuals not living in the home who are or could be claimed as dependents for federal income tax purposes; and

(4) Payments of alimony or child support to meet the needs of individuals not living in the home.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1670, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-560 (part).]

WAC 388-218-1680 Allocation of income to pregnant women. (1) The department shall use the need standard that reflects the number of people in the family as though the child were born when applying the WAC 388-218-1720 One hundred eighty-five percent of need test. Include the father when residing in the client's home.

(2) The department shall use the payment standard that reflects the number of people in the family as though the child were born when applying the WAC 388-218-1740 Payment standard test. Include the father when residing in the client's home.

(3) The department shall follow the rules specified in WAC 388-218-1640 Allocation of nonassistance unit income for support of legal dependents, for the allocation of income to a pregnant woman when the parents are married and the father resides in the client's home.

[Statutory Authority: P.L. 103-286, RCW 74.08.090 and The Confederated Tribes of the Colville Reservation Grand Coule Dam Settlement Act. 95-11-124 (Order 3857), § 388-218-1680, filed 5/24/95, effective 6/24/95. Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1680, filed 5/3/94, effective 6/3/94.]

WAC 388-218-1690 Allocation of the income of an ineligible child. (1) A child may receive income paid to the parent or parents or other needy caretaker relative. Such income includes:

- (a) Earned income;
- (b) Allotments;
- (c) Retirement benefits;
- (d) Survivors and disability insurance;
- (e) Veterans' benefits;
- (f) Court-ordered support payments;
- (g) Trust fund payments; or
- (h) Other income legally designated for the benefit of an individual child.

(2) Such income of a child ineligible to be included as a member of the assistance unit shall be considered as follows:

(a) If the child is ineligible due to noncooperation with the Washington state employment opportunities programs, or with child support enforcement if the child is a minor parent, such child's income shall be considered available to meet the need of the assistance unit;

(b) If the child is ineligible due to any other factor of eligibility, none of the child's income shall be considered available to meet the need of the assistance unit.

(3) If the income of an ineligible child or stepchild, including a stepchild excluded from the assistance unit as specified in WAC 388-218-1650 Allocation of support for stepchildren, contains a portion for such child's caretaker relative, that portion shall be considered as available to the assistance unit.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1690, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-535 (part).]

WAC 388-218-1695 Deeming of income—Alien sponsorship. (1) For a period of three years following entry for permanent residence into the United States, an individually sponsored alien shall provide the state agency with any information and documentation necessary to determine the income of the sponsor that can be deemed available to the alien, and obtain any cooperation necessary from the sponsor.

(2) For all subsections in this section, the department shall deem the income of an individual sponsor (and the sponsor's spouse if living with the sponsor) to be the unearned income of an alien for three years following the alien's entry for permanent residence into the United States.

(3) Monthly income deemed available to the alien from the individual sponsor or the sponsor's spouse not receiving AFDC or SSI shall be:

(a) The sponsor's total monthly unearned income, added to the sponsor's total monthly earned income reduced by twenty percent (not to exceed one hundred seventy-five dollars) of the total of any amounts received by the sponsor in the month as wages or salary or as net earnings from self-employment, plus the full amount of any costs incurred in producing self-employment income in the month.

(b) The amount described in (a) of this subsection reduced by:

(i) The basic requirements standard for a family of the same size and composition as the sponsor and those other persons living in the same household as the sponsor claimed by the sponsor as dependents to determine the sponsor's federal personal income tax liability but who are not AFDC recipients;

(ii) Any amounts actually paid by the sponsor to persons not living in the household claimed by the sponsor as dependents to determine the sponsor's federal personal income tax liability; and

(iii) Actual payments of alimony or child support, with respect to persons not living in the sponsor's household.

(4) In any case where a person is the sponsor of two or more aliens, the department shall divide the income of the sponsor, to the extent they would be deemed the income of any one of the aliens under provisions of this section, equally among the aliens.

(5) The department shall not consider the income which is deemed to a sponsored alien in determining the need of other unsponsored members of the alien's family except to the extent the income is actually available.

[Statutory Authority: RCW 74.04.050 and 74.08.090. 95-19-005 (Order 3890), § 388-218-1695, filed 9/6/95, effective 10/7/95. Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1695, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-590 (part).]

WAC 388-218-1700 Prospective eligibility. The department shall determine eligibility based on the best estimate of income and circumstances existing in the payment month.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1700, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-483 (part).]

WAC 388-218-1710 Income tests. To be eligible for AFDC, a client shall meet the following income tests:

(1) One hundred eighty-five percent of need test, as specified in WAC 388-218-1720 One hundred eighty-five percent of need test;

(2) One hundred percent of need test, as specified in WAC 388-218-1730 One hundred percent of need test; and

(3) Payment standard test, as specified in WAC 388-218-1740 Payment standard test.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1710, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-480 (part).]

WAC 388-218-1720 One hundred eighty-five percent of need test. A client whose nonexempt gross income exceeds one hundred eighty-five percent of the standard of need for the appropriate household size plus additional requirements authorized for that assistance unit, shall not be eligible for AFDC from the date specified in WAC 388-218-1830 Treatment of income—Suspension of a grant.

(1) The department shall consider the income of all members of the assistance unit and the income of natural, adoptive, or stepparents of children in the assistance unit, residing in the same household, in this test except for income specifically exempted or disregarded and in subsection (2) of this section.

(2) In determining the total income of the family, the department shall exclude:

(a) The earned income of a child who is a full-time student is excluded for six months per calendar year; and

(b) The first fifty dollars per month of the current monthly support obligation of any child support collected on the family's behalf or received by the family.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1720, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-28-480 and 388-28-484.]

WAC 388-218-1730 One hundred percent of need test. (1) The assistance unit's monthly nonexempt unearned income plus monthly earned income, less allowable disregards, shall be below the appropriate state need standard plus additional requirements.

(2) This test does not apply if the assistance unit received AFDC in one of the four months before the month of application.

[Statutory Authority: P.L. 103-286, RCW 74.08.090 and The Confederated Tribes of the Colville Reservation Grand Coule Dam Settlement Act. 95-11-124 (Order 3857), § 388-218-1730, filed 5/24/95, effective 6/24/95. Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1730, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-480 (part).]

WAC 388-218-1740 Payment standard test. The assistance unit's monthly nonexempt unearned income plus monthly nonexempt earned income shall be below the

appropriate state payment standard plus additional requirements.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1740, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-480 (part).]

WAC 388-218-1800 Treatment of newly acquired nonexempt income. (1) Income affects the grant amount according to the provisions of:

(a) WAC 388-218-1700 Prospective eligibility;

(b) WAC 388-218-1710 Income tests;

(c) WAC 388-218-1810 Treatment of recurring income;

(d) WAC 388-218-1820 Treatment of nonrecurring income—Lump sums;

(e) WAC 388-218-1830 Treatment of income—Suspension of a grant;

(f) WAC 388-218-1900 Prospective budgeting; and

(g) WAC 388-218-1910 Retrospective budgeting.

(2) When the value of the income is taken into account when determining the assistance payment, as specified in subsection (1) of this section, assistance is continued in the amount of the difference between the income value plus any other income amounts and the payment standard plus authorized additional requirements.

(3) If income is not taken into account when determining assistance payments but is subsequently discovered, an overpayment shall be established according to chapter 388-270 WAC.

(4) Rules and procedures in chapter 388-270 WAC are followed in respect to overpayments.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1800, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-484 (part).]

WAC 388-218-1810 Treatment of recurring income. If income is recurrent and equal to or in excess of one month's payment level plus authorized additional requirements minus other income, the client is ineligible from the effective date specified in WAC 388-218-1830 Treatment of income—Suspension of a grant, and the grant is terminated, except for clients in institutions other than nursing homes.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1810, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-484 (part).]

WAC 388-218-1820 Treatment of nonrecurring income—Lump sums. (1) The department shall consider nonrecurring lump sum payments as income in the month received.

(2) When the assistance unit's nonrecurrent lump sum income, plus other income, after applicable disregards exceeds the payment standard, plus authorized additional requirements, the assistance unit shall be ineligible for assistance.

(3) The department shall also apply these requirements to the income of persons required to be included in the assistance unit but are excluded for reasons of sanction or noncooperation.

(4) Ineligibility shall exist for the number of full months derived by dividing this total income by the need standard plus authorized additional requirements.

(5) A minimum period of ineligibility shall be one month.

(6) The department shall treat any income remaining after this calculation is treated as income received in the first month following the period of ineligibility.

(7) The department may shorten the period of ineligibility when the following conditions are met:

(a) An event occurs which, had the assistance unit been receiving assistance, would result in an increase in the need standard; or

(b) The income received, or any part thereof, has become unavailable to the members of the assistance unit for reasons beyond their control; or

(c) Members of the assistance unit incur, become responsible for, and pay medical expenses.

(8) Assistance is authorized only after the events in subsection (7)(a), (b), or (c) of this section have been verified and current eligibility has been established.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1820, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-28-480 and 388-28-484]

WAC 388-218-1830 Treatment of income—Suspension of a grant. (1) See chapter 388-245 WAC for effective dates of ineligibility.

(2) The department shall suspend rather than terminate if:

(a) The department has knowledge of or reason to believe ineligibility would be only for one payment month; and

(b) Ineligibility for that one payment month was caused by income or other circumstances in the corresponding budget month.

(3) The department shall continue the budgeting process regardless of suspension unless a significant change (i.e., loss of employment) occurs in the suspense month. See WAC 388-218-1910, Retrospective budgeting.

[Statutory Authority: RCW 74.04.050 and 45 CFR 233.34 (c) and (d). 96-01-008 (Order 3934), § 388-218-1830, filed 12/6/95, effective 1/6/96. Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1830, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-28-483 and 388-28-484]

WAC 388-218-1900 Prospective budgeting. (1) Except as specified under subsection (5) of this section and WAC 388-218-1910 Retrospective budgeting, the department shall budget all income prospectively for the first two months of initial eligibility, including income of an individual added to an existing assistance unit.

(2) The department shall budget income prospectively for:

(a) Assistance units in which all adult members are elderly or disabled, as defined in WAC 388-245-2020 Monthly reporting—Definitions, and do not have:

(i) Earned income; or

(ii) Recent work history as defined in WAC 388-245-2020 Monthly reporting—Definitions.

(b) Homeless assistance units as defined in WAC 388-245-2020 Monthly reporting—Definitions;

(c) Migrant assistance units as defined in WAC 388-245-2020 Monthly reporting—Definitions;

(3) The department shall compute the amount of the assistance payment based on the expected income and circumstances existing in the payment month.

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(4) The department shall:

(a) Establish an overpayment if the income is underestimated; and

(b) Issue a corrective payment if the income is overestimated.

(5) The department shall budget income prospectively for one month if:

(a) The case has been closed less than one month; and

(b) The case was closed in the first prospective month.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1900, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-483 (part).]

WAC 388-218-1910 Retrospective budgeting. (1)

The department shall retrospectively budget all income for the first two months of initial eligibility if one of the following exists:

(a) A case is reopened as terminated in error;

(b) An individual having had income allocated to an assistance unit is added to that assistance unit;

(c) Assistance had been suspended as specified under WAC 388-218-1830 Treatment of income—Suspension of a grant, and:

(i) The initial month follows the month of suspension; and

(ii) The family's circumstances for the initial authorization month have not changed significantly from the circumstances reported in the budget month.

(d) A case is reopened that has been closed less than one month and was closed in the second prospective month; and

(e) A case is reopened that has been closed less than one month and was closed in a retrospective month.

(2) After the first two months of initial eligibility, the department shall budget all income retrospectively for all assistance units, except as specified under WAC 388-218-1900(2) Prospective budgeting, and subsection (5) of this section.

(3) The department shall compute the amount of assistance based on the income or circumstances existing in the budget month.

(4) The department shall consider all income received during the calendar month of application approval for retrospective budgeting purposes, except as specified under subsection (5) of this section.

(5) Noncontinuous income budgeted prospectively during the first two months of eligibility shall not be budgeted for the first and second payment month for which retrospective budgeting is used.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1910, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-483 (part).]

WAC 388-218-1920 Determining grant amount—

General. (1) To determine the grant amount, the department shall deduct all newly acquired nonexempt income from the payment level plus authorized additional requirements.

(2) The amount deducted shall equal the following:

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

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

(3) The department shall treat income derived from the increase in the value of a resource (such as interest on savings or an increase in the cash surrender value of a life insurance policy) as follows:

(a) In the month of increase, the increased value of the resource shall affect eligibility only to the extent the increased value causes the total value of the client's resources to exceed the one thousand dollar resource standard; and

(b) The department shall consider the excess as newly acquired income.

(4) Exempt funds representing another person's share of household costs are exempt provided such payments are not legally obligated child support, as specified in WAC 388-218-1720 (2)(b), One hundred eighty-five percent of need test.

(5) The department shall apply the income availability rules in WAC 388-218-1110, Income availability—Reduction of need, when income is only potentially available to meet the client's requirements.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1920, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-482 (part).]

WAC 388-218-1930 Determining grant amount—Applicants. (1) The department shall determine the grant amount for the month of application by:

(a) Subtracting all nonexempt income, received or reasonably expected to be received during the calendar month, from the payment level plus authorized additional requirements; and

(b) Prorating the remainder for the number of days after grant authorization. This prorated figure is the grant amount for the first month of eligibility.

(2) The department shall determine the grant amount for the month following the month of initial eligibility by subtracting all nonexempt income, received or reasonably expected to be received during the calendar month, from the payment level plus authorized additional requirements. The remainder is the grant amount for the second month of eligibility.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1930, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-480 (part).]

WAC 388-218-1940 Determining grant amount—Recipients. (1) The department shall base the grant amount for the third month of assistance and subsequent months upon income received in the budget and/or report month. WAC 388-218-1900 Prospective budgeting, is an exception to this rule.

(2) The department shall treat newly acquired income as specified under:

(a) WAC 388-218-1700 Prospective eligibility;

(b) WAC 388-218-1710 Income tests;

(c) WAC 388-218-1800 Treatment of newly acquired nonexempt income;

(d) WAC 388-218-1810 Treatment of recurring income;

(e) WAC 388-218-1820 Treatment of nonrecurring income—Lump sums;

(f) WAC 388-218-1830 Treatment of income—Suspension of a grant; and

(g) WAC 388-218-1920 Determining grant amount—General.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-218-1940, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-480 (part).]

Chapter 388-219 WAC

GENERAL ASSISTANCE—INCOME POLICIES

WAC

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|--------------|---|
| 388-219-0100 | General assistance for pregnant women. |
| 388-219-0200 | General assistance for children. |
| 388-219-1000 | General assistance-unemployable. |
| 388-219-1100 | GAU exempt income. |
| 388-219-1500 | GAU earned income disregards. |
| 388-219-1600 | GAU work expense disregards. |
| 388-219-1700 | GAU training expense disregard. |
| 388-219-2000 | Deeming of income of an alien's sponsor. |
| 388-219-2500 | Exemption of nonrecurring income—Lump sum payments. |
| 388-219-2600 | GAU treatment of nonrecurring income. |
| 388-219-3000 | GAU allocation of income. |
| 388-219-3500 | GAU income test. |

WAC 388-219-0100 General assistance for pregnant women. The department shall use the income rules for the AFDC program in chapter 388-218 WAC to determine financial eligibility and payment amounts for general assistance for pregnant women (GA-S).

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-219-0100, filed 5/3/94, effective 6/3/94.]

WAC 388-219-0200 General assistance for children. The department shall use the income rules for the AFDC program in chapter 388-218 WAC to determine financial eligibility and payment amounts for general assistance for children (GA-H) except, the department shall consider only the income of the eligible child.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-219-0200, filed 5/3/94, effective 6/3/94.]

WAC 388-219-1000 General assistance-unemployable. Except as specified in this chapter, the department shall use income rules for the AFDC program in chapter 388-218 WAC to determine financial eligibility and payment amounts for the general assistance-unemployable program (GA-U). The following areas are different for GAU:

- (1) Exempt income;
- (2) Earned income disregards;
- (3) Work expense disregards;
- (4) Training expense disregards;
- (5) Deeming of income of an alien's sponsor;
- (6) Allocation of income;
- (7) Exemption of lump sum payments;
- (8) Treatment of nonrecurring income; and
- (9) The income test.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-219-1000, filed 5/3/94, effective 6/3/94.]

WAC 388-219-1100 GAU exempt income. The department shall exempt income the same as in the AFDC program except:

- (1) Irregular income up to five dollars per month shall be exempted;

(2) The income of an SSI recipient shall not be exempted;

(3) The AFDC exemption for nonrecurring cash gifts up to thirty cumulative dollars received by each member of the assistance unit per calendar quarter shall not be allowed.

[Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-219-1100, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-28-480 and 388-28-575.]

WAC 388-219-1500 GAU earned income disregards. (1) The department shall disregard the first eighty-five dollars plus one-half the remainder of total gross monthly earned income in determining eligibility for and the amount of assistance.

(2) The department shall not allow the thirty-dollar and one-third disregard in WAC 388-218-1450 nor the thirty-dollar disregard in WAC 388-218-1460.

(3) The department shall not apply WAC 388-218-1480, circumstances where earned income disregards are not allowed, to GAU income.

[Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-219-1500, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-570 (part).]

WAC 388-219-1600 GAU work expense disregards.

(1) As chosen by the client, the department shall deduct work expenses from earnings using the "percentage method" or the "actual method."

(2) If the client chooses the "percentage method," the department shall deduct twenty percent of gross earnings or net self-employment income.

(3) If the client chooses the "actual method," the department shall deduct the actual cost of the following work-related expenses when verified in writing:

(a) Personal work expenses in the form of self-employment taxes (FICA) and income taxes are deductible when paid;

(b) Payroll deductions required by law or as a condition of employment in the amounts actually withheld;

(c) The cost for transportation as provided under subsection (4) of this section;

(d) Expenses which are necessary for continued employment.

(4) For transportation, the department shall allow:

(a) The cost of public transportation if it is available and practical for the client's use;

(i) The cost includes only the charges from the recipient's home to the stop nearest the client's employment or training;

(ii) The amount allowed is the actual cost of the common carrier based upon any reduced quantity rates which may be available;

(iii) Public transportation includes scheduled intracity and intercity busses, trains, boats, etc. It does not include "for hire" vehicles, such as taxis and rental cars, unless no other means of public transportation is available; or

(b) The cost of a private vehicle only when public transportation is not available or practical:

(i) Shared rides shall be prorated on an equitable basis, depending on the travel plan;

(ii) The cost of a vehicle shall be limited to gas, oil, and fluids; necessary service and repairs; replacement of worn

items such as tires; registration and licensing fees; and depreciation and interest on automobile loans;

(iii) The amount allowed shall be the total operating cost of the vehicle times the percentage of work-related miles driven during the month;

(iv) If the client chooses, eight cents per mile shall be allowed to cover the work-related expense;

(v) The cost of tolls and parking required for employment.

(5) The client shall have the option to change between the "percentage method" and the "actual method" whenever the client reports income to the department. If the client elects to change methods, the department shall effect the change the first day of:

(a) The month of receipt of the income, if the change causes ineligibility; or

(b) The payment month, if the change causes an increase or decrease in the grant amount.

(6) The department shall not allow the ninety-dollar work expense disregard in WAC 388-218-1440 nor the dependent care disregard in WAC 388-218-1470.

[Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-219-1600, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-28-515 and 388-28-570.]

WAC 388-219-1700 GAU training expense disregard.

(1) In determining net income from a training allowance, the department shall deduct applicable GAU earned income and work expense disregards from the gross training allowance received.

(2) For clients enrolled in a remedial education or vocational training course, the department shall deduct the actual cost of uniforms and/or special clothing as priced by the department.

[Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-219-1700, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-515 (part).]

WAC 388-219-2000 Deeming of income of an alien's sponsor. The department shall deem the income of an alien's sponsor as available to the alien as provided for the AFDC program in chapter 388-218 WAC:

(1) At application, for applications filed on or after July 8, 1994. For the purposes of this rule, reapplications filed following a break in assistance of thirty days or more shall be considered an application; or

(2) For all other general assistance-unemployable clients, the department shall not deem the income of an alien's sponsor as available to the client.

[Statutory Authority: 1994 1st sp.s. c 6, 94-13-050 (Order 3741), § 388-219-2000, filed 6/8/94, effective 7/9/94. Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-219-2000, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-590 (part).]

WAC 388-219-2500 Exemption of nonrecurring income—Lump sum payments. (1) The department shall exempt a nonrecurring lump sum payment received by the client and used to accumulate cash reserves:

(a) The department shall exempt the difference between the resource ceiling and the client's existing resources when the lump sum was received. Any excess shall be considered newly acquired income.

(b) In determining the client's existing resources, the department shall deduct any unexpended grant moneys received within thirty days of the date the lump sum was received.

(c) Such exemption shall apply once for each nonrecurring lump sum received.

(2) The department shall exempt a nonrecurring lump sum payment placed in trust for a recipient, if the lump sum is not under the recipient's control:

(a) The department shall exempt a disbursement made to the recipient from the trust if the disbursement is:

(i) Made within thirty days of the date the lump sum was received; and

(ii) Used by the client to accumulate allowable reserves;

(b) In exempting a disbursement from a trust, the department shall exempt the difference between the resource ceiling and the client's existing resources on hand when the lump sum was received. Any excess shall be considered newly acquired income.

(c) In determining the client's existing resources, the department shall deduct any unexpended grant moneys received within thirty days of the date the lump sum was received.

(d) Such exemption shall apply once for each lump sum placed in trust.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-219-2500, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-28-440, 388-28-474, 388-28-475 and 388-28-575.]

WAC 388-219-2600 GAU treatment of nonrecurring income. (1) The department shall consider nonexempt, nonrecurring lump-payments as newly acquired income in the month received.

(2) If the client's newly acquired income plus any other income, after applicable disregards is less than the payment standard plus authorized additional requirements, the department shall continue assistance in the amount of the difference.

(3) If the client's nonrecurrent newly acquired income, plus other income, after applicable disregards exceeds the payment standard plus authorized additional requirements, the department shall discontinue assistance:

(a) If such income is equal to or in excess of one month's payment level, but less than two months' payment level plus authorized additional requirements, the department shall suspend assistance:

(i) Effective the first day of the payment month; and

(ii) Shall deduct the income in excess of one month's payment standard plus authorized additional requirements from the grant for the month following the month of suspension.

(b) If the income, plus other income, is in excess of two months' payment level plus authorized additional requirements, the department shall terminate assistance effective the first day of the month of receipt of the income:

(i) Ineligibility shall continue for two months;

(ii) Upon completion of the two-month period of ineligibility, the department shall determine eligibility for those that reapply on the same basis as other new applicants.

(4) The department may shorten the period of ineligibility specified in subsection (3)(b) of this section, if the client

has verifiable expenses such as medical care, unforeseen disaster or other changes in circumstances making it impossible for the applicant to live on the resource for the two-month period of ineligibility.

(5) The department shall treat a person acquiring income during suspended status as a recipient in terms of eligibility.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-219-2600, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-28-480 and 388-28-484.]

WAC 388-219-3000 GAU allocation of income. The department shall allocate nonexempt net income to the assistance unit of which the person is a member, except when:

(1) The family contains two or more assistance units. In such case, the department shall equally divide the total nonexempt net community income between the assistance units unless:

(a) The family prefers some other division; and

(b) The preferred division does not increase the total amount of assistance, excluding medical care.

(2) The person lives with a nonapplying spouse. In such case, the department shall consider the following available to the client:

(a) The nonapplying spouse's net income from wages, retirement benefits, or separate property to the extent that such income exceeds a one-person payment level. In computing the nonapplying spouse's net income, the department shall allow:

(i) GAU work expense disregards; and

(ii) Verified court or administratively ordered support payments made by the nonapplying spouse for legal dependents not living in the parent's home. The amount exempted shall be the amount paid up to the one person need standard for each such dependent. The department shall not apply the GAU earned income disregard to the spousal income computation.

(b) All the client's net income from wages, retirement benefits, or separate property; and

(c) Half of all other community income.

(3) The person is in a medical institution, alcohol/drug treatment center, congregate care facility, or adult family home. When a person in a medical institution, alcohol/drug treatment center, congregate care facility, or adult family home applies for or receives a general assistance grant, the department shall allocate income as follows:

(a) First to the appropriate payment level of the legal dependents in the family home as stated in chapter 388-250 WAC; and

(b) Then to the needs of the person according to the standards of assistance for each living arrangement.

(4) The person pays court or administratively ordered support for a legal dependent not living in the parent's home. In such case, the department shall allocate income to the assistance unit after deducting:

(a) Applicable earned income and work expense disregards; and

(b) Verified court or administratively ordered support payments made for a legal dependent not living in the parent's home. The amount exempted shall be the amount

paid up to the one-person need standard for each legal dependent.

[Statutory Authority: RCW 74.08.090. 96-10-031 (Order 3970), § 388-219-3000, filed 4/24/96, effective 5/25/96; 94-10-065 (Order 3732), § 388-219-3000, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-28-500, 388-28-560 and 388-28-575.]

WAC 388-219-3500 GAU income test. (1) To be eligible for GAU, a client's total monthly nonexempt net income shall be below the appropriate monthly payment standard plus authorized additional requirements.

(2) The department shall not apply the AFDC one hundred and eighty-five percent of need test in WAC 388-218-1720 nor the one hundred percent of need test in WAC 388-218-1730.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-219-3500, filed 5/3/94, effective 6/3/94. Formerly WAC 388-28-480 (part).]

Chapter 388-225 WAC

CONSOLIDATED EMERGENCY ASSISTANCE PROGRAM—CEAP

WAC

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|--------------|--|
| 388-225-0010 | Purpose of program. |
| 388-225-0020 | General provisions. |
| 388-225-0050 | Assistance units. |
| 388-225-0060 | Eligibility conditions—Emergent needs. |
| 388-225-0070 | Eligibility conditions—Residency and alien status. |
| 388-225-0080 | Eligibility conditions—Living with a relative of specified degree. |
| 388-225-0090 | Eligibility conditions—Job refusal. |
| 388-225-0100 | Eligibility conditions—Other possible resources. |
| 388-225-0120 | Eligibility conditions—Income and resource eligibility. |
| 388-225-0150 | Exempt income and resources. |
| 388-225-0160 | Income deductions. |
| 388-225-0170 | Determining income and resources. |
| 388-225-0180 | Financial need and CEAP grant amount. |
| 388-225-0190 | Payment limitations. |

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

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| 388-225-0300 | Crisis intervention social services for families and children. [Statutory Authority: RCW 74.08.090. 94-06-026 (Order 3707), § 388-225-0300, filed 2/23/94, effective 3/26/94.] Repealed by 95-11-046 (Order 3851), filed 5/10/95, effective 6/10/95. Statutory Authority: RCW 74.08.090. |
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WAC 388-225-0010 Purpose of program. The consolidated emergency assistance program (CEAP) is a federally-matched grant assistance program providing time-limited assistance to meet emergent needs.

[Statutory Authority: RCW 74.08.090. 94-06-026 (Order 3707), § 388-225-0010, filed 2/23/94, effective 3/26/94.]

WAC 388-225-0020 General provisions. The department shall authorize CEAP for the following persons who meet the eligibility conditions established in this chapter:

- (1) A family with dependent children; or
- (2) A pregnant woman with no other children; or
- (3) A dependent child who is or may be bound for foster care placement. Assistance provided for the child is specified under chapter 388-165 WAC.

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[Statutory Authority: RCW 74.08.090. 95-11-046 (Order 3851), § 388-225-0020, filed 5/10/95, effective 6/10/95; 94-06-026 (Order 3707), § 388-225-0020, filed 2/23/94, effective 3/26/94.]

WAC 388-225-0050 Assistance units. (1) The department shall include the following persons living together in the CEAP assistance unit:

- (a) A pregnant woman in any stage of pregnancy who has no other child; or
- (b) A child seventeen years of age or younger and all full, half, or adopted brothers and sisters seventeen years of age or younger of such a child; and
- (c) The child's parent, adoptive parent, or stepparent with whom the child lives; and
- (d) A minor parent's parent who is a caretaker relative of:

- (i) The minor parent; or
 - (ii) The minor parent's full or half brother or sister.
- (e) Only the minor parent's child if the minor parent is not eligible due to the income and resources of the minor parent's parent.

(2) At the option of the family, the department may include the following persons in the assistance unit:

(a) One needy relative caretaker of specified degree, as defined for the aid to dependent children program, whose eligibility depends solely on caring for the child, if the child's parent does not reside in the family home; or

(b) A stepbrother or stepsister of the child included in the assistance unit, except as required in subsection (1) of this section.

(3) The department shall not include a person receiving Supplemental Security Income (SSI) in the CEAP assistance unit.

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

- (a) AFDC household member fails to cooperate with the office of support enforcement without good cause; or
- (b) An alien not meeting the citizenship and alien status requirements as specified under WAC 388-225-0070.

[Statutory Authority: RCW 74.08.090. 94-06-026 (Order 3707), § 388-225-0050, filed 2/23/94, effective 3/26/94.]

WAC 388-225-0060 Eligibility conditions—Emergent needs. To be eligible for CEAP, an applicant shall have one or more of the following emergent needs:

- (1) Food;
- (2) Shelter;
- (3) Clothing;
- (4) Minor medical;
- (5) Utilities;
- (6) Household maintenance, which includes basic household supplies such as beds, blankets, pots, pans;
- (7) Necessary clothing or transportation costs to accept or maintain a job; or
- (8) Transportation for a minor, not in foster care, to a home where care will be provided by family members or approved caretakers.

[Statutory Authority: RCW 74.08.090. 94-06-026 (Order 3707), § 388-225-0060, filed 2/23/94, effective 3/26/94.]

WAC 388-225-0070 Eligibility conditions—Residency and alien status. (1) To be eligible for CEAP:

(a) An applicant shall be a resident of Washington state. A resident means a person:

(i) Voluntarily living in the state with the intention of making and maintaining a home in the state; and

(ii) Not residing in the state for a temporary purpose.

(b) If not a resident of Washington state, an applicant shall be:

(i) Detained in Washington state for reasons beyond the household's control as a result of events which could not have been reasonably anticipated; or

(ii) A migrant. A migrant is a person who moves from one region to another to perform some work or duty.

(2) An alien granted lawful temporary resident status under sections 210A and 245A of the Immigration and Nationality Act shall be ineligible. Disqualification due to this provision applies for a period of five years from the date the temporary resident status was granted.

[Statutory Authority: RCW 74.08.090. 94-06-026 (Order 3707), § 388-225-0070, filed 2/23/94, effective 3/26/94.]

WAC 388-225-0080 Eligibility conditions—Living with a relative of specified degree. To be eligible for CEAP, a dependent child seventeen years of age or younger shall:

(1) Be living with a parent or other relative of a specified degree as defined for the aid to families with dependent children program; or

(2) If not living with such relative, have done so within the six months before the month in which assistance is requested.

[Statutory Authority: RCW 74.08.090. 94-06-026 (Order 3707), § 388-225-0080, filed 2/23/94, effective 3/26/94.]

WAC 388-225-0090 Eligibility conditions—Job refusal. To be eligible for CEAP, an applicant shall not have refused a bona fide job offer of employment or training for employment, without good cause, within thirty days before application or after application:

(1) A household refusing a bona fide offer of employment or training for employment without good cause within thirty days before application or after application shall:

(a) Be ineligible for thirty days or until the persons accepts employment, whichever is less, if the need for emergency assistance was due to the refusal; and

(b) Begin the household's period of ineligibility on the date of refusal of employment or training for employment.

(2) The following conditions shall constitute good cause for refusal of employment:

(a) Physical, mental, or emotional inability of the person to satisfactorily perform the work required;

(b) Inability of a person to get to and from the job without undue cost or hardship to the person, e.g., travel time in excess of one hour, one way;

(c) The nature of the work is hazardous to the person;

(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) Child care is not available to the household.

(1997 Ed.)

[Statutory Authority: RCW 74.08.090. 94-06-026 (Order 3707), § 388-225-0090, filed 2/23/94, effective 3/26/94.]

WAC 388-225-0100 Eligibility conditions—Other possible resources. To be eligible for CEAP, an applicant shall:

(1) Take all steps necessary to make the applicant eligible for:

(a) AFDC, SSI, or refugee assistance;

(b) Medical assistance for CEAP applicants requesting emergent medical care; and

(c) Food stamps for those CEAP applicants requesting emergent food assistance.

(2) Have applied for unemployment compensation if potentially eligible.

(3) Not be under sanction for failure to comply with the eligibility requirements for AFDC, SSI, general assistance, or refugee assistance, if compliance could have prevented the need for emergency assistance.

[Statutory Authority: RCW 74.08.090. 94-06-026 (Order 3707), § 388-225-0100, filed 2/23/94, effective 3/26/94.]

WAC 388-225-0120 Eligibility conditions—Income and resource eligibility. To be eligible for CEAP, an applicant shall:

(1) Have net monthly income less than ninety percent of the payment standard for an AFDC household with shelter costs; or,

(2) Demonstrate that the applicant could not have planned to avoid the emergency, if income is above the ninety percent cutoff. The household shall demonstrate an inability to plan if funds ordinarily available were expended for:

(a) Medical bills;

(b) Emergent child care to avoid abuse;

(c) Dental care to alleviate pain; or

(d) Costs incurred in obtaining employment.

(3) Be in financial need. The department shall consider a household to be in financial need if the household qualifies for a grant according to WAC 388-225-0180.

[Statutory Authority: RCW 74.08.090. 94-06-026 (Order 3707), § 388-225-0120, filed 2/23/94, effective 3/26/94.]

WAC 388-225-0150 Exempt income and resources. The department shall exempt:

(1) A home. The department shall apply aid to families with dependent children resource rules in determining whether real property is used as a home;

(2) A used and useful vehicle with an equity value not to exceed one thousand five hundred dollars;

(3) Used and useful household furnishings;

(4) Used and useful personal effects;

(5) Tools and equipment used and useful in the person's occupation;

(6) Livestock, the products of which are consumed by the applicant and the applicant's dependents;

(7) Any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, P.L. 91-646;

(8) The value of the coupon allotment under the Food Stamp Act of 1977, as amended;

(9) Any compensation provided to volunteers in ACTION programs established by Titles I, II, and III to P.L. 93-113, the Domestic Volunteer Service Act of 1973;

(10) Any benefits received under the women, infants and children program (WIC) of the Child Nutrition Act of 1966, as amended, and the special food service program for children under the National School Lunch Act, as amended;

(11) The income and resources of a Supplemental Security Income recipient;

(12) Energy assistance payments;

(13) Grants, loans, or work study to a student under Title IV of the Higher Education Amendments or Bureau of Indian Affairs for attendance costs as identified by the institution;

(14) Indian tribal judgment funds distributed per capita under P.L. 93-134, P.L. 94-114, P.L. 97-408, P.L. 97-458, P.L. 98-64;

(15) Two thousand dollars per person per calendar year received under the Alaska Native Claims Settlement Act or under P.L. 92-203 and P.L. 100-241;

(16) Payments 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;

(17) Payments made from the Agent Orange Settlement Fund established to settle agent orange liability claims under P.L. 101-201.

[Statutory Authority: RCW 74.08.090. 94-06-026 (Order 3707), § 388-225-0150, filed 2/23/94, effective 3/26/94.]

WAC 388-225-0160 Income deductions. The department shall allow the following deductions from the household's income:

(1) Ninety dollars from earned income for work expenses;

(2) The actual amount paid for child care from earned income up to the maximums allowed for the aid to families with dependent children program; and

(3) The current month's verified expenditures for:

(a) Medical bills;

(b) Emergent child care to avoid abuse;

(c) Dental care to alleviate pain; or

(d) Costs incurred in obtaining employment.

[Statutory Authority: RCW 74.08.090. 94-06-026 (Order 3707), § 388-225-0160, filed 2/23/94, effective 3/26/94.]

WAC 388-225-0170 Determining income and resources. (1) The department shall estimate the expected income, resources, and circumstances for the calendar month in which eligibility is established for all:

(a) Assistance unit members as described under WAC 388-225-0050(1); and

(b) If included at the option of the family, assistance unit members as described under WAC 388-225-0050(2); and

(c) Spouses and minor siblings of persons included in the assistance unit, if living with the family.

(2) The department shall base the income estimate on reasonable expectation and knowledge of anticipated total nonexempt income for the family members described under

subsection (1) of this section, including all public assistance payments plus authorized additional requirements.

(3) The department shall consider all nonexempt income, resources, cash, marketable securities, personal property, and real property of all family members described under subsection (1) of this section.

(4) The department shall place a value on all nonexempt resources available to the applicant at the time of grant authorization in accordance with aid to families with dependent children program policy regarding nonexempt resources.

[Statutory Authority: RCW 74.08.090. 94-06-026 (Order 3707), § 388-225-0170, filed 2/23/94, effective 3/26/94.]

WAC 388-225-0180 Financial need and CEAP grant amount. (1) The department shall deduct the following from the amount required to meet the emergent need subject to CEAP payment standard maximums and limitations:

(a) Nonexempt income (including public assistance grants and authorized additional requirements) less income deductions; and

(b) Cash on hand if not already counted as income; and

(c) The value of other nonexempt resources at the time of grant authorization.

(2) If the total value of the items listed under subsection (1) of this section is equal to or in excess of the amount required to meet the emergent need, subject to CEAP payment standard maximums and limitations, the applicant shall be ineligible.

(3) If the total value of the items listed under subsection (1) of this section is less than the amount required to meet the emergent need, subject to CEAP payment standard maximums and limitations, the department shall grant assistance in the amount of the difference.

(4) The department shall not deny CEAP to an eligible child based on the income and resources of a relative caretaker who is not:

(a) The child's parent; and

(b) Legally obligated to support the child; and

(c) Required to be included in the assistance unit as specified under WAC 388-225-0050.

[Statutory Authority: RCW 74.08.090. 94-06-026 (Order 3707), § 388-225-0180, filed 2/23/94, effective 3/26/94.]

WAC 388-225-0190 Payment limitations. (1) The department shall authorize CEAP for not more than thirty consecutive days in any period of twelve consecutive calendar months.

(2) The department shall pay CEAP by warrant directly to the household or by vendor payment.

[Statutory Authority: RCW 74.08.090. 94-06-026 (Order 3707), § 388-225-0190, filed 2/23/94, effective 3/26/94.]

Chapter 388-230 WAC
GENERAL ASSISTANCE FOR PREGNANT
WOMEN

WAC

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WAC 388-230-0010 Purpose of program. (1) General assistance for pregnant women (GA-S) is a state-funded grant assistance program providing for the needs of:

- (a) A pregnant woman; or
- (b) A woman who has relinquished her newborn for adoption.

(2) GA-S is used only when federally-funded grant assistance programs are not available.

[Statutory Authority: RCW 74.08.090. 93-16-059 (Order 3556), § 388-230-0010, filed 7/29/93, effective 8/29/93.]

WAC 388-230-0030 Definitions. (1) "Institution for mental diseases" means an institution primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services.

(2) "Public institution" means an institution that is supported in whole or in part from public funds and is the responsibility of a governmental unit or over which a governmental unit exercises administrative control.

[Statutory Authority: RCW 74.08.090. 93-16-059 (Order 3556), § 388-230-0030, filed 7/29/93, effective 8/29/93.]

WAC 388-230-0040 Summary of eligibility conditions. (1) The department shall grant GA-S to a person who meets the eligibility conditions stated in this chapter and is:

(a) A pregnant woman not eligible for AFDC or CEAP for reasons other than refusal or failure to cooperate without good cause in obtaining such assistance; or

(b) A woman who relinquished a newborn for adoption if the woman was receiving:

(i) GA-S at the time of the birth of the child; or

(ii) AFDC at the time of the birth of the child and subsequently loses AFDC eligibility because an eligible child does not reside in the household.

(2) Assistance granted under subsection (1)(b) of this section shall be limited to the end of the month containing the last day of the six week period following the day the child is born.

[Statutory Authority: RCW 74.08.090. 93-16-059 (Order 3556), § 388-230-0040, filed 7/29/93, effective 8/29/93.]

WAC 388-230-0050 Assistance units. (1) The department shall include the following persons in single assistance unit:

(a) A pregnant single person; or

(b) A married couple when the husband is eligible for general assistance unemployable and the wife is eligible for general assistance for pregnant women; or

(c) Only the pregnant woman in the case of a married couple when the other spouse is employable.

(2) The department shall include only the pregnant woman in the payment of the grant assistance under the GA-S program.

[Statutory Authority: RCW 74.08.090. 93-16-059 (Order 3556), § 388-230-0050, filed 7/29/93, effective 8/29/93.]

WAC 388-230-0060 Eligibility conditions—Program criteria. For GA-S, the department shall apply the general assistance unemployable (GAU) program criteria applicable to:

- (1) Citizenship or alien status;
- (2) Social Security number; and
- (3) Residency.

[Statutory Authority: RCW 74.08.090. 93-16-059 (Order 3556), § 388-230-0060, filed 7/29/93, effective 8/29/93.]

WAC 388-230-0080 Persons in institutions. (1) If otherwise eligible for GA-S, the department may grant GA-S to a person in an institution if the person is not:

(a) An inmate of a public institution;

(b) A patient of a public institution unless in a medical institution; or

(c) A patient of a public institution unless in an institution for mental disease and is:

(i) Sixty-five years of age or older; or

(ii) Twenty years of age or younger.

(2) If a person has been committed to the confinement and custody of a public institution such as a state penitentiary or county jail, the department shall consider the person an inmate of the public institution if he or she is:

(a) On a work release program; or

(b) Confined to a place of residence other than the institution.

[Statutory Authority: RCW 74.08.090. 93-16-059 (Order 3556), § 388-230-0080, filed 7/29/93, effective 8/29/93.]

WAC 388-230-0090 Eligibility conditions—Financial criteria. In determining financial eligibility and grant amounts, the department shall follow aid to families with dependent children income, resource, transfer of property, and payment rules.

[Statutory Authority: RCW 74.08.090. 94-16-044 (Order 3759), § 388-230-0090, filed 7/27/94, effective 9/1/94; 93-16-059 (Order 3556), § 388-230-0090, filed 7/29/93, effective 8/29/93.]

WAC 388-230-0110 Need and payment standards.

(1) In determining a persons's need and payment amounts, the department shall use the need and grant payment standards applicable to the aid to families with dependent children program.

(2) In the case of a married couple when the husband is eligible for general assistance unemployable and the wife is eligible for general assistance for pregnant women:

(a) Eligibility and payment will be based on the two-person need and payment standard; and

(b) The wife is the only person who can receive grant assistance under the GA-S program.

[Statutory Authority: RCW 74.08.090. 93-16-059 (Order 3556), § 388-230-0110, filed 7/29/93, effective 8/29/93.]

WAC 388-230-0120 Protective payees. For a recipient unable to manage assistance funds, the department shall follow aid to families with dependent children protective payee rules.

[Statutory Authority: RCW 74.08.090. 93-16-059 (Order 3556), § 388-230-0120, filed 7/29/93, effective 8/29/93.]

WAC 388-230-0140 Ineligibility based on benefits from other programs. The department shall deny requests for or terminate GA-S to a person:

- (1) Eligible for or receiving CEAP or AFDC;
- (2) Eligible for or whose needs are being met by supplemental security income (SSI);
- (3) Currently under sanction for failure to comply with AFDC or SSI requirements; or
- (4) Who fails or refuses to cooperate without good cause in obtaining AFDC, CEAP, or SSI.

[Statutory Authority: RCW 74.08.090. 93-16-059 (Order 3556), § 388-230-0140, filed 7/29/93, effective 8/29/93.]

Chapter 388-233 WAC

GENERAL ASSISTANCE FOR CHILDREN

WAC

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WAC 388-233-0010 Purpose of program. General assistance for children is a state-funded program providing for the needs of dependent children, residing with court-appointed legal guardians or court-appointed permanent custodians who are not eligible for the aid to families with dependent children program.

[Statutory Authority: RCW 74.08.090. 95-24-013 (Order 3926), § 388-233-0010, filed 11/22/95, effective 1/1/96. Statutory Authority: RCW 74.08.090 and 74.12.330. 93-17-029 (Order 3610), § 388-233-0010, filed 8/11/93, effective 9/11/93.]

WAC 388-233-0020 Summary of eligibility conditions. Effective March 11, 1993, the department shall grant general assistance for children to a child who meets the eligibility conditions stated in this chapter and:

- (1) Who resides with and is in the home of a court-appointed legal guardian or court-appointed permanent custodian; and

(2) Who is not eligible for or not receiving aid to families with dependent children or SSI; and

(3) Who is not under sanction for failure to comply with aid to families with dependent children or SSI requirements; and

(4) Whose court-appointed permanent custodian or court-appointed legal guardian is not a relative of a specified degree as defined under the aid to families with dependent children program; and

(5) Who is not living with a relative of a specified degree, as defined under the aid to families with dependent children program, who is:

- (a) A parent; or
- (b) Exercising parental control over the child.

[Statutory Authority: RCW 74.08.090. 95-24-013 (Order 3926), § 388-233-0020, filed 11/22/95, effective 1/1/96. Statutory Authority: RCW 74.08.090 and 74.12.330. 93-17-029 (Order 3610), § 388-233-0020, filed 8/11/93, effective 9/11/93.]

WAC 388-233-0030 Assistance units. The general assistance for children program assistance unit shall include only the eligible child.

[Statutory Authority: RCW 74.08.090 and 74.12.330. 93-17-029 (Order 3610), § 388-233-0030, filed 8/11/93, effective 9/11/93.]

WAC 388-233-0040 Eligibility conditions—Program criteria. The department shall base a child's eligibility on the current requirements of the aid to families with dependent children program except for the following requirements:

- (1) The requirement to live with a relative of a specified degree; and
- (2) The requirement of participation in the JOBS program if the child is not in school.

[Statutory Authority: RCW 74.08.090 and 74.12.330. 93-17-029 (Order 3610), § 388-233-0040, filed 8/11/93, effective 9/11/93.]

WAC 388-233-0050 Eligibility conditions—Assignment of rights to support. (1) The court-appointed legal guardian or court-appointed permanent custodian shall give consent to the division of child support to take assignment of any rights to support in behalf of the eligible child as required under chapter 388-14 WAC.

(2) The department shall require the court-appointed legal guardian or court-appointed permanent custodian to promptly remit to the division of child support any support received directly after assignment is made, as required under chapter 388-14 WAC.

[Statutory Authority: RCW 74.08.090. 95-24-013 (Order 3926), § 388-233-0050, filed 11/22/95, effective 1/1/96. Authority: RCW 74.08.090 and 74.12.330. 93-17-029 (Order 3610), § 388-233-0050, filed 8/11/93, effective 9/11/93.]

WAC 388-233-0060 Eligibility conditions—Support enforcement cooperation. (1) The department shall require the court-appointed legal guardian or court-appointed permanent custodian to cooperate with the division of child support in the collection of child support.

(2) The department shall waive the requirement for cooperation if the court-appointed legal guardian or court-appointed permanent custodian claims and the department

establishes good cause as specified under chapter 388-215 WAC.

[Statutory Authority: RCW 74.08.090. 95-24-013 (Order 3926), § 388-233-0060, filed 11/22/95, effective 1/1/96; 94-16-044 (Order 3759), § 388-233-0060, filed 7/27/94, effective 9/1/94. Statutory Authority: RCW 74.08.090 and 74.12.330. 93-17-029 (Order 3610), § 388-233-0060, filed 8/11/93, effective 9/11/93.]

WAC 388-233-0070 Eligibility conditions—Financial criteria. (1) In determining financial eligibility, the department shall follow aid to families with dependent children income, resource, and transfer of property rules.

(2) Child support received shall be considered as unearned income of the child.

(3) The department shall consider only the income and resources of the eligible child.

[Statutory Authority: RCW 74.08.090. 95-24-013 (Order 3926), § 388-233-0070, filed 11/22/95, effective 1/1/96; 4-16-044 (Order 3759), § 388-233-0070, filed 7/27/94, effective 9/1/94. Statutory Authority: RCW 74.08.090 and 74.12.330. 93-17-029 (Order 3610), § 388-233-0070, filed 8/11/93, effective 9/11/93.]

WAC 388-233-0080 Need and payment standards. The department shall use the aid to families with dependent children program need and payment rules and standards in determining eligibility and amount of grant payment.

[Statutory Authority: RCW 74.08.090 and 74.12.330. 93-17-029 (Order 3610), § 388-233-0080, filed 8/11/93, effective 9/11/93.]

WAC 388-233-0090 Grant payee. The department shall establish the court-appointed legal guardian or court-appointed permanent custodian as the payee for the eligible child.

[Statutory Authority: RCW 74.08.090. 95-24-013 (Order 3926), § 388-233-0090, filed 11/22/95, effective 1/1/96. Statutory Authority: RCW 74.08.090 and 74.12.330. 93-17-029 (Order 3610), § 388-233-0090, filed 8/11/93, effective 9/11/93.]

WAC 388-233-0100 Redetermination of eligibility. The department shall redetermine eligibility for the child every six months of continuous receipt of assistance.

[Statutory Authority: RCW 74.08.090 and 74.12.330. 93-17-029 (Order 3610), § 388-233-0100, filed 8/11/93, effective 9/11/93.]

**Chapter 388-235 WAC
GENERAL ASSISTANCE UNEMPLOYABLE**

WAC

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- 388-235-9200 Assignment and recovery of interim assistance.
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WAC 388-235-0010 Purpose of program. General assistance unemployable (GAU) is a state-funded financial assistance program for needy adults incapacitated from gainful employment.

[Statutory Authority: RCW 74.08.090. 93-16-058 (Order 3559), § 388-235-0010, filed 7/29/93, effective 8/29/93.]

WAC 388-235-0020 Definitions. (1) "Available medical treatment" means medical, surgical, alcoholism, drug, or mental health services, or any combination thereof.

(2) "Basic work activities" means the following activities:

- (a) Sitting;
- (b) Standing;
- (c) Walking;
- (d) Lifting;
- (e) Carrying;
- (f) Handling;
- (g) Seeing;
- (h) Hearing;
- (i) Communicating; and

(j) Understanding and following instructions.

(3) "Exertion levels" means the degree of strength required to perform certain job functions. Exertional levels are used at progressive evaluation process (PEP) step V and are ranked from "sedentary" to "heavy."

(4) "Incapacitated person" means a person incapable of gainful employment as a result of a physical, emotional, or mental condition expected to continue for ninety days or more from date of application. A person incapacitated solely by alcoholism or drug addiction is not included in this definition. However an otherwise incapacitated person who is also impaired by alcohol or drug addiction may be eligible for general assistance.

(5) "Institution for mental diseases" means an institution primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases including medical attention, nursing care, and related services.

(6) "Medical impairment" means, for purposes of this chapter, any diagnosable physical, mental, or emotional condition except alcoholism or drug addiction.

(7) "Physical functional capacity" means the degree of strength, agility, flexibility, and mobility a person can apply to work-related activities. This capacity is evaluated at PEP Step V.

(8) "Progressive evaluation process (PEP)" is a seven-step process applied sequentially by the department to decide the existence, severity, and duration of incapacity.

(9) "Public institution" means an institution supported in whole or in part from public funds, and is the responsibility of a governmental unit or over which a governmental unit exercises administrative control.

(10) "Reasonably be expected to render client able to work" means, in the opinion of the department, the required treatment will restore or substantially improve the person's ability to engage in gainful employment.

(11) "Severity of a medical impairment" means the degree to which an impairment restricts a person from performing basic work-related activities.

(12) "Transferrable skills" means work skills a person acquires through relevant semi-skilled or skilled work, that can be used in a variety of jobs within the same or different occupational areas. The department considers a person to have transferrable skills when the job requirements for work the person is able to do are essentially comparable to the job requirements of relevant work, including:

- (a) Having one or more skills in common; and
- (b) The necessary skill level is the same or lower; and
- (c) Using the same or similar equipment; or
- (d) The same or similar materials, products, processes, or services.

(13) "Vocational factors" means age, education, work experience, and transferrable skills.

[Statutory Authority: RCW 74.08.090. 93-16-058 (Order 3559), § 388-235-0020, filed 7/29/93, effective 8/29/93.]

WAC 388-235-0030 Summary of eligibility conditions. The department shall authorize GAU to a client who:

(1) Meets categorical requirements as follows:

(a) Be incapacitated as provided under WAC 388-235-5000 through 388-235-6000;

(b) Meet age limitations as specified under WAC 388-235-0050;

(c) Be a resident of the state of Washington as provided under WAC 388-235-0060 through 388-235-0090;

(d) Be a citizen or alien as provided under WAC 388-235-0100;

(e) Furnish a social security number as provided under WAC 388-235-0110.

(2) Meets financial eligibility requirements as specified under WAC 388-235-2000 through 388-235-4000;

(3) Undergoes a treatment and referral assessment as provided under WAC 388-235-7000 through 388-235-7600;

(4) Assigns interim assistance as provided under WAC 388-235-9200 and 388-235-9300;

(5) Is not eligible for or receiving benefits from other programs as specified under WAC 388-235-9000; and

(6) Meets requirements, if living in an institution, as required under WAC 388-235-1500.

[Statutory Authority: RCW 74.08.090. 93-16-058 (Order 3559), § 388-235-0030, filed 7/29/93, effective 8/29/93.]

WAC 388-235-0040 Assistance unit. The department shall include the following persons in a single GAU assistance unit:

(1) An incapacitated single adult;

(2) A married couple if both persons are incapacitated;

(3) The incapacitated spouse of a married couple when only one person is incapacitated;

(4) Only the incapacitated person of a married couple or family when:

(a) The spouse or child with whom the person lives is eligible for aid to families with dependent children (AFDC);

(b) The incapacitated person is not eligible for an AFDC grant; and

(c) The incapacitated person is not under an AFDC sanction.

(5) A married couple when the husband is incapacitated and the wife is eligible for general assistance under the pregnant woman provisions in chapter 388-230 WAC.

[Statutory Authority: RCW 74.08.090. 93-16-058 (Order 3559), § 388-235-0040, filed 7/29/93, effective 8/29/93.]

WAC 388-235-0050 Age requirements. For GAU eligibility, a person shall be eighteen years of age or older unless the person is part of a married couple. In a married couple, one or both spouses may be seventeen years of age or younger.

[Statutory Authority: RCW 74.08.090. 93-16-058 (Order 3559), § 388-235-0050, filed 7/29/93, effective 8/29/93. Formerly WAC 388-26-025 (part).]

WAC 388-235-0060 Residence—Establishing. For GAU eligibility, a person shall be:

(1) A resident who:

(a) Voluntarily lives in the state of Washington; and

(b) Intends to maintain a home in the state.

(2) Living in an identifiable residence within the department's community services office catchment area.

[Statutory Authority: RCW 74.08.090. 93-16-058 (Order 3559), § 388-235-0060, filed 7/29/93, effective 8/29/93. Formerly parts of WAC 388-26-050 and 388-26-055.]

WAC 388-235-0070 Residence—Temporary absences. (1) The department shall find that a recipient is maintaining residence in Washington state when the person's absences of more than one month were for:

(a) A visit as specified for the AFDC program; or
 (b) Reasons other than a visit, and the person provides adequate information to establish a continuing residence in the state.

(2) The department shall determine the adequacy of the information on a person's absence of more than one month. In such cases, the department shall assume the person is no longer a resident unless the person provides evidence to the contrary.

[Statutory Authority: RCW 74.08.090. 94-16-044 (Order 3759), § 388-235-0070, filed 7/27/94, effective 9/1/94; 93-16-058 (Order 3559), § 388-235-0070, filed 7/29/93, effective 8/29/93. Formerly WAC 388-26-060 (part).]

WAC 388-235-0080 Residence—Applicant living in another state. The department shall find that a person applying for GAU while living out of the state meets the residence requirement when the person:

(1) Offers acceptable proof of maintaining residence in this state since leaving. A person's acceptable proof shall:

(a) Be determined by the department; and
 (b) Include return trips to this state, written statements to other persons, maintenance of a home in this state, or other similar actions.

(2) Once lived and acquired residence in this state and:

(a) Still intends to maintain residence in Washington state;

(b) Has a plan to return to the state; and

(c) A person's absence is:

(i) Enforced and beyond the person's control; or
 (ii) Essential to the person's welfare and due to physical or social needs.

(3) Lives in the United States at the time of GAU application; and

(4) Arranges to have the GAU application taken by a public assistance agency and the agency completes the necessary investigation to process the application in accordance with Washington rules.

[Statutory Authority: RCW 74.08.090. 93-16-058 (Order 3559), § 388-235-0080, filed 7/29/93, effective 8/29/93. Formerly WAC 388-26-065.]

WAC 388-235-0090 Residence—Applicant receiving assistance from another state. The department shall not authorize GAU until the person's:

(1) Eligibility for assistance from another state ceases; and

(2) The grant from another state is terminated.

[Statutory Authority: RCW 74.08.090. 93-16-058 (Order 3559), § 388-235-0090, filed 7/29/93, effective 8/29/93. Formerly WAC 388-26-070 (part).]

WAC 388-235-0100 Citizenship and alien status. For GAU eligibility, a person shall be:

(1) A United States citizen; or

(2) A Canadian Indian (a North American Indian born in Canada) considered the same as a United States citizen because the Canadian Indian has:

(a) Fifty percent or more Indian blood; or

(b) Less than fifty percent Indian blood and entered the United States prior to December 24, 1952; and

(c) Maintained residence since entry.

(3) An alien:

(a) Lawfully admitted for permanent residence;

(b) Otherwise permanently residing in the United States under color of law; or

(c) Granted temporary residency status under the Immigration Reform and Control Act.

[Statutory Authority: RCW 74.08.090. 93-16-058 (Order 3559), § 388-235-0100, filed 7/29/93, effective 8/29/93. Formerly WAC 388-26-120 (part).]

WAC 388-235-0110 Social Security number. (1) For GAU eligibility, a person shall:

(a) Furnish a Social Security number; or

(b) Apply for a Social Security number if it is unknown or has not been issued.

(2) The department shall not deny, delay, or terminate assistance pending issuance of Social Security numbers if the client provides verification that meets the requirement under subsection (1)(b) of this section.

(3) The department shall exclude from the assistance unit any person failing to comply with the requirement to furnish or apply for a Social Security number.

(4) The department shall assist an applicant in obtaining a Social Security number by:

(a) Referring the person to the nearest Social Security office; and

(b) Furnishing to the client information available from department records if requested by the Social Security Administration.

(5) The client shall report a new Social Security number within twenty days of its receipt.

[Statutory Authority: RCW 74.08.090. 93-16-058 (Order 3559), § 388-235-0110, filed 7/29/93, effective 8/29/93.]

WAC 388-235-1500 Persons in institutions. (1) If otherwise eligible for GAU, a person in an institution may be granted general assistance if the person is not:

(a) An inmate of a public institution; or

(b) A patient of a public institution unless in a medical institution; or

(c) A patient of a public institution unless in an institution for mental disease and is:

(i) Sixty-five years of age or over; or

(ii) Twenty years of age or younger.

(2) If a person has been committed to the confinement and custody of a public institution such as a state penitentiary or county jail, the department shall consider the person an inmate of the public institution if he or she is:

(a) On a work release program; or

(b) Confined to a place of residence other than the institution.

[Statutory Authority: RCW 74.08.090. 93-16-058 (Order 3559), § 388-235-1500, filed 7/29/93, effective 8/29/93.]

WAC 388-235-2000 Resources. The department shall treat resources and transfer of property for GAU the same as for AFDC as required under chapters 388-216 and 388-217 WAC.

[Statutory Authority: RCW 74.08.090. 94-16-044 (Order 3759), § 388-235-2000, filed 7/27/94, effective 9/1/94; 93-16-058 (Order 3559), § 388-235-2000, filed 7/29/93, effective 8/29/93.]

WAC 388-235-3000 Income. In determining a person's financial eligibility and assistance amount, the department shall:

(1) Follow income rules in chapter 388-219 WAC; and resource, transfer of property, and payment rules applicable to GAU as required under chapters 388-216, 388-217, and 388-265 WAC; and

(2) Exempt the first eighty-five dollars plus one-half the remainder of the client's total gross monthly earned income.

[Statutory Authority: RCW 74.08.090. 94-16-044 (Order 3759), § 388-235-3000, filed 7/27/94, effective 9/1/94; 93-16-058 (Order 3559), § 388-235-3000, filed 7/29/93, effective 8/29/93.]

WAC 388-235-4000 GAU payment and need standards. (1) In determining a person's need and payment amounts, the department shall use the grant standards applicable to the GAU program.

(2) In the case of a married couple when the husband is eligible for general assistance unemployable and the wife is eligible for general assistance for pregnant women:

(a) Eligibility and payment will be based on the two-person need and payment standard; and

(b) The husband is the only person who can receive grant assistance under the GAU program.

[Statutory Authority: RCW 74.08.090. 93-16-058 (Order 3559), § 388-235-4000, filed 7/29/93, effective 8/29/93.]

WAC 388-235-5000 Incapacity determination—Process. (1) When determining whether incapacity exists, the department shall consider only the person's ability to obtain and perform work-related activity.

(2) Unless medical documentation requirements are waived under WAC 388-235-5050, the department shall:

(a) Determine the existence, severity, and duration of a person's incapacity for the GAU program using PEP; and

(b) Apply each step of this process sequentially, using as many steps as necessary to reach a decision as to whether incapacity exists.

[Statutory Authority: RCW 74.08.090. 93-16-058 (Order 3559), § 388-235-5000, filed 7/29/93, effective 8/29/93.]

WAC 388-235-5050 Waiver of medical documentation and progressive evaluation process (PEP). The department shall consider incapacity established without medical documentation and a progressive evaluation process (PEP) when a person is:

(1) Eligible for a financial benefit based on Social Security Administration disability criteria;

(2) Eligible for services from the division of developmental disabilities;

(3) Sixty-five years of age or older;

(4) Released from inpatient psychiatric treatment and is participating in direct treatment services to meet the client's mental health needs. In such cases:

(a) The department shall establish a person's incapacity for ninety days without a psychiatric/psychological evaluation; or

(b) The department shall not establish a person's incapacity if the client leaves ongoing inpatient psychiatric treatment against medical advice.

(5) Eligible for long-term care services administered by the aging and adult services administration of the department directly or through contract with area agencies on aging; or

(6) Released from aging and adult services administered long-term care services in a medical institution. In such cases, incapacity shall be established for ninety days from the date of release.

[Statutory Authority: RCW 74.08.090. 96-16-022, § 388-235-5050, filed 7/30/96, effective 8/30/96; 93-16-058 (Order 3559), § 388-235-5050, filed 7/29/93, effective 8/29/93.]

WAC 388-235-5060 Determination of capacity to engage in gainful employment. (1) The department shall determine a person's ability to perform gainful employment when:

(a) Determining eligibility. The department may waive the determination of gainful employment if medical documentation requirements are waived under WAC 388-235-5050;

(b) The person is employed; or

(c) New information is received which may indicate employability.

(2) The department shall consider the ability to perform gainful employment as the capacity to perform, in a regular and predictable manner, an activity usually done for pay or profit. Gainful employment does not include:

(a) Working under special conditions; such as in a department-approved sheltered workshop; or

(b) Working sporadically or part-time if, due to the incapacity, the person is unable to compete with unimpaired workers in the same job.

(3) The department shall deny or terminate general assistance to a person capable of or engaged in gainful employment.

[Statutory Authority: RCW 74.08.090. 93-16-058 (Order 3559), § 388-235-5060, filed 7/29/93, effective 8/29/93.]

WAC 388-235-5070 Sources of medical evidence. (1) The department shall pay the cost of necessary medical reports to determine incapacity except when the reports are provided by DSHS personnel.

(2) For a physiological impairment, the department shall only accept as primary evidence reports from the following medical professionals:

(a) A physician;

(b) An advanced registered nurse practitioner (ARNP) in the ARNP's area of certification; or

(c) The chief of medical administration of the Veterans' Administration, or their designee, as authorized in federal law.

(3) For an emotional or mental impairment, the department shall only accept as primary evidence reports from:

(a) A psychiatrist;

(b) A licensed clinical psychologist;

(c) An advanced registered nurse practitioner when certified in psychiatric nursing;

(d) A mental health professional designated by the local community mental health agency, as defined under RCW 71.05.020; or

(e) A physician, at the department's discretion.

(4) For a claimed or apparent developmental disability, the department may accept as primary evidence reports from a medical professional skilled in identifying developmental disabilities.

(5) The department shall accept as supplemental medical evidence reports from:

(a) Treating practitioners, such as a chiropractor, nurse, or physician's assistant; or

(b) DSHS institutions and agencies which are providing or have provided services to the person.

[Statutory Authority: RCW 74.08.090, 93-16-058 (Order 3559), § 388-235-5070, filed 7/29/93, effective 8/29/93.]

WAC 388-235-5080 Medical evidence requirements.

(1) The department shall only accept written medical evidence containing clear, objective medical documentation which includes:

(a) A diagnosis for the incapacitating conditions;

(b) The effect of the condition on the individual's ability to perform work-related activities; and

(c) Relevant medical history and sufficient medical documentation to support any conclusions of incapacity.

(2) When making an incapacity decision, the department shall not place significant weight on an individual's report of symptoms unless medical findings show that a medical condition is present that could reasonably be expected to produce the symptoms which are reported. In such cases, clear, objective medical information must be present, including professional observation and relevant medical history, which supports conclusions about:

(a) The existence and persistence of the symptom(s); and

(b) Its effect on the individual's ability to function.

(3) The department shall consider the opinion of the treating or consulting physicians or health care professionals when determining a person's incapacity. The department shall set forth clear and convincing reasons for rejecting uncontradicted medical opinion in making an incapacity decision.

(4) The determination of incapacity shall be made solely by the department based on the medical information received. The department shall not be bound by decisions of incapacity or unemployability made by another agency or person.

[Statutory Authority: RCW 74.08.090, 93-16-058 (Order 3559), § 388-235-5080, filed 7/29/93, effective 8/29/93.]

WAC 388-235-5090 Assigning severity ratings. The department shall assign severity ratings on a scale of one to five including a severity rating of:

(1) "One" when a person's impairment has no effect on the performance of basic work-related activities;

(2) "Two" when a person's impairment has no significant effect on performance of basic work-related activities;

(3) "Three" when a person's impairment significantly limits performance of at least one basic work-related activity;

(4) "Four" when a person's impairment very significantly limits performance of at least one basic work-related activity; and

(5) "Five" when a person's impairment prevents the performance of at least one basic work-related activity.

[Statutory Authority: RCW 74.08.090, 93-16-058 (Order 3559), § 388-235-5090, filed 7/29/93, effective 8/29/93.]

WAC 388-235-5100 PEP step I—Review of medical documentation. (1) The department shall review a person's medical documentation to ensure the following requirements are met:

(a) The medical report contains sufficient information as described under WAC 388-235-5070;

(b) An authorized medical professional wrote the medical report;

(c) The medical report documents the existence of a potentially incapacitating condition; and

(d) The medical report indicates an impairment is expected to last ninety days or more from the application date.

(2) The department may require additional medical information when the information received is insufficient to decide incapacity.

(3) The department shall deny a person's application when:

(a) There is a single impairment with objective findings consistent with a severity rating less than "three"; or

(b) A reported impairment is not expected to last ninety days or more (or twelve weeks) from the date of application.

[Statutory Authority: RCW 74.08.090, 93-16-058 (Order 3559), § 388-235-5100, filed 7/29/93, effective 8/29/93.]

WAC 388-235-5200 PEP step II—Severity of mental impairments. (1) If a mental impairment is claimed, the department shall determine severity of the person's mental or emotional disorder based on:

(a) Psychosocial and treatment history;

(b) Clinical findings;

(c) Results of special tests; and

(d) Professionally observed symptomatology that indicates impairment of the person's ability to perform basic work-related activities.

(2) For a person diagnosed as mentally retarded, the department shall assign a person's severity rating based on:

(a) A full test intelligence quotient (IQ) score. The department shall consider a person's IQ score of:

(i) Eighty-five or above within normal limits and is rated "one";

(ii) Seventy to eighty-four as borderline intellectual functioning and is rated "three";

(iii) Sixty-nine or below as mental retardation and is rated "five"; or

(b) The lowest IQ subscale score, for example, verbal or performance, rated as described under subsection (2)(a) of this section when:

(i) The full IQ test could not be given; and

(ii) At least two subscale scores are provided.

(3) For a person diagnosed as having an organic mental disorder, the department shall assign a severity rating based

on the most severe of the following three areas of a person's impairment:

- (a) Marked memory defect for recent events;
 - (b) Impoverished, slowed, perseverative thinking, with confusion or disorientation; or
 - (c) Labile, shallow, or coarse affect.
- (4) The department shall base the severity of a person's functional psychotic or nonpsychotic disorder, excluding alcoholism or drug addiction, on:

(a) Clinical assessment of these twelve symptoms: Depressed mood, suicidal trends, verbal expression of anxiety or fear, expression of anger, social withdrawal, motor agitation, motor retardation, paranoid behavior, hallucinations, thought disorder, hyperactivity, preoccupation with physical complaints; and

(b) An overall assessment of:

- (i) Intensity and pervasiveness of the symptoms as described under subsection (4)(a) of this section; and
- (ii) Effect on the client's ability to perform work-related activities.

(c) The department shall assign a minimum severity rating of "three" when one or more of the person's symptoms, as described under subsection (4)(a) of this section is present and one or more of the following conditions are met:

- (i) A diagnosis of psychotic disorder has been made;
- (ii) The person has been hospitalized for psychiatric reasons two or more times within the preceding two years;
- (iii) The person has experienced a continuous psychiatric hospitalization or residential treatment exceeding six months duration within the preceding two years;
- (iv) The person is considered at least moderately impaired by at least three of the above-listed symptoms; or
- (v) The person is considered as at least moderately impaired in the overall assessment of intensity and pervasiveness of these symptoms.

(d) The department shall assign a minimum rating of "four" when the overall assessment of the intensity and pervasiveness of these symptoms is:

- (i) Marked; or
- (ii) Moderate and three or more of the above symptoms are present to at least a marked degree.

(e) The department shall assign a rating of "five" when the overall assessment of the intensity and pervasiveness of these symptoms is:

- (i) Severe; or
- (ii) Marked and three or more of the above symptoms are present to a severe degree.

(5) When a person is diagnosed as being impaired in more than one area, the department shall assign one mental rating based on ratings in each of the three areas:

(a) A person with two or more moderate impairments or one or more moderate and one marked impairment is considered to have an overall mental severity rating of "four";

(b) A person with two or more marked impairments is considered to have an overall mental severity rating of "five."

(6) When the overall functioning level appears consistent with the person's overall mental severity rating, the department shall:

(a) Deny GAU when the person does not have a significant claimed physical impairment and an overall mental severity rating of "one" or "two";

(b) Approve GAU when the person has an overall mental severity rating of "five," regardless of whether a significant claimed physical impairment exists; or

(c) Evaluate the person at the next applicable step, when the person:

(i) Has an overall mental severity rating of "three" or "four"; or

(ii) Has a mental severity rating of "two" and also has a physical impairment.

[Statutory Authority: RCW 74.08.090. 93-16-058 (Order 3559), § 388-235-5200, filed 7/29/93, effective 8/29/93.]

WAC 388-235-5300 PEP step III—Severity of physical impairments. (1) When a person claims a physical impairment, the department shall determine the severity rating of the person's physical impairment based on current medical evidence that provides an objective description of the impairment.

(2) The department shall assign a severity rating for each diagnosed physical impairment:

(a) The department shall use the examining medical evidence provider's given severity rating when:

(i) The given rating is substantiated by and consistent with the medical evidence provided;

(ii) The medical evidence provider's assessment of functional capacities is consistent with the department's definition of the given severity rating; and

(iii) The medical evidence provider's given severity rating is not contradicted by:

(A) Other evidence from the same evaluation; or

(B) By evidence from a separate, current evaluation of the client.

(b) The department shall assign a severity rating by comparing the medical findings of the client's functional capacities with the severity rating definitions when:

(i) The medical evidence provider fails to assign a severity rating; or

(ii) The rating does not meet the conditions under subsection (2)(a) of this section.

(3) After assigning a severity rating to each physical impairment, the department shall:

(a) Deny GAU when the person does not have a diagnosed mental impairment rated "two" or more and only one physical impairment consistent with a severity rating of "two";

(b) Approve GAU if the person's physical impairment is consistent with a severity rating of "five"; or

(c) Evaluate the person at "step 4" when the person

(i) Has a multiple physical impairment rated "two," "three," or "four"; or

(ii) Has both physical and mental impairment ratings of at least "two."

[Statutory Authority: RCW 74.08.090. 93-16-058 (Order 3559), § 388-235-5300, filed 7/29/93, effective 8/29/93.]

WAC 388-235-5400 Progressive evaluation process—Step IV—Multiple impairments. (1) When a person has two or more diagnosed impairments and each impair-

ment is consistent with a severity rating of "two" or more but none are consistent with a severity rating of "five," the department shall:

(a) Assign an overall severity rating; and

(b) Classify each diagnosis according to body system based upon the International Classification of Diseases (ICD), 9th revision.

(2) The department shall disregard severity ratings assigned to a person's alcoholism or drug addiction in this process.

(3) When a person's diagnosed impairments are all classified under the same body system, the department shall assign an overall severity rating for the person by:

(a) Using the highest rating given by the medical evidence provider to an impairment within that system; or

(b) When all impairments are rated "two," raising the severity rating to "three" when the impairments have the cumulative effect of significantly interfering with one or more basic work-related activity.

(4) When all diagnosed impairments, including mental disorders, are classified under at least two body systems, the department shall assign an overall severity rating by combining the highest rating from each body system. The department shall:

(a) Assign an overall severity rating of "four" when there are two or more impairments with severity ratings of "three" or one or more impairment has a severity rating of "three" and one impairment has a severity rating of "four";

(b) Assign an overall severity rating of "five" when there are two or more impairments with severity ratings of "four";

(c) Assign an overall severity rating of "three" only when:

(i) There are two or more impairments;

(ii) No impairments are rated higher than "two"; and

(iii) The impairments have the cumulative effect of significantly interfering with one or more basic work-related activities.

(5) When an overall severity rating is assigned, the department shall:

(a) Deny GAU if the impairments are consistent with an overall severity rating of "two"; or

(b) Approve GAU if the impairments have an overall severity rating of "five"; or

(c) Evaluate the person at the next step.

[Statutory Authority: RCW 74.08.090. 93-16-058 (Order 3559), § 388-235-5400, filed 7/29/93, effective 8/29/93.]

WAC 388-235-5500 Progressive evaluation process—Step V—Functional mental capacity. (1) The department shall evaluate the functional capacity of a person with mental impairments assigned an overall severity rating of "three" or "four" by assessing the person's specific cognitive and social factors.

(2) The department shall evaluate cognitive factors by assessing a person's abilities to:

(a) Understand, remember, and follow simple, one-or-two step instructions;

(b) Understand, remember, and follow complex instructions, with three or more steps;

(c) Learn new tasks;

(d) Exercise judgment and make decisions; and

(e) Perform routine tasks without undue supervision.

(3) The department shall approve GAU when the clinical assessment indicates the person:

(a) Is at least moderately impaired in their ability to understand, remember, and follow simple, one-or-two step instructions and is at least moderately limited in their ability to:

(i) Learn new tasks, exercise judgment, and make decisions; and

(ii) Perform routine tasks without undue supervision; or

(b) Can understand, remember, and follow simple instructions, but is:

(i) At least moderately impaired in their ability to understand, remember, and follow complex instructions, with three or more steps; and

(ii) Markedly limited in the ability to learn new tasks, exercise judgment and make decisions, and perform routine tasks without undue supervision.

(4) The department shall evaluate a person's social factors by assessing the person's abilities to:

(a) Relate appropriately to coworkers and supervisors;

(b) Interact appropriately in public contacts;

(c) Tolerate the pressures of a work setting;

(d) Care for self, including personal hygiene; and

(e) Maintain appropriate behavior in a work setting.

(5) The department shall:

(a) Assess the limitations on the person's social functioning indicated by the medical evidence provider; and

(b) Approve GAU if a combination of significant limitations exists in the area of social functioning that precludes gainful employment.

[Statutory Authority: RCW 74.08.090. 93-16-058 (Order 3559), § 388-235-5500, filed 7/29/93, effective 8/29/93.]

WAC 388-235-5600 Progressive evaluation process—Step V—Functional physical capacity. (1) The department shall consider the effect of a person's physical impairment on the ability to perform work-related activities when a person's physical impairments are assigned an overall severity rating of "three" or "four."

(a) The department shall assess physical functional capacity based on the person's exertional, exertionally-related and nonexertional limitations.

(b) For the department to consider a limitation, the limitation must be substantiated by the medical evidence and directly related to the diagnosed impairment(s).

(2) The department shall assign an exertion level and determine a person's exertionally-related limitations by comparing all available medical evidence to the definitions of exertional levels, exertionally-related limitations and nonexertional limitations under WAC 388-235-5020 when:

(a) The medical evidence provider does not document that a person's diagnosed impairment causes a limitation on work-related activities; or

(b) A given limitation is not consistent with objective medical evidence.

(3) "Exertion level" means a comparison of a person's capacity to lift, carry, stand and walk with the strength needed to fulfill job duties in the following work categories. For this subsection, occasionally means less than one-third

of the time and frequently means one-third to two-thirds of the time:

(a) **Sedentary:** A person is in this category when capable of lifting ten pounds maximum and occasionally lifting and/or carrying such articles as dockets, ledgers, and small tools. Although a sedentary job is one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are only required occasionally and other sedentary criteria are met.

(b) **Light:** A person is in this category when capable of lifting twenty pounds maximum with frequent lifting and/or carrying of objects weighing up to ten pounds. Even though the weight lifted may be only a negligible amount, a job is in this category when it requires walking or standing to a significant degree, or when it involves sitting most of the time with a degree of pushing and pulling of arm and/or leg controls.

(c) **Medium:** A person is in this category when capable of lifting fifty pounds maximum with frequent lifting and/or carrying of objects weighing up to twenty-five pounds.

(d) **Heavy:** A person is in this category when capable of lifting one hundred pounds maximum with frequent lifting and/or carrying of objects weighing up to fifty pounds.

(4) "Exertionally-related limitations" means a restriction in mobility, agility or flexibility in the following twelve activities: Balancing, bending, climbing, crawling, crouching, handling, kneeling, pulling, pushing, reaching, sitting, and stooping.

(5) "Nonexertional physical limitations" means restrictions on work activities that do not affect strength, mobility, agility, or flexation.

[Statutory Authority: RCW 74.08.090. 93-16-058 (Order 3559), § 388-235-5600, filed 7/29/93, effective 8/29/93.]

WAC 388-235-5700 Evaluating vocational factors for progressive evaluation process—Steps VI and VII.

(1) The department shall consider vocational factors of age, education, and work experience only when a person's impairment(s) have been assigned an overall severity rating of an "three" or "four."

(2) The department shall evaluate education in terms of formal schooling or other training which enables a person to meet job requirements. The department shall classify a person's education as:

(a) "Illiterate" when a person is able to sign their name, but cannot read or write a simple communication, such as instructions, or inventory lists;

(b) "Limited education" when a person has completed formal education of the eleventh grade level or less or special education, unless there is evidence to the contrary; or

(c) "High school education and above" when a person has completed high school or obtained a general education equivalency degree (GED) and is capable of work at a semi-skilled through skilled job level, unless there is evidence to the contrary.

(3) The department shall evaluate a person's work experience to determine if it constitutes relevant past work. Relevant past work is defined as work:

(a) Normally done for pay or profit. Noncompetitive work, like working in a sheltered workshop, jobs where the

impaired worker was given special consideration, or the regular activities of a student or homemaker, is excluded;

(b) Performed in the past five years; and

(c) Done long enough for the person to acquire the skills to continue doing the job, considering the reasons for losing or frequently changing jobs or the specific skills or nature of the job. If the job is not excluded based on such considerations, the department shall consider the person to have the necessary work skills when the following minimum cumulative time periods are met:

(i) Thirty days for unskilled work;

(ii) Three months for semi-skilled work; and

(iii) Six months for skilled work.

(4) The department shall evaluate a person with relevant work experience and determine whether the person has transferrable skills. The department shall compare the person's description of the relevant work with the general work requirements for jobs in the following occupational areas:

(a) Managerial and administrative;

(b) Professional, paraprofessional, and technical;

(c) Sales;

(d) Clerical and administrative support;

(e) Service;

(f) Agriculture, forestry, and fishing; and

(g) Production, construction, maintenance, and material moving.

[Statutory Authority: RCW 74.08.090. 93-16-058 (Order 3559), § 388-235-5700, filed 7/29/93, effective 8/29/93.]

WAC 388-235-5800 Progressive evaluation process—Step VI—Evaluate capacity to perform past work.

(1) The department shall evaluate a person's ability to perform relevant past work in relation to current functional capacities before considering the person's age and educational factors.

(2) For each job the department considers part of the person's relevant work experience, the department shall determine:

(a) The exertional or skill requirements of the job; and

(b) Current cognitive, social, or nonexertional factors that significantly limit the person's ability to perform relevant past work.

(3) After evaluating a person's relevant past work experience, the department shall:

(a) Deny GAU when a person has:

(i) The physical or mental ability to perform past relevant work and a significant cognitive, social or nonexertional limitation does not exist; or

(ii) Recently acquired specific work skills through successful completion of vocational training enabling the person to work within current physical or mental capacities;

(b) Approve GAU when the person:

(i) Is fifty-five years of age or older; and

(ii) Has an impairment that is assigned an overall severity rating of at least "three"; and

(iii) Does not have the physical or mental ability to perform relevant past work or does not have relevant past work; or

(c) Evaluate the person at the next step.

[Statutory Authority: RCW 74.08.090. 93-16-058 (Order 3559), § 388-235-5800, filed 7/29/93, effective 8/29/93.]

WAC 388-235-5900 Progressive evaluation process—Step VII—Evaluating capacity to perform other work. (1) If a person is unable to perform past work, the department shall evaluate a person's ability to perform other work.

(2) The department shall approve GAU for a person who has a significant physical limitation and is limited to:

(a) Sedentary work; or

(b) Light work, and the person is:

(i) Fifty years of age or older;

(ii) Thirty-five years of age or older and cannot speak, read, or write English; or

(iii) Eighteen years of age or older and has a limited education or less and no relevant past work.

(c) Medium work, and the person is:

(i) Fifty years of age or older and has a limited education or less and no relevant past work; or

(ii) Fifty-five years of age or older without consideration of educational level or other work limitations.

(d) Heavy work with only nonexertional limitations and fifty-five years of age or older.

(3) The department shall approve GAU when a person is in the following age ranges and has the described cognitive or social limitations on a functional mental capacity:

(a) Fifty years of age or older with a:

(i) Moderate limitation on the ability to relate appropriately to coworkers and supervisors; and

(ii) Marked limitation on the ability to respond appropriately to, and tolerate the pressures and expectations of, a normal work setting.

(b) Eighteen to fifty-four years of age with a severe limitation on the ability to respond appropriately to, and tolerate the pressures and expectations of, a normal work setting; or

(c) Eighteen to forty-nine years of age and has:

(i) A severity rating of "four" and one or more of the twelve symptoms identified in WAC 388-235-5200 (4)(a) listed as "severe"; and

(ii) "Moderate" limitation in the ability to relate appropriately to coworkers and supervisors; and

(iii) "Marked" limitation in the ability to respond appropriately to, and tolerate the pressures and expectations of, a normal work setting.

(4) The department shall approve GAU when a person has both a significant mental impairment and a significant physical impairment and:

(a) Either impairment meets the criteria in subsection (2) or (3) of this section; or

(b) The person meets the criteria in subsection (3)(a) of this section when age is disregarded; or

(c) After disregarding relevant past work experience, a person with limited education or less is:

(i) Fifty years of age or older and work activities are restricted to medium exertional level or less; or

(ii) Eighteen to forty-nine years of age and their work activities are restricted to light exertional level.

(5) The department shall approve or deny eligibility for GAU by administrative review for any person not eligible

for GAU using the criteria in subsection (2), (3), or (4) of this section.

(a) A team of two or more department designees shall conduct the administrative review; and

(b) The administrative review team shall decide incapacity by assessing, independent of the progressive evaluation process, all available medical information and identified vocational factors, including transferable skills, for effects on the person's ability to do work-related activities.

[Statutory Authority: RCW 74.08.090. 93-16-058 (Order 3559), § 388-235-5900, filed 7/29/93, effective 8/29/93.]

WAC 388-235-6000 Duration of assistance based on incapacity. (1) The department shall determine the duration of a person's incapacity based on the department's evaluation of the medical evidence and other relevant information in the case record.

(2) The department shall establish the duration of assistance based on a person's incapacity. The duration shall not exceed twelve months without a redetermination of the incapacity.

[Statutory Authority: RCW 74.08.090. 93-16-058 (Order 3559), § 388-235-6000, filed 7/29/93, effective 8/29/93.]

WAC 388-235-7000 Purpose of referrals. The purpose of treatment or other agency referrals is to:

(1) Restore or improve the person's ability to work for pay in a regular and predictable manner;

(2) Reduce the person's need for general assistance.

[Statutory Authority: RCW 74.08.090. 93-16-058 (Order 3559), § 388-235-7000, filed 7/29/93, effective 8/29/93.]

WAC 388-235-7100 Treatment and referral requirements. (1) For GAU eligibility, 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.

(2) The department shall provide written notification of a person's treatment requirements at the time of initial approval and at each redetermination.

(3) The department shall recommend available medical services, provided under the state-financed medical care services program.

(4) The department shall assess and decide if a person needs to be referred to treatment, referred to other agencies, or other social services. After the initial assessment, the department will assess the person's treatment and social services needs once a year or more often.

(5) When a client fails or refuses treatment, referral to other agencies, or other social services, the department shall make the "good cause" determination based on criteria in WAC 388-235-7500.

(6) Any recipient disagreeing with treatment requirements may request a fair hearing. Once a person's request is initiated, the department shall take no adverse action as a result of a person's failure to comply with the treatment at issue pending a decision.

[Statutory Authority: RCW 74.08.090. 93-16-058 (Order 3559), § 388-235-7100, filed 7/29/93, effective 8/29/93.]

WAC 388-235-7200 Other agency referral requirements. (1) The department shall screen each person to determine appropriateness of referral to other agencies which can reasonably be expected to reduce the need for assistance.

(2) For GAU eligibility, an incapacitated person shall accept and follow through on required referrals to other agencies, unless there is good cause for failure to do so as provided under WAC 388-235-7500.

[Statutory Authority: RCW 74.08.090. 93-16-058 (Order 3559), § 388-235-7200, filed 7/29/93, effective 8/29/93.]

WAC 388-235-7300 ADATSA referral requirements. (1) The department shall refer a person claiming incapacity based primarily on alcoholism or drug dependency for evaluation under the alcoholism and drug addiction treatment and support act (ADATSA).

(2) The department shall evaluate a person for general assistance who appears to have significant mental or physical impairments resulting from, or in addition to, alcoholism or drug addiction when the person:

(a) Indicates upon application that other physical or mental impairments may be incapacitating in themselves; or

(b) The person is rejected for the alcoholism and drug addiction treatment and support program, and/or medical evidence obtained by assessment for that program indicates other significant medical impairments may exist.

(3) Any general assistance applicant or recipient shall be required to undergo an alcohol/drug assessment when the:

(a) Person claims an alcohol or drug problem; or

(b) Department obtains medical or clinical evidence indicating that within the last eighteen months, such a problem appears to exist; or

(c) Department receives information that the person has been arrested for an alcohol- or drug-related offense within the last ninety days; or

(d) Person meets one or more of the criteria in subsections (3)(a) through (c) of this section and the need for a protective payee must be established.

(4) Applicants whose mental, emotional, and/or physical condition is caused or exacerbated by alcoholism or drug addiction must have eligibility for general assistance based solely on the mental, emotional, and/or physical condition.

(a) The effects of the alcoholism or drug addiction must be differentiated from the other condition in order to determine incapacity.

(b) Unless it can be reasonably established that the other condition would remain incapacitating for at least sixty days of abstinence from alcohol or drugs, the person is not eligible for general assistance.

(5) When the effects of alcoholism or drug addiction in the applicant's mental, emotional, and/or physical condition cannot be clearly differentiated, the department shall refer the person to ADATSA for evaluation and/or treatment.

(6) The provisions under subsections (4) and (5) of this section apply to recipients as well, except that a person whose alcohol/drug addiction cannot be clearly differentiated from any physical/mental impairments and eligibility established under the ADATSA or GAU program will remain on GAU subject to WAC 388-235-8130 provisions.

(7) The department may require a person to undergo a period of alcohol or drug treatment before re-evaluating the person's eligibility for general assistance.

(8) The department shall determine program eligibility for a person impaired by chemical dependency, who also has mental or physical impairments, as follows:

(a) A person qualifying for both general assistance and ADATSA shelter program may choose either program;

(b) A person qualifying for both general assistance and ADATSA treatment shall participate in ADATSA treatment when it can reasonably be expected to enable the person to work or reduce the need for assistance, unless the person has good cause to refuse; or

(c) A person qualifying for general assistance who has good cause to refuse or who does not qualify for ADATSA treatment, shall be required to cooperate with an alternative alcohol or drug treatment plan which can reasonably be expected to enable the person to work or to reduce the need for assistance, unless there is good cause to refuse.

[Statutory Authority: RCW 74.04.057. 94-13-202 (Order 3743), § 388-235-7300, filed 6/22/94, effective 7/23/94. Statutory Authority: RCW 74.08.090. 93-16-058 (Order 3559), § 388-235-7300, filed 7/29/93, effective 8/29/93.]

WAC 388-235-7400 Protective payments. (1) The department shall issue a general assistance grant to a client in the form of protective payment when:

(a) The department determines the client is unable to manage the client's funds; or

(b) A department-designated chemical dependency assessment center diagnoses the client as chemically dependent and determines the client used drugs or alcohol within the ninety-day period immediately preceding assessment.

(2) The department shall have the discretion to waive the protective payment requirement for an actively addicted client when the department determines that the client has the ongoing ability to manage the client's funds.

(3) The department may issue a general assistance grant to the client in the form of vendor payment when no suitable protective payee is available.

[Statutory Authority: RCW 74.04.057. 94-13-202 (Order 3743), § 388-235-7400, filed 6/22/94, effective 7/23/94.]

WAC 388-235-7500 Good cause for refusing medical treatment or other agency referrals. The department shall find that a client has good cause for refusing required medical treatment when such client's refusal is based on any of the following conditions:

(1) The client is genuinely fearful of undergoing required treatment. Such fear may appear to be unrealistic or irrational; however, fear exists in such a degree that treatment would be adversely affected;

(2) The client could lose a faculty, or the remaining use of faculty, and refuses to accept the risk;

(3) Because of the client's definitely stated religious scruples, the client will not accept required medical treatment;

(4) The client is temporarily unable to participate in required medical treatment, due to an intervening incapacity. The temporary inability to participate must be documented

by medical evidence. The requirement to participate is again imposed as soon as the client is able to participate;

(5) The client was not properly notified of the treatment required and/or the consequences for failure to comply with these requirements;

(6) The client's treatment required by previous written notification is subsequently determined by the department to have been inappropriate or unavailable. The department shall consider treatment unavailable when the treatment includes copayments or service charges not covered by the department, and the client is denied access to the treatment due to an inability to pay; or

(7) The client has limitations or impairments consistent with the definition of necessary supplemental accommodation services (NSA) and the effects of those limitations or impairments substantially contributed to the client's refusal to accept treatment or pursue services from other agencies.

[Statutory Authority: RCW 74.04.050, 43.20A.550 and 74.08.090. 97-02-047, § 388-235-7500, filed 12/30/96, effective 1/30/97. Statutory Authority: RCW 74.08.090. 93-16-058 (Order 3559), § 388-235-7500, filed 7/29/93, effective 8/29/93.]

WAC 388-235-7600 Sanction for refusing medical treatment or other agency referrals. The department shall terminate GAU to a person who has been referred to, but refuses to accept a referral to or pursue available required medical treatment or available services or benefits from other agencies without good cause until the person:

(1) Agrees to accept and/or pursue such treatment or service; and

(2) Is subject to the following maximum periods of ineligibility after reapplication:

(a) First refusal - one week;

(b) Second refusal within six months - one month; and

(c) Third and subsequent refusals within one year - two months.

[Statutory Authority: RCW 74.08.090. 93-16-058 (Order 3559), § 388-235-7600, filed 7/29/93, effective 8/29/93.]

WAC 388-235-8000 Redetermination of financial eligibility. The department shall redetermine financial eligibility for a GAU client every six months or more often of continuous receipt of assistance.

[Statutory Authority: RCW 74.08.090. 93-16-058 (Order 3559), § 388-235-8000, filed 7/29/93, effective 8/29/93.]

WAC 388-235-8100 Redetermination of incapacity.

(1) The department shall redetermine incapacity for a GAU recipient every twelve months or more often, but may redetermine a recipient's incapacity at any time based on new information.

(2) The department shall redetermine a recipient's eligibility due to incapacity based on current medical information.

(3) If a recipient's incapacity is not substantiated and the conditions in WAC 388-235-8130 are met, then the department shall deny continued eligibility.

[Statutory Authority: RCW 74.08.090. 93-16-058 (Order 3559), § 388-235-8100, filed 7/29/93, effective 8/29/93.]

WAC 388-235-8130 Determining a recipient is no longer incapacitated—Termination proviso. (1) The department shall demonstrate one or more of the following conditions exist before determining a recipient is not incapacitated:

(a) Clear improvement in the recipient's overall medical condition based on new medical evidence. "Clear improvement" means, since incapacity was established:

(i) The physical or mental impairment, on which incapacity was based, has decreased in severity to the point where the recipient is capable of gainful employment; or

(ii) The effect of that impairment on work-related activities has been significantly diminished through therapy, medication, or rehabilitation to the point where the recipient is capable of gainful employment; or

(b) A previous error in the eligibility decision. "Previous error" means a client's incapacity was previously established based on:

(i) Faulty or insufficient information; or

(ii) An erroneous procedure based on the rule in effect at the time.

(2) The department shall not apply the clear improvement or previous error criteria under subsection (1) of this section when:

(a) A person has a break in assistance of over thirty days and the person does not meet the criteria for retroactive reinstatement as required under WAC 388-235-8200;

(b) The department determines the recipient is engaged in gainful employment;

(c) The department determines a recipient receiving services through the division of vocation rehabilitation (DVR) is not incapacitated, but assistance has been extended through the completion of the training program by an exception to policy; or

(d) The recipient does not meet the categorical eligibility requirements for the GAU program.

[Statutory Authority: RCW 74.08.090. 93-16-058 (Order 3559), § 388-235-8130, filed 7/29/93, effective 8/29/93.]

WAC 388-235-8140 Redetermination of eligibility based on mental retardation. The department shall consider a person's incapacity established without medical documentation at the time of review when the person is currently receiving GAU based on mental retardation if the client:

(1) Has submitted current medical evidence documenting a diagnosis of mental retardation with a full scale score on the Wechsler Adult Intelligence Scale (WAIS) of seventy or lower; or

(2) Has submitted current medical evidence documenting a diagnosis of mental retardation or borderline intellectual functioning with a full scale score on the WAIS of seventy-one to seventy-five and meets the following criteria:

(a) Has submitted current medical evidence which documents another mental or physical impairment of marked severity; and

(b) The current medical evidence documents that medical treatment for the other mental or physical impairment is not likely to restore or substantially improve the person's ability to work.

(3) Cooperates with required referral to the division of developmental disabilities (DDD) and an application for SSI.

[Statutory Authority: RCW 74.08.090, 93-16-058 (Order 3559), § 388-235-8140, filed 7/29/93, effective 8/29/93.]

WAC 388-235-8150 Redetermination for a recipient appearing to meet federal disability criteria for SSI. The department may extend the incapacity period up to one year from the latest date of incapacity determination, without further medical documentation, when the department determines the client appears to meet federal disability criteria to receive SSI.

(1) At the end of the one-year period, the department shall redetermine the client's GAU eligibility based on current medical evidence.

(2) If the client is denied SSI after application and any administrative appeal before the end of the incapacity certification period, the department shall adjust the client's incapacity period to be the greater of:

(a) The end of the previously established incapacity period based on current medical evidence; or

(b) Sixty days after the SSI denial date.

[Statutory Authority: RCW 74.08.090, 93-16-058 (Order 3559), § 388-235-8150, filed 7/29/93, effective 8/29/93.]

WAC 388-235-8200 Reinstating eligibility after termination due to lack of medical evidence. (1) The department shall reinstate a client's eligibility the day following the date of termination if assistance was terminated due to lack or insufficiency of medical evidence to establish incapacity if:

(a) The lack or insufficiency of medical evidence is not due to the client's failure to cooperate in gathering said evidence; and

(b) The client provides the additional medical evidence subsequent to the termination, which establishes that the client has been, and continues to be, incapacitated since the date of termination; and

(c) The additional medical evidence substantiates incapacity.

[Statutory Authority: RCW 74.08.090, 93-16-058 (Order 3559), § 388-235-8200, filed 7/29/93, effective 8/29/93.]

WAC 388-235-9000 Benefits from other programs.

(1) The department shall deny a request for, or terminate, general assistance-unemployable (GAU) to a person:

(a) Eligible for or receiving aid to families with dependent children (AFDC);

(b) Eligible for or whose needs are met by SSI, except as provided under WAC 388-235-9300;

(c) Under sanction for failure to comply with AFDC or supplemental security income (SSI) requirements;

(d) Failing or refusing to cooperate without good cause in obtaining AFDC or SSI;

(e) Unemployable due to alcohol or drug addiction. The department shall refer such person to the alcoholism and drug addiction treatment and support program.

(2) If otherwise eligible, the department shall not deny requests for GAU to a person found ineligible for AFDC, as described under WAC 388-215-1820.

[Statutory Authority: RCW 74.08.990 and Bordner vs. Rahm #84-2-00435-2, 95-03-048 (Order 3824), § 388-235-9000, filed 1/11/95, effective 2/11/95. Statutory Authority: RCW 74.08.090, 93-16-058 (Order 3559), § 388-235-9000, filed 7/29/93, effective 8/29/93. Formerly WAC 388-26-145 (part).]

WAC 388-235-9100 GAU pending SSI eligibility.

The department shall authorize GAU to a client, who in the department's opinion, may become eligible for or is seeking SSI. Such assistance shall be authorized through the month SSI payments begin if the client:

(1) Applies for SSI and follows through with the application; and

(2) Assigns the initial or reinstated SSI payment to DSHS as provided under WAC 388-235-9200; and

(3) Is otherwise eligible.

[Statutory Authority: RCW 74.08.090, 93-16-058 (Order 3559), § 388-235-9100, filed 7/29/93, effective 8/29/93.]

WAC 388-235-9200 Assignment and recovery of interim assistance. (1) "Interim assistance" means the state funds the department provides to, or on behalf of, the client to meet basic needs during the:

(a) Interim period the client's initial application for SSI is pending and subsequently approved; or

(b) Period the client's SSI payments were suspended or terminated, and subsequently reinstated for that period; and

(c) The month recurring SSI payments begin.

(2) The department shall require a client, who in the department's opinion may become eligible for or is seeking SSI, to assign the initial or reinstated SSI payment to the department. The assignment shall be up to the amount of the interim assistance the department provides to the client.

(3) The department shall recover interim assistance from the client's initial or reinstated SSI payment when provided totally out of state funds.

(4) The department shall provide up to twenty-five percent of the interim assistance reimbursement on a case to the attorney who has successfully represented that client in the client's effort to receive SSI.

[Statutory Authority: RCW 74.08.090, 93-16-058 (Order 3559), § 388-235-9200, filed 7/29/93, effective 8/29/93.]

WAC 388-235-9300 GAU to an SSI recipient whose SSI check is lost, stolen, or missent. (1) The department may grant GAU to an SSI client whose SSI check has been lost, stolen, missent, or otherwise delayed when the client:

(a) Agrees, in writing, to repay the amount of the GAU issued; and

(b) Meets all other GAU eligibility requirements.

(2) When the client's SSI check is lost in the mail, the department shall:

(a) Delay the issuance of GAU for ten working days from the first of the month in which the SSI check was issued; or

(b) Waive the delay and issue the check immediately if the department determines the SSI client has an emergent need.

[Statutory Authority: RCW 74.08.090, 93-16-058 (Order 3559), § 388-235-9300, filed 7/29/93, effective 8/29/93.]

Chapter 388-240 WAC
ALCOHOL/DRUG PROGRAMS

WAC

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WAC 388-240-0010 Introduction. This chapter contains the rules for program service levels and for determining client eligibility for:

- (1) The alcohol/drug detoxification program; and
- (2) The Alcoholism and Drug Addiction Treatment and Support Act (ADATSA) program. The ADATSA program is divided into two subprograms:
 - (a) Treatment; and
 - (b) Shelter.

[Statutory Authority: RCW 74.08.090. 93-19-039 (Order 3632), § 388-240-0010, filed 9/8/93, effective 10/9/93.]

WAC 388-240-0020 Definitions. (1) "Active addiction" means use of alcohol or drugs by a diagnosed alcoholic or drug addict within a specific time period immediately preceding the latest assessment center evaluation:

(a) For ADATSA shelter eligibility purposes, within the sixty-day period immediately preceding assessment.

(b) For ADATSA treatment eligibility purposes, within the ninety-day period immediately preceding assessment.

(2) "Alcohol and Drug Addiction Treatment and Support Act (ADATSA)" is a legislative enactment providing state-financed treatment and support to indigent alcoholics and drug addicts.

(3) "Gainfully employed" means performing in a regular and predictable manner an activity for pay or profit. Gainful employment does not include noncompetitive jobs such as work in a department-approved sheltered workshop or sporadic or part-time work, if the person, due to functional limitation, is unable to compete with unimpaired workers in the same job.

(4) "Intensive protective payee" provides case management services for an ADATSA shelter client. These services include:

(a) Sufficient controls of monthly shelter expenditures as necessary to ensure the client's basic needs are met; and

(b) Preventing the diversion of assistance toward purchase of alcohol or drugs.

(5) "Protective payee" means a person or agency who has the authority and responsibility to make decisions about

the expenditure of outpatient treatment living stipends for an outpatient client.

(6) "Shelter services" or "shelter assistance" means:

(a) Room and board in a supervised living arrangement to an ADATSA client by a facility under contract with the department; or

(b) Where contracted facilities are not available, benefits paid to an intensive protective payee for an ADATSA client living in independent housing.

[Statutory Authority: RCW 74.08.090. 93-19-039 (Order 3632), § 388-240-0020, filed 9/8/93, effective 10/9/93.]

WAC 388-240-1100 Detoxification services. The department shall only pay for three-day detoxification services for acute alcoholic condition or five-day detoxification services for acute drug addiction for eligible persons when the services are:

- (1) Directly related to detoxification; and
- (2) Performed by a certified detoxification center or a general hospital contracted with the department to perform these services.

[Statutory Authority: RCW 74.08.090. 93-19-039 (Order 3632), § 388-240-1100, filed 9/8/93, effective 10/9/93.]

WAC 388-240-1200 Detoxification eligibility. (1) The department shall consider a person eligible who is an AFDC/general assistance, a medical assistance program, or a supplemental security income (SSI) beneficiary; or

(2) The department shall consider a person eligible who does not have combined nonexempt income and/or resources that exceed the aid to families with dependent children (AFDC) payment standards. The department shall:

(a) Exempt the following resources for the alcoholism and drug detoxification program:

(i) A home;

(ii) Household furnishings and personal clothing essential for daily living;

(iii) Other personal property used to reduce need for assistance or for rehabilitation; and

(iv) A used and useful automobile.

(b) Not exempt the following resources:

(i) Cash;

(ii) Marketable securities; and

(iii) Any other resource not specifically exempted that can be converted to cash.

(c) Deduct or exempt the following from income:

(i) Mandatory expenses of employment;

(ii) Total income and resources of a noninstitutionalized SSI beneficiary;

(iii) Support payments paid under a court order; and

(iv) Payments to a wage earner plan specified by a court in bankruptcy proceedings, or previously contracted major household repairs when failure to make such payments will result in garnishment of wages or loss of employment.

(3) The department shall not require the person receiving detoxification services to incur a deductible as a factor of eligibility for the covered period of detoxification.

(4) The department shall determine eligibility for the detoxification program on the basis of information shown on the department's application forms.

(5) The department shall require supplemental forms, verification procedures, and/or face-to-face interviews only in cases where there is a specific reason for requiring further verification of eligibility.

(6) When the department is notified within ten working days of the date detoxification began, the department shall cover this period if all eligibility factors are met.

(7) The department shall continue the effective period of eligibility from the date detoxification treatment began through the end of the month in which the client completed the three-day or five-day treatment.

[Statutory Authority: RCW 74.08.090. 93-19-039 (Order 3632), § 388-240-1200, filed 9/8/93, effective 10/9/93.]

WAC 388-240-2100 ADATSA purposes and programs. (1) The purpose of ADATSA is to:

(a) Assist in the rehabilitation of alcoholics and drug addicts who can benefit from treatment; or

(b) Provide a program of shelter services for those alcoholics and drug addicts whose chemical dependency has resulted in incapacitating physiological or cognitive impairments.

(2) The department shall provide eligible persons with those ADATSA services available within legislative appropriation and only to the extent such service conforms to all conditions and limitations set by the department.

(3) Persons qualifying for the ADATSA program may be eligible for:

(a) Alcohol/drug treatment services and support described under WAC 388-240-4100 and 388-240-4400; or

(b) Shelter services as described under WAC 388-240-5100.

(4) A person eligible for ADATSA shall be eligible for medical care services as described under WAC 388-86-120 or its successor.

[Statutory Authority: RCW 74.08.090. 93-19-039 (Order 3632), § 388-240-2100, filed 9/8/93, effective 10/9/93.]

WAC 388-240-2300 ADATSA categorical eligibility.

(1) A person eligible for ADATSA services shall:

(a) Be eighteen years of age or older;

(b) Be a resident of Washington as defined by the GAU program; and

(c) Be either a United States citizen or alien who:

(i) Is lawfully admitted for permanent residence;

(ii) Is otherwise permanently residing in the United States under color of law; or

(iii) Has been granted temporary residency status under the Immigration Reform and Control Act.

(d) Provide the department with the applicant's Social Security number. If the applicant cannot finish a Social Security number because it has not been issued or is not known, the applicant shall apply for a number before authorization of assistance. The applicant shall provide the Social Security number to the department upon receipt.

(e) Meet the same income and resource criteria as required by the general assistance-unemployable (GA-U) program; except, persons excluded from GA-U under WAC 388-235-9000, because they are clients of federal aid, may be eligible for ADATSA treatment services.

(2) A person placed in an alcohol or drug congregate care facility shall meet the payment and procedural requirements set forth in WAC 388-15-568 or its successor. However, the department shall not require a client receiving services in an intensive inpatient chemical dependency treatment program of thirty days or less to participate in the cost of care.

(3) The department shall require a client with income while residing in a recovery house, extended care recovery house, or long-term care or drug residential treatment facility to contribute toward the cost of care of that portion of their income in excess of the clothing and personal incidental standard. This participation shall:

(a) Begin the month following the month of admission; and

(b) For benefits, be computed by the department according to applicable rules for the program under which the benefits are received.

[Statutory Authority: RCW 74.08.090. 93-19-039 (Order 3632), § 388-240-2300, filed 9/8/93, effective 10/9/93.]

WAC 388-240-2400 ADATSA treatment—Eligibility requirements. (1) Within the current appropriation, the department may grant ADATSA treatment services to an alcoholic or drug addict.

(2) An eligible person for ADATSA treatment services shall meet the:

(a) Financial eligibility criteria in WAC 388-240-2300; and

(b) Incapacity eligibility criteria in WAC 388-240-2450.

[Statutory Authority: RCW 74.08.090. 93-19-039 (Order 3632), § 388-240-2400, filed 9/8/93, effective 10/9/93.]

WAC 388-240-2450 ADATSA treatment—Incapacity requirements. (1) In order to qualify for ADATSA treatment services, a person shall be:

(a) Diagnosed as having a mild, moderate, or severe dependency on a psychoactive substance class other than nicotine, using the criteria for *Psychoactive Substance Dependence in the Diagnostic and Statistical Manual of Mental Disorders* (third edition revised), published by the American Psychiatric Association (this publication will be referred to below as the DSM III-R.); and

(b) Incapacitated, i.e., unable to work. Incapacity shall exist if the applicant meets one or more of the following:

(i) Currently pregnant or up to two months post partum; or

(ii) Diagnosed as at least moderately psychoactive substance dependent and referred for treatment by child protective services; or

(iii) Diagnosed as severely psychoactive substance dependent and currently an intravenous drug user; or

(iv) Diagnosed as severely psychoactive substance dependent and has:

(A) One prior diagnosis of severe psychoactive substance dependency by an assessment center; or

(B) At least one prior admission to a department-approved alcohol/drug treatment or detoxification program.

(v) Diagnosed as severely psychoactive substance dependent and has had two or more arrests for offenses directly related to the chemical dependency; or

(vii) Lost two or more jobs during the last six months as a direct result of chemical dependency; or

(viii) Admitted to a department-approved outpatient treatment program during the last six months and the outpatient treatment provider certifies the treatment recipient is not benefiting from outpatient treatment and needs more intensive chemical dependency treatment services.

(c) Not eligible for ADATSA treatment, notwithstanding subsection (b) of this section, when the person:

(i) Is not clearly diagnosed as currently dependent on psychoactive substances other than nicotine; or

(ii) Has abstained from alcohol and drug use for the last ninety days, excluding days spent while incarcerated; or

(iii) Has been gainfully employed in a job in the competitive labor market at any time during the last thirty days.

(2) A person who is successfully participating in ADATSA outpatient treatment services shall be considered incapacitated through completion of the planned treatment, even if the person:

(a) Becomes employed;

(b) Abstains from alcohol or drug use; or

(c) Has full or partial remission of psychoactive substance abuse dependence.

[Statutory Authority: RCW 74.08.090, 93-19-039 (Order 3632), § 388-240-2450, filed 9/8/93, effective 10/9/93.]

WAC 388-240-2500 ADATSA shelter—Eligibility requirements. (1) Within the current appropriation, the department may grant ADATSA shelter services to an alcoholic or drug addict.

(2) An eligible person for these ADATSA shelter services shall meet the:

(a) Financial eligibility criteria in WAC 388-240-2300; and

(b) Incapacity eligibility criteria in WAC 388-240-2550.

[Statutory Authority: RCW 74.08.090, 93-19-039 (Order 3632), § 388-240-2500, filed 9/8/93, effective 10/9/93.]

WAC 388-240-2550 ADATSA shelter—Incapacity requirements. To meet shelter incapacity standards, a person shall meet the following conditions:

(1) Be actively addicted, meaning having used alcohol or drugs within the sixty-day period immediately preceding the latest assessment center evaluation, as determined by the assessment center;

(2) Have resulting physiological or organic damage, or have resulting cognitive impairment not expected to dissipate with sixty days of sobriety or detoxification;

(3) To qualify on the basis of physical impairment, the physiological or organic damage must have a severity rating of "03" or more as defined under the GA-U program;

(4) To qualify on the basis of cognitive impairment, the applicant must have:

(a) At least a moderate impairment of ability to understand, remember, and follow complex instructions; and

(b) An overall moderate impairment in ability to:

(i) Learn new tasks;

(ii) Exercise judgment;

(iii) Make decisions, and

(iv) Perform routine tasks without undue supervision.

(5) The department shall require the impairments described in subsections (2), (3) and (4) of this section to be supported by documented, objective, and current medical evidence provided by a licensed physician, licensed clinical psychologist, or mental health professional as defined by RCW 71.05.020.

[Statutory Authority: RCW 74.08.090, 93-19-039 (Order 3632), § 388-240-2550, filed 9/8/93, effective 10/9/93.]

WAC 388-240-2570 ADATSA shelter—Eligibility determination and review. The department shall:

(1) Make an eligibility decision for ADATSA shelter within forty-five days of the date of application, except in circumstances beyond the control of the agency such as failure or delay in securing necessary information or documentation on the part of the applicant;

(2) Redetermine incapacity and financial and medical eligibility for ADATSA shelter every six months or more often; and

(3) Provide adequate and advance notice of adverse action.

[Statutory Authority: RCW 74.08.090, 93-19-039 (Order 3632), § 388-240-2570, filed 9/8/93, effective 10/9/93.]

WAC 388-240-2600 ADATSA SSI referral requirements. (1) An ADATSA client the department determines potentially eligible for supplemental security income (SSI) shall:

(a) Make application for SSI; and

(b) Assign the initial SSI payment to the department of social and health services up to the amount of ADATSA assistance provided to the recipient pending approval of the SSI application.

(2) To establish eligibility, the department shall assist an ADATSA client in:

(a) Making application for SSI; and

(b) Obtaining the necessary documentation required by the Social Security Administration.

[Statutory Authority: RCW 74.08.090, 93-19-039 (Order 3632), § 388-240-2600, filed 9/8/93, effective 10/9/93.]

WAC 388-240-3100 ADATSA assessment center—

Role. (1) A department-designated chemical dependency assessment center shall determine incapacity based on alcoholism or drug addiction. The assessment center is the department's sole source of medical evidence required for the diagnosis and evaluation of alcoholism/drug addiction and its effects on employability.

(2) The department shall:

(a) Require a current assessment, in writing, for all ADATSA clients; and

(b) Pay the costs of assessments needed to determine eligibility.

(3) ADATSA assessment centers shall:

(a) Be responsible for diagnostic evaluation and treatment placement;

(b) Not be responsible for providing direct treatment;

(c) In accordance with chapter 275-19 WAC or its successor, conduct a face-to-face diagnostic assessment to determine if the client:

(i) Is chemically dependent;

(ii) Meets incapacity standards for treatment under WAC 388-240-2400; and

(iii) If incapacitated, is willing, able, and eligible to undergo a course of ADATSA treatment.

(4) The assessment center shall determine a course of treatment based on an individual assessment of alcohol/drug involvement and treatment needs in accordance with RCW 70.96A.100 and the procedures under chapter 275-19 WAC or its successor.

(5) Once the treatment client's financial and medical eligibility is established, the assessment center shall:

(a) Develop an ADATSA treatment plan;

(b) Arrange all placements into ADATSA treatment taking into account the treatment priorities described under WAC 388-240-4200;

(c) Provide the client with written notification of the client's right to return to the community service office (CSO) at any time while receiving ADATSA treatment. This includes, but is not limited to, those situations where the client is discharged from any residential or outpatient agency providing services under contract to the department;

(d) Provide the client with written notification of the client's right to request a fair hearing to challenge any action affecting eligibility for ADATSA treatment;

(e) Provide ongoing case monitoring of treatment services; and

(f) Notify the community services office promptly of all placement or eligibility status changes.

(6) When evaluating the person's ability to benefit from primary outpatient treatment, the assessment center shall consider clinical or medical factors indicating the likelihood of a client's success in a less-structured primary treatment modality. Such factors may include:

(a) An assessment of former treatment history;

(b) The number of detoxification admissions;

(c) The chronicity and degree of incapacity of the client;

and

(d) Social factors, such as:

(i) The availability of social support systems;

(ii) Family support; and

(iii) Stable living arrangement.

[Statutory Authority: RCW 74.08.090. 93-19-039 (Order 3632), § 388-240-3100, filed 9/8/93, effective 10/9/93.]

WAC 388-240-4100 ADATSA treatment limitations.

(1) The department shall offer ADATSA treatment services to an eligible person incapacitated by alcoholism or drug addiction, subject to:

(a) Availability defined under WAC 388-240-2100; and

(b) Priority classifications set forth under WAC 388-240-4200.

(2) The department shall limit a person's treatment services to a maximum of six months in a twenty-four-month period. The twenty-four-month period begins on the date of initial entry into treatment.

(3) The department shall limit residential treatment to the following durations:

(a) Intensive inpatient treatment, not to exceed thirty days per admission;

(b) Recovery house treatment, not to exceed sixty days per admission;

(c) Extended care recovery house treatment, not to exceed ninety days;

(d) Long-term care residential treatment, not to exceed one hundred eighty days;

(e) Drug residential treatment, not to exceed one hundred eighty days.

(4) An ADATSA client shall not receive more than ninety days of ADATSA outpatient treatment in a twenty-four-month period, if referred:

(a) Directly to outpatient treatment; or

(b) Following a residential placement.

(5) The department shall only offer medical services to a person eligible for ADATSA treatment choosing methadone chemical dependency treatment, as referenced under WAC 388-86-120 or its successor.

[Statutory Authority: RCW 74.08.090. 93-19-039 (Order 3632), § 388-240-4100, filed 9/8/93, effective 10/9/93.]

WAC 388-240-4200 ADATSA treatment terminations and reinstatements. (1) The department shall terminate an ADATSA client who withdraws or is discharged from treatment for any reason. The client must reapply and be re-referred to the assessment center if the client requires further ADATSA treatment services.

(a) The department shall refer an ADATSA client demonstrating an inability to remain abstinent in outpatient treatment to residential treatment.

(b) The department may require a client dropping out of treatment in the intensive inpatient modality to repeat this phase.

(c) The department may require a client dropping out of treatment during the recovery house or outpatient modality to:

(i) Return to the modality from which the client dropped out; or

(ii) Enter intensive inpatient treatment if, in the clinical judgment of the assessment center, a more structured form of treatment seems warranted.

(2) A client absent from inpatient treatment or other residential services for less than seventy-two hours may reenter that program without being considered as having dropped out. This is done at the discretion of the treatment service administrator and without requiring the client to apply for readmittance through the assessment center.

(3) An ADATSA client terminating treatment shall not be eligible for benefits beyond the month in which treatment services end. Regulations regarding advance and adequate notice still apply, but an ADATSA treatment client shall not be eligible for continued assistance pending a fair hearing as provided under WAC 388-33-377 or its successor.

[Statutory Authority: RCW 74.08.090. 93-19-039 (Order 3632), § 388-240-4200, filed 9/8/93, effective 10/9/93.]

WAC 388-240-4400 ADATSA treatment priority groups. (1) When assigning residential admissions, the assessment center shall:

(a) Give first priority to a pregnant woman or a parent with a child in the home;

(b) Additionally, provide priority access to ensure admission for:

(i) A person referred through by the department's children's protective services (CPS) program; and

(ii) An injecting drug user (IDU).

(2) When assigning outpatient admissions, the assessment center shall:

(a) Give first priority to a pregnant woman or a parent with a child in the home unable to access Title XIX outpatient treatment;

(b) Additionally, provide priority access to ensure admission for:

(i) A person completing residential treatment;

(ii) A person referred through CPS; and

(iii) An IDU.

(3) The department may deny ADATSA treatment services to a person able to access, at no cost to the person, comparable state-approved chemical dependency treatment.

[Statutory Authority: RCW 74.08.090. 93-19-039 (Order 3632), § 388-240-4400, filed 9/8/93, effective 10/9/93.]

WAC 388-240-4600 ADATSA treatment living allowance. (1) An ADATSA client in residential treatment shall be eligible for an allowance based on the department's current payment standard for clothing and personal incidentals.

(2) An ADATSA client in an outpatient treatment modality shall be eligible for a treatment living allowance for housing and other living expenses.

(3) The department shall:

(a) Base the living allowance amount on the current ADATSA payment standard;

(b) Issue this living allowance directly to the outpatient provider as (protective) payee; and

(c) Not authorize the use of any treatment living allowance to pay for shelter in a dormitory setting not requiring sobriety as a condition of residence.

[Statutory Authority: RCW 74.08.090. 93-19-039 (Order 3632), § 388-240-4600, filed 9/8/93, effective 10/9/93.]

WAC 388-240-5100 ADATSA shelter services. (1) The department shall limit ADATSA shelter services to shelter assistance in the contracted facilities unless the client resides in a county described under subsection (2) of this section.

(2) A client residing in a county where a contracted shelter bed is not available may receive shelter assistance in independent housing, subject to the following provisions:

(a) The client shall, as a condition of continued eligibility, move to a contracted shelter bed when available. "Availability" means the existence of a vacant shelter bed, rather than whether or not a particular A/R is accepted or rejected from a shelter facility based on disciplinary problems;

(b) The client shall receive the monthly shelter assistance payment through an intensive protective payee defined under WAC 388-240-6100; and

(c) The department shall only provide assistance for independent housing to a client residing in a permanent residential structure. The client must have a deed of purchase, rental agreement, or other verifiable written agreement between the client and the person or entity to

whom the client is obligated for shelter costs or from whom the recipient is receiving supplied shelter.

(3) The department shall base the amount of a client's assistance for independent housing and basic needs on the appropriate payment standard for the GA-U program. For a client in a contracted shelter facility, the department shall provide an allowance for clothing and personal incidentals based on the standard for congregate care facilities.

(4) The department shall terminate a client receiving contracted shelter services:

(a) When the client is discharged from the facility for disciplinary reasons; or

(b) If the client subsequently leaves shelter, without notice, for more than seventy-two hours.

(5) The department shall continue benefits for an ADATSA shelter requesting a fair hearing within the advance notice period before termination is to occur as required under WAC 388-37-377 or its successor.

[Statutory Authority: RCW 74.08.090. 93-19-039 (Order 3632), § 388-240-5100, filed 9/8/93, effective 10/9/93.]

WAC 388-240-6100 ADATSA protective payees.

(1) The department shall pay the assistance needs of an ADATSA client receiving outpatient treatment or shelter assistance by protective payee or vendor payment. The protective payee for:

(a) An outpatient client shall be the same agency providing outpatient treatment;

(b) A shelter client in independent housing shall be an agency under contract with the department to provide intensive protective payee services described under subsection (5) of this section; and

(c) A shelter client residing in a contracted shelter facility shall be the facility operator. The facility operator shall have the authority to use personal discretion on the method of disbursing the client's clothing and personal incidental money each month.

(2) The protective payee for an outpatient client shall:

(a) Have the authority and responsibility to make decisions about the expenditure of outpatient treatment stipends;

(b) Encourage the client to participate in the decision-making process. The amount of decision-making the protective payee allows the client shall depend upon the level of responsibility the client demonstrates; and

(c) Disburse funds to meet the basic needs of a client's shelter, utilities, food, clothing, and personal incidentals.

(3) The outpatient protective payee may use discretion on the method of disbursing to the client any cash balance remaining from the client's monthly assistance warrant. The protective payee has the authority to apportion any remaining funds to the client at regular intervals throughout the month.

(4) The intensive protective payee shall provide to a client case management services to include, but not be limited to:

(a) Disbursement of a payment for shelter and utilities, such as a check directly to the landlord, mortgage company, utility company, etc;

(b) Direct payment to vendors directly for goods or services provided to or for the recipient, including personal and incidental expenses; and

(c) An exception only where unusual circumstances prevent direct payment and the recipient is unlikely to divert the money to purchasing alcohol or drugs.

(5) A shelter client in independent housing has the right to request a change of an intensive protective payee within the county if dissatisfied with the department's selection of a particular intensive protective payee. If the department determines good cause exists for the payee change, the department shall reassign the client to another intensive protective payee, if available.

(6) In the event the client or protective payee relationship is terminated for any reason, the protective payee shall return any remaining funds to the department.

[Statutory Authority: RCW 74.08.090. 93-19-039 (Order 3632), § 388-240-6100, filed 9/8/93, effective 10/9/93.]

Chapter 388-245 WAC

MAINTENANCE OF GRANT PROGRAMS

WAC

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WAC 388-245-1000 Definitions. "Adequate notice" means a written statement of the action the department intends to take; reasons for the intended action; the specific rule or regulation supporting the action; and client's rights to request a fair hearing, including the circumstances under which assistance is continued if a hearing is requested.

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

"Change in circumstances" is any change affecting eligibility or continued payment of the grant previously authorized.

"Reside permanently" means the recipient remains in a new area for more than ninety days.

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"Visit" means the absence of a recipient from his or her area of residence for not more than ninety days.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-245-1000, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-33-135, 388-33-235, 388-33-240 and 388-33-376.]

WAC 388-245-1150 Periodic and special review of eligibility. (1) The department shall redetermine the eligibility of financial assistance recipients at least once in every six months of continuous receipt of assistance. The redetermination shall include:

(a) A review of each eligibility factor and an evaluation of any change occurring since eligibility was previously established or reviewed; and

(b) For AFDC recipients, a face-to-face interview at least once every twelve months.

(2) At each periodic review of eligibility the department shall provide the recipient information regarding:

(a) Significant changes in public assistance laws or department rules not previously discussed which may affect the recipient; and

(b) The recipient's legal rights and responsibilities in connection with public assistance.

(3) The department shall complete a full review if a sufficient number of factors have changed to require a redetermination of eligibility.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-245-1150, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-38-260, 388-38-280 and 388-38-285.]

WAC 388-245-1160 Eligibility review forms. The department shall designate the forms that the recipient shall complete and submit during the periodic eligibility review.

(1) The forms shall:

(a) Be the recipient's statement in support of continuing eligibility; and

(b) Contain the recipient's written declaration that the answers are made under the penalty of perjury.

(2) The recipient shall complete and submit the designated form to the department to continue receiving assistance.

(3) The department shall only require one completed form from a family consisting of two or more assistance units.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-245-1160, filed 5/3/94, effective 6/3/94. Formerly WAC 388-38-280 (part).]

WAC 388-245-1170 Department action on review of eligibility. As a result of the review of eligibility, the department shall:

(1) Take action so that all matters pertaining to incorrect past, current or future grants are brought into conformity with the rules of the department; and

(2) Notify the recipient according to the rules and procedures in this chapter when the review results in a change in amount of grant, suspension, termination, or the discovery of an overpayment. See rules related to necessary supplemental accommodation services (NSA) clients regarding adverse actions under WAC 388-200-1300 (7)(h).

[Statutory Authority: RCW 74.04.050, 43.20A.550 and 74.08.090. 97-02-047, § 388-245-1170, filed 12/30/96, effective 1/30/97. Statutory Authority:

RCW 74.08.090. 94-10-065 (Order 3732), § 388-245-1170, filed 5/3/94, effective 6/3/94. Formerly WAC 388-38-290.]

WAC 388-245-1210 Program changes. The department shall authorize assistance for a person receiving continuing assistance and applying for a grant in another program effective the first regular warrant roll for which the client:

- (1) Is eligible for payment from the new program; and
- (2) The grant under the old program is terminated.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-245-1210, filed 5/3/94, effective 6/3/94. Formerly WAC 388-33-120 (part).]

WAC 388-245-1300 Change of grant amount. (1) The department shall adjust the grant of a continuing assistance recipient when a change of circumstances reduces or increases the recipient's need.

(2) The department shall notify the recipient in writing when the department authorizes a change in grant amount.

[Statutory Authority: RCW 74.04.050, 43.20A.550 and 74.08.090. 97-02-047, § 388-245-1300, filed 12/30/96, effective 1/30/97. Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-245-1300, filed 5/3/94, effective 6/3/94. Formerly WAC 388-33-335.]

WAC 388-245-1310 Effective date of change in grant amount. (1) The effective date of change shall be:

(a) The date a person entered the household or the date a person is determined eligible, whichever is later, when a person is added to the grant.

(b) The date a sanction is removed when a person's needs are added to a grant because he or she is being removed from a sanction status.

(c) The date a person moves from a supplied shelter to a renting or owning situation.

(d) The date a person moves from an institution or congregate care facility and is otherwise eligible for a grant.

(e) The first of the month following the month in which a change occurred, when a change in circumstances other than income, results in an increase or reduction of the assistance grant.

(2) The effective date of change shall never precede the date the circumstances actually changed.

(3) See chapter 388-218 WAC for effective dates used when budgeting income.

(4) See WAC 388-245-1510 for effective dates when a change causes ineligibility.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-245-1310, filed 5/3/94, effective 6/3/94. Formerly WAC 388-33-140.]

WAC 388-245-1315 Effective date of grant amount—Monthly deduction of overpayment. (1) The department shall start a deduction from the monthly grant when required by WAC 388-270-1400 effective the first regular warrant following the advance notice period provided in WAC 388-245-1700.

(2) The department shall not begin a deduction if the recipient requests a fair hearing regarding the assessment of the overpayment or the monthly deduction of overpayment during the advance notice period. The department shall not make a monthly deduction until after the decision on the fair

hearing has been made or the hearing request is withdrawn in writing or abandoned by the recipient.

(3) The department shall discontinue the monthly deduction upon timely receipt of a hearing request.

(4) The department shall discontinue the monthly deduction when restitution is completed.

(5) The department shall authorize payment expeditiously to compensate the recipient for an underpayment due to an erroneous monthly deduction.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-245-1315, filed 5/3/94, effective 6/3/94. Formerly WAC 388-33-190.]

WAC 388-245-1320 Address changes to another local office area. (1) The eligibility of a recipient who moves from one area to another within the state is affected only insofar as his or her need may change. A change in residence usually involves a change in living arrangements, requirements and/or income, and reauthorization of grant. See WAC 388-245-1310 for effective date.

(2) The department shall presume a client intends to reside permanently in another area when the client is absent from his or her former residence for more than ninety days. The department shall establish intent taking into account the plan, wishes and actions of the client.

(3) The client's declaration of intent to return to his or her former residence within ninety days after the date he or she left shall be prima facie evidence that he or she is on a visit.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-245-1320, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-33-230, 388-33-235, 388-33-240 and 388-33-376.]

WAC 388-245-1350 Redirection of warrant. (1) A recipient eligible for continuing assistance is entitled to regular and correct payment without undue interruption or delay. The department shall redirect a warrant only when:

(a) An overpayment will occur; or

(b) The warrant will not be received by the recipient.

(2) Factors which justify redirection of a warrant are limited to:

(a) The address of a recipient is unknown by the department or the recipient has reported that he or she has changed, or will change, his or her address prior to scheduled receipt of the warrant.

(b) A change in payee is required for correct receipt of the warrant.

(c) A proposed reduction, suspension, or termination of a grant as provided in WAC 388-245-1730.

(d) A recipient has entered an institution and the department has been notified by someone acting on his or her behalf.

(e) The recipient is NSA and has failed to respond to a request for information or adverse action notice in a timely manner and the department is unable to determine eligibility.

(3) The department may redirect a warrant when an authorization has been submitted which cannot be processed before delivery date due to error in the authorization. The warrant is redirected so that necessary action can be immediately taken to continue payment in the correct amount.

(4) The department shall notify the recipient before action is taken to redirect a warrant for any reason other than death. Such notification shall include:

- (a) The reason for the redirect action; and
- (b) Assurance of correct payment, when appropriate, at the earliest possible date.

(5) The department shall determine the recipient's eligibility or ineligibility for the warrant at the earliest possible date, but not later than thirty days after the date of its issuance.

(6) The department shall:

(a) Cancel the warrant if ineligibility is determined and notify the recipient in writing of the reason for cancellation.

(b) Release the warrant, or promptly reauthorize payment in the correct amount if it is not in the correct amount, according to WAC 388-245-1310.

[Statutory Authority: RCW 74.04.050, 43.20A.550 and 74.08.090. 97-02-047, § 388-245-1350, filed 12/30/96, effective 1/30/97. Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-245-1350, filed 5/3/94, effective 6/3/94. Formerly WAC 388-38-270.]

WAC 388-245-1400 Suspension of grant. The department shall suspend a grant when:

(1) The amount of the monthly grant following the budgeting of income is less than ten dollars per month;

(2) The recipient is in a congregate care facility, adult residential rehabilitation center, adult residential treatment facility, adult family home, or division of developmental disabilities group home and has income that exceeds the payment standard but is less than the eligibility standard;

(3) The department has reason to believe ineligibility caused by income or other change of circumstance in the report month would be for one month only;

(4) A general assistance recipient enters a state mental hospital; or

(5) A general assistance recipient's income exceeds the payment standard for more than one month, but less than two months.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-245-1400, filed 5/3/94, effective 6/3/94. Formerly WAC 388-33-355 (part).]

WAC 388-245-1410 Reinstatement or termination of a suspended grant. (1) The department shall determine eligibility for the month following the month of suspense according to WAC 388-218-1910.

(2) The department shall reinstate a suspended grant when:

- (a) The conditions in WAC 388-245-1400 cease to exist;
- (b) The recipient completes a department initiated review of eligibility;
- (c) The recipient is otherwise eligible.

(3) When reinstating a grant, the department shall not issue benefits for a time period prior to the date the recipient becomes eligible for payment.

(4) The department shall terminate a suspended grant when:

(a) The recipient does not request reinstatement of a grant within:

- (i) Fifteen days after leaving an institution; or
- (ii) Fifteen days of completing restitution of an overpayment by monthly grant deduction; or

(iii) The end of the suspense month for all other suspense reasons;

(b) The individual dies while the grant is suspended; or

(c) The individual becomes ineligible for some other reason.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-245-1410, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-33-120 and 388-33-355.]

WAC 388-245-1500 Termination of grant. The department shall terminate the grant when the recipient does not meet the conditions required for continued eligibility.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-245-1500, filed 5/3/94, effective 6/3/94. Formerly WAC 388-33-365 (part).]

WAC 388-245-1510 Effective date of ineligibility for terminated grants. (1) 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.

(2) When the change causes ineligibility for one month only the department shall follow WAC 388-245-1400 and 388-245-1410.

(3) 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, except for:

(a) Striking workers, see WAC 388-215-1540.

(b) Clients who receive general assistance based on the relinquishment of a child for adoption.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-245-1510, filed 5/3/94, effective 6/3/94. Formerly WAC 388-33-135 (part).]

WAC 388-245-1520 Reinstatement of grant terminated in error. (1) When the department changes its decision to reduce, terminate or suspend the grant, the department shall authorize assistance expeditiously.

(2) The department shall reauthorize a grant terminated in error effective the first of the month in which payment was erroneously discontinued.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-245-1520, filed 5/3/94, effective 6/3/94. Formerly WAC 388-33-375 (part).]

WAC 388-245-1600 Effective date adjusted by fair hearing or court decision. (1) The fair hearing or court decision will specify the effective date of eligibility or change in the grant. Any regular grant change is made on the first possible regular warrant roll date. See WAC 388-255-1400 for payment of any adjusting grant due.

(2) When the initial or final hearing decision is favorable to the appellant, or when the department decides in favor of the appellant prior to the hearing, the department shall make corrective payments retroactively to the date an incorrect action was taken or such earlier date as is provided under department rules.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-245-1600, filed 5/3/94, effective 6/3/94. Formerly WAC 388-33-165.]

WAC 388-245-1610 Effective date of law or rule change. The department shall specify the effective date of eligibility when a change in law or departmental rules creates a change in eligibility date or the amount of a grant.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-245-1610, filed 5/3/94, effective 6/3/94. Formerly WAC 388-33-170.]

WAC 388-245-1700 Written notice—Adverse actions for recipients. (1) The department shall mail written advance notice to recipients, at least ten days before the date of action to terminate, suspend, or reduce benefits to recipients of AFDC, Refugee, GA, or all medical assistance programs. The notice shall contain the:

- (a) Action the department intends to take;
- (b) Reasons for the intended action;
- (c) The specific rule or regulation supporting the action;
- (d) Recipient's right to request a fair hearing, including the circumstances under which assistance is continued if a hearing is requested; and
- (e) Full translation into the primary language of the limited English proficient recipient.

(2) The department shall provide written adequate notice, as specified in subsection (1) of this section, when the ten-day notice is not required per WAC 388-245-1710.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-245-1700, filed 5/3/94, effective 6/3/94. Formerly WAC 388-33-376 (part).]

WAC 388-245-1710 Dispensation of advance notice. The department shall not be required to provide advance notice of action to terminate, suspend, or reduce assistance when:

(1) The department has factual information of the death of the client or of the assistance payee when there is no other person available to serve as payee.

(2) A recipient has been admitted or committed to an institution making the recipient ineligible.

(3) A client has been placed in skilled nursing or intermediate care or long-term hospitalization.

(4) The client's whereabouts are unknown and departmental mail directed to him or her has been returned by the post office indicating no known forwarding address.

(5) A client is receiving assistance in another state.

(6) An AFDC child is removed from the home as a result of a judicial determination or voluntarily placed in foster care by his or her legal guardian.

(7) Eligibility for emergent need or for an additional requirement is authorized for specific items for a one-month period only and the client has been so advised.

(8) The department received a statement from the recipient that he or she no longer wishes assistance. The department shall immediately send adequate notice to confirm the verbal or written request for termination.

(9) The department receives a clear statement from the recipient giving information requiring termination, suspension, or reduction of assistance. The recipient must indicate in writing that he or she understands the consequence of supplying such information. The department shall provide adequate notice stating the adverse action.

(10) The department takes action because of information the recipient reported on the monthly report by the AFDC recipient.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-245-1710, filed 5/3/94, effective 6/3/94. Formerly WAC 388-33-385.]

WAC 388-245-1715 Recipient to provide information or take action to maintain continued eligibility for financial assistance. The department shall allow a recipient of financial assistance not less than ten calendar days to provide information or take a specific action that affects continuing financial eligibility. The department shall assist client's designated NSA with getting information in accordance with WAC 388-200-1300 (7)(b). Information necessary to determine the recipient's eligibility may include documents and statements verifying eligibility.

(1) The department shall request such information or action in writing. The written request may be given to the recipient in person or sent to the recipient's last known address. The request shall include a statement of:

(a) The information or specific action necessary to determine continuing eligibility;

(b) The date by which such information must be provided or action taken; and

(c) That failure to provide such information or take such action may result in termination or reduction of financial assistance.

(2) The department shall take appropriate action to reduce, suspend or terminate financial assistance, including providing the recipient with advance and adequate notice of adverse action as provided in WAC 388-245-1700 if, during the ten calendar day period of time (see WAC 388-200-1300 (7)(h) regarding clients designated NSA), the recipient:

(a) Does not take the action or provide the information during the specified time period;

(b) Provides information or verification during the time period which is inadequate; or

(c) Provides adequate information or verification which results in reduction, suspension, or termination of financial assistance.

[Statutory Authority: RCW 74.04.050, 43.20A.550 and 74.08.090. 97-02-047, § 388-245-1715, filed 12/30/96, effective 1/30/97. Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-245-1715, filed 5/3/94, effective 6/3/94. Formerly WAC 388-38-265 (part).]

WAC 388-245-1720 Recipient provides information or takes action during advance notice period. (1) The department shall take appropriate action to continue financial assistance if, during the advance notice period, the recipient:

(a) Takes the requested action; or

(b) Provides adequate information which does not result in reduction, suspension or termination of financial assistance.

(2) The department shall provide an additional adequate notice to the recipient if, during the advance notice period, the recipient provides:

(a) Inadequate information;

(b) Adequate information which results in termination, reduction, or suspension of financial assistance; or

(c) The recipient is designated NSA and requires an accommodation to comply.

(3) Advance notice is not required under subsection (2) of this section.

[Statutory Authority: RCW 74.04.050, 43.20A.550 and 74.08.090. 97-02-047, § 388-245-1720, filed 12/30/96, effective 1/30/97. Statutory Authority:

RCW 74.08.090. 94-10-065 (Order 3732), § 388-245-1720, filed 5/3/94, effective 6/3/94. Formerly WAC 388-38-265 (part).]

WAC 388-245-1730 Assistance during the advance notice period. (1) Rules for advance and adequate notice, as provided under WAC 388-245-1000 and 388-245-1700 do not alter rules for effective dates of eligibility, and grant changes resulting from changes in circumstances.

(2) The department shall continue assistance unchanged at least until the end of a required advance notice period, regardless of the effective dates specified in rules for eligibility and grant changes.

(3) The department shall establish an overpayment for assistance continued beyond the effective dates specified in rules for eligibility and grant changes.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-245-1730, filed 5/3/94, effective 6/3/94. Formerly WAC 388-33-382 (part).]

WAC 388-245-1740 Grant continuation pending fair hearing. (1) The department shall not suspend, reduce, or terminate assistance when a recipient of medical benefits, AFDC, refugee assistance, general assistance and/or services files a request for fair hearing according to chapter 388-08 WAC and the request:

(a) Is made within the advance notice period;

(b) The action is not solely the result of an automatic grant adjustment for classes of recipients required by state or federal law; and

(c) The action is a result of an automatic grant adjustment as stated in (b) of this subsection, but the reason for an individual appeal is incorrect grant, benefit, or service computation.

(2) The administrative law judge shall determine at the fair hearing whether the issue is one of policy, fact, or judgment when a recipient:

(a) Requests a fair hearing within the advance notice period to appeal the department's planned action to reduce, suspend, or terminate assistance; and

(b) The planned action is not solely a result of an automatic grant adjustment required by either state or federal law.

(3) Assistance shall continue through the month in which an initial fair hearing decision is rendered if there is an issue of fact or judgment, including the correctness of application of the department's rules and policy unless:

(a) The appellant requests in writing that assistance not be continued;

(b) The request is withdrawn in writing by the client; or

(c) The request is abandoned.

(4) The department shall promptly inform the client in writing if assistance will not be continued.

(5) Any assistance received pending a fair hearing or hearing decision is considered to be an overpayment when the fair hearing decision subsequently finds against the recipient.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-245-1740, filed 5/3/94, effective 6/3/94. Formerly WAC 388-33-377.]

WAC 388-245-2010 Monthly reporting—General. As a condition of continuing eligibility for AFDC, certain

assistance units shall report their income and circumstances monthly.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-245-2010, filed 5/3/94, effective 6/3/94.]

WAC 388-245-2020 Monthly reporting—Definitions. (1) "Disabled" means a person who meets one of the following criteria:

(a) Receives disability or blindness payments under Titles I, II, XIV, or XVI of the Social Security Act; or

(b) 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 or

(c) 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; or

(d) Is 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;

(e) 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;

(f) 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.

(g) Is a recipient of disability-related medical assistance under Title XIX of the Social Security Act.

(2) "Elderly" means a person sixty years of age or older.

(3) "Homeless assistance unit" means an assistance unit lacking a fixed and regular night-time residence and where the primary night-time residence is a:

(a) Supervised shelter designed to provide temporary accommodations; or

(b) Halfway house or similar institution providing temporary residence for persons needing institutionalization; or

(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.

(4) "Migrant assistance unit" means an assistance unit that works in seasonal agricultural employment which requires the assistance unit to be absent from its permanent place of residence overnight.

(5) "Recent work history" means having been employed in one of the two months prior to the payment month.

[Statutory Authority: RCW 74.04.050 and 74.08.090. 96-07-025 (Order 3952), § 388-245-2020, filed 3/13/96, effective 5/1/96. Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-245-2020, filed 5/3/94, effective 6/3/94. Formerly WAC 388-24-044 (part).]

Chapter 388-250 WAC GRANT STANDARDS

WAC 388-245-2030 Monthly reporting—Requirements. (1) Assistance units with earned income or with a recent work history are required to report monthly except:

- (a) Migrant assistance units;
- (b) Homeless assistance units;
- (c) Assistance units with a recent work history in which all adult members are elderly or disabled; or
- (d) Assistance units with earned income or recent work history received exclusively from college work study issued from the following sources:
 - (i) Title IV of the Higher Education Amendments; or
 - (ii) Bureau of Indian Affairs student assistance programs.

(2) Assistance units, for purposes of mandatory monthly reporting, include assistance units having earned income allocated to them from individuals living with them who have earned income or recent work history.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-245-2030, filed 5/3/94, effective 6/3/94. Formerly WAC 388-24-044 (part).]

WAC 388-245-2040 Monthly reporting—Time frames. (1) Monthly reporting assistance units shall return to the department a completed monthly report by the fifth day of the month following the month for which the report describes the household circumstances.

(2) Assistance units with recent work history shall report for three months, including the last month of earnings.

(3) Newly approved assistance units with recent work history shall be required to report for two months beginning the month following the month of opening.

(4) The first report month for assistance units reporting new employment shall be the month following the month the department becomes aware of the earnings.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-245-2040, filed 5/3/94, effective 6/3/94. Formerly WAC 388-24-044 (part).]

WAC 388-245-2050 Monthly reporting—Adverse actions. (1) The department shall terminate assistance when an assistance unit fails to return a completed report by the fifth day of the month except as provided in subsection (3) of this section.

(2) The department shall give advance and adequate notice to the assistance unit which does not submit a completed monthly report timely as defined in subsection (1) of this section.

(3) If the assistance unit furnishes a completed report to the department within ten days from the date of a termination notice pursuant to subsection (1) of this section and WAC 388-245-2040(1), Monthly reporting—Time frames, the department shall:

- (a) Accept the replacement form; and
- (b) Reinstatement assistance if the information on the replacement form indicates the assistance unit is still eligible.

(4) If the information on the replacement form indicates the assistance unit is ineligible or eligible for an amount less than the prior month's payment, the department shall give adequate notice to the assistance unit.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-245-2050, filed 5/3/94, effective 6/3/94. Formerly WAC 388-24-044 (part).]

WAC

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| 388-250-1750 | Standards of assistance—Additional requirements. |

WAC 388-250-1010 Definitions. (1) "Consolidated standards of need," means combining individual requirement amounts into a single dollar value.

(2) "Energy costs" means space heat, lighting, water heating, and other household energy consumption.

(3) "Grant maximum" means the amount of payment authorized regardless of household size. No incremental increase in the grant payment will be made for additional members of an assistance unit beyond the grant maximum for a designated household size.

(4) "Household maintenance and operations" means household supplies, housewares, linens, sewing supplies, household management, laundry, banking, and telephone.

(5) "Monthly grant amount" means the payment standard and any additional requirements less any countable income, or the grant maximum, whichever is less.

(6) "Need standard" means the income required by an applicant or recipient to maintain a minimum and adequate level of living.

(7) "Payment standard" means the amount to which the applicant's or recipient's available income and resources are compared in determining financial eligibility.

(8) "Rateable reduction" means the percentage difference between the need standard and the payment standard.

(9) "Requirement" means an item or service the department recognizes as essential to the welfare of a person.

(a) "Additional requirement" means a requirement essential to some clients under specified conditions.

(b) "Basic requirements" means food, clothing, shelter, energy costs, transportation, household maintenance and operations, personal maintenance, and necessary incidentals.

(10) "Residing in own home" means living arrangement not involving boarding and rooming or care in a hospital, nursing home, or another institution.

[Statutory Authority: RCW 74.08.090. 94-09-001 (Order 3729), § 388-250-1010, filed 4/6/94, effective 5/7/94.]

WAC 388-250-1050 Standards of assistance. (1) The department shall establish consolidated standards of assistance each fiscal year.

(2) The department may establish standards of assistance that vary by geographical areas, program, and family size.

(3) The department may establish grant maximums and rateable reductions.

(4) The department may establish a separate standard for shelter provided to the recipient at no cost.

[Statutory Authority: RCW 74.08.090. 94-09-001 (Order 3729), § 388-250-1050, filed 4/6/94, effective 5/7/94.]

WAC 388-250-1100 Standards of assistance—Assistance units. (1) The department shall determine which persons to include in an assistance unit.

(2) When creating the assistance unit, the department shall consider:

(a) Household members for whose support the applicant is legally responsible; and

(b) Categorical program requirements.

(3) The department shall not include a person receiving benefits under Title XVI of the Social Security Act in an aid to families with dependent children assistance unit.

[Statutory Authority: RCW 74.08.090. 94-09-001 (Order 3729), § 388-250-1100, filed 4/6/94, effective 5/7/94.]

WAC 388-250-1150 Standards of assistance—Basic requirements. (1) The department shall provide a person eligible for an AFDC, general assistance, or refugee assistance grant the basic requirements.

(2) The department shall apply standards for basic requirements to persons with or without shelter costs.

(3) The department shall base the monthly payment standard and maximums thereto, if in effect, on the number of recipients in the assistance unit.

(4) When two or more assistance units share a common dwelling, the department shall base the monthly standard for each on the number of members in the assistance unit.

(5) When a person is in a medical institution, the department shall not compute basic requirements of food, shelter, and household maintenance in the grant, but pay basic requirements as a medical care cost.

(6) The department shall apply standards for additional requirements to persons with circumstances specified in WAC 388-255-1020.

(7) State supplements for supplemental security income recipients shall not be less than the levels specified under 20 CFR 416.2098.

[Statutory Authority: RCW 74.08.090. 94-09-001 (Order 3729), § 388-250-1150, filed 4/6/94, effective 5/7/94.]

WAC 388-250-1200 Standards of assistance—Basic requirements—Need and payment standards. The statewide monthly need and payment standards for basic requirements shall be determined by whether a household has an obligation to pay shelter costs.

(1) A household with an obligation to pay shelter costs includes:

(a) A person owning, purchasing, or renting. This includes payment of only costs of property taxes, or fire insurance, or sewer, or water, or garbage;

(b) A person residing in a lower income housing project, assisted under the United States Housing Act of 1937, or Section 236 of the National Housing Act, if the person either pays rent or makes a utility payment in lieu of a rental payment;

(c) A person or family who is homeless. Effective April 23, 1990, a person or family is considered homeless if the person or family:

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

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

(iii) Lives in temporary lodging provided through a public or privately funded emergency shelter program.

(2) A household with shelter provided at no cost includes requirements for shelter, food, clothing, energy, personal maintenance and necessary incidentals, household maintenance and operations, and transportation.

[Statutory Authority: RCW 74.04.050 and 45 CFR 233.20 (a)(2). 95-07-123 (Order 3843), § 388-250-1200, filed 3/22/95, effective 4/22/95. Statutory Authority: RCW 74.08.090. 94-09-001 (Order 3729), § 388-250-1200, filed 4/6/94, effective 5/7/94.]

WAC 388-250-1250 Standards of assistance—Need standards. (1) Effective September 1, 1996, the department shall determine the statewide monthly need standard for a household with an obligation to pay shelter to be:

| Recipients in Household | Need Standard |
|-------------------------|---------------|
| 1 | \$ 788 |
| 2 | 996 |
| 3 | 1,233 |
| 4 | 1,450 |
| 5 | 1,670 |
| 6 | 1,896 |
| 7 | 2,190 |
| 8 | 2,424 |
| 9 | 2,662 |
| 10 or more | 2,893 |

(2) Effective September 1, 1996, the department shall determine a household with shelter provided at no cost, except as described under WAC 388-250-1200, to be:

| Recipients in Household | Need Standard |
|-------------------------|---------------|
| 1 | \$ 481 |
| 2 | 608 |
| 3 | 752 |
| 4 | 884 |
| 5 | 1,019 |

| | |
|------------|-------|
| 6 | 1,157 |
| 7 | 1,336 |
| 8 | 1,478 |
| 9 | 1,624 |
| 10 or more | 1,764 |

[Statutory Authority: RCW 74.04.050, 97-01-001, § 388-250-1250, filed 12/5/96, effective 1/5/97. Statutory Authority: RCW 74.08.025, 74.08.090, 80.36.420 (3)(a)(b) and 45 CFR 233.20 (a)(1)(i). 95-21-049 (Order 3910), § 388-250-1250, filed 10/11/95, effective 11/11/95. Statutory Authority: RCW 74.04.050 and 45 CFR 233.20 (a)(1) and (2). 94-20-039 (Order 3784), § 388-250-1250, filed 9/28/94, effective 10/29/94. Statutory Authority: RCW 74.08.090, 94-09-001 (Order 3729), § 388-250-1250, filed 4/6/94, effective 5/7/94.]

WAC 388-250-1300 Standards of assistance—One hundred eighty-five percent of need standards. (1) Effective September 1, 1996, the department shall determine one hundred eighty-five percent of the statewide monthly need standard for basic requirements for a household with an obligation to pay shelter costs to be:

| Recipients in Household | 185% of Need Standard |
|-------------------------|-----------------------|
| 1 | \$ 1,458 |
| 2 | 1,843 |
| 3 | 2,281 |
| 4 | 2,683 |
| 5 | 3,090 |
| 6 | 3,508 |
| 7 | 4,052 |
| 8 | 4,484 |
| 9 | 4,925 |
| 10 or more | 5,352 |

(2) Effective September 1, 1996, the department shall determine one hundred eighty-five percent of the statewide monthly need standard for basic requirements for a household with shelter provided at no cost to be:

| Recipients in Household | 185% of Need Standard |
|-------------------------|-----------------------|
| 1 | \$ 890 |
| 2 | 1,125 |
| 3 | 1,391 |
| 4 | 1,635 |
| 5 | 1,885 |
| 6 | 2,140 |
| 7 | 2,472 |
| 8 | 2,734 |
| 9 | 3,004 |
| 10 or more | 3,263 |

[Statutory Authority: RCW 74.04.050, 97-01-001, § 388-250-1300, filed 12/5/96, effective 1/5/97. Statutory Authority: RCW 74.08.025, 74.08.090, 80.36.420 (3)(a)(b) and 45 CFR 233.20 (a)(1)(i). 95-21-049 (Order 3910), § 388-250-1300, filed 10/11/95, effective 11/11/95. Statutory Authority: RCW 74.04.050 and 45 CFR 233.20 (a)(1) and (2). 94-21-043 (Order 3797), § 388-250-1300, filed 10/12/94, effective 11/12/94. Statutory Authority: RCW 74.08.090, 94-09-001 (Order 3729), § 388-250-1300, filed 4/6/94, effective 5/7/94.]

WAC 388-250-1350 Standards of assistance—Payment standards for general assistance-unemployable, and Alcoholism and Drug Additional Treatment and

Support Act programs. The statewide monthly payment standard for general assistance-unemployable, and Alcoholism and Drug Addiction Treatment and Support Act programs shall be as follows:

(1) Effective January 1, 1991, the department shall determine the statewide monthly payment standard for a household with an obligation to pay for shelter to be:

| 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 |

(2) Effective January 1, 1991, the department shall determine the payment standard for a household with shelter provided at no cost, except as described under WAC 388-250-1200, to be:

| 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, 94-09-001 (Order 3729), § 388-250-1350, filed 4/6/94, effective 5/7/94.]

WAC 388-250-1400 Standards of assistance—Payment standards for aid to families with dependent children, refugee assistance, and general assistance for pregnant women programs. The statewide monthly payment standard for aid to families with dependent children, refugee assistance, and general assistance for pregnant women programs shall be as follows:

(1) Effective January 1, 1993, the department shall determine the statewide monthly payment standard for a household with an obligation to pay for shelter to be:

| Recipients in Household | Payment Standard |
|-------------------------|------------------|
| 1 | \$ 349 |
| 2 | 440 |
| 3 | 546 |
| 4 | 642 |
| 5 | 740 |
| 6 | 841 |
| 7 | 971 |

| | |
|------------|-------|
| 8 | 1,075 |
| 9 | 1,180 |
| 10 or more | 1,283 |

(2) Effective January 1, 1993, the department shall determine the payment standard for a household with shelter provided at no cost, except as described under WAC 388-250-1200, to be:

| Recipients in Household | Payment Standard |
|-------------------------|------------------|
| 1 | \$ 212 |
| 2 | 268 |
| 3 | 332 |
| 4 | 391 |
| 5 | 451 |
| 6 | 511 |
| 7 | 591 |
| 8 | 654 |
| 9 | 718 |
| 10 or more | 780 |

[Statutory Authority: RCW 74.04.050 and 45 CFR 233.20 (a)(2). 96-04-002 (Order 3941), § 388-250-1400, filed 1/24/96, effective 2/24/96. Statutory Authority: RCW 74.08.090. 94-09-001 (Order 3729), § 388-250-1400, filed 4/6/94, effective 5/7/94.]

WAC 388-250-1450 Standards of assistance—Grant maximum. (1) The department shall ensure that a grant to a family of eight or more does not exceed the maximum in subsection (3) of this section.

(2) In computing the grant amount, the department shall

| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 (or more) |
|------------------|-------|-------|-------|-------|-------|-------|-------|-------------|
| Food | \$211 | \$268 | \$332 | \$391 | \$450 | \$511 | \$583 | \$645 |
| Shelter | 258 | 325 | 404 | 476 | 548 | 621 | 719 | 795 |
| Clothing | 30 | 38 | 47 | 56 | 64 | 73 | 83 | 94 |
| Minor Medical | 179 | 228 | 282 | 332 | 382 | 432 | 501 | 554 |
| Utilities | 87 | 110 | 136 | 160 | 184 | 210 | 243 | 268 |
| Household Maint. | 64 | 81 | 100 | 118 | 136 | 155 | 178 | 197 |

Job-related transportation, as needed, is not to exceed the grant maximum.

Transportation of a child to home, as needed, is not to exceed the grant maximum.

[Statutory Authority: RCW 74.08.090. 94-09-001 (Order 3729), § 388-250-1500, filed 4/6/94, effective 5/7/94.]

WAC 388-250-1550 Standards of assistance—Persons in medical institutions. Effective July 1, 1988, the department shall determine 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, joint commission on accreditation of hospitals (JCAH)-approved psychiatric hospital or an intermediate care facility to be forty-one dollars and sixty-two cents.

[Statutory Authority: RCW 74.08.090. 94-09-001 (Order 3729), § 388-250-1550, filed 4/6/94, effective 5/7/94.]

deduct nonexempt income available to meet need from the monthly payment standard specified in this chapter.

(3) Effective January 1, 1993, the grant maximum is:

| <u>Number in Household</u> | <u>Maximum</u> |
|----------------------------|----------------|
| 8 or more | \$1,075 |

[Statutory Authority: RCW 74.08.090. 94-09-001 (Order 3729), § 388-250-1450, filed 4/6/94, effective 5/7/94.]

WAC 388-250-1500 Standards of assistance—Consolidated emergency assistance (CEAP). Effective January 1, 1993, the department shall determine the statewide standards for the consolidated emergency assistance program to be the amount necessary to meet allowable emergent needs not to exceed one hundred percent of the payment standard.

(1) Maximum CEAP grant.

| Recipients in Household | Maximum Grant |
|-------------------------|---------------|
| 1 | \$ 349 |
| 2 | 440 |
| 3 | 546 |
| 4 | 642 |
| 5 | 740 |
| 6 | 841 |
| 7 | 971 |
| 8 or more | 1,075 |

(2) CEAP payment maximums for individual emergent need items.

WAC 388-250-1600 Standards of assistance—Persons in congregate care facilities (CCF), adult residential rehabilitation centers/adult residential treatment facilities (ARRC/ARTF), and division of developmental disabilities (DDD) group home facilities. (1) The department shall determine the monthly eligibility standard for CCF, ARRC/ARTF, and DDD group home care to be:

(a) The department-contracted facility rate for payment to such facilities to provide a specific level of care and supervision; plus

(b) A monthly allowance of thirty-eight dollars and eighty-four cents for clothing, personal maintenance, and necessary incidentals (CPI).

(2) The department shall determine the monthly grant payment to be the CPI allowance.

[Statutory Authority: RCW 74.08.090. 94-09-001 (Order 3729), § 388-250-1600, filed 4/6/94, effective 5/7/94.]

WAC 388-250-1650 Standards of assistance—Adult family home care. (1) The department shall determine the monthly eligibility standard for adult family home (AFH) care to be:

(a) The department-contracted facility rate for payment to AFHs to provide a specific level of care and supervision; plus

(b) A monthly allowance of thirty-eight dollars and eighty-four cents for clothing, personal maintenance, and necessary incidentals (CPI); plus

(c) Additional service hours computed at the department contracted rate as described under WAC 388-15-880.

(2) The department shall determine the monthly grant payment standard to be the one-person monthly payment standard as defined under WAC 388-250-1350.

[Statutory Authority: RCW 74.08.090, 94-09-001 (Order 3729), § 388-250-1650, filed 4/6/94, effective 5/7/94.]

WAC 388-250-1700 Standards of assistance—Supplemental security income. Effective January 1, 1996, the standards of SSI assistance paid to an eligible individual and couple are:

(1) Living alone (own household or alternate care, except nursing homes or medical institutions).

| | Standard | Federal SSI Benefit | State Supplement |
|---|----------|---------------------|------------------|
| Area I: King, Pierce, Snohomish, Thurston, and Kitsap Counties | | | |
| Individual | \$495.42 | \$470.00 | \$ 25.42 |
| Individual with one essential person | 724.98 | 705.00 | 19.98 |
| Couple: | | | |
| Both eligible | 724.98 | 705.00 | 19.98 |
| Includes one essential person | 724.98 | 705.00 | 19.98 |
| Includes ineligible spouse | 622.73 | 470.00 | 152.73 |
| Area II: All Counties Other Than the Above | | | |
| Individual | \$476.86 | 470.00 | 6.86 |
| Individual with one essential person | 705.00 | 705.00 | 0 |
| Couple: | | | |
| Both eligible | 705.00 | 705.00 | 0 |
| Includes one essential person | 705.00 | 705.00 | 0 |
| Includes ineligible spouse | 595.53 | 470.00 | 125.53 |

Areas I and II:

Eligible individual with more than one essential person: \$470.00 for eligible individual plus \$235.00 for each essential person (no state supplement).

Eligible couple with one or more essential persons: \$705.00 for eligible couple plus \$235.00 for each essential person (no state supplement).

(2) Shared living (Supplied shelter): Area I and II

| | Standard | Federal SSI Benefit | State Supplement |
|--------------------------------------|----------|---------------------|------------------|
| Individual | \$318.62 | \$313.34 | \$ 5.28 |
| Individual with one essential person | 475.72 | 470.00 | 5.72 |
| Couple: | | | |
| Both eligible | 475.72 | 470.00 | 5.72 |
| Includes one essential person | 475.72 | 470.00 | 5.72 |
| Includes ineligible spouse | 407.55 | 313.34 | 94.21 |

Area I and II:

Eligible individual with more than one essential person: \$313.34 for eligible individual plus \$156.66 for each essential person (no state supplement).

Eligible couple with one or more essential persons: \$470.00 for eligible couple plus \$156.66 for each essential person (no state supplement).

(3) Residing in a medical institution: Area I and II

| | Standard | Federal SSI Benefit | State Supplement |
|-----------|----------|---------------------|------------------|
| No change | \$41.62 | \$30.00 | \$11.62 |

(4) Mandatory income level (MIL) for grandfathered claimant. Increased by two dollars and nineteen cents for all MIL clients, except for those converted in a "D" living arrangement (residing in a medical institution at the time of conversion).

[Statutory Authority: RCW 74.08.090 and Legislative decision in the 1995 Budget Bill, 96-10-044 (Order 3972), § 388-250-1700, filed 4/26/96, effective 5/27/96; 95-20-028 (Order 3903), § 388-250-1700, filed 9/27/95, effective 10/28/95. Statutory Authority: RCW 74.04.050 and 45 CFR 233.20 (a)(2)(vi), 95-03-046 (Order 3822), § 388-250-1700, filed 1/11/95, effective 2/11/95. Statutory Authority: 1994 sp.s. c 6, 94-15-003 (Order 3750), § 388-250-1700, filed 7/7/94, effective 8/7/94. Statutory Authority: RCW 74.08.090, 94-09-001 (Order 3729), § 388-250-1700, filed 4/6/94, effective 5/7/94.]

WAC 388-250-1750 Standards of assistance—Additional requirements. (1) The department shall determine:

(a) **Restaurant meals** - Effective January 1, 1993, the monthly standard for restaurant meals to be one hundred eighty-seven dollars and nine cents.

(b) **Home-delivered meals** - The monthly standard to be the amount charged by the agency delivering the service when a plan for use of this service is approved by the department.

(c) **Food for guide dog or service animal** - Effective January 1, 1991, the monthly standard for food for guide dog or service animal to be thirty-three dollars and sixty-six cents.

(d) **Telephone** - The monthly standard for telephone is the amount of the client threshold for the Washington telephone assistance program (WTAP) or the minimum standard residential rate available in the area for the service, whichever is less.

(e) **Laundry** - Effective January 1, 1993, the monthly standard for laundry to be eleven dollars and thirteen cents.

(f) **Winterizing homes—AFDC** - Effective January 1991, the maximum allowance for winterizing a home is five hundred dollars.

(2) The department shall ensure the total of payments made under this section for one month does not exceed one month's AFDC payment standard for a household with an obligation to pay for shelter. See Additional requirements—Emergent needs situations (WAC 388-255-1350).

[Statutory Authority: RCW 74.08.025, 74.08.090, 80.36.420 (3)(a)(b) and 45 CFR 233.20 (a)(l)(i), 95-21-049 (Order 3910), § 388-250-1750, filed 10/11/95, effective 11/11/95. Statutory Authority: RCW 74.08.090, 94-09-001 (Order 3729), § 388-250-1750, filed 4/6/94, effective 5/7/94.]

Chapter 388-255 WAC
SPECIAL PAYMENTS

WAC

| | |
|--------------|---|
| 388-255-1020 | Additional requirements—General provisions. |
| 388-255-1050 | Additional requirements—Restaurant meals. |
| 388-255-1100 | Additional requirements—Home-delivered meals (meals on wheels). |
| 388-255-1150 | Additional requirements—Food for guide dog or service animal. |
| 388-255-1200 | Additional requirement—Telephone. |
| 388-255-1250 | Additional requirements—Laundry. |
| 388-255-1300 | Additional requirements—Winterizing homes AFDC. |
| 388-255-1350 | Additional requirements for emergent situations. |
| 388-255-1400 | One-time grant—Authorization—Disbursement. |

WAC 388-255-1020 Additional requirements—General provisions. (1) The department shall provide additional requirements under the circumstances and limitations specified in this chapter.

(2) The department shall provide for certain additional requirements when a person's circumstances indicate that the item is essential in according to the department established criteria. In determining whether the need for an additional requirement exists, the department shall consider:

- (a) The circumstances that created the need;
- (b) The person's health or living conditions; and
- (c) Other pertinent factors as described under subsection (4) of this section.

(3) The department shall verify the need for an additional requirement.

(4) The need for an additional requirement may regularly recur or be nonrecurring. When the requirement is ongoing, the department shall:

- (a) Add the requirement to the basic monthly grant payment for the assistance unit;
- (b) Establish a plan for periodically reviewing the need for the requirement;
- (c) Reestablish the need for an ongoing additional requirement as often as the case plan indicates, but at least:
 - (i) Semiannually for AFDC, or refugee assistance recipients; or
 - (ii) Annually for general assistance or SSI recipients, when the need is not likely to change; or
 - (iii) More frequently if circumstances are likely to change.

[Statutory Authority: RCW 74.08.090. 94-09-001 (Order 3729), § 388-255-1020, filed 4/6/94, effective 5/7/94.]

WAC 388-255-1050 Additional requirements—Restaurant meals. (1) The department may authorize additional requirements for restaurant meals for clients eligible for AFDC, refugee or general assistance grants, and SSI recipients.

(2) The department shall authorize restaurant meals as an additional requirement when the department determines:

- (a) A client is physically or mentally unable to prepare meals; and
- (b) Board, or board and room, is not available or the use of such facilities is not feasible for the person.

(3) The monthly standard for restaurant meals is described under WAC 388-250-1750(1).

[Statutory Authority: RCW 74.08.090. 94-09-001 (Order 3729), § 388-255-1050, filed 4/6/94, effective 5/7/94.]

WAC 388-255-1100 Additional requirements—Home-delivered meals (meals on wheels). (1) The department may authorize additional requirements for home-delivered meals (meals on wheels) for clients eligible for AFDC grants, refugee cash assistance, general assistance grants, or SSI benefits.

(2) The department shall authorize home-delivered meals (meals on wheels) as an additional requirement when the department determines:

- (a) A person cannot be expected to prepare all of their own meals, and home-delivered meals are available; and
- (b) The person requires help in preparation of meals and would benefit nutritionally or otherwise from home-delivered meals; and
- (c) Help in preparation of meals is not reasonably available without cost to the person; and
- (d) Board (or board and room) is not available, is not feasible, or is costlier for the recipient.

(4) The department shall determine the monthly standard to be the amount charged by the agency delivering the service. (See WAC 388-250-1750.)

[Statutory Authority: RCW 74.08.090. 94-09-001 (Order 3729), § 388-255-1100, filed 4/6/94, effective 5/7/94.]

WAC 388-255-1150 Additional requirements—Food for guide dog or service animal. (1) The department may authorize additional requirements for food for a guide dog or service animal for clients eligible for AFDC grants, refugee cash assistance, general assistance grants, or SSI benefits.

(2) The department shall determine the cost of food for a guide dog or service animal to be an additional requirement when the animal has been trained at a recognized school or training facility.

(3) The monthly standard for food for a guide dog or service animal is described under WAC 388-250-1750.

[Statutory Authority: RCW 74.08.090. 94-09-001 (Order 3729), § 388-255-1150, filed 4/6/94, effective 5/7/94.]

WAC 388-255-1200 Additional requirement—Telephone. (1) The department may authorize additional requirements for telephone assistance for clients eligible for AFDC grants, refugee cash assistance, general assistance grants, or SSI benefits.

(2) The department shall authorize telephone services as an additional requirement when the department determines:

- (a) The lack of a telephone would endanger the clients life or make a more expensive type of care necessary;
- (b) The function of a telephone cannot be performed by other means, including the help of neighbors, relatives or other community services; and
- (c) The client has requested participation through their local telephone company in the Washington Telephone Assistance Program.

(3) The monthly standard for telephone is described under WAC 388-250-1750.

[Statutory Authority: RCW 74.08.090. 96-01-017 (Order 3935), § 388-255-1200, filed 12/8/95, effective 1/8/96; 94-09-001 (Order 3729), § 388-255-1200, filed 4/6/94, effective 5/7/94.]

WAC 388-255-1250 Additional requirements—Laundry. (1) The department may authorize additional requirements for laundry for clients eligible for AFDC grants, refugee cash assistance, general assistance grants or SSI benefits.

(2) The department shall authorize laundry as an additional requirement when the department determines:

- (a) The client is physically unable to do laundry; and
- (b) A person is not able to perform this service for the client at no cost.

(3) The monthly standard for laundry is described under WAC 388-250-1750.

[Statutory Authority: RCW 74.08.090. 94-09-001 (Order 3729), § 388-255-1250, filed 4/6/94, effective 5/7/94.]

WAC 388-255-1300 Additional requirements—Winterizing homes AFDC. (1) The department may authorize additional requirements for winterizing homes for clients eligible for AFDC grants assistance.

(2) The department shall authorize repairs to a home owned or being purchased by an AFDC client as an additional requirement under the following circumstances:

(a) The primary purpose of the repairs is to minimize heat loss or otherwise increase the efficiency of the home heating system;

(b) The repairs are necessary to render the home habitable;

(c) Lack of repairs would require the assistance unit to move to rental quarters;

(d) The rental costs expended by the assistance unit over a period of two years would exceed the costs, including repairs, attributable to continued occupancy; and

(e) Expenditures for home repair has not been previously made under the policies outlined under subsection (2)(a), (b), (c) and (d) of this section.

(3) The department shall ensure all expenditures for repairs are paid by vendor payments when there is sufficient recorded evidence that a home repair was performed.

(4) The maximum allowance for winterizing a home is described under WAC 388-250-1750.

[Statutory Authority: RCW 74.08.090. 94-09-001 (Order 3729), § 388-255-1300, filed 4/6/94, effective 5/7/94.]

WAC 388-255-1350 Additional requirements for emergent situations. (1) The department may authorize additional requirements for emergent situations for clients eligible for AFDC grants or refugee cash assistance.

(2) The department shall allow additional requirements in the following emergent situations when, for good cause, a client does not have adequate funds to:

(a) Secure housing and necessary clothing in the event of a natural disaster, such as flood or fire, and relief is not available through the department of community development's individual and family grant program;

(b) Prevent imminent eviction or secure new housing, where a formal written notice of eviction, notice to pay or vacate, or notice of foreclosure has been received. The department shall limit payment to the amount needed to either prevent the eviction, or to secure new housing, as described under subsection (4) of this section, whichever is less;

(c) Correct a sudden malfunction resulting in loss of heat, water, electricity, or cooking facilities. The client is legally responsible for the repairs when winterization funds are not available. The department shall limit payment to actual costs of repairs or replacement when another alternative does not exist.

(d) Obtain new housing when:

(i) The premises contains a verifiable material defect jeopardizing the occupant's health and safety; and

(ii) The landlord or owner fails or refuses to correct the defect within the time allowed by law.

(e) Prevent an impending utility shutoff when:

(i) A notice of impending shutoff has been received; or

(ii) Verified by the department that the client is without necessary fuel for heating or cooking. The department shall authorize only the amount necessary to meet the emergent need.

(f) Obtain new housing for needs caused by an abusive spouse. The department shall limit payment to:

(i) Established fees paid to shelters for abused spouses;

or

(ii) The amount necessary to obtain new housing.

(g) Obtain food when another resource is not available.

(3) The department shall establish good cause when the department determines funds ordinarily available to meet are not available because of:

(a) Stolen proceeds from cashed warrants;

(b) Payment for the necessities of:

(i) Medical bills;

(ii) Child care in an emergency;

(iii) Avoiding abuse; or

(iv) Dental care for alleviation of pain or to obtain employment.

(c) Payments to meet temporary extra costs for the necessary need items of housing, utilities, food, or clothing provided the actions of the recipient were reasonable under the circumstances. The department shall:

(i) Presume a recipient acted reasonably when the amount expended for these necessities does not exceed the amount specified under WAC 388-250-1400;

(ii) Determine other cases on a case-by-case basis. If the amount in WAC 388-250-1400 is exceeded, the department shall make a judgment regarding reasonableness.

(4) The department shall ensure the total of payments made under this section for one month does not exceed one month's AFDC payment standard for a household with an obligation to pay for shelter, as established under WAC 388-250-1400.

[Statutory Authority: RCW 74.08.090. 94-09-001 (Order 3729), § 388-255-1350, filed 4/6/94, effective 5/7/94.]

WAC 388-255-1400 One-time grant—Authorization—Disbursement. (1) The department shall make a one-time grant to supplement or replace a regular monthly grant payment.

(2) The department shall authorize a one-time payment for:

(a) An additional requirement under WAC 388-255-1050 through WAC 388-255-1350, unless the payment is otherwise specified;

(b) Income or assistance budgeted by the department as available to, but not received by, the assistance unit;

(c) Supplemental assistance a client needs from the date the recipient leaves an institution to the date the client receives the regular, adjusting, or reinstated grant;

(d) Initiating, reinstating, or increasing a grant as required by a fair hearing or court decision;

(e) Compensation for an underpayment to client or former client;

(f) An exception to the rule approved by the department under chapter 388-200-1150 WAC;

(g) Reissuance of a canceled warrant to adjust the grant;

(h) A change in the basic requirements which results in an increase in the regular grant;

(i) Assistance which requires a partial month payment in compliance with the ten-day advance notice rules on reduction, suspension, or termination of a grant; and

(j) A person added to the assistance unit.

(3) Except as provided in subsection (2)(d) and (e) of this section, the department shall ensure a retroactive one-time grant does not cover a period of more than sixty days before the date of authorization.

[Statutory Authority: RCW 74.08.090, 94-09-001 (Order 3729), § 388-255-1400, filed 4/6/94, effective 5/7/94. Formerly WAC 388-33-595.]

Chapter 388-265 WAC PAYMENT OF GRANTS

WAC

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|--------------|--|
| 388-265-1010 | Grant payment—General provisions. |
| 388-265-1050 | Grant authorization. |
| 388-265-1100 | Grant payee. |
| 388-265-1150 | Protective payee—General. |
| 388-265-1200 | Emergency AFDC protective payee. |
| 388-265-1250 | Protective or vendor payment due to mismanagement of grant. |
| 388-265-1275 | Protective payment—AFDC or GA parenting or pregnant minor. |
| 388-265-1300 | Protective payment—AFDC clients sanctioned for failure, or refusal to cooperate with the job opportunities and basic skills training program (JOBS). |
| 388-265-1350 | Protective payment—AFDC clients sanctioned for failure or refusal to cooperate with the office of support enforcement. |
| 388-265-1400 | Vendor payee. |
| 388-265-1450 | Protective payee responsibility. |
| 388-265-1500 | Protective payee or vendor payee plan. |
| 388-265-1550 | Client notification of protective payee or vendor payee. |
| 388-265-1600 | Termination of protective payee or vendor payee payment. |
| 388-265-1650 | Protective payment—Fair hearing rights. |
| 388-265-1700 | Confidential information—Protective payee or vendor payee. |
| 388-265-1750 | Protective payee fees. |
| 388-265-1800 | Warrant endorsement. |
| 388-265-1850 | Warrant delivery. |
| 388-265-1900 | Warrant cancellation. |
| 388-265-1950 | Loss, theft, or destruction of a client's warrant. |
| 388-265-2000 | Loss, theft, or destruction of a vendor warrant. |

WAC 388-265-1010 Grant payment—General provisions. (1) The department shall require that:

(a) Each grant shall encompass only one assistance unit, even though there may be two or more assistance units in the same family group or household; and

(b) State-funded grant assistance programs which include general assistance - unemployable (GA-U), general assistance for pregnant women (GA-X), and Alcoholism and Drug Addiction Treatment and Support Act (ADATSA) (GA-W) or any combination thereof, shall encompass one assistance unit, but may be paid in separate, prorated amounts to each person in the assistance unit.

(2) The department shall:

(a) Determine the payment amount of continuing grants using the monthly standards of assistance; and

(b) Make continuing grant payments in compliance with advance notification requirements, except as provided under WAC 388-245-1710.

(3) A client may request payment of less than the amount for which the client qualifies. The department shall limit the grant to the amount of the client's written stipulation.

(4) The department shall round down a grant to the next whole dollar amount except for a client:

(a) Receiving a clothing and personal incidental allowance; or

(b) Subject to a mandatory deduction for recoupment of an overpayment.

(5) The department shall not pay a grant of less than ten dollars, except for a:

(a) Grant which is subject to a mandatory deduction for recoupment of an overpayment;

(b) Clothing and personal incidental allowance with budgeted income; or

(c) Reimbursement grant authorized under a supplemental Social Security interim assistance agreement.

[Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-265-1010, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-33-015, 388-33-020, 388-33-025, 388-33-050, 388-33-051 and 388-33-055.]

WAC 388-265-1050 Grant authorization. (1) The department shall authorize all grant payments and changes for public assistance grants.

(2) The department shall issue payment of the new, reopened, reinstated, or changed grant for the correct circumstances of the client.

(3) The department shall continue payment of a grant, in the amount authorized, until a change in the client's circumstances causes:

(a) A change in the amount of the grant;

(b) Suspension of the grant; or

(c) Termination of the grant.

(4) The department may reauthorize, recompute, or terminate a grant when:

(a) Income, resource, or eligibility rules are amended; or

(b) Income amounts for a client are verified by the agency providing the income.

[Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-265-1050, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-33-080, 388-33-085 and 388-33-095.]

WAC 388-265-1100 Grant payee. The department shall make a grant payment directly to a client on the basis of "need" as defined under WAC 388-22-030, except when the payee is:

- (1) Another person or agency acting as protective payee for a client;
- (2) An ineligible parent, or other relative of specified degree, acting on behalf of a child eligible for AFDC;
- (3) A guardian or agent;
- (4) A vendor of goods and services supplied to the eligible client; or
- (5) A facility acting as the protective payee for an Alcoholism and Drug Addiction Treatment and Support Act (ADATSA) client, as specified under WAC 388-240-6100.

[Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-265-1100, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-33-400 and 388-33-455.]

WAC 388-265-1150 Protective payee—General. (1)

The person chosen as the protective payee may be:

- (a) A relative, friend, neighbor, clergy, or member of a church or community service group;
 - (b) A person who serves with a voluntary social agency;
 - (c) A home economist with a public or private organization;
 - (d) A member of a practical nurse association, or other agency;
 - (e) For AFDC, a staff member of a public agency administering child welfare, health, rehabilitation, and housing programs;
 - (f) A department staff member of homemaker services, housekeeping aide program; or
 - (g) An employee of the department when another suitable person is not available.
- (2) An employee of the department shall not serve as payee for a client in the employee's regular caseload.
- (3) For a GAU client who is determined by the department to be actively addicted, the department shall select a:
- (a) Department approved alcohol/drug treatment or assessment agency;
 - (b) Designated staff of a community mental health agency;
 - (c) Social service agency, individual, or corporation who has a written agreement with the department to provide protective payee services;
 - (d) Judicially appointed guardian or other legal representative when such appointment appears to serve the best interests of the client; or
 - (e) Department employee.
- (4) The department shall give preference to a specialist in home and money management over other department staff.

(5) To avoid conflict of interest, the protective payee may not be:

- (a) The office administrator;
- (b) The employee determining the financial eligibility of the client;
- (c) The employee recommending the protective payee plan;
- (d) A vendor of goods and services dealing directly with the client;
- (e) A special investigative or resource employee;
- (f) The employee authorizing payment for the client; or

(g) For AFDC, any department employee, when the department has legal custody or the responsibility for placement and care of the child.

(6) Standards for selecting a protective payee include, but are not limited to:

- (a) Interest and concern in the client's welfare;
- (b) Ability to help the client make proper use of the assistance payment;
- (c) Accessibility to the client or client's family;
- (d) Ability to establish and maintain a positive relationship with the client and client's family; and
- (e) Good character and reliability.

(7) To the extent possible, the client shall choose the protective payee, or participate in the selection of the protective payee.

[Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-265-1150, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-33-440 and 388-33-455.]

WAC 388-265-1200 Emergency AFDC protective payee. (1)

The department shall make AFDC payment on behalf of a child, in most circumstances, to the parent as the caretaker relative.

(2) The department may make payment to another person on behalf of a child, when the caretaker relative is not available, or does not have legal custody of the child.

(3) The department may pay AFDC to a person, other than a relative of specified degree, acting for the caretaker relative when the:

- (a) Emergency situation is temporary;
- (b) Person other than the caretaker relative, lives with, and assumes care and supervision of a child;
- (c) Emergent situation deprives a child of the care and supervision of the caretaker relative with whom the child lives;
- (d) Emergent situation requires the department to make and carry out new plans for the:
 - (i) Child's continuing care and support; and
 - (ii) Transfer of responsibility for the child to a more permanent arrangement.

(4) The emergency payee is not included in the AFDC assistance unit.

(5) The department shall provide the client with written notice of the protective payment as described under WAC 388-265-1550.

[Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-265-1200, filed 5/3/94, effective 6/3/94. Formerly WAC 388-33-420 (part).]

WAC 388-265-1250 Protective or vendor payment due to mismanagement of grant. (1)

The rules in this section do not apply to protective payment for the caretaker relative sanctioned by the department due to the refusal or failure of the caretaker relative to cooperate with:

- (a) The job and opportunities and basic skills training program (JOBS); or
- (b) The office of support enforcement.

(2) The department may use protective or vendor payment for cases in which the client:

- (a) Has demonstrated severe difficulty in managing money; and

(b) For AFDC, has the capacity to learn, in a relatively short time, to manage assistance funds to assure the proper care of the child.

(3) The department may authorize protective payment to help improve management and use of money for the best interest of the client.

(4) The department shall base a decision to establish a protective payment plan due to the mismanagement of funds on the evidence contained in the case record. The evidence must be specific and clearly establish the fact that the way in which the funds are used by the client threatens the well-being of the child for AFDC or the GAU/SSI client.

(5) Evidence of mismanagement includes, but is not limited to:

(a) Continued inability to plan and spread necessary expenditures over the usual payment period;

(b) Continued evidence that the child or GAU/SSI client is not properly fed and clothed;

(c) For AFDC, that expenditures are made in such a way as to threaten the chances for healthy growth and development of the child;

(d) Medical or psychological evaluations;

(e) An alcohol/drug assessment which establishes incapacity due to alcoholism or drug addiction;

(f) Observation of gross physical conditions such as extensive paralysis, serious mental retardation, continued disorientation, or severe memory loss;

(g) Persistent and deliberate failure to meet obligations for rent, food, and other essentials; and

(h) Repeated evictions or compiling of debts against current income.

(6) The department shall provide social services assistance to accomplish the educational and constructive purposes of the protective payment plan.

(7) The department shall not use protective or vendor payment when:

(a) The basic problem is insufficient funds rather than management of money; or

(b) A financial problem is due only to an emergent situation.

(8) The department shall provide the client with written notice of the protective payment as described under WAC 388-265-1550.

(9) The department may request the attorney general file a petition in the superior court for the appointment of a guardian for a child eligible for AFDC when the caretaker relative is not using the grant adequately for the needs of the child. Such guardianship, as provided under RCW 74.12.250, shall be:

(a) Special and limited solely for the purpose of safeguarding the assistance grant made for the needs of a child; and

(b) Terminated by the department on termination of the assistance grant, or sooner, upon order of the court.

[Statutory Authority: RCW 74.04.050, 43.20A.550 and 74.08.090. 97-02-047, § 388-265-1250, filed 12/30/96, effective 1/30/97. Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-265-1250, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-33-420, 388-33-430, 388-33-440 and 388-33-455.]

WAC 388-265-1275 Protective payment—AFDC or GA parenting or pregnant minor. (1) The department may use protective payment for cases in which the client is:

(a) Seventeen years of age or younger; and

(b) Unmarried; and

(c) Either pregnant or has a dependent child.

(2) The department shall establish a protective payment plan based on a determination made by the department that the client is not living in an appropriate living situation. Appropriate living situations include:

(a) Place of residence maintained by the client's parent, legal guardian, or other adult relative as their own home; or

(b) As determined by the department, other appropriate supportive living arrangement supervised by an adult which is maintained as a family setting.

(3) Notwithstanding subsection (2) of this section, if the client is not living in an appropriate living situation, as determined by the department, the department may waive the establishment of a protective payment plan if the client demonstrates the ability to manage funds adequately.

(4) The department shall select a protective payee following the criteria under WAC 388-265-1150.

(5) The department shall provide the client with written notice of protective payment as described under WAC 388-265-1550.

[Statutory Authority: Chapter 74.12 RCW and E2 SHB 2798. 94-20-040 (Order 3785), § 388-265-1275, filed 9/28/94, effective 10/29/94.]

WAC 388-265-1300 Protective payment—AFDC clients sanctioned for failure, or refusal to cooperate with the job opportunities and basic skills training program (JOBS). (1) The department shall determine if a client certified to the JOBS program has refused, or failed to participate in the JOBS program without good cause.

(2) The department shall require protective payment for a client determined by the department to not have good cause for refusing, or failing to cooperate with the JOBS program.

(3) The department shall make direct payment to the sanctioned client if the department, after making a reasonable effort, is unable to locate a protective payee.

(4) The department shall select a protective payee following the criteria under WAC 388-265-1500.

(5) The department shall notify the client in writing of protective payment as described under WAC 388-265-1550.

(6) The department shall resume direct payment to the caretaker relative when the department determines that the caretaker relative:

(a) Is participating in JOBS as required by the department; or

(b) Has good cause for refusal to participate in JOBS.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-265-1300, filed 5/3/94, effective 6/3/94. Formerly WAC 388-33-450 (part).]

WAC 388-265-1350 Protective payment—AFDC clients sanctioned for failure or refusal to cooperate with the office of support enforcement. (1) The department shall determine if an AFDC client failed, or refused to cooperate with the office of support enforcement, to obtain child support, without good cause, as required in WAC 388-215-1440.

(2) The department shall authorize assistance to the other eligible assistance unit members:

- (a) By protective payment; or
- (b) Directly to the sanctioned client, if the department, after making reasonable efforts, is unable to locate a protective payee.

(3) The department shall:

- (a) Notify the client in writing of the establishment of a protective payment as described in WAC 388-265-1550;
- (b) Select a protective payee in accordance with WAC 388-265-1150;

(c) Review, at least every three months, the manner in which the protective payee performs;

(d) Review the sanctioned client's circumstances as frequently as required, but at least every six months; and

(e) Notify the client of any change in cooperation status.

(4) The department shall promptly resume payment to the client when the department determines that the client:

- (a) Is cooperating with support collection efforts; or
- (b) Has good cause not to cooperate with support collection efforts.

(5) The client sanctioned for noncooperation with the office of support enforcement does not have a right to a fair hearing regarding:

- (a) The person selected as protective payee; or
- (b) The manner of disbursement.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-265-1350, filed 5/3/94, effective 6/3/94. Formerly WAC 388-33-453 (part).]

WAC 388-265-1400 Vendor payee. (1) The department may pay assistance in whole, or in part, as a vendor payment directly to a person furnishing food, living accommodations or other goods or services to, or for, a client in the absence of a protective payee.

(2) The client shall select the vendor, or participate in the selection, to the extent possible.

(3) The vendor should be easily accessible to the client.

(4) The department may authorize a vendor payment for an additional requirement when the client is in emergent need and the client:

(a) Has been served a written notice of eviction, and the department verifies that the landlord:

(i) Will not forestall eviction unless a vendor payment is received; and

(ii) Will not evict the client after receiving the vendor payment;

(b) Has been served a utility shut-off notice, and the department verifies that the vendor:

(i) Will not forestall shut-off unless a vendor payment is received; and

(ii) Will not shut-off the utility after receiving the vendor payment;

(c) Does not have cash savings available to meet the emergent need.

(5) The department may authorize vendor payment from the grant when:

(a) A client requests in writing that a vendor payment be made;

(b) A client dies before receiving or endorsing a warrant and the client owes for personal and household service, housekeeping service, or board and room. The department

shall authorize vendor payment for the amount equal the portion of the canceled warrant actually owed to the vendor;

(c) The department determines that an AFDC client requires protective payment due to mismanagement of the grant under WAC 388-265-1250 and no protective payee is available;

(d) The department determines that a client certified to the JOBS program refused, or failed to participate, in the JOBS program without good cause and no protective payee is available;

(e) The department determines that a client refused, or failed to cooperate with the office of support enforcement without good cause and no protective payee is available.

(6) The department shall deduct the vendor payment for items in subsection (5) of this section from the initial or regular grant, unless issuing payment in place of a one-time grant as specified in WAC 388-255-1400.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-265-1400, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-33-440 and 388-33-460.]

WAC 388-265-1450 Protective payee responsibility.

(1) The department shall define the protective payee's responsibilities in writing. The department will provide a copy of the protective payee's responsibilities to:

- (a) The protective payee;
- (b) The client; and
- (c) The case record.

(2) The payee and the department share the responsibility for developing a plan to improve the client's capacity to handle money and to evaluate the client's progress.

(3) The protective payee shall have the authority and responsibility to make decisions about the expenditures of the assistance payment.

(4) The teaching component for AFDC protective payment requires that the caretaker relative participate in the decision making to the extent of the caretaker relative's ability to do so.

(5) The protective payee shall provide an accounting record to the department to verify that they are spending the assistance money on behalf of the client.

(6) The department shall review the protective payee's accounting record and determine the appropriateness of the expenditures.

(7) The protective payee shall return any remaining funds to the department when the protective payee relationship is terminated for any reason.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-265-1450, filed 5/3/94, effective 6/3/94. Formerly WAC 388-33-455 (part).]

WAC 388-265-1500 Protective payee or vendor payee plan. (1) The department shall review the need for protective payment and the protective payee's performance of duties as frequently as indicated by the client's circumstances, but no less than every six months.

(2) The department shall approve a protective or vendor payment plan for AFDC which initially does not exceed a three-month period.

(3) The department may, after the initial review of the AFDC plan, authorize protective payment up to a maximum

of twenty-four consecutive months. This plan must be reviewed no less than every six months.

(4) The review shall include an evaluation whether:

(a) Conditions justify continuation, or a modification of the plan;

(b) The protective payee's responsibilities are being carried out appropriately;

(c) The client can be expected to resume the payee function; or

(d) A court appointed guardian or foster care is needed because:

(i) The client cannot learn the payee functions; and

(ii) It appears the plan will continue beyond two years.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-265-1500, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-33-442, 388-33-448 and 388-33-458.]

WAC 388-265-1550 Client notification of protective payee or vendor payee. (1) The department shall notify the client in writing when a protective or vendor payment plan is approved. The written notice shall include:

(a) That a decision has been made to authorize protective payment;

(b) The basis for decision;

(c) The name of the protective payee or the use of vendor payment;

(d) The effective date; and

(e) With the exception of noncooperation with the office of support enforcement, the client's right to appeal the decision.

(2) The department shall notify the client in writing of any changes in the protective payment plan. The notice shall include:

(a) The decision to change the protective payment plan;

(b) What the change is;

(c) The name of the new payee, if the change is a different payee;

(d) The effective date of the change; and

(e) With the exception of AFDC noncooperation with office of support enforcement, the right to a fair hearing.

(3) The department shall notify the principals in writing of the decision to terminate the plan. The notice shall include:

(a) That a decision was made to terminate the plan;

(b) The reason for the decision;

(c) The effective date of termination; and

(d) With the exception of noncooperation with the office of support enforcement, the client's right to appeal the decision.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-265-1550, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-33-444, 388-33-446 and 388-33-457.]

WAC 388-265-1600 Termination of protective payee or vendor payee payment. (1) The department may remove a protective payee:

(a) Upon the payee's request;

(b) When a different payee is designated by the department;

(c) When the client is ready to resume the payee function; or

(d) When a judge has appointed a guardian or other legal representative.

(2) Vendor payment is discontinued when:

(a) The department locates a person to serve as protective payee; or

(b) When the client is ready to resume the payee function.

(3) If a guardian is appointed for the client the department shall change the protective payee plan and designate the guardian as the protective payee.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-265-1600, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-33-446 and 388-33-457.]

WAC 388-265-1650 Protective payment—Fair hearing rights. With the exception of noncooperation with the office of support enforcement, a client has the right to a fair hearing if the client is:

(1) Dissatisfied with the department's decision that a protective payment shall be made, continued, or changed; or

(2) Dissatisfied with the protective payee selected.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-265-1650, filed 5/3/94, effective 6/3/94. Formerly WAC 388-33-459.]

WAC 388-265-1700 Confidential information—Protective payee or vendor payee. (1) The department shall confine the release of information from the public assistance record to the protective payee to only those facts pertinent to the fulfillment of the payee's responsibility.

(2) The department shall explain to a prospective protective payee the need to respect the client's right to confidentiality.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-265-1700, filed 5/3/94, effective 6/3/94. Formerly WAC 388-33-449.]

WAC 388-265-1750 Protective payee fees. (1) The department may authorize a fee to cover approved administrative costs of the protective payee under the following conditions:

(a) The person serving as protective payee is not a friend, relative, or department employee; and

(b) The client is eligible for:

(i) GA-U;

(ii) AFDC when the department has determined a client is unable to manage the client's assistance funds; or

(iii) GA or AFDC and is a pregnant or parenting minor, and protective payment established under RCW 74.04.0052 or RCW 71.12.255.

(2) The department shall not allow the protective payee to withhold money from the client's grant for payment of the protective payee's costs or services.

(3) "Administrative costs fee" means a fixed amount per assistance recipient, as set forth in the contract between the protective payee and the department.

[Statutory Authority: RCW 74.08.090, 1994 c 299 § 33, RCW 74.08.280 and 74.50.060(2). 95-11-119 (Order 3858), § 388-265-1750, filed 5/24/95, effective 6/24/95. Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-265-1750, filed 5/3/94, effective 6/3/94. Formerly WAC 388-33-455 (part).]

WAC 388-265-1800 Warrant endorsement. (1) The department shall write assistance warrants to show the payee's surname first, followed by given name and initial.

(2) Each warrant must bear the personal endorsement of the client, unless there is a power of attorney, who is authorized to endorse and cash the client's warrant. If the client is unable to sign, the warrant must be endorsed by the client's mark or thumb print. The mark shall be witnessed by two persons who give their name and address.

(3) The department cannot stop payment if someone other than the payee cashes the warrant when the warrant has been endorsed by the payee.

(4) A person having power of attorney may legally endorse a warrant only when:

(a) The client has granted power of attorney on a properly prepared, legal document;

(b) The document is recorded in the office of the county auditor; and

(c) Two copies of the recorded document, certified by the county auditor, are on file with the department.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-265-1800, filed 5/3/94, effective 6/3/94. Formerly WAC 388-33-525.]

WAC 388-265-1850 Warrant delivery. (1) The client shall receive the warrant promptly, without interruption after the department has established eligibility and authorized a grant.

(2) The department shall mail the warrant to the client's address except as provided in this section.

(3) When the department authorizes a warrant for a client whose address is unknown, the department shall mail a letter to the last known address of the client, requesting the client to provide the current address.

(4) A client may request in writing that the warrant be mailed in care of the local office.

(5) The department shall redirect delivery of a warrant to the local office as provided under WAC 388-245-1350.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-265-1850, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-33-535, 388-33-545 and 388-33-550.]

WAC 388-265-1900 Warrant cancellation. (1) A warrant not endorsed by the payee before death shall not be endorsed by, or to, another person.

(2) A warrant payable to a deceased payee must be returned to the department for cancellation.

(3) When a payee with dependents in the assistance unit leaves home without endorsing a warrant, the warrant shall be:

(a) Returned to the department for cancellation, unless it is feasible for the dependents to hold the warrant until the payee returns; or

(b) Returned to the department for cancellation and reissuance to another eligible payee.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-265-1900, filed 5/3/94, effective 6/3/94. Formerly WAC 388-33-585.]

WAC 388-265-1950 Loss, theft, or destruction of a client's warrant. (1) When the client requests issuance of a duplicate warrant the client shall:

(a) Complete an affidavit attesting to the reported facts; and

(b) File a report of a lost or stolen warrant with the police.

(2) The client may report a loss or nonreceipt of a warrant to the department prior to the filing of a police report.

(3) The client shall promptly report loss, theft, destruction, or nondelivery of a warrant by submittal of appropriate written report forms to the department within sixty days of the date the warrant was due the client.

(4) The department shall:

(a) Secure all facts surrounding the report;

(b) Determine an appropriate course of action; and

(c) Inform the recipient of the action the department will take.

(5) The department shall promptly replace the warrant after receiving a report of loss, theft, destruction, or nonreceipt of an unendorsed warrant.

(6) The department shall replace an unendorsed, lost, stolen, nonreceived, or destroyed warrant:

(a) On or before the tenth of the month in which the warrant was due; or

(b) Within five working days of the report of loss, theft, nonreceipt, or destruction, whichever is later.

(7) The department shall replace an unendorsed warrant which is lost, stolen, or destroyed in full. Restrictively or specially endorsed warrants shall be deemed to be unendorsed warrants.

(8) When the client reports loss or nonreceipt sixty days or more after the mailing date, the department may:

(a) Inquire into the circumstances of the loss or nonreceipt prior to authorization of a replacement warrant; and

(b) Notify the recipient in writing if the inquiry resulted in a determination by the department not to replace the reported warrant. Written notice shall include:

(i) A statement of the determination;

(ii) The reason for the determination; and

(iii) A statement of the client's right to request a fair hearing to appeal the decision.

(9) When the client reports nonreceipt of a public assistance warrant within six months of a prior report of nonreceipt, the department shall:

(a) Secure all facts surrounding the report;

(b) Promptly replace the warrant;

(c) Verify the address;

(d) Send warrants to the client's new address, if there has been a change of address which better ensures receipt of the public assistance warrant;

(e) Redirect future warrants to the local office for a period of six months if there is no change of address, or assurance of receipt of the public assistance warrants at the current address.

(f) The department may waive redirection if there is hardship or other good cause not to redirect the warrant.

(10) If the client has accepted a warrant at the local office and then promptly reports the same warrant as lost, stolen, or destroyed the department shall:

(a) Secure all facts surrounding the report; and

(b) Evaluate the ability of the client to manage public assistance funds.

(11) The department shall take appropriate action to protect the state from loss if the original warrant is redeemed by the state treasurer as an endorsed warrant.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-265-1950, filed 5/3/94, effective 6/3/94. Formerly WAC 388-33-576.]

WAC 388-265-2000 Loss, theft, or destruction of a vendor warrant. (1) When a vendor payee reports to the department that a warrant was not received, or that an unendorsed warrant has been lost, stolen or destroyed, the vendor payee shall complete an affidavit attesting to the reported facts. The department shall:

- (a) Secure all facts surrounding the report;
- (b) Assess the reported facts and make a judgment as to the validity of the report; and
- (c) Determine a course of action appropriate to the facts of the case.

(2) The department shall replace an unendorsed warrant in accordance with the requirements in WAC 388-265-1950.

(3) The department shall not replace an endorsed warrant, or cash proceeds of a warrant, lost by the vendor.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-265-2000, filed 5/3/94, effective 6/3/94. Formerly WAC 388-33-579.]

Chapter 388-270 WAC INCORRECT PAYMENTS

WAC

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WAC 388-270-1005 Incorrect payments—General.

(1) This chapter provides department policies for incorrectly paid financial and medical assistance benefits.

(2) Public assistance overpayments means a debt due the state subject to recovery by the department.

(3) Department policies for incorrectly paid food stamp benefits are located in chapter 388-49 WAC.

[Statutory Authority: RCW 74.08.090. 94-05-045 (Order 3704), § 388-270-1005, filed 2/9/94, effective 3/12/94.]

WAC 388-270-1010 Overpayment amount. (1) The department shall ensure the amount of overpayment is the amount of assistance received, including medical care, for which the assistance unit was not entitled.

(2) The department shall reduce the total amount of incorrectly received grant assistance by the amount of:

(a) Grant assistance the unit would have been eligible to receive from any other category of grant assistance during the period of ineligibility; and

(b) Child support the department retained for the month of the overpayment in excess of the amount in (a) above; or

(c) Excess support minus the amount of support already distributed to the assistance unit if ineligibility exists; and

(d) Any existing grant underpayments.

(3) The department shall not reduce the amount of the public assistance grant overpayment using a medical assistance or food stamp underpayment.

(4) The department shall not reduce a medical assistance overpayment using a grant or food stamp underpayment.

(5) The department shall not credit an incorrect payment from one assistance unit to another assistance unit.

[Statutory Authority: RCW 74.08.090. 94-05-045 (Order 3704), § 388-270-1010, filed 2/9/94, effective 3/12/94.]

WAC 388-270-1025 Overpayment—Support payments not treated as a grant overpayment.

The caretaker relative shall remit support payments received directly from the absent parent to the office of support enforcement. The department shall not treat support payments as a grant overpayment, but such payments shall be considered as a debt to be established by the office of support enforcement.

[Statutory Authority: RCW 74.08.090. 94-05-045 (Order 3704), § 388-270-1025, filed 2/9/94, effective 3/12/94.]

WAC 388-270-1075 Overpayment—Liability.

(1) The department may recover overpayments from:

(a) Any individual member of an overpaid assistance unit, whether or not the member is currently a recipient.

(b) Any assistance unit of which a member of the overpaid assistance unit has subsequently become a member.

(2) The department shall not recover an overpayment from a person:

(a) Acting as a nonresponsible relative payee only and deriving no financial benefit from the payment of assistance. In such instance, the department shall establish the overpayment account receivable in the name of the person who received the financial benefit.

(b) Who is not receiving a grant at the time an unintentional overpayment is discovered and/or computed, provided the overpaid amount is less than thirty-five dollars.

[Statutory Authority: RCW 74.08.090. 94-05-045 (Order 3704), § 388-270-1075, filed 2/9/94, effective 3/12/94.]

WAC 388-270-1100 Verification of overpayment.

(1) The department shall attempt to verify all pertinent information when an apparent overpayment has occurred.

(2) When verification is not complete, the department shall attempt to contact the recipient and request an explanation of the circumstances surrounding the apparent overpayment. If the recipient does not respond or fails to cooperate, the department shall make an independent determination, based on all available information, whether an overpayment exists.

(3) The department shall take appropriate action to secure repayment when an overpayment has been verified following departmental rules on notification of suspension, termination, or reduction of grant.

[Statutory Authority: RCW 74.08.090. 94-05-045 (Order 3704), § 388-270-1100, filed 2/9/94, effective 3/12/94.]

WAC 388-270-1110 Rights and responsibilities. The department shall inform all applicants and recipients of their rights and responsibilities concerning eligibility for and receipt of assistance.

[Statutory Authority: RCW 74.08.090. 94-05-045 (Order 3704), § 388-270-1110, filed 2/9/94, effective 3/12/94.]

WAC 388-270-1125 Determination of intent. (1) Recipients of public assistance shall notify the department within twenty days of any change in circumstances affecting eligibility or need, including receipt or possession of all income or resources not previously declared to the department. When the department finds that an applicant or recipient has misstated or failed to reveal any material fact affecting eligibility or need, the department shall presume that such act was done intentionally.

(2) The department shall secure evidence regarding a misstatement or failure to reveal pertinent facts or circumstances, when possible, to determine if the act was committed intentionally. In the absence of further evidence, the presumption is not overcome; however, the recipient may rebut such presumption.

[Statutory Authority: RCW 74.08.090. 96-17-032, § 388-270-1125, filed 8/15/96, effective 9/15/96; 94-05-045 (Order 3704), § 388-270-1125, filed 2/9/94, effective 3/12/94. Formerly WAC 388-38-255 (part).]

WAC 388-270-1150 Notification of overpayment.

(1) The department shall send a letter to the responsible recipient (parent or payee on behalf of a responsible child) when an overpayment is established. The letter shall include:

- (a) The amount, dates, and circumstances of the overpayment due the state;
- (b) Whether the department considers the overpayment intentional;
- (c) A computation of the amount due the state;
- (d) The right to a fair hearing;
- (e) That the department establishes repayment requirements if the responsible person is not currently subject to benefit reduction; and
- (f) That the recipient's property is subject to lien and foreclosure, distraint and seizure, and sale or order to withhold and deliver after the recipient terminates from public assistance. The net proceeds of such action will be applied to satisfy the overpayment debt. Civil collection actions are lawful after ninety days of termination or the overpayment letter, whichever is later.

(2) The department shall serve the overpayment letter by:

- (a) Personal service, or
- (b) Certified mail, return receipt requested, addressee only.

[Statutory Authority: RCW 74.08.090. 94-05-045 (Order 3704), § 388-270-1150, filed 2/9/94, effective 3/12/94.]

WAC 388-270-1200 Invalid overpayment. When the department determines that it has mistakenly charged an individual with an overpayment, the department shall:

- (1) Nullify the overpayment account receivable;
- (2) Credit any amount paid to any other outstanding debt obligation due DSHS, and refund any amount paid into the invalid overpayment account; and
- (3) Notify the individual in writing:
 - (a) That the individual is not liable;
 - (b) The amount credited to existing debt obligation, if any; and
 - (c) The balance to be repaid to the individual, if any.

[Statutory Authority: RCW 74.08.090. 94-05-045 (Order 3704), § 388-270-1200, filed 2/9/94, effective 3/12/94.]

WAC 388-270-1250 Repayment of grant overpayment from a current recipient. (1) All individuals of the overpaid assistance unit shall repay an overpayment from:

- (a) Resources and/or income; or
 - (b) Deductions from subsequent grants; and
 - (c) The individual's estate, upon death.
- (2) An individual may be required to repay an overpayment as a result of civil or criminal action initiated by the department or the prosecutor.

(3) The department shall require a recipient to repay all overpayments occurring after January 1, 1982 by mandatory deduction, except where recovery is inequitable under WAC 388-270-1300.

(4) The department shall honor a client's written request to more than the mandatory deduction from subsequent grants. The department shall discontinue or modify the voluntary grant deduction at any time, upon written request from the recipient.

(5) The department shall, by the end of the quarter following the quarter in which the overpayment is first identified, recover overpayments by:

- (a) Lump sum payment; or
- (b) Execute recovery from a current recipient's grant or income and resources by a monthly deduction of ten percent or less of the total monthly grant payment standard. The recipient must have:
 - (i) Been served with the overpayment letter as defined in WAC 388-270-1150(2);
 - (ii) Been advised of the options available (mandatory deductions or lump-sum payments); and
 - (iii) Given an opportunity to respond to these payment options.

[Statutory Authority: RCW 74.08.090. 94-05-045 (Order 3704), § 388-270-1250, filed 2/9/94, effective 3/12/94.]

WAC 388-270-1300 Repayment of grant overpayment occurring prior to April 3, 1982, and resulting from department error. (1) Overpayments resulting from department error are debts due the state and are subject to mandatory grant deduction except as specified in subsection (4) and (5) of this section, or where recovery is determined to be inequitable.

(2) The department shall not impose liability for an overpayment occurring prior to April 3, 1982, which was caused by departmental error, until the department deter-

mines that it would not be inequitable. Recovery shall be deemed inequitable if:

(a) The department admitted or stated to the recipient or to the recipient's authorized representative that the recipient was entitled in whole or in part to the money or services overpaid, or acted in a manner which would reasonably lead that recipient to believe that the recipient was eligible to receive in whole or in part the money or services overpaid; and

(b) The recipient retained or accepted the money or services overpaid on the faith of such an admission, statement, act or omission; upon which the recipient had a right to rely; and

(c) The recipient would suffer an injury if the department were allowed to repudiate the department's admission, statement, act or omission.

(d) Injury as used in this section includes the imposition of liability for repayment of a debt due the state.

(3) If the department determines recovery would be inequitable:

(a) The recipient shall not be liable for repayment;

(b) The overpayment shall not be a debt due the state; and

(c) The recipient shall be informed.

(4) If recovery would not be inequitable, the department shall notify the recipient:

(a) Of the specific reason why recovery is not inequitable;

(b) That the recipient is liable for repayment of the debt;

(c) Whether the overpayment is subject to a mandatory deduction from the current grant; and

(d) Of their right to contest the decision.

[Statutory Authority: RCW 74.08.090. 94-05-045 (Order 3704), § 388-270-1300, filed 2/9/94, effective 3/12/94.]

WAC 388-270-1400 Recovery of overpayments by mandatory grant deduction. (1) The department shall limit policies in this section to overpayments of grant assistance when delineating recoupment of overpayments by means of a deduction from the current grant.

(2) The department shall recoup an overpayment by mandatory deduction from future continuing assistance grants except as specified by WAC 388-270-1300.

(3) The department shall recover an intentional overpayment by a mandatory grant deduction of ten percent of the payment standard.

(4) The department may establish a monthly grant deduction of up to one hundred percent of the grant when:

(a) The overpayment is intentional;

(b) The client has cash, bank accounts, or marketable securities but refuses to use these resources in full or partial satisfaction of the overpayment; and

(c) The amount of income and resources remaining available to the assistance unit is not less than ninety percent of the grant payment standard.

(5) 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.

(6) The department shall establish a monthly deduction against the clothing and incidental grant of a recipient in a nursing facility, intermediate care facility, or hospital.

The department shall not establish a monthly deduction against the vendor payment to the nursing facility or intermediate care facility or hospital.

(7) The department shall suspend an individual's grant when the monthly deduction is equal to or more than the grant which would have been paid had no overpayment occurred.

(8) The department shall inform the client in writing of the amount of the monthly deduction prior to the initial grant deduction. The notification shall include:

(a) The amount of the current grant before and after the deduction is made;

(b) The date the deduction begins;

(c) The total amount of overpayment to be recouped by grant deduction; and

(d) The approximate number of months the deduction will be made; and

(e) The right to request a fair hearing.

(9) The department shall not recoup a mandatory deduction from a public assistance grant for more than one hundred percent of the amount of assistance the individual was ineligible to receive.

[Statutory Authority: RCW 74.08.090. 94-05-045 (Order 3704), § 388-270-1400, filed 2/9/94, effective 3/12/94. Formerly WAC 388-33-045.]

WAC 388-270-1500 Repayment from estate. An overpayment of assistance not repaid during the person's lifetime is repayable from the person's estate.

[Statutory Authority: RCW 74.08.090. 94-05-045 (Order 3704), § 388-270-1500, filed 2/9/94, effective 3/12/94.]

WAC 388-270-1550 Underpayments. The department shall repay upon discovery a current or former recipient any underpayments, not negated by budgeting against an overpayment.

[Statutory Authority: RCW 74.08.090. 94-05-045 (Order 3704), § 388-270-1550, filed 2/9/94, effective 3/12/94.]

WAC 388-270-1600 Time limits, write-offs, and compromises. (1) The department shall not pursue collection of an overpayment due the state after the expiration of six years from the date of notice unless:

(a) The department has commenced recovery action in a court of law; or

(b) An administrative remedy authorized by statute is in place.

(2) The department shall cease collection on a case, extended as a result of subsection (1)(a) and (b) of this section, at the end of ten years unless a court order is in effect for a longer period.

(3) The department may accept a compromise from the debtor after collection efforts have begun when the debtor offers an amount:

(a) Equal to or exceeding the amount expected to be collected within the statute of limitations; or

(b) From nonattachable income or resources and it is unlikely the debtor shall return to public assistance or be

gainfully employed before the expiration of the statute of limitations; or

(c) Exceeding the projected cost of collection enforcement efforts.

(4) The department may accept a lump sum payment or an extended repayment agreement from the debtor to achieve a compromise offer. The department may decide to make the extended repayment agreement subject to accelerated payment if the debtor's financial condition significantly changes. The department may write off from the account receivable records the amount of the original balance that remains uncollected after the debtor pays the compromise amount before the expiration of the collection period allowed by statute.

(5) The department may clear an amount from its account receivable records before the expiration of the statutory collection period when there is no further possibility of collection. See WAC 388-44-330(5).

[Statutory Authority: RCW 74.08.090, 94-05-045 (Order 3704), § 388-270-1600, filed 2/9/94, effective 3/12/94.]

**Chapter 388-275 WAC
SUPPLEMENTAL SECURITY INCOME**

WAC

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WAC 388-275-0010 Purpose. The purpose of the Supplemental Security Income Program is to provide a minimum income level for persons who are aged, blind, and disabled with limited income and resources.

Authority for the program is found in Title XVI of the Social Security Act amended by P.L. 92-603.

[Statutory Authority: RCW 74.08.090 and 74.04.600 through 74.04.650, 94-04-033 (Order 3695), § 388-275-0010, filed 1/26/94, effective 2/26/94.]

WAC 388-275-0020 Definitions. (1) "Conversion" means the process by which a client who was receiving assistance under the former state-administered Old Age Assistance (OAA), Aid to the Blind (AB), or Disability (DA) programs was transferred in January 1974 to the federally administered SSI program.

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

(3) "Eligible couple" means an eligible individual and eligible spouse.

(4) "Eligible individual" means an aged, blind, or disabled person as defined in Title XVI of the Social Security Act.

(5) "Emergency advance SSI payment" means an expedited one-time SSI payment issued by the local SSA office to a person who:

(a) Has an application for SSI pending or just approved with SSA; and

(b) SSA determines is presumptively disabled or blind; and

(c) Has a financial emergency.

(6) "Essential person" means a person who is not eligible for SSI in the person's own right but receives SSI benefits because:

(a) The person is a legal dependant or spouse of an SSI beneficiary and have continuously lived in the home of the eligible person since December 1973; and

(b) At the time of conversion to SSI in 1974 the person's needs were included in the state-administered assistance grant for the aged, blind, and disabled programs.

(7) "Federal Benefit Rate (FBR)" means the federal SSI benefits payment standard.

(8) "Grandfathered" means the special status for a client converted from the state-administered aged, blind, and disabled programs which provides:

(a) Future eligibility determined on the basis of state eligibility criteria in effect at the time of conversion; and

(b) A maintained mandatory minimum payment level.

(c) A "grandfathered" recipient shall retain grandfathered status as long as the recipient continues meeting the eligibility requirements at the time of conversion.

(9) "Ineligible spouse" means a person whose needs are included in the SSI beneficiary's payment and who is:

(a) Not eligible for SSI in the person's own right; and

(b) Living with a SSI eligible individual; and

(c) Married to or "holding out" to the community as married to the eligible individual. SSA considers a man and woman who are not legally married, but are holding out to the community that the couple are husband and wife, as a couple for purposes of determining eligibility and payment amount under SSI.

(10) "Interim assistance" means state funds furnished to or on behalf of the individual for basic needs, including care in alternate care facilities, during the:

(a) Interim period the client's application for SSI is pending and subsequently approved; or

(b) Period the client's SSI benefits were suspended or terminated, and subsequently reinstated for that period.

(11) "Interim assistance period" means the period:

(a) Beginning with the first day:

(i) A client was eligible for SSI benefits; or

(ii) A client's benefits were suspended or terminated, if the client was subsequently found to have been eligible for such benefits; and

(b) Ending with the month payment is made. It includes the last interim assistance payment which the state prepares and cannot stop delivery on, when the client's initial or reinstated (posteligibility) SSI benefit payment is received from SSA.

(12) "Presumptive SSI payment" means an SSI payment, authorized for a maximum of six months, which SSA issues prior to a formal eligibility decision to a person who SSA determines:

(a) Is presumptively disabled or blind; and

(b) Meets all other eligibility requirements.

(13) "Secretary" means the secretary of department of social and health services.

(14) "SSA" means the Social Security Administration.

(15) "SSI benefit payment" means the federal SSI benefit payment and/or the state supplementary payment

amount the Social Security Administration determines payable on behalf of the state.

(16) "Supplemental Security Income (SSI) program" means the federal program of Supplemental Security Income for a person who is aged, blind, and disabled established by section 301 of the Social Security Act, and subsequent amendments, and administered by the Social Security Administration (SSA).

(17) "State data exchange (SDX)" means the computer system for exchanging information between SSA and the department regarding SSI clients. SDX provides the department with information to authorize medical coupons and Medicare buy-in for a person eligible for SSI.

(18) "State supplementary payment" means a state money payment authorized by the state and administered by SSA to supplement the federal SSI benefit payment standard.

[Statutory Authority: RCW 74.08.090 and 74.04.600 through 74.04.650. 94-04-033 (Order 3695), § 388-275-0020, filed 1/26/94, effective 2/26/94.]

WAC 388-275-0030 Administrative responsibility.

(1) Social Security Administration (SSA) administers the SSI program.

(a) Except as specified under subsection (2) of this section, SSA administers state supplementary payments as specified under the state supplement agreement between the department and SSA.

(b) An applicant shall make application for SSI benefits, including the state supplement, with the SSA.

(2) The department administers state supplementary payments for individuals or couples:

(a) Residing in a Title XIX certified medical facility; and

(b) SSA determines eligible for a federal SSI benefit payment.

(3) The department shall authorize Title XIX Medicaid based on the SDX for individuals or couples eligible for SSI:

(a) Notwithstanding subsection (3) of this section, the department shall determine eligibility for the SSI client who:

(i) Refuses to provide third party insurance information and assign the insurance rights to the department;

(ii) Disposes of resources for less than fair market value and apply for Medicaid coverage of nursing facility care within thirty months of the date of transfer; or

(iii) Has a Medicaid qualifying trust.

(b) The essential spouse shall remain eligible for Title XIX medical assistance as long as the "grandfathered" essential spouse status does not cease.

(c) The ineligible spouse requesting medical assistance shall make a separate application to the department.

[Statutory Authority: RCW 74.08.090 and 74.04.600 through 74.04.650. 94-04-033 (Order 3695), § 388-275-0030, filed 1/26/94, effective 2/26/94.]

WAC 388-275-0040 Effect on other programs. (1) SSA shall not pay the SSI ineligible spouse state supplement for a parent eligible for or receiving aid to families with dependent children (AFDC) for or with the parent's children.

(2) The department shall not pay state-funded general assistance when:

(a) The SSI eligible individual is eligible for or receiving an SSI ineligible spouse state supplement for the spouse; or

(b) The spouse of an SSI eligible individual refuses, without good cause, to apply for the SSI ineligible spouse state supplement.

[Statutory Authority: RCW 74.08.090 and 74.04.600 through 74.04.650. 94-04-033 (Order 3695), § 388-275-0040, filed 1/26/94, effective 2/26/94.]

WAC 388-275-0050 Waiver of state supplement.

(1) A person receiving or eligible to receive the state supplementary payments may:

(a) Waive the right to such payments by making a written request for waiver to SSA; and

(b) Revoke the supplemental payment waiver at any time by requesting, in writing, to the SSA.

(2) The department shall not pay state-funded general assistance in lieu of the state supplementary payments to a household that waives supplementary payments.

[Statutory Authority: RCW 74.08.090 and 74.04.600 through 74.04.650. 94-04-033 (Order 3695), § 388-275-0050, filed 1/26/94, effective 2/26/94.]

WAC 388-275-0060 Payments. (1) The amounts of state supplementary payment standards are as specified under chapter 388-250 WAC and the state supplementary agreement between the department and SSA.

(2) A state supplementary payment is made on a monthly basis and is included in the same check as a federal benefit is payable.

(3) The state supplementary payment is for the same month as the federal benefit.

[Statutory Authority: RCW 74.08.090. 94-16-044 (Order 3759), § 388-275-0060, filed 7/27/94, effective 9/1/94. Statutory Authority: RCW 74.08.090 and 74.04.600 through 74.04.650. 94-04-033 (Order 3695), § 388-275-0060, filed 1/26/94, effective 2/26/94.]

WAC 388-275-0070 Termination of state supplement. SSA shall terminate the state supplement when:

(1) The person dies;

(2) The person ceases to reside in Washington state;

(3) The person fails to apply for and, if eligible, obtain benefits or accept vocational services as specified by SSA;

(4) The person's disability is based on alcoholism or drug addition and the recipient refuses treatment required by SSA;

(5) The person has resided throughout a calendar month in a public institution;

(6) The person ceases to meet the categorical eligibility requirements of aged, blind, or disabled; or

(7) The grandfathered person ceases to meet the definition of aged, blind, and disabled under which the person received assistance for December 1973.

[Statutory Authority: RCW 74.08.090 and 74.04.600 through 74.04.650. 94-04-033 (Order 3695), § 388-275-0070, filed 1/26/94, effective 2/26/94.]

WAC 388-275-0080 Overpayment and underpayment. (1) SSA recoupment procedures for SSI benefit amounts shall also apply to the recovery of state supplementary overpaid amounts.

(2) The department shall not compensate an SSI beneficiary for reductions of the beneficiary's SSI benefit or state supplement caused by recoupment procedures.

(3) SSA shall pay the claimant for a state supplementation underpayment; except when the:

(a) Claimant dies before receiving the underpaid amount, SSA shall pay the underpaid amount to the claimant's eligible spouse.

(b) Deceased claimant does not have an eligible spouse, no payment of the underpaid amount is made.

(4) General assistance that is subsequently duplicated by the client's receipt of SSI for the same period and not reimbursed to the state is considered a debt due the state and subject to recovery through all available legal remedies.

(a) The department shall establish a debt for general assistance not reimbursed except when the:

(i) Initial or reinstated SSI payment is sent to the department; and

(ii) SSI payment does not cover the amount of interim assistance issued.

(b) General assistance that is duplicated by emergency advance SSI payments or SSI payments based on presumptive disability or presumptive blindness is not recoverable from the interim assistance reimbursement payment and shall be considered a debt.

[Statutory Authority: RCW 74.08.090 and 74.04.600 through 74.04.650, 94-04-033 (Order 3695), § 388-275-0080, filed 1/26/94, effective 2/26/94.]

WAC 388-275-0090 Representative payee. The secretary or the secretary's designee may act as representative payee for a child eligible for SSI benefits.

[Statutory Authority: RCW 74.08.090 and 74.04.600 through 74.04.650, 94-04-033 (Order 3695), § 388-275-0090, filed 1/26/94, effective 2/26/94.]

Chapter 388-280 WAC

UNITED STATES (U.S.) REPATRIATE PROGRAM

WAC

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WAC 388-280-1010 Purpose. (1) The purpose of the program is to assist repatriates, returned or brought to the U.S. from foreign countries, to resettle in the U.S. by providing assistance for one year or less until other resources become available.

(2) Repatriation assistance is a loan which is to be repaid by the repatriate. Repayment is according to the repatriate's ability.

[Statutory Authority: RCW 74.08.090, 93-12-054 (Order 3560), § 388-280-1010, filed 5/26/93, effective 6/26/93.]

WAC 388-280-1020 Definition. (1) "Dependent of U.S. citizen" means:

(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; or

(iii) Minor siblings.

(c) A U.S. citizen's repatriated spouse's:

(i) Parents; or

(ii) Minor siblings.

(2) "Extended repatriation assistance" means repatriation assistance provided for up to nine months after eligibility for the ninety-day temporary assistance period ends.

(3) "Repatriate" means a U.S. citizen or a 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.

(4) "Temporary assistance" means repatriation assistance provided during the first ninety days a repatriate is back in this country.

[Statutory Authority: RCW 74.08.090, 93-12-054 (Order 3560), § 388-280-1020, filed 5/26/93, effective 6/26/93.]

WAC 388-280-1030 Application. (1) The department shall consider a referral to a person by the U.S. State Department as a request for assistance.

(2) For client requests, where a person contacts the department directly, the department shall:

(a) Notify the U.S. State Department of such request;

(b) Consider the U.S. State Department's reply, designating the person as a repatriate, as a request for assistance.

(3) The department shall apply to the U.S. Department of Health and Human Services (HHS) for extended repatriation assistance when he repatriate is:

(a) Unable to attain self-support or self-care for reasons such as age, disability, or lack of vocational preparation; or

(b) Ineligible for assistance through any other program.

(4) When extended repatriation assistance is appropriate, the department shall apply for such assistance before the expiration of the initial ninety-day period of eligibility.

[Statutory Authority: RCW 74.08.090, 93-12-054 (Order 3560), § 388-280-1030, filed 5/26/93, effective 6/26/93.]

WAC 388-280-1040 Repaying repatriation assistance. (1) The department shall:

(a) Explain to the repatriate that assistance received under the U.S. repatriate program is a loan the repatriate is expected to repay;

(b) Obtain a signed statement that the repatriate:

(i) Understands the repayment requirement; and

(ii) Agrees to make repayment;

(c) Assess the repatriate's ability to repay and make a recommendation to the U.S. Department HHS regarding the repatriate's financial ability to make repayment; and

(d) Document reasons why the repatriate is unable to make repayment.

(2) The department shall consider a repatriate able to repay assistance when income or resources in excess of continuing needs will become available within one year after the repatriate's resettlement.

[Statutory Authority: RCW 74.08.090, 93-12-054 (Order 3560), § 388-280-1040, filed 5/26/93, effective 6/26/93.]

WAC 388-280-1050 Safeguarding information. (1) The department shall use information obtained about a repatriate only as necessary for program administration.

(2) Except as noted under subsection (3) of this section, the department shall not disclose:

(a) The name or address of a repatriate, including lists or passenger manifests; or

(b) Personal information identifying a repatriate, the circumstances or physical or mental health as furnished on applications, reports of investigations, medical reports, or any other department records.

(3) The department may release personal information to another agency from whom the repatriate has requested services when:

(a) A repatriate receives a request for the release of relevant information from the other agency which specifies the other agency will not disclose the information.

[Statutory Authority: RCW 74.08.090, 93-12-054 (Order 3560), § 388-280-1050, filed 5/26/93, effective 6/26/93.]

WAC 388-280-1060 Referral to other agencies. The department shall refer a repatriate to the Social Security Administration to apply for Supplemental Security Income (SSI) benefits if the repatriate is:

- (1) Sixty-five years of age or older;
- (2) Blind; or
- (3) Disabled.

[Statutory Authority: RCW 74.08.090, 93-12-054 (Order 3560), § 388-280-1060, filed 5/26/93, effective 6/26/93.]

WAC 388-280-1070 Income and resources. (1) The department may deny or terminate repatriate assistance when the client has nonexempt:

(a) Income, according to aid to families with dependent needs; and/or

(b) Resources, according to AFDC rules, that are immediately available to meet their repatriation needs.

(2) The department shall consider resources immediately available when the:

(a) Resource value can be determined;

(b) Resource is under the control of the repatriate; and

(c) Repatriate can draw upon the resource for maintenance.

[Statutory Authority: RCW 74.08.090, 93-12-054 (Order 3560), § 388-280-1070, filed 5/26/93, effective 6/26/93.]

WAC 388-280-1080 Eligibility. Provided a household is otherwise eligible, the department shall grant:

(1) Temporary repatriation assistance to needy persons who are repatriates as designated by the U.S. State Department.

(2) Extended repatriation assistance to needy repatriates upon approval of the U.S. Department of Health and Human Services.

[Statutory Authority: RCW 74.08.090, 93-12-054 (Order 3560), § 388-280-1080, filed 5/26/93, effective 6/26/93.]

WAC 388-280-1090 Client responsibilities. An applicant for or recipient of repatriation assistance shall:

(1) Provide evidence the U.S. State Department needs to establish the applicant's status as a repatriate;

(2) Assist in determining the willingness and ability of a relative to assist the repatriate;

(3) Report other resources potentially available or self support; and

(4) Immediately report change in income or resources.

[Statutory Authority: RCW 74.08.090, 93-12-054 (Order 3560), § 388-280-1090, filed 5/26/93, effective 6/26/93.]

WAC 388-280-1100 Department responsibilities as the port of entry state. The department shall:

(1) Meet the repatriate at the port of entry and determine what services are needed;

(2) Explain the program and provide a repatriate with informational handouts as provided by the U.S. Department of HHS;

(3) Explain the repayment provisions for the program and secure a signed repayment agreement;

(4) Provide appropriate assistance including onward transportation to the final destination;

(5) Coordinate with the final destination state regarding reception and care at the final destination;

(6) For mentally ill repatriates, provide related hospitalization and other medical assistance, including involuntary treatment in a mental health hospital, as necessary.

[Statutory Authority: RCW 74.08.090, 93-12-054 (Order 3560), § 388-280-1100, filed 5/26/93, effective 6/26/93.]

WAC 388-280-1110 Department responsibilities as the final destination state. The department shall:

(1) Develop a plan to carry out arrangements for care, treatment, and assistance or reception, assistance, and resettlement;

(2) Determine the need for continuing assistance;

(3) Explain the program;

(4) Explain the repayment provisions and secure a signed repayment agreement; and

(5) Provide necessary services.

[Statutory Authority: RCW 74.08.090, 93-12-054 (Order 3560), § 388-280-1110, filed 5/26/93, effective 6/26/93.]

WAC 388-280-1120 Unattended minors. The department shall provide services for the care and protection of unattended repatriate minors. The department shall:

(1) Provide social services or arrange for placement of the repatriate minor in a facility that supplement or substitute for parental care and supervision, as needed, through the child welfare services program;

(2) Ensure such services and assistance conform to the department's standards for foster home, receiving home, or institutional care; and

(3) Observe recognized child welfare practices in protecting an unaccompanied repatriate minor.

[Statutory Authority: RCW 74.08.090. 93-12-054 (Order 3560), § 388-280-1120, filed 5/26/93, effective 6/26/93.]

WAC 388-280-1130 Scope of services. The department shall provide a repatriate the following necessary services:

(1) Transportation to the repatriate's place of residence, the home of relatives, or the place the repatriate will be resettled:

(a) Only one domestic trip is allowable;

(b) The lowest cost and most direct means of transportation unless effective service to a repatriate calls for other accommodations;

(c) Transportation expenses, including travel incidentals, such as meal and lodging enroute and assistance with luggage, checking, storage, or transportation of personal effects.

(2) Transportation, overnight accommodations, and per diem for an escort to accompany and assist a physically ill or mentally ill or disabled repatriate from the port of entry to the final destination, and the escort's expenses when returning to the port of entry;

(3) Food items to meet the cost of a physician-recommended special diet;

(4) Restaurant meals as required;

(5) Temporary shelter;

(6) Essential clothing;

(7) Medical and hospital care a physician considers necessary because of the repatriate's health. The department shall limit care provided by the port of entry state to acute illnesses which prevent the repatriate from traveling to the final destination state;

(8) Necessary social services;

(9) Subsistence and resettlement expenses;

(10) Communication by phone or telegraph to contact relatives, friends, or former employers to obtain access to resources for self-support;

(11) Housing arrangements to provide adequate accommodations, including housing or utility deposits;

(12) Sufficient funds for maintenance until the agency at the final destination can begin to assist the repatriate, if the person requires resettlement at the final destination; and

(13) Counseling and referral in regard to employment, and retaining.

[Statutory Authority: RCW 74.08.090. 93-12-054 (Order 3560), § 388-280-1130, filed 5/26/93, effective 6/26/93.]

WAC 388-280-1140 Time limits on benefits. (1) Except as provided under subsection (2) of this section, the department shall limit repatriate assistance to ninety days beginning with the date of arrival in the U.S.

(2) The department shall provide a repatriate extended repatriation assistance for up to an additional nine months upon prior approval by the U.S. Department of Health and Human Services.

(3) The department shall immediately terminate a repatriate's assistance upon the repatriate's receipt of financial benefits under either the AFDC or SSI programs.

[Statutory Authority: RCW 74.08.090. 93-12-054 (Order 3560), § 388-280-1140, filed 5/26/93, effective 6/26/93.]

WAC 388-280-1150 Payment limits. (1) The department shall limit payments for repatriation assistance to:

(a) The department's payment standards for the AFDC program as appropriate for the number of eligible repatriates for ongoing assistance;

(b) A maximum of five hundred and sixty dollars per person for resettlement or assistance for initial one-time services such as rental deposits. The department shall limit use of this maximum to not more than one month and only during the temporary assistance period;

(2) The department's payment for other services shall be as provided under section 1130, "Scope of services" in this chapter.

[Statutory Authority: RCW 74.08.090. 93-12-054 (Order 3560), § 388-280-1150, filed 5/26/93, effective 6/26/93.]

WAC 388-280-1160 Assistance payment—Types of payments. (1) The department shall grant a repatriate assistance in cash, voucher, or warrant. Payment shall be made either to the repatriate or in the repatriate's behalf.

(2) The department's method of payment shall be at the department's option.

[Statutory Authority: RCW 74.08.090. 93-12-054 (Order 3560), § 388-280-1160, filed 5/26/93, effective 6/26/93.]

Chapter 388-290 WAC CHILD CARE

WAC

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WAC 388-290-010 Child care and other work-related supportive services—Purpose. The purpose of this program is to provide child care and other support services

necessary to assist families with dependent children to become self-sufficient.

[Statutory Authority: RCW 74.04.050 and 45 CFR 255.4(F). 95-23-028 (Order 3916), § 388-290-010, filed 11/8/95, effective 12/9/95.]

WAC 388-290-020 Definitions. Except as specified in this chapter, terms used under chapter 388-290 WAC shall have the same meaning applied to the AFDC program, as terms defined under chapters 388-22 and 388-250 WAC, and to the JOBS program under chapter 388-47 WAC.

(1) "Able" means physically and/or mentally capable of caring for a child in a responsible manner.

(2) "Applicable standards" means standards and practices related to child care under chapter 388-73 WAC or, in the case of a tribal JOBS program, tribal law.

(3) "Child care overpayment" means any child care payment received by or for an assistance unit for a month which exceeds the amount the unit was eligible to receive.

(4) "Co-payment" means the computed amount which the parent pays toward the child's cost of care.

(5) "JOBS" means the job opportunities and basic skills training program for eligible AFDC families which assists obtaining education, training, and employment needed to avoid long-term welfare dependence.

(6) "Support services" means child care, and other services provided for under federal law, that may be required, enabling an AFDC applicant or recipient to pursue employment, education, and training under chapter 388-47 WAC JOBS training program.

[Statutory Authority: RCW 74.04.050 and 45 CFR 255.4(F). 95-23-028 (Order 3916), § 388-290-020, filed 11/8/95, effective 12/9/95.]

WAC 388-290-040 Assurances and responsibilities under JOBS, income assistance, and transitional child care. (1) The department shall assure:

(a) Supportive services needed to enable a participant with an approved employability plan to participate in accordance with that approved plan in the JOBS program;

(b) Child care services meet applicable standards of state or tribal law as described under WAC 388-15-170;

(c) An entity providing child care allows parental access;

(d) The child's individual needs are taken into account when the department provides or arranges for child care and other supportive services; and

(e) Child care provided or claimed for payment is related to a person's JOBS program participation or employment hours.

(2) The department shall:

(a) Inform applicants or recipients about child care and supportive services available under this chapter;

(b) Respond to requests for child care services within a reasonable period of time;

(c) Inform applicants or recipients of the types and locations of child care services available to help them select child care services;

(d) Inform applicants or recipients of the child care options for which the department can make payment as described under WAC 388-290-110. The department shall:

(i) Provide information on transitional child care to all families terminating from AFDC; and

(ii) Include information on how to request transitional child care in the informational material provided to families terminating from AFDC.

(e) Inform applicants or recipients of their rights and responsibilities in relation to child care and support services;

(f) Provide timely child care payments to the provider; and

(g) Provide advance and adequate notice to recipients of reduction, suspension, or termination of child care benefits.

(3) The recipient shall:

(a) Choose the provider and make the child care arrangements;

(b) Immediately notify the department of any change in providers;

(c) Pay the in-home care giver when the department pays the applicant or recipient for in-home care;

(d) Pay any required co-payment;

(e) Supply the department with necessary information to allow payment to the authorized provider; and

(f) Immediately notify the provider when the department discontinues or changes the child care authorization.

(4) The provider shall provide:

(a) Parental access;

(b) Constant supervision of a child under care throughout the time such person is the provider;

(c) Developmentally appropriate activities for a child under provider's care; and

(d) Access to attendance records by appropriate state and federal government representatives.

(5) The provider shall meet licensing and contracting requirements as required under chapter 388-73 WAC.

[Statutory Authority: RCW 74.04.050 and 45 CFR 255.4(F). 95-23-028 (Order 3916), § 388-290-040, filed 11/8/95, effective 12/9/95.]

WAC 388-290-110 JOBS, income assistance, and transitional child care programs. (1) The department shall guarantee child care by:

(a) Paying providers for center care or family day care when the provider is:

(i) Licensed under chapter 74.15 RCW and chapter 388-73 WAC;

(ii) Exempt from licensure under chapter 74.15 RCW and chapter 388-73 WAC;

(iii) A tribal day care center meeting the requirements of tribal law and certified by the department;

(iv) A child care facility, certified by the department, on a military installation; or

(v) A child care facility operated on public school property by a school district.

(b) Paying the recipient for in-home care provided the care taker meets the requirements as described under WAC 388-15-170 (8). In-home care shall include care given in the child's home or in a relative's home if the relative is:

(i) An adult sibling living outside the child's home; or

(ii) Grandparents, aunts, uncles, or first cousins.

(c) Allowing the dependent care earnings disregard for employed AFDC recipients. The department shall allow a disregard when the household:

(i) Received AFDC on October 13, 1988, based on application of the dependent care disregard, and has remained continuously eligible for grant assistance since that

time. Such households shall have the option to use the disregard or state-paid child care;

(ii) Was employed on September 30, 1991, and has not converted to the state-paid, child care system; or

(iii) Is subject to retrospective budgeting and is converting to state-paid child care. When the household incurred child care costs in the corresponding budget month, the department shall allow both state-paid child care and a child care earnings disregard for the month of conversion and the month thereafter.

(2) Within the child care guarantee of this section, the department shall authorize payment for child care to allow:

(a) An AFDC applicant or recipient to participate in:

(i) JOBS orientation or assessment;

(ii) Job search that is part of an approved employability plan under chapter 388-47 WAC; or

(b) An AFDC recipient to participate in:

(i) Work-related barrier removal activities, as approved by the department for participation in employment or activities under chapter 388-47 WAC;

(ii) In an approved education or training or other component activity under chapter 388-47 WAC; or

(iii) Employment, either to accept or maintain.

(c) A family eligible for transitional child care to participate in employment activities.

(3) The department shall take the individual needs of the child into account.

(4) The department shall not guarantee child care for households where any adult in the assistance unit is able and available to care for the children. See "able" as defined under section 020 of this chapter.

[Statutory Authority: RCW 74.04.050 and 45 CFR 255.4(F). 95-23-028 (Order 3916), § 388-290-110, filed 11/8/95, effective 12/9/95.]

WAC 388-290-115 JOBS, income assistance, and transitional child care programs—Eligible children and recipients. (1) The department shall authorize necessary child care if the dependent child is:

(a) Included in the same assistance unit as the recipient; or

(b) For transitional child care, meets the requirements of WAC 388-290-170(4); or

(c) Included in the household, but is not in the recipient's assistance unit because the child is receiving SSI benefits or foster care benefits under Title IV-E of the Social Security Act; and

(d) Twelve years of age or younger; or

(e) Physically or mentally (including emotionally) incapable of self-care, as verified by a licensed medical practitioner or licensed or certified psychologist; or

(f) Under court supervision.

(2) The department shall not authorize child care to a recipient not included in the assistance unit when the recipient is:

(a) An undocumented alien;

(b) A recipient of SSI; or

(c) A nonneedy relative.

(3) The department shall authorize JOBS and income assistance child care to employed recipients not included in the assistance unit due to a sanction with children meeting the requirements of subsection (1) of this section.

[Statutory Authority: RCW 74.04.050 and 45 CFR 255.4(F). 95-23-028 (Order 3916), § 388-290-115, filed 11/8/95, effective 12/9/95.]

WAC 388-290-120 JOBS, income assistance, and transitional child care program—Payment. (1) The department's payment for child care shall not exceed the seventy-fifth percentile of local market rate for child care. The department shall establish the department limits based on representative samples of local child care providers.

(2) The child care rate limits shall be as published by the department.

(3) The department's payment for child care shall:

(a) Relate to a person's hours of participation under chapter 388-47 WAC or hours of employment; and

(b) Include transportation time between the place of employment or participation site for activity under chapter 388-47 WAC and the child care provider.

(4) The department may authorize child care payments for JOBS or income assistance child care for up to two weeks for a person waiting to enter education or training, or other component activity approved under chapter 388-47 WAC, or employment.

(5) The department may authorize JOBS, income assistance, or transitional child care for a period not to exceed one month when:

(a) Child care arrangements would otherwise be lost; and

(b) The component activity or employment is scheduled to begin within that period.

(6) The department may pay for initial one-time fees for registration or equipment which are required by an authorized child care provider if such fees are:

(a) Required of all parents whose child is in care; and

(b) Needed to maintain a child care arrangement.

(7) The department shall not pay ongoing annual registration fees.

(8) Notwithstanding WAC 388-290-110 (1)(b), the department may establish a protective payee due to mismanagement when the recipient fails to pay the in-home care provider when:

(a) The department has issued a child care warrant to the correct address and twelve or more working days have passed since the issuance date; and

(b) The recipient has not reported the warrant lost, stolen, or destroyed.

[Statutory Authority: RCW 74.04.050 and 45 CFR 255.4(F). 95-23-028 (Order 3916), § 388-290-120, filed 11/8/95, effective 12/9/95.]

WAC 388-290-123 JOBS, income assistance, and transitional child care programs—Effective dates. (1) The department shall authorize JOBS and income assistance child care for:

(a) Orientation or assessment, to coincide with participation in orientation or assessment provided the household has applied for assistance;

(b) Employment, to coincide with the start of employment or the date of eligibility for assistance, whichever is later, as long as the recipient reports employment by the eighteenth day of the process month. If the recipient does not report employment timely, the effective date for child care benefits shall be the date of request for child care;

(c) Other approved activities, to coincide with the date of request for child care or the date the activity commenced or was approved, whichever is later.

(2) The department shall authorize transitional child care for eligible families as required under WAC 388-290-155(3).

(3) The department shall provide timely notice to recipients for changes in payment when the change results in a discontinuation, suspension, reduction, termination, or forces a change in child care arrangements:

(a) Except, as required under WAC 388-290-120 (4) and (5), the department shall terminate child care benefits to coincide with the termination of a component activity or assistance, provided timely notice for the change in child care has been given; and

(b) Timely notice requirements shall not apply for other changes in the manner of payment.

[Statutory Authority: RCW 74.04.050 and 45 CFR 255.4(F). 95-23-028 (Order 3916), § 388-290-123, filed 11/8/95, effective 12/9/95.]

WAC 388-290-130 Income assistance and transitional child care programs—Effect on eligibility and payments. (1) Except as provided under chapter 388-218 WAC, WAC 388-290-110 (1)(c), and subsections (2) and (3) of this section, the department shall determine AFDC eligibility and payment amounts without the dependent care disregard for households subject to the income assistance child care program.

(2) The department shall determine payment amounts with the dependent care disregard for households receiving both state-paid child care and the earnings disregard for the month of conversion and the month thereafter.

(3) When eligible, an employed applicant's eligibility for income assistance child care starts with the first day of AFDC eligibility.

(4) The department shall not consider the child care benefits provided under this chapter as income or resources when determining AFDC, food stamp program eligibility, or payment amount. The department shall treat income received as a child care provider according to the requirements under chapters 388-49 and 388-218 WAC.

[Statutory Authority: RCW 74.04.050 and 45 CFR 255.4(F). 95-23-028 (Order 3916), § 388-290-130, filed 11/8/95, effective 12/9/95.]

WAC 388-290-135 JOBS, income assistance, and transitional child care—Hearings. (1) Applicants or recipients shall be entitled to fair hearings under chapter 388-08 WAC on any action affecting child care benefits except for changes resulting from a change in policy or law.

(2) Recipients of JOBS and income assistance child care payments may be eligible for continued child care benefits pending the outcome of a fair hearing if the recipient requests the fair hearing on or before the effective date of the action or within ten days of the notice of adverse action.

(3) Recipients of transitional child care benefits shall be eligible for continued benefits pending the outcome of a fair hearing if the recipient requests the fair hearing on or before the effective date of the action or within ten days of the notice of adverse action. Continued benefits shall not extend beyond the family's twelve-month eligibility period.

(4) The department shall consider any child care assistance the recipient receives pending a fair hearing or

hearing decision to be an overpayment when the fair hearing decision subsequently finds against the recipient.

[Statutory Authority: RCW 74.04.050 and 45 CFR 255.4(F). 96-09-058 (Order 3965), § 388-290-135, filed 4/12/96, effective 5/13/96; 95-23-028 (Order 3916), § 388-290-135, filed 11/8/95, effective 12/9/95.]

WAC 388-290-140 Income assistance child care program—Conversion. (1) The department shall convert or subject households to the state-paid income assistance child care program as follows:

(a) At application. The department shall consider a reapplication following a break in assistance of one month or more as an application;

(b) For existing cases starting employment after October 1, 1991, when employment starts; and

(c) For existing cases that are employed on October 1, 1991, at the next eligibility review or the month thereafter, or upon the recipient's request, if earlier.

(2) Recipients that cease to be eligible for assistance at conversion because of the loss of the child care earnings disregard shall receive transitional benefits, if otherwise eligible.

[Statutory Authority: RCW 74.04.050 and 45 CFR 255.4(F). 95-23-028 (Order 3916), § 388-290-140, filed 11/8/95, effective 12/9/95.]

WAC 388-290-155 Transitional child care—Purpose and initial eligibility. (1) The department shall:

(a) Guarantee transitional child care to families who become ineligible for AFDC as described under subsection (2) of this section; and

(b) Permit such AFDC-ineligible families to accept or retain employment.

(2) A family shall be eligible for transitional child care provided the family:

(a) Is ineligible for AFDC due solely or in part because of increased hours of, or increased income from, employment or the loss of income disregards due to time limitations;

(b) Received AFDC in three or more of the six months immediately preceding the first month of ineligibility; and

(c) Requested orally or in writing transitional child care benefits and provides the information necessary for determining eligibility and fees.

(3) A family's eligibility for transitional child care shall:

(a) Begin with the first month the AFDC family is ineligible for AFDC for reasons described under subsection (2) of this section; and

(b) Continue for a period of twelve consecutive months.

(4) Families may begin receiving child care in any month during the twelve-month eligibility period. The department shall allow retroactive benefits for child care paid by an eligible family during this twelve-month period when the:

(a) Provider meets requirements as described under WAC 388-290-110(1); and

(b) Family requests benefits during the twelve-month period.

[Statutory Authority: RCW 74.04.050 and 45 CFR 255.4(F). 95-23-028 (Order 3916), § 388-290-155, filed 11/8/95, effective 12/9/95.]

WAC 388-290-160 Transitional child care—Co-payment. (1) The caretaker relative shall contribute to the transitional child care cost based on the family's ability to pay according to a sliding scale based on the AFDC need standard as described under chapter 388-250 WAC.

(a) Families with gross income, at or below one hundred percent of the needs standard, shall contribute five dollars per month toward the transitional child care cost.

(b) Families with gross income exceeding one hundred percent of the needs standard shall contribute toward the transitional child care cost at the rate of twenty-five percent of the income exceeding one hundred percent of the needs standard, but not less than five dollars per month.

(c) In computing the effects of income on transitional child care co-payment levels, the department shall apply AFDC rules as described under chapter 388-218 WAC.

(d) The department shall calculate co-payments for the transitional child care total cost without regard to the number of children receiving care.

(2) The department shall calculate co-payments:

(a) At the time of the initial eligibility determination;

(b) When monthly income decreases; and/or

(c) When household size increases.

(3) A person failing to pay the required co-payment shall be subject to termination as required under WAC 388-290-170 (1)(c).

(4) A family shall pay the co-payment for transitional child care directly to the child care provider.

[Statutory Authority: RCW 74.04.050 and 45 CFR 255.4(F). 95-23-028 (Order 3916), § 388-290-160, filed 11/8/95, effective 12/9/95.]

WAC 388-290-170 Transitional child care—Ongoing eligibility. (1) A family's eligibility for transitional child care ceases to exist for a remaining portion of the twelve-month period when the caretaker relative:

(a) Terminates employment without good cause. Good cause for failure to retain employment includes, but is not limited to:

(i) Physical, mental, or emotional inability to perform the required activity;

(ii) Court-ordered appearance or temporary incarceration;

(iii) Family or individual emergency or crises;

(iv) Breakdown in transportation arrangements, with no readily accessible alternate transportation;

(v) Inclement weather preventing a person and others similarly situated from traveling to, or participating in, the prescribed employment;

(vi) The nature of the employment is hazardous to the person;

(vii) The employment wages do not meet minimum wage standards or are not customary for the work in the community;

(viii) The employment was obtained due to a vacancy caused by a labor dispute;

(ix) Refusal to accept major medical treatment needed to continue employment, for example, major surgery;

(x) Refusal to continue employment when the wages, less mandatory payroll deductions and necessary work-related expenses, do not equal or exceed the family's AFDC cash benefit;

(xi) Illness or incapacity of another household member requiring the caretaker relative's care; or

(xii) Child care problems and/or loss of a child care provider.

(b) Fails to cooperate with the department in establishing and enforcing child support obligations;

(c) Fails to pay required co-payment fees; or

(d) Child is no longer dependent, except for deprivation by unemployment.

(2) The department shall only reinstate a family's eligibility for child care when:

(a) The caretaker relative loses a job with good cause and finds another job. The department may qualify the family for the remaining portion of the twelve-month eligibility period; or

(b) Back co-payment fees are paid or satisfactory arrangements are made to make full payments.

(3) Siblings of children eligible for transitional child care, if needy and otherwise eligible, who enter or return to a household, shall be eligible to receive transitional child care benefits.

(4) The department shall not consider transitional child care benefits as income or resources when determining AFDC or food stamp program eligibility or payment amount. The department shall treat income received as a child care provider according to chapters 388-49 and 388-218 WAC.

[Statutory Authority: RCW 74.04.050 and 45 CFR 255.4(F). 95-23-028 (Order 3916), § 388-290-170, filed 11/8/95, effective 12/9/95.]

WAC 388-290-180 Child care overpayments. (1) In those areas not expressly covered under this section, recipients of JOBS, income assistance, and/or transitional child care benefits shall be subject to and covered by chapter 388-270 WAC.

(2) The department shall include, but not limit, a child care overpayment to:

(a) Vendor payments for child care provided during a period when a child was not eligible for public assistance;

(b) Payments made pending a fair hearing when the fair hearing decision subsequently finds against the client;

(c) Payments made during the ten-day advance notice period when the client is ineligible for payment; and

(d) Continued payments received by the recipient because the appropriate ten-day advance period extends into the next month.

(3) The department shall calculate the amount of the child care overpayment based on the amount of child care payment the client or the child care provider receives for which the assistance unit was not entitled.

(4) When establishing an overpayment, the department shall reduce any child care overpayment by the amount of any child care underpayment where applicable.

(5) The department shall recover overpayments from:

(a) The assistance unit which was overpaid;

(b) Any assistance unit of which a member of the overpaid assistance unit has subsequently become a member; or

(c) Any member of the overpaid assistance unit whether or not currently a recipient.

(6) When a provider has claimed payment for child care services not provided, the department shall establish the overpayment in the provider's name.

(7) The department shall attempt recovery of an overpayment in all cases:

(a) Of fraud;

(b) Involving current recipients of child care benefits; and

(c) Where cost of recovery does not exceed the overpayment amount.

(8) In recovering overpayments from a family currently receiving child care benefits, the department shall consider a family's income level and financial obligations, including household expenses, when determining repayment requirements. Such families shall retain a reasonable amount of funds to meet the needs of the assistance unit.

(9) The department may only make recovery of child care overpayments from current Title IV-A child care recipients from child care benefits. Recovery may not interfere with child care arrangements.

(10) The department may make any recoveries of child care overpayments from AFDC benefit payments only on a voluntary request from a family receiving AFDC benefits.

(11) The department shall recover overpayments from families no longer receiving child care payments as required under WAC 388-270-1150.

[Statutory Authority: RCW 74.04.050 and 45 CFR 255.4(F). 95-23-028 (Order 3916), § 388-290-180, filed 11/8/95, effective 12/9/95.]

WAC 388-290-210 Other supportive services. The department and the JOBS contractor may provide other supportive services payment or reimbursement for other supportive services expenses enabling a person to participate in the JOBS program.

(1) The department shall subject the expenditures for a participant's supportive services to the maximum limits as indicated in the state's supportive services plan.

(2) The department shall ensure supportive services are as outlined in the JOBS supportive services state plan and include, but are not limited to:

(a) Transportation costs;

(b) Tools and equipment;

(c) License fees, including union initiation fees and licenses required by law, employer, or union for participation in JOBS or employment; and

(d) One-time work-related expenses necessary for a participant to accept or maintain employment. The department shall only allow these expenses when:

(i) The participant has a bona fide job expected to last thirty days or more;

(ii) Other funds are not available; and

(iii) Such expenses are required for the type of work.

[Statutory Authority: RCW 74.04.050 and 45 CFR 255.4(F). 95-23-028 (Order 3916), § 388-290-210, filed 11/8/95, effective 12/9/95.]

WAC 388-290-250 Transitional supportive services. The department or the contractor may provide transitional supportive services, as outlined in the JOBS supportive services state plan, to a JOBS participant who loses eligibility for AFDC.

(1) Services provided within thirty days following AFDC termination include, but are not limited to transportation, one-time work-related expenses, and social services; and

(2) Counseling services for job retention may be provided for up to ninety days following AFDC termination.

[Statutory Authority: RCW 74.04.050 and 45 CFR 255.4(F). 95-23-028 (Order 3916), § 388-290-250, filed 11/8/95, effective 12/9/95.]

WAC 388-290-260 Supportive services overpayments. (1) In those areas not expressly covered by this section, it is the intent of the department that recipients of JOBS and/or transitional supportive services benefits shall be subject to and covered by chapter 388-270 WAC.

(2) "Supportive services overpayment" means any supportive service payment received by or for an assistance unit or JOBS participant that exceeds the amount the unit was eligible to receive.

(3) The department shall determine the amount of the supportive services overpayment is the amount of payment received by the assistance unit or vendor for which the assistance unit was not entitled.

(4) For current recipients of supportive services benefits, the department may only make recovery of support services overpayments from support services benefits. The department may only make a recovery of an overpayment from AFDC benefit payments upon voluntary request from a family receiving AFDC benefits.

(5) Recovery of overpayments from families no longer receiving supportive services payments, follow WAC 388-270-1150.

[Statutory Authority: RCW 74.04.050 and 45 CFR 255.4(F). 95-23-028 (Order 3916), § 388-290-260, filed 11/8/95, effective 12/9/95.]

Chapter 388-300 WAC

JOB OPPORTUNITIES AND BASIC SKILLS TRAINING (JOBS) PROGRAM (Formerly chapter 388-47 WAC)

WAC

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WAC 388-300-0100 Job opportunities and basic skills training (JOBS) program—Authority and purpose.

(1) The JOBS program is established under P.L. 100-485, as amended, 102 Stat. 2343. The short title is the Family Support Act of 1988. Federal regulations for the JOBS program are described under 45 CFR, part 250, part 251, part 255, and part 256. The state statutory authority is Title 74 RCW.

(2) The department shall be by the authority of Title 74 RCW the Title IV-A and Title IV-F agency, and shall have the authority to carry out the JOBS program.

(3) The JOBS program shall provide a recipient of aid to families with dependent children (AFDC) the opportunity to obtain appropriate education, training, skills, and supportive services, including child care, consistent with the needs of the recipient, that will help the recipient enter or reenter gainful employment, thereby avoiding long-term welfare dependence and achieving economic self-sufficiency.

(4) The department shall ensure the JOBS program is directed at increasing labor force participation and household earnings of AFDC recipients.

(5) The department shall communicate to a program participant the concepts of the importance of work and how performance and effort directly affect:

(a) Future career and educational opportunities and economic well-being; and

(b) Personal empowerment, self-motivation, and self-esteem.

(6) The department shall ensure that:

(a) Work experience is the most important component of the JOBS program; and

(b) Education is an important program element and tool for an individual to achieve full independence including:

(i) Literacy training;

(ii) Secondary education;

(iii) High school equivalency;

(iv) Vocational training; and

(v) Post-secondary education.

(7) The department shall provide as specified in 45 CFR, part 250 JOBS program services in accordance with the Washington state plan - JOBS (Title IV-F) and JOBS supportive services and child care in accordance Washington state plan - supportive services (Title IV-A/F).

(8) The department may contract specific program operation functions to other entities.

(9) The department shall contract with service providers in a manner that ensures the state continues to receive enhanced federal funding by meeting the:

(a) Expenditure rate for target group members;

(b) Federal participation rate for nonexempt AFDC-E households in the components specified in WAC 388-300-2100; and

(c) Federal participation rate for JOBS participants.

[Statutory Authority: Chapter 74.25A RCW and RCW 74.08.090. 95-19-075 (Order 3897), § 388-300-0100, filed 9/18/95, effective 10/19/95.]

WAC 388-300-0200 Definitions. Except as otherwise specified, the terms used in this chapter, 388-300 WAC, shall have the same meaning as applied to the AFDC program, and terms defined under chapter 388-22 WAC and 45 CFR, part 250, part 251, part 255, and part 256.

(1) "Basic education" means an activity below the post-secondary level which includes:

(a) High school education or education designed to prepare a person to qualify for a general educational development (GED) certificate;

(b) Basic and remedial education providing a person with a basic literacy level; and

(c) Education in English as a second language (ESL) proficiency which enables a participant to understand, speak, read, or write the English language to allow employment commensurate with the participant's employment goal.

(2) "Basic literacy level" means a minimum literacy level allowing a person to function at a level equivalent to grade 8.9.

(3) "Component" means the JOBS program activities and services available under WAC 388-300-1100 and 388-300-2200 through 388-300-3100.

(4) "Component costs" means educational or training-related costs such as tuition, books, supplies, or fees paid to or required by an educational or training institution. "Component costs" include reimbursement paid to an employer who is providing on-the-job training.

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

(6) "Employability assessment" means the process by which the person's barriers to employment are identified and information gathered about the person's individual and family circumstances which may affect the person's ability to find and retain employment.

(7) "Employability plan" means a written plan for achieving the employability of a JOBS participant developed jointly by the participant and the service provider. The plan includes:

(a) The employment and training activities in which the person will be participating to become employable;

(b) Supportive services to be provided to the person which are necessary for the person to participate in the activity; and

(c) The person's need for child care during participation in the activities.

(8) "Employability planning" means the process, starting with the assessment, which has an employability plan as the desired outcome.

(9) "Employment partnership program (EPP)" means the work supplementation program as described under chapter 74.25A RCW.

(10) "Employment partnership council (EPC)" means the local council appointed by the county legislative authority in EPP sites as authorized under chapter 74.25A RCW.

(11) "GED" means general educational development.

(12) "JOBS Automated System" means the automated electronic data collection system used to identify the components or employment in which a JOBS participant is or has been participating.

(13) "JOBS eligible" means the person is an applicant for or recipient of AFDC.

(14) "One-time work-related expense" means payments for expenses needed by an applicant or recipient of AFDC to enter or maintain employment on a per-job-basis as provided for in the Washington state plan - supportive service plan (Title IV-A/F).

(15) "Participant" means an applicant for or recipient of AFDC engaged in JOBS program activities. Participation in JOBS begins with the assessment.

(16) "Satisfactory progress" means a participant in secondary or post-secondary education or job skills training:

(a) Has achieved and is maintaining a grade point average sufficient to graduate; and

(b) Is taking sufficient credit hours in required coursework to graduate from the course of study within the time frame established for the course by the institution unless:

(i) The education or training activity is coupled with another JOBS approved activity;

(ii) A particular required class is not available in the time frame; or

(iii) There are mitigating circumstances as determined by the department or the service provider which make fewer hours of class time reasonable for a participant.

(17) "Service provider" means either the department or another entity under contract or interagency agreement with the department to provide JOBS services.

(18) "Supportive services" means services as specified and to the limits in the Washington state plan - supportive services (Title IV-A/F) provided to JOBS participants. Supportive services do not include child care, and supportive services do include:

(a) Child care registration fee;

(b) Transportation reimbursement;

(c) Car repair;

(d) Clothing;

(e) Medical examinations or services;

(f) Licenses or fees;

(g) Meals and short-term lodging;

(h) Testing;

(i) Supportive counseling, education, and training;

(j) Haircuts;

(k) Relocation expenses;

(l) Tools and equipment;

(m) Work-related clothing and uniforms; and

(n) Union initiation fees.

(19) "Target group member" means:

(a) An AFDC applicant or recipient who received AFDC for thirty-six or more of the preceding sixty months;

(b) A custodial parent under twenty-four years of age who did not complete high school and is not enrolled in high school or a high school equivalent at the time of the family's application for AFDC;

(c) A custodial parent under twenty-four years of age having less than six months of employment in the last year; or

(d) A member of a family where the youngest child is within two years of ineligibility for AFDC because of age.

(20) "Work maturity" means an understanding of workplace expectations and the ability to conform to these expectations.

[Statutory Authority: Chapter 74.25A RCW and RCW 74.08.090. 95-19-075 (Order 3897), § 388-300-0200, filed 9/18/95, effective 10/19/95.]

WAC 388-300-0300 Providing program information and opportunity to participate. (1) The department shall provide applicants for and recipients of AFDC with the following information at application or, as appropriate, at redetermination:

(a) Specific information about the JOBS program; and

(b) Instruction on how to enter the program.

(2) The department shall provide information orally and in writing. In all cases the department shall provide the information in a manner designed to be understood by the applicant or recipient.

(3) The department shall ensure that information provided under subsection (1) of this section includes:

(a) The department's obligation to provide services to JOBS participants;

(b) A description of who is exempt from mandatory JOBS participation;

(c) The availability of JOBS program activities, child care, and supportive services for which a person may be eligible while participating in JOBS, including:

(i) Employment, training, and education services;

(ii) Supportive services, including but not limited to transportation reimbursement;

(iii) Child care services, including but not limited to available child care programs and information about how to select, obtain, and access assistance to obtain appropriate child care;

(iv) Transitional child care benefits; and

(v) Medical extension benefits.

(d) A clear description of how to enter the JOBS program.

(4) The department shall ensure that information provided under subsection (1) of this section includes the rights, responsibilities, and obligations of JOBS participants including, but not limited to:

(a) Consequences of refusing or failing to participate, including the effect on volunteers;

(b) The requirement of both parents in an AFDC-E household to participate in JOBS if the department guarantees child care; and

(c) The requirement that the second parent in an AFDC-E family participate in JOBS if the qualifying parent fails or refuses to participate as required without good cause.

[Statutory Authority: Chapter 74.25A RCW and RCW 74.08.090. 95-19-075 (Order 3897), § 388-300-0300, filed 9/18/95, effective 10/19/95.]

WAC 388-300-0400 Participation exemptions. (1)

The department shall determine a person's exemption status for JOBS at application, redetermination, and at any change of circumstance of the AFDC case.

(2) A recipient shall be exempt from required JOBS participation if the person is:

(a) Fifteen years of age or younger;

(b) A dependent child as defined under chapter 388-215 WAC attending full-time an elementary, secondary, vocational, or technical school;

(c) Sixty years of age or older;

(d) Ill, when the department determines on the basis of medical evidence or other sound basis that the illness or injury is serious enough to temporarily prevent entry into employment, education, or training;

(e) Incapacitated, when verified by the department that a physical or mental impairment, determined by a physician or licensed or certified psychologist, prevents the person from engaging in employment or training under JOBS. Incapacitation may include a period of recuperation after childbirth if prescribed by a physician;

(f) Residing in a remote location requiring two hours or more round-trip travel time from a JOBS program or activity site when the person uses reasonably available public or private transportation. When normal round-trip commuting time in the area is two hours or more, the department shall not consider the person to be residing in a remote location except when the person's round-trip commuting time exceeds the accepted community standards. Travel time is exclusive of time necessary to transport a child to and from a child care facility.

(g) Needed in the home to care for another ill or incapacitated household member, as determined by a physician or a licensed or certified psychologist, and no other appropriate member of the household is available to provide the needed care;

(h) Working thirty or more hours a week;

(i) Pregnant, and it has been medically verified that the child is expected to be born in the month in which participation would be required or within the following six-month period;

(j) The parent or other caretaker relative of a child less than three years of age and personally providing care for the child. The department shall require a custodial parent nineteen years of age or younger who has not completed high school or GED to participate in basic educational activities regardless of the age of the youngest child. The department shall exempt only one parent or other caretaker relative under this provision;

(k) The parent or other caretaker relative personally providing care for a child less than six years of age, unless the department assures: child care is guaranteed and that the person is not required to participate in JOBS more than twenty hours per week. The department shall exempt only one parent or other caretaker relative under this provision;

(l) A full-time volunteer serving under the Volunteers in Service to America (VISTA), under Title I of the Domestic Volunteer Service Act of 1973; or

(m) Serving a court-ordered electronic home detention sentence.

(3) The department shall:

(a) Re-evaluate the exemption status of a recipient when a condition specified in subsection (2) of this section is expected to end, but not less frequently than at the redetermination of AFDC eligibility; and

(b) Notify the recipient and appropriate service providers of a change in the recipient's exemption status within ten working days.

(4) The department shall consider an applicant or recipient of AFDC claiming exemption status from JOBS participation requirements exempt until the department determines the status of such person.

(5) A recipient of AFDC shall not be required to participate in the JOBS program until notified of the need to do so by:

(a) The department; or

(b) The tribal entity operating a tribal JOBS program.

[Statutory Authority: Chapter 74.25A RCW and RCW 74.08.090. 95-19-075 (Order 3897), § 388-300-0400, filed 9/18/95, effective 10/19/95.]

WAC 388-300-0500 Required participation. (1) The department shall ensure that before a nonexempt AFDC recipient is required to further participate in JOBS components the service provider has:

(a) Conducted an assessment of the person's employability; and

(b) Developed an employability plan for the person.

(2) The department may require a nonexempt AFDC recipient to participate in JOBS components and activities.

(3) A nonexempt AFDC recipient who is required to participate and who fails or refuses to participate in JOBS without good cause shall be subject to a sanction under WAC 388-300-3400.

(4) The department shall not require a nonexempt AFDC recipient to participate in JOBS unless the department guarantees child care under chapter 388-51 WAC and under the limitations set forth in WAC 388-300-0400(k) for a dependent child in the household who is:

(a) Twelve years of age or younger; or

(b) Thirteen years of age or older with special needs.

(5) The department may require both parents in an AFDC-E household to participate in JOBS if the department guarantees child care.

(6) The department may only require an AFDC recipient to participate in JOBS when funding is available to provide the supportive services needed by the person to participate in the required activities.

(7) The department shall sanction a nonexempt recipient who volunteers to participate in JOBS if the person fails or refuses to participate in approved employability plan components or activities. The department shall not subject volunteers for the work supplementation program, as described under WAC 388-300-2900, to a sanction for refusing or failing to participate in that activity.

(8) The department shall not impose a sanction under subsection (7) of this section until:

(a) A good cause determination is made under WAC 388-300-3200; and

(b) When appropriate, conciliation services under WAC 388-300-3300 have been offered.

[Statutory Authority: Chapter 74.25A RCW and RCW 74.08.090. 95-19-075 (Order 3897), § 388-300-0500, filed 9/18/95, effective 10/19/95.]

WAC 388-300-0600 Referral to pathways. (1) The department shall refer nonexempt AFDC applicants or recipients or exempt volunteers to specific service providers for JOBS program or other services at the time of AFDC eligibility determination or redetermination.

(2) The department shall refer one and may refer both nonexempt parents in a household applying for AFDC-E to the re-employment pathway described in WAC 388-300-0700 if the parent is:

(a) Twenty-four years of age or younger and has completed high school or GED; or

(b) Twenty-five years of age or older.

(3) The department shall refer nonexempt AFDC-R applicants to the re-employment pathway described in WAC 388-300-0700 if:

(a) The parent's most recent job in the last twelve months paid at least six dollars and fifty cents an hour; and

(b) The parent is:

(i) Eighteen years of age or older and has completed high school or GED; or

(ii) Twenty-four years of age or older.

(4) The department shall refer the following nonexempt AFDC applicants, recipients, or dependent children to the young person education pathway described in WAC 388-300-0800:

(a) Twenty-three years of age or younger nonexempt AFDC-R applicants or recipients who have not completed high school or GED;

(b) Twenty-four years of age or younger nonexempt AFDC-E applicants or recipients who have not completed high school or GED;

(c) Dependent children in an AFDC household who are:

(i) Over sixteen and under nineteen years of age; and

(ii) Not attending high school.

(5) The department shall refer any AFDC household member who appears to be disabled under WAC 388-511-1105 to the disability advocacy pathway as described under WAC 388-300-1000.

(6) The department shall refer nonexempt AFDC applicants or recipients not meeting the criteria in subsections (2), (3), and (4) of this section to the employment investment pathway described in WAC 388-300-0900.

(7) The department shall ensure that all referred persons have the opportunity to begin the assessment and employability plan development process at the person's first contact with the pathway service provider.

(8) A service provider may refer a participant to other pathway service providers when an assessment indicates an inappropriate assignment based on factors including, but not limited to, the participant's educational, physical, mental or occupational skill level, or the local labor market.

(9) The department shall inform persons of their right to complaint or grievance under WAC 388-300-3500 regarding pathway assignment at the time of such assignment.

[Statutory Authority: Chapter 74.25A RCW and RCW 74.08.090. 95-19-075 (Order 3897), § 388-300-0600, filed 9/18/95, effective 10/19/95.]

WAC 388-300-0700 Re-employment pathway. (1) The department shall ensure the re-employment pathway provides focused employment services to recipients who:

(a) Already possess job skills; or

(b) Are most likely to be re-employed with minimal services.

(2) The service provider shall ensure that persons in the re-employment pathway are provided with:

(a) An assessment of the person's employability as described in WAC 388-300-1100 and employability plan development under WAC 388-300-1200; and

(b) Supportive services in the pathway activities before assigning the person to a component.

(3) The service provider shall immediately refer the person to the employment investment pathway as described under WAC 388-300-0900 when the service provider determines under the assessment described under WAC 388-300-1100 that the person is not competitive in the local labor market.

(4) The service provider shall, within available funds, provide the following services to persons in the re-employment pathway:

(a) Job readiness training under WAC 388-300-2300;

(b) Job search assistance under WAC 388-300-2400; and

(c) ESL in conjunction with activities specified in subsections (a) and (b) of this section.

(5) The service provider shall refer participants who need child care services to the department.

(6) The service provider shall:

(a) Monitor the participant's activity to ensure that the pathway services continue to meet the employability needs of the participant; and

(b) Refer a participant to a service provider in another pathway when:

(i) An assessment of the participant's progress in obtaining employment indicates another JOBS activity is more appropriate; or

(ii) Not more than four months have elapsed.

(7) The department shall sanction under WAC 388-300-3400 those nonexempt participants who fail or refuse to participate in pathway activities in accordance with the person's employability plan developed under WAC 388-300-1200.

[Statutory Authority: Chapter 74.25A RCW and RCW 74.08.090. 95-19-075 (Order 3897), § 388-300-0700, filed 9/18/95, effective 10/19/95.]

WAC 388-300-0800 Young person education pathway. (1) The young person education pathway shall provide specialized services including parenting classes, and family planning education and services, to persons referred under WAC 388-300-0600.

(2) The department shall ensure that an AFDC custodial parent in the young person education pathway is provided with an assessment of:

(a) The person's living arrangement, as described in WAC 388-265-1275, if the person is an unmarried pregnant or parenting minor seventeen years of age or younger;

(b) Family issues which may affect the person's employability, including the needs of the participant's children; and

(c) The participant's knowledge of and need for family planning, and referral to appropriate resources.

(3) The service provider shall provide JOBS participants with:

- (a) An assessment under WAC 388-300-1100; and
- (b) Employability plan development under WAC 388-300-1200.

(4) The service provider shall ensure the JOBS components available under WAC 388-300-2200 are provided to persons in the young person education pathway within the age and program limits specified in that section.

(5) The department may require a nonexempt AFDC custodial parent in the young person education pathway to participate in the JOBS educational activities set forth in the person's employability plan.

(6) The department may require a dependent child in an AFDC household who is sixteen or seventeen years of age to participate in high school completion or GED.

(7) The service provider shall monitor the participant's activity to ensure that pathway services continue to meet the participant's employability needs.

(8) The service provider shall ensure that a person participating in a JOBS component in the young person education pathway is provided with supportive services as required for the person to participate in the activities.

(9) The service provider shall refer the participant to the department for child care services as required for the person to participate in the pathway activities.

(10) The service provider shall refer persons in the pathway to the employment investment pathway service provider when:

- (a) The person completes high school or GED; or
- (b) An assessment of the person's progress in the activities indicates that another JOBS activity or other activity is more appropriate.

(11) The department shall sanction under WAC 388-300-3400 nonexempt AFDC recipients, including nonexempt custodial parents nineteen years of age or younger who:

- (a) Have been required to participate in basic education activities under WAC 388-300-2200(5); and
- (b) Fail or refuse to participate in pathway activities in accordance with the person's employability plan under WAC 388-300-1200.

[Statutory Authority: Chapter 74.25A RCW and RCW 74.08.090. 95-19-075 (Order 3897), § 388-300-0800, filed 9/18/95, effective 10/19/95.]

WAC 388-300-0900 Employment investment pathway. (1) The employment investment pathway shall provide a participant with job search, job readiness, job skills training, or basic or post-secondary educational services, or work-related activities to assist the person to find and retain employment.

(2) The service provider shall ensure a participant in the employment investment pathway is provided:

- (a) An assessment of the person's employability as described in WAC 388-300-1100; and
- (b) Employability plan development as described in WAC 388-300-1200.

(3) The service provider shall ensure the following JOBS services are provided to persons in the employment investment pathway within available funds:

- (a) JOBS component activities described in WAC 388-300-2200 through WAC 388-300-3100 to the extent that participants meet the criteria for such components and funds are available; and

(b) Supportive services as required for the person to participate in the pathway activities.

(4) The service provider shall refer the participant to the department for child care services as required for the person to participate in the pathway activities.

(5) The service provider shall monitor the participant's JOBS activity to ensure the pathway services continue to meet the participant's employability needs.

(6) The department shall sanction under WAC 388-300-3400 a nonexempt participant who fails or refuses to participate in pathway activities in accordance with the person's employability plan developed under WAC 388-300-1200.

[Statutory Authority: Chapter 74.25A RCW and RCW 74.08.090. 95-19-075 (Order 3897), § 388-300-0900, filed 9/18/95, effective 10/19/95.]

WAC 388-300-1000 Disability advocacy pathway.

(1) The disability advocacy pathway service provider shall:

- (a) Offer facilitation services to maximize income levels available to families with disabled family members; and
- (b) Assist these family members to receive services for which they are eligible from the most appropriate state or federal program.

(2) The department shall ensure a person in the disability advocacy pathway is provided with:

- (a) An evaluation of the severity and potential duration of the person's potentially disabling condition using WAC 388-511-1105;
- (b) Referral to division of vocational rehabilitation, as appropriate; and
- (c) As appropriate, assistance to a person filing application for:
 - (i) Old age and survivor's disability insurance;
 - (ii) Supplemental security income; and
 - (iii) Medicaid; or
 - (iv) An appeal to an adverse decision made by the Social Security Administration regarding the person's eligibility for such benefits as provided under Titles II, XVI, and XIX of the Social Security Act.

(3) The department shall not require a person to apply for federal services or benefits to replace receipt of AFDC benefits for the person or the person's child.

(4) The department may refer a person in the disability advocacy pathway to another pathway or another type of service when an assessment indicates another service is more appropriate or will more effectively meet the person's needs.

[Statutory Authority: Chapter 74.25A RCW and RCW 74.08.090. 95-19-075 (Order 3897), § 388-300-1000, filed 9/18/95, effective 10/19/95.]

WAC 388-300-1100 Employability assessment. (1) The service provider and the participant shall jointly complete an assessment of the participant's employability before the person's participation in a JOBS component.

(2) The service provider must provide the person with an assessment prior to the person beginning any JOBS activity including initial job search.

(3) The service provider shall ensure the person has the opportunity to begin the assessment process within ten working days of the date the person was referred to the service provider.

(4) The service provider shall assess the participant's employability based on the person's:

- (a) Literacy level and English language proficiency;
- (b) Educational level and school experiences;
- (c) Age;
- (d) Occupational skills;
- (e) Work maturity skills;
- (f) Job finding skills;
- (g) Skills deficiencies;
- (h) Work history;
- (i) Occupational aptitudes and employment goal preference;
- (j) Mental or physical limitations;
- (k) JOBS supportive service needs including transportation reimbursement;
- (l) Needs for child care;
- (m) Local labor market in terms of currently available and future employment opportunities; and
- (n) Other factors which the department determines to be relevant to the employability of the participant.

(5) The service provider shall ensure the employability assessment includes a review of the family circumstances including the needs of the participant's children.

(6) The service provider:

- (a) Shall conduct the assessment through face-to-face interviews, which are preferable, telephone conversations, or other forms of direct communication; and
- (b) May use various methods including testing and self-assessment instruments.

[Statutory Authority: Chapter 74.25A RCW and RCW 74.08.090. 95-19-075 (Order 3897), § 388-300-1100, filed 9/18/95, effective 10/19/95.]

WAC 388-300-1200 Employability plan. (1) The service provider and the participant shall jointly develop an employability plan based on the assessment described in WAC 388-300-1100.

(2) The service provider shall ensure the elements identified in the assessment under WAC 388-300-1100 (4) and (5) are considered when developing an employability plan with the participant.

(3) The service provider shall take into consideration the following elements when developing an employability plan with and for the participant:

- (a) Preferences of the participant to the extent possible given the goals and constraints of the department, including program resources, available services, and local employment opportunities;
- (b) Available JOBS program resources; and
- (c) The federal requirements for participation rate, target group expenditure rate, and unemployed parent program participation rate to ensure the continuation of enhanced federal matching rates for state funds.

(4) The service provider shall ensure that the employability plan contains an employment goal which has been developed in consultation with the participant.

(5) The service provider shall have employment goal approval authority within the following guidelines:

- (a) The employment in the occupation is available in the participant's local labor market; and

(b) The employment goal provides the participant with wages which lead to the person's family becoming self-supporting; and

(c) The participant does not have competitive skills in an occupation different than the proposed employment goal at a wage at or above the AFDC needs standard as specified in chapter 388-250 WAC; and

(d) The participant has competitive skills only in an occupation which is seasonal in nature and provides annual wages below the AFDC needs standard as specified in chapter 388-250 WAC; and

(e) The participant requires twenty-four months or less to complete a job skills training program at a technical college or employment certification program at a community college as specified under WAC 388-300-2500 in order to be competitive in the local labor market in the occupation; or

(f) The participant requires ninety quarter credit hours or sixty semester credit hours or less to complete an associate degree or a baccalaureate degree excluding prerequisite courses at an institution as specified under WAC 388-300-2600 to be competitive in the labor market in the occupation.

(6) The service provider shall consult with the department when the employment goal may be appropriate but does not meet the guidelines in subsection (5) of this section.

(7) The service provider shall inform the participant of the participant's right to discuss the employment goal or component assignment with a representative of the department when the participant and the service provider do not agree on the appropriateness of an employment goal or component assignment offered for approval by either the participant or the service provider.

(8) The department shall have final approval authority for a participant's employment goal and component assignment. The department shall base the approval decision on information obtained through the assessment process under WAC 388-300-1100, information provided on the employability plan as described under WAC 388-300-1200, and may gather additional information from the participant and the service provider to assist in the decision-making process.

(9) Participants who have been denied approval of an employment goal or component assignment shall have the right to file a grievance, request conciliation or request a fair hearing.

(10) The service provider shall ensure that the employability plan includes:

- (a) Labor market information relative to the employment goal;
- (b) The component activities to be undertaken by the participant as approved under WAC 388-300-1200.
- (c) The supportive services and child care needed by the participant to take part in JOBS;
- (d) Any other needs of the family that might be met by JOBS, such as participation of a dependent child in drug education or life skills planning sessions; and
- (e) Any job search or other participation requirements placed upon the participant.

[Statutory Authority: Chapter 74.25A RCW and RCW 74.08.090. 95-19-075 (Order 3897), § 388-300-1200, filed 9/18/95, effective 10/19/95.]

WAC 388-300-1300 Component approval. (1) The service provider shall approve a component for inclusion on

an employability plan before the participant may begin participation in the component.

(2) A participant is not eligible for JOBS funding for component costs, supportive services, or child care for a component unless the service provider has approved the component or the component would meet the approval criteria for inclusion on the person's employability plan.

(3) The service provider shall approve job search for inclusion on a participant's employability plan when the participant would benefit from labor market information, assistance in identifying prospective employers, and other guidance provided in the job search component while conducting a focused job search effort.

(4) The service provider shall approve other components for inclusion on a participant's employability plan when the following criteria have been met:

(a) The participant requires new or additional vocational, occupational, job search, job readiness, or other employment-related skills and abilities in order to find and retain employment in the local labor market at a wage at or above the AFDC needs standard specified in chapter 388-250 WAC; and

(b) The component provides specific occupational skills or abilities needed by the participant to enter or re-enter employment in the participant's approved employment goal; and

(c) The component will enable the participant to become employed in the participant's approved employment goal; and

(d) Objective measurements such as tests or previous academic achievement indicate the participant possesses the aptitude, skills, or abilities to complete the component and work in the occupation; and

(e) Completion of the component does not provide the participant with an associate or bachelor degree or post-graduate degree if the participant already possesses a bachelor degree; and

(f) The component does not:

(i) Include religious worship, exercise, or instruction; or

(ii) Serve to assist, promote, or deter religious activity;

and

(g) The participant meets the specific component criteria as listed in WAC 388-300-2200 through WAC 388-300-3100.

[Statutory Authority: Chapter 74.25A RCW and RCW 74.08.090. 95-19-075 (Order 3897), § 388-300-1300, filed 9/18/95, effective 10/19/95.]

WAC 388-300-1400 Funding priority criteria. (1)

The department shall ensure that JOBS funds are obligated and expended in a manner that maximizes JOBS program federal match rates as specified in 45 CFR 250.73 and 45 CFR 250.74.

(2) The department shall have the authority (2) to adjust funding levels among priority groups in subsection (3) of this section when the department is not meeting the following federal requirements:

(a) Fifty-five percent of all JOBS funds expended on target group members;

(b) Achievement of the required participation rate of nonexempt AFDC recipients in JOBS program components as specified in 45 CFR 250.74; and

(c) Achievement of the required AFDC-E program participation rate in work-related JOBS program components or employment under WAC 388-300-2100 as specified in 45 CFR 250.74.

(3) To achieve the federal requirements specified in subsection (2) of this section, the department shall make JOBS funded services available to eligible AFDC-E and AFDC-R households in the following priority:

(a) All AFDC-E cases;

(b) Exempt and nonexempt target group AFDC-R cases provided that volunteers are given first consideration in determining the priority of participation within target groups;

(c) All other nonexempt cases; and

(d) All other cases or dependents.

(4) The service provider shall approve JOBS component costs, supportive services, or child care already identified on the person's employability plan when the participant has made independent changes in any of the following plan elements to the extent that the service provider approves such changes:

(a) Employment goal;

(b) Course of educational or training activities; or

(c) Component activity.

(5) The department shall ensure that a participant continues to receive funding to support the components and supportive services identified in the participant's employability plan if the participant:

(a) Changes geographic location to the extent that the person's AFDC case management is transferred to a different community service office in Washington state; and

(b) Continues the plan activities without interruption.

(6) The service provider shall allocate its funds in accordance with the priority groups identified in subsection (3) of this section, to the extent funds are available.

(7) The service provider shall fund component costs and supportive services identified on the employability plan, in accordance with the priority groups listed in subsection (3) of this section, when the service provider has approved components.

(8) The service provider shall fund a participant's one-time work-related services without regard to the priority group status of the participant.

[Statutory Authority: Chapter 74.25A RCW and RCW 74.08.090. 95-19-075 (Order 3897), § 388-300-1400, filed 9/18/95, effective 10/19/95.]

WAC 388-300-1500 Annual review for continued funding. (1) The service provider shall review all employability plans to determine whether to continue funding the participant's employability plan components after the close of a state fiscal year.

(2) The service provider shall conduct annual reviews before the beginning of the federal fiscal year (October 1).

(3) The service provider shall perform the following tasks at the annual review of each participant:

(a) Determine if the participant is making satisfactory progress or is participating satisfactorily in the most recently assigned component based on the reviews of the participant's progress conducted throughout the previous year;

(b) Approve components for inclusion on the employability plan for the following state fiscal year;

(c) Obligate funds for component costs and supportive services approved for inclusion on the participant's employability plan in accordance with the funding priorities established in WAC 388-300-1400 for those participants who entered the JOBS program on or after the effective date of this chapter; and

(d) Obligate funds for component costs and supportive services to support components approved prior to the effective date of this chapter without regard to the funding priorities established in WAC 388-300-1400 if the participant is:

(i) Making satisfactory progress; or

(ii) Participating satisfactorily in the components identified on the employability plan.

(4) The service provider shall have the authority to establish waiting lists for participants who have been denied component activities because of a lack of available funds for that specific component.

[Statutory Authority: Chapter 74.25A RCW and RCW 74.08.090. 95-19-075 (Order 3897), § 388-300-1500, filed 9/18/95, effective 10/19/95.]

WAC 388-300-1600 Component costs and supportive service funding conditions. (1) A JOBS participant shall use other funding sources, such as Pell grants or VISTA stipends, before receiving JOBS funding for post-secondary and job skills training component costs and supportive services costs, as described under chapter 388-51 WAC.

(2) The department shall not require a participant to accept student loans when offered as part of a student financial aid package.

(3) The department shall not authorize funding of components costs for participants participating in self-initiated education or training under WAC 388-300-3000.

(4) A JOBS participant shall be eligible for JOBS funding of component costs, supportive services, and child care for a component when:

(a) The service provider has approved the component for inclusion on the person's employability plan; and

(b) The person has provided the service provider with all information regarding student financial aid or other available resources; and

(c) The person is a member of a priority group for which funding is available; or

(d) Funding for component costs or supportive services were previously denied due to lack of funds, provided that:

(i) Funds subsequently become available; and

(ii) The participant was on a waiting list for funding under WAC 388-300-1700.

[Statutory Authority: Chapter 74.25A RCW and RCW 74.08.090. 95-19-075 (Order 3897), § 388-300-1600, filed 9/18/95, effective 10/19/95.]

WAC 388-300-1700 Lack of program funds. (1) The department shall establish waiting lists for referrals to service providers when the service provider has exhausted available pathway funds.

(2) The department shall:

(a) Determine which priority groups will be deferred to waiting lists;

(b) Create referral waiting lists for participants who have been denied access to services due to lack of priority group funds;

(c) Rank participants on the waiting list for the person's priority group according to the date the participant was denied access to program services; and

(d) Issue the participant a written notice that access to services are denied due to lack of funds.

(3) If funds become available during the state fiscal year, the department shall refer the participant to a program service provider according to:

(a) The priority group status of the participant; and

(b) The participant's ranking in the priority group as determined under subsection (2)(c) of this section.

(4) When a service provider has exhausted funds or capacity to deliver services for component costs or supportive services for specific components, the service provider shall:

(a) Inform the department that funds are not available to support an approved component for a specific JOBS participant;

(b) Create funding waiting lists for participants who will be issued written funding denials by the department based on the lack of component funds; and

(c) Place a participant on a waiting list for component funding when funding is not available. The service provider shall rank the participant on the list according to the date the service provider informed the department that funding was not available for that person.

(5) The department shall issue any funding denial notices required due to lack of program funds under subsections (1) or (4) of this section in accordance with WAC 388-300-1900.

[Statutory Authority: Chapter 74.25A RCW and RCW 74.08.090. 95-19-075 (Order 3897), § 388-300-1700, filed 9/18/95, effective 10/19/95.]

WAC 388-300-1800 Termination of payments for component costs, supportive services, and child care. (1) The service provider shall terminate payments for component costs or supportive services related to an approved component when so directed by the department.

(2) The department may direct the service provider to terminate component cost or supportive service payments when:

(a) The service provider has notified the department that the participant:

(i) Is not meeting the definition of satisfactory progress in WAC 388-300-0200; or

(ii) Has ceased to participate in the component before completion of the activity;

(b) The department independently determines the conditions in subsection (2)(a) of this section exist.

(3) The department may terminate child care payments when:

(a) The JOBS service provider has notified the department that the participant:

(i) Is not meeting the definition of satisfactory progress in WAC 388-300-0200;

(ii) Has ceased to participate in the component before completion of the activity.

(b) The department independently determines the conditions in subsection (3)(a) of this section exist. However, the department must notify both the JOBS service provider and the child care service provider of such termination at the time the department sends notice to the participant.

(4) The department shall ensure that participants whose component costs and supportive services are terminated under subsection (2) of this section receive advance written notice under WAC 388-300-1900.

(5) Participants shall have the right to appeal decisions made under this section through the department's fair hearing process under WAC 388-300-3600.

[Statutory Authority: Chapter 74.25A RCW and RCW 74.08.090. 95-19-075 (Order 3897), § 388-300-1800, filed 9/18/95, effective 10/19/95.]

WAC 388-300-1900 Notice of component decisions or funding decisions. (1) The department shall provide participants with written notification of decisions regarding denial of:

(a) Components considered for inclusion on an employability plan; or

(b) Funding of component costs, supportive services, or child care.

(2) The department shall provide participants with written notification of departmental decisions to terminate previously approved component costs and supportive services.

(3) The department shall ensure denial or termination include:

(a) The reason for the decision;

(b) A statement of the legal basis for the action;

(c) A description of the component, component cost, supportive service, or child care which has been denied or which will be terminated;

(d) The amount of funds denied or disallowed for continued payment in the case of terminations; and

(e) The circumstances under which the person is entitled to continued JOBS or AFDC benefits pending the outcome of a fair hearing under WAC 388-300-3600.

(4) The department shall notify participants of a decision to deny components, component costs, supportive services, or child care within ten working days of the denial decision.

(5) The department shall notify participants of the service provider's intention to terminate component costs or supportive services at least ten working days prior to the termination or other action.

(6) The department shall ensure the written notification sent to participants informs the participant of their right to appeal any part of the decision under WAC 388-300-3600.

[Statutory Authority: Chapter 74.25A RCW and RCW 74.08.090. 95-19-075 (Order 3897), § 388-300-1900, filed 9/18/95, effective 10/19/95.]

WAC 388-300-2000 Child care. (1) The department shall guarantee a JOBS participant Title IV-A child care under chapter 388-51 WAC for the period of time the participant is:

(a) Participating in an approved JOBS component or an approvable component under WAC 388-300-1300;

(b) Waiting to enter JOBS or employment and during gaps in participation within the following limitations:

(i) For up to two weeks in normal circumstances; or

(ii) For up to one month if child care would otherwise be lost and the activity is scheduled to begin during the month.

(c) For employment for the period of time available for transitional child care under chapter 388-51 WAC.

(2) The department shall not deny a JOBS participant child care due to the lack of program funds for component costs and supportive services if the person is participating in an approved component under WAC 388-300-1300 without JOBS program funding.

(3) The department may terminate JOBS child care if approved components are terminated as described under WAC 388-300-1800.

[Statutory Authority: Chapter 74.25A RCW and RCW 74.08.090. 95-19-075 (Order 3897), § 388-300-2000, filed 9/18/95, effective 10/19/95.]

WAC 388-300-2100 Unemployed parent program.

(1) The department may require one or both parents in an AFDC-E household to participate a minimum of sixteen hours a week in one or a combination of the following JOBS components or employment-related activities:

(a) WEX;

(b) OJT;

(c) Work supplementation;

(d) Unsubsidized employment;

(e) Job search for the first two months of AFDC eligibility; or

(f) Work study assignments which are part of a student financial aid package.

(2) The department may require an AFDC-E parent twenty-four years of age or younger who has not completed high school or equivalent to participate in educational activities as described in WAC 388-300-2200 in lieu of the activities in subsection (1) of this section.

(3) The department shall consider a person making satisfactory progress, as defined in WAC 388-300-0200, in an educational activity provided for in subsection (2) of this section to be meeting the participation requirements for the unemployed parent program.

[Statutory Authority: Chapter 74.25A RCW and RCW 74.08.090. 95-19-075 (Order 3897), § 388-300-2100, filed 9/18/95, effective 10/19/95.]

WAC 388-300-2200 Basic educational activities. (1) The department may require specific AFDC recipients who have not completed high school or GED certification to participate in basic educational activities.

(2) The service provider shall ensure that high school, GED certification or other educational activities are included in the employability plan for the following participants:

(a) A custodial parent nineteen years of age or younger who has not completed high school or equivalent;

(b) An AFDC-E parent who has not completed high school or equivalent and is:

(i) Twenty-four years of age or younger; and

(ii) Not participating in at least sixteen hours per week in work activities or unsubsidized employment as described under WAC 388-300-2100; or

(c) Dependent children in an AFDC household who are sixteen or seventeen years of age who have not completed high school or equivalent and are not in high school.

(3) When a participant requests, the service provider shall have the authority to assign a participant to JOBS components other than high school completion or GED certification if the participant is:

(a) An AFDC-R custodial parent twenty to twenty-four years of age who has:

(i) A basic literacy level; and

(ii) An approved employment goal which does not require a high school diploma or GED and has demonstrated a capacity to find and retain employment in that occupation;

(b) An AFDC-R custodial parent eighteen or nineteen years of age who:

(i) Is participating in another JOBS program activity which will lead to the person's earning wages at or above the AFDC need standard as specified in chapter 388-250 WAC; or

(ii) Has been denied admittance to a school or a training institution due to the participant's behavior or the institution's administrative reasons;

(c) An AFDC-R custodial parent or a dependent child sixteen or seventeen years of age when:

(i) An individual assessment, which does not rely solely on grade completion, indicates that the education or GED is not in the best interests of the person or the person's family; and

(ii) The person is participating in another JOBS educational activity or in skills training activities, combined with education.

(4) The department may require nonexempt custodial parents eighteen or nineteen years of age to participate in training or work activities, subject to the twenty-hour limit in WAC 388-300-0400 instead of high school completion or GED certification when:

(a) The parent fails to make satisfactory progress in successfully completing the educational activity; or

(b) Participation in educational activities is inappropriate for the parent based on an educational assessment and the parent's employment goal. The department shall ensure such determinations:

(i) Occur before an education activity assignment; and

(ii) Are based on an employment goal described in the employability plan.

(5) The department may require basic and remedial education for any JOBS participant who:

(a) Has not completed a high school education;

(b) Does not have at least a grade 8.9 basic literacy level; and

(c) Is twenty years of age or older and needs basic literacy services to function at a level which meets the standards of local employers.

(6) The department shall require English proficiency education for a participant who lacks sufficient English language skills to allow employment commensurate with the participant's approved employment goal.

(7) Service providers shall encourage a JOBS participant to participate in educational components as one component in an employability plan when the participant:

(a) Has not completed high school;

(b) Does not demonstrate basic literacy level achievement;

(c) Has an employment goal which requires high school completion or GED; or

(d) Needs remedial or English proficiency education to meet current standards of the local labor market.

(8) The service provider shall require all participants in educational activities to participate full-time, as defined by the educational institution, unless the participant is concurrently engaged in another JOBS component.

[Statutory Authority: Chapter 74.25A RCW and RCW 74.08.090. 95-19-075 (Order 3897), § 388-300-2200, filed 9/18/95, effective 10/19/95.]

WAC 388-300-2300 Job readiness activities. (1)

The department shall ensure job readiness activities prepare participants for work by assuring that participants:

(a) Are familiar with general workplace expectations; and

(b) Exhibit work behavior and attitudes necessary to compete successfully in the labor market.

(2) Job readiness activities include, but are not limited to:

(a) Life skills training, including, but not limited to, self-esteem building and communication skills training;

(b) Job search techniques, including, but not limited to:

(i) Resume writing skill development;

(ii) Interviewing skills development; and

(iii) Job search skill development related to accessing unadvertised job openings.

(c) Identifying employer expectations; and

(d) Learning how to access and use labor market information for the purpose of identifying which employers are most likely to be hiring employees; and

(e) Job retention skills including, but not limited to:

(i) Conflict resolution;

(ii) Time management; and

(iii) Decision making.

(3) Within available funds, the service provider shall require a participant to participate in job readiness when the participant:

(a) Lacks job search skills;

(b) Does not have recent work history;

(c) Lacks work maturity skills;

(d) Has a history of poor job retention; or

(e) Is a young parent involved in education components.

[Statutory Authority: Chapter 74.25A RCW and RCW 74.08.090. 95-19-075 (Order 3897), § 388-300-2300, filed 9/18/95, effective 10/19/95.]

WAC 388-300-2400 Job search program. (1)

The department shall ensure the job search program provides a participant with information, job seeking skills training, one-to-one support, and counseling needed by the participant to find and to retain employment.

(2) The department shall ensure the following time limits are applied to job search:

(a) In the initial twelve consecutive months that a family is on assistance, the department shall not require participation in job search for more than sixteen weeks within the following limits:

(i) An initial eight week period which begins on the date of the application for assistance and continues for eight consecutive calendar weeks; and

(ii) An additional eight week period which can begin at any time following the initial eight week period of job search and does not have to be completed during consecutive calendar weeks. "An additional eight week period" means eight weeks of full-time participation or the equivalent. An equivalent to full-time for eight weeks includes twenty hours a week for sixteen weeks, or one day a week for forty weeks.

(b) During subsequent years that a family is on assistance, the person is eligible for job search for eight weeks of full-time participation or the equivalent, as stated in (2)(a)(ii);

(c) The department may require a participant to participate in job search beyond the sixteen week period in the initial year and the eight week period during subsequent years only if job search is performed as part of an educational, training, or employment component. For example, a JOBS participant may be required to conduct a search for unsubsidized employment one day per week while participating in WEX; and

(d) The department shall ensure that if a family becomes ineligible for AFDC, then reappplies, the potential JOBS participant becomes eligible for an additional sixteen weeks of job search, as provided under subsections (2)(a)(i) and (ii) of this section.

(3) Participants in job search activities may engage in activities including, but not limited to:

(a) Applying for job openings listed in newspapers or with public or private agencies;

(b) Interviewing with employers for potential job openings;

(c) Attending classes or workshops designed to provide instruction or assistance with the job application process and resume writing or interviewing with employers;

(d) Meeting with the service provider one-to-one or with a group to develop an effective approach to finding employment; and

(e) Accepting referral to prospective unsubsidized job openings developed for the participant by the service provider.

(4) The service provider may require nonexempt applicants or recipients to participate in job search when it is included on the participant's employability plan developed under WAC 388-300-1200.

(5) The service provider shall establish specific requirements for each participant in job search including, but not limited to:

(a) The number of employer contacts to be made by the participant each week;

(b) The type of employment sought by the participant; and

(c) The frequency of required reporting back to the service provider.

(6) The department shall allow exempt target and nontarget AFDC applicants and recipients to volunteer for job search within available funds.

(7) The service provider may assign a participant in the employment investment pathway to job search when job

search services will assist the person enter or re-enter employment and the participant:

(a) Has recent work history; and

(b) Has skills for employment currently available in the participant's local labor market;

(c) Is completing or assigned to job readiness or a work-related component; or

(d) Volunteers to participate in job search.

(8) The service provider shall ensure that the component meets the criteria for approval in WAC 388-300-1300.

(9) The department may require a person to participate or a person may volunteer to participate in initial job search under subsection (2) of this section provided:

(a) An applicant is not required to participate in initial job search as a condition of eligibility for AFDC;

(b) The department does not delay the processing of a person's application for AFDC due to participation in initial job search;

(c) The service provider has conducted an assessment of the participant's employability under WAC 388-300-1100; and

(d) Initial job search may extend beyond the date of eligibility determination.

(10) The service provider may require job search under subsection (2)(c) of this section if it is designed to improve the participant's employment prospects.

(11) The service provider shall terminate job search if an assessment of the person's progress in obtaining employment indicates another JOBS activity is more appropriate.

(12) The service provider shall refer the participant to the employment investment pathway or other services within the pathway if job search is terminated under subsection (11) of this section.

[Statutory Authority: Chapter 74.25A RCW and RCW 74.08.090, 95-19-075 (Order 3897), § 388-300-2400, filed 9/18/95, effective 10/19/95.]

WAC 388-300-2500 Jobs skills training. (1) The department shall ensure job skills training provides a participant with specific occupational skills through instruction in a classroom, laboratory, or workshop setting.

(2) The service provider shall approve job skills training for inclusion in a participant's employability plan when:

(a) The participant has an approved employment goal which requires the participant to acquire occupational skills beyond those the person currently possesses provided that such skills could not be achieved through participation in available openings in:

(i) On-the-job training under WAC 388-300-2800; or

(ii) The work experience program under WAC 388-300-2700.

(b) The criteria for approving a JOBS component for inclusion in a participant's employability plan under WAC 388-300-1300 have been met;

(c) Completion of the job skills training would take no more than twenty-four months; and

(d) The participant has fulfilled all entrance requirements set forth by the institution.

(3) The service provider shall ensure that job skills training is available to a parent in an AFDC-E household only when at least one parent in the household is participating a minimum of sixteen hours a week in a component

allowed under the unemployed parent program under WAC 388-300-2100.

(4) Institutions providing job skills training must be:

(a) An institution of higher education defined under section 11(a) or section 381 (a), (b), or (c) of the Higher Education Act of 1965, as amended;

(b) A vocational school meeting the provisions of section 435 (b) or (c) of the Higher Education Act, as amended; or

(c) A public institution the state has authorized to provide such a program within the state.

[Statutory Authority: Chapter 74.25A RCW and RCW 74.08.090. 95-19-075 (Order 3897), § 388-300-2500, filed 9/18/95, effective 10/19/95.]

WAC 388-300-2600 Post-secondary education. (1)

The department shall ensure post-secondary education provides a participant with specific academic instruction and occupational skills through instruction in a classroom setting.

(2) Within available funds, the service provider shall approve post-secondary education for inclusion in a participant's employability plan when the participant:

(a) Has an approved employment goal which requires that the participant acquire occupational skills beyond those which could be achieved through participation in:

(i) Job skills training under WAC 388-300-2500; or

(ii) On-the-job training under WAC 388-300-2800; or

(iii) The work experience program under WAC 388-300-2700.

(b) Meets the criteria for approving a JOBS component for inclusion in an employability plan as set forth in WAC 388-300-1300; and

(c) Is within ninety quarter credit hours or sixty semester hours of completion of the course of study.

(3) The service provider shall ensure that post-secondary education is available to a parent in an AFDC-E household only when at least one parent in the household is participating a minimum of sixteen hours a week in a component allowed under the unemployed parent program as described in WAC 388-300-2100.

(4) The service provider shall only consider component approval when the institution providing the post-secondary education is:

(a) An institution of higher education as defined under section 11(a) or section 481 (a), (b), or (c) of the Higher Education Act of 1965, as amended; or

(b) A public institution the state has authorized to provide such a program within the state.

[Statutory Authority: Chapter 74.25A RCW and RCW 74.08.090. 95-19-075 (Order 3897), § 388-300-2600, filed 9/18/95, effective 10/19/95.]

WAC 388-300-2700 Work experience program (WEX). (1) The department shall ensure WEX provides a

JOBS participant with:

(a) Instruction in work practices essential to increase work maturity;

(b) The opportunity to exercise skills specific to employment in a supervised employment site with a public or private nonprofit employer;

(c) The opportunity to experience working and learning what the demands of employment are, both on the job and at home; and

(d) The opportunity to conduct job search or participate in job readiness activities while participating in a work activity.

(2) The service provider shall consider WEX for inclusion in a participant's employability plan when the participant:

(a) Is an AFDC-E household member who has been unsuccessful in finding employment during the previous eight or more weeks of job search;

(b) Possesses job skills but needs current work history;

(c) Lacks work maturity; or

(d) Has been unable to retain previous employment for reasons other than labor market conditions.

(3) The service provider shall take into consideration the participant's prior education, training, proficiency, experience, skills, basic literacy, interests, and barriers to employment when determining if WEX is an appropriate assignment for a participant.

(4) The service provider shall ensure:

(a) The component meets the conditions for approval in WAC 388-300-1300;

(b) An AFDC recipient's employment has priority over participation in WEX;

(c) WEX assignments serve a useful public purpose in a public or private nonprofit organization; and

(d) Agencies providing WEX opportunities meet appropriate standards of health, safety, and other reasonable working conditions at the work site.

(5) The department shall ensure that WEX positions:

(a) Meet the conditions of WAC 388-300-3700 regarding displacement of regular employees; and

(b) Are not used to fill vacant, unfilled positions.

(6) The service provider may require a nonexempt AFDC recipient to participate in WEX assignments for up to twenty hours a week based on the participant's work experience needs and available funding;

(7) The service provider shall ensure that participants assigned to WEX are:

(a) Assigned to one WEX assignment for not more than nine months;

(b) Re-assessed following the completion of each WEX assignment;

(c) Covered by industrial insurance as required under Title 51 RCW;

(d) Not required to perform tasks which:

(i) Are in any way related to religious, political, electoral, or partisan activities; or

(ii) Would result in the displacement of a person currently employed as provided under WAC 388-300-3700.

(e) Not required to travel unreasonable distances from home or to remain away from home overnight to participate in the WEX assignment without the participant's consent; and

(f) Not be required to use income or resources to pay WEX participation costs.

[Statutory Authority: Chapter 74.25A RCW and RCW 74.08.090. 95-19-075 (Order 3897), § 388-300-2700, filed 9/18/95, effective 10/19/95.]

WAC 388-300-2800 On-the-job training (OJT). (1)

The department shall ensure OJT provides a participant with occupational skills through training at a work site.

(2) The service provider shall consider on-the-job training for inclusion in a participant's employability plan when:

(a) The participant lacks skills which are in demand in the local labor market at a wage level that will make the participant's family ineligible for an AFDC grant due to earnings;

(b) The participant has basic skills in an occupation, but requires additional occupational skills beyond those which could be achieved through participation in the work experience program under WAC 388-300-2700;

(c) The criteria for approving a JOBS component for inclusion in an employability plan have been met as set forth in WAC 388-300-1300; and

(d) The participant meets the employer's standards for educational achievement.

(3) The service provider shall ensure:

(a) OJT assignment hours are consistent with the hours in the normal work week for the occupation;

(b) The OJT assignment duration is consistent with the federal Department of Labor Dictionary of Occupational Titles Specific Vocational Preparation occupational guidelines; and

(c) The total amount of the reimbursement paid to the employer does not exceed fifty percent of the total gross wages for regular hours including, as appropriate, gross wages paid to the participant for release time for training.

(4) OJT participants shall be compensated:

(a) At the same rates, including benefits and periodic increases, as similarly situated employees or trainees; and

(b) In accordance with applicable law, but in no event less than the higher of the federal minimum wage or applicable state or local minimum wage.

(5) The department shall provide child care for OJT participants under the income assistance child care program as described in chapter 388-51 WAC.

(6) If an OJT participant becomes ineligible for AFDC due to earned income rules, or in the case of a principal earner in an unemployed parent case due to the one hundred hour rule, such person shall:

(a) Remain a JOBS participant for the duration of the OJT; and

(b) Be eligible for child care and other supportive services as described under chapter 388-51 WAC.

(7) The service provider shall ensure the participant's OJT assignment meets the following conditions:

(a) State or local safety and health standards;

(b) Assignments are not related to political, electoral, religious, or partisan activities;

(c) The employer provides industrial insurance coverage as required under Title 51 RCW; and

(d) The employer provides unemployment compensation coverage for the participant as required under Title 50 RCW.

(8) The department shall require that no work assignment under this program displaces regular employees as specified under WAC 388-300-3700.

(9) The department shall ensure that funds available to carry out the program are not used to assist, promote, or deter union organizing.

(10) When an OJT agreement has been terminated due to the displacement of a regular employee, the JOBS

participant's continued employment with the employer shall be at the sole discretion of the person and the employer.

(11) The service provider shall terminate the subsidized employment of JOBS participants if the place of employment or its regular employees are involved in a strike, lockout, or bona fide labor dispute.

[Statutory Authority: Chapter 74.25A RCW and RCW 74.08.090. 95-19-075 (Order 3897), § 388-300-2800, filed 9/18/95, effective 10/19/95.]

WAC 388-300-2900 Work supplementation program (WSP). (1) The department shall ensure WSP provides employment opportunities to an otherwise eligible AFDC recipient by using all or part of the person's AFDC grant to subsidize the person's wages for up to nine AFDC payment months.

(2) The department may operate WSP as the employment partnership program (EPP) described in chapter 74.25A RCW with the following provisions:

(a) The department shall contract with local community-based organizations to develop employment positions in EPP; and

(b) Participation in WSP shall be voluntary.

(3) An AFDC recipient shall not be subject to sanction under AFDC rules for refusal to or failure to participate in WSP.

(4) The department shall consider WSP participants to be employed from the date of hire by the employer.

(5) WSP participants are eligible for:

(a) JOBS one-time work-related expenses for the first thirty days of employment in a WSP assignment;

(b) The thirty dollars plus one-third of earned income exclusion from income; and

(c) The work-related expense disregards.

(6) The department shall ensure that the WSP participant is considered an AFDC recipient regardless of the family's receipt of a residual AFDC grant.

(7) The department shall ensure that an AFDC-E qualifying parent participating in WSP is considered to be in a JOBS component rather than in employment for purposes of the one hundred hour rule and therefore is not categorically ineligible for AFDC due to working one hundred or more hours a month.

(8) The department shall ensure that child care payments are available for any eligible children of the participant for the full length of the WSP employment.

(9) An eligible employer shall certify to the service provider or to the local employment partnership council in EPP sites that the employee's employment complies with the following conditions:

(a) Work conditions are reasonable and not in violation of applicable federal, state, or local safety and health standards;

(b) Employment activities are not related to religious, political, electoral, or partisan activities;

(c) The employer provides industrial insurance coverage as required under Title 51 RCW;

(d) The employer provides the participant with unemployment compensation coverage as required under Title 50 RCW; and

(e) Participants hired following the completion of the subsidy period shall be provided benefits equal to those provided to other employees including:

- (i) Social security coverage;
- (ii) Sick leave;
- (iii) The opportunity to join a collective bargaining unit; and
- (iv) Medical benefits.

(10) The department shall ensure that no work activity under this program:

(a) Conflicts with WAC 388-300-3700; or

(b) Fills an established, unfilled position vacancy in the work site.

(11) The department shall ensure that funds available to carry out the program are not used to assist, promote, or deter union organizing.

(12) When a work supplementation agreement has been terminated due to displacement of a regular employee, the JOBS participant's continued unsubsidized employment with that employer is at the sole discretion of the person and the employer.

(13) The department shall terminate WSP subsidies to an employer which becomes involved in a strike, lockout, or bona fide labor dispute after the WSP subsidy period begins.

(14) The department shall ensure that work activities under this program have promotional opportunities or reasonable opportunities for an increase in the employee's wage.

(15) The department shall ensure that EPP positions under WSP pay a minimum of five dollars per hour.

(16) Employers who participate in WSP may receive subsidies at a rate of up to fifty percent of the employee's total gross wages.

(17) The department shall determine Medicaid eligibility for a participant who is ineligible for a residual AFDC grant as if the participant were an AFDC recipient.

(18) The department shall determine that a participant who is ineligible for a residual cash grant due only to WSP participation remains eligible for Medicaid benefits.

(19) Under chapter 74.25A RCW, the legislative authority in the county in which EPP is operating shall appoint an Employment Partnership Council (EPC).

(20) Under chapter 74.25A RCW, the EPC shall have responsibility for:

(a) Recruiting and encouraging local employers to create new job opportunities for AFDC recipients through EPP;

(b) Accepting employer's certification of compliance with the conditions set forth in subsection (3) of this section;

(c) Determining if employers have terminated an EPP employee's unsubsidized employment without good cause as required under subsection (20)(b) of this section; and

(d) Recommending to the department that subsidies should be recovered when an employer has terminated an EPP employee for reasons other than good cause.

(21) When an EPP work assignment does not last six months following the EPP subsidization period, the department shall, upon recommendation of the local employment partnership council, recover state supplemented wages from an employer from the beginning of the subsidization period under subsections (22) and (23) of this section.

(22) The local employment partnership council shall recommend to the department that the department recover

subsidies paid to the employer during WSP under the following conditions:

(a) The employer terminated before the end of six months of unsubsidized employment, the employment of the worker for whom the employer had previously received wage subsidies; and

(b) The employer did not have good cause for terminating the employment of the employee under subsection (23) of this section.

(23) The employment partnership council may determine that good cause exists for termination of an employee when:

(a) The employee's act or failure to act caused harm to the employer's business; or

(b) The employee was discharged for good cause due to misconduct, or conviction of a felony or gross misdemeanor:

(i) As defined and determined under chapter 50.20 RCW as amended; and

(ii) As interpreted under WAC 192-16-019 as amended.

[Statutory Authority: Chapter 74.25A RCW and RCW 74.08.090. 95-19-075 (Order 3897), § 388-300-2900, filed 9/18/95, effective 10/19/95.]

WAC 388-300-3000 Self-initiated training or education. (1) The department shall consider a person's training or education to be self-initiated if the person is enrolled in or is attending school at the time the person would otherwise begin participation in JOBS.

(2) The service provider shall conduct an assessment under WAC 388-300-1100 before considering a component for approval and inclusion in the participant's employability plan.

(3) The service provider shall ensure that the training or education component meets the criteria for occupational goal and component approval in WAC 388-300-1300.

(4) The service provider shall allow a person to continue in the training or education activity when:

(a) The participant is attending at least half-time;

(b) The participant is making satisfactory progress in the activity; and

(c) The course of study is consistent with the approved employment goal.

(5) The service provider shall not cause the number of hours available for self-initiated education or training to be limited or restricted by assignment of the participant to another component except in the case of an AFDC-E household where one parent must be participating sixteen hours per week in an unemployed parent program component under WAC 388-300-2100.

(6) The JOBS program shall not pay component costs such as tuition, books, supplies, and fees for a participant's self-initiated training or education.

(7) Participants shall be eligible for JOBS child care and supportive services while participating in approved self-initiated training or education provided the provisions in subsection (5) of this section are met in the case of AFDC-E participants.

[Statutory Authority: Chapter 74.25A RCW and RCW 74.08.090. 95-19-075 (Order 3897), § 388-300-3000, filed 9/18/95, effective 10/19/95.]

WAC 388-300-3100 Job development and placement services. (1) Job development and placement services

are those activities conducted by a service provider on behalf of a participant designed to:

- (a) Solicit a public or private employer's unsubsidized job openings;
 - (b) Discover job openings with public or private employers;
 - (c) Market participants for specific job openings; and
 - (d) Secure job interviews for participants.
- (2) The service provider shall offer job development and placement services to a participant when an assessment indicates that the person:
- (a) Has skills that are in demand in the local labor market; and
 - (b) Has not been successful in job search efforts.
- (3) The service provider shall focus job development and placement efforts on the skills of an individual participant.
- (4) The service provider shall ensure that the participant is informed of the name of employers that will be or have been contacted on that participant's behalf.
- (5) The service provider shall ensure that information provided to employers about a participant is made known to that participant before contacting employers.
- (6) The service provider shall not release information to employers in addition to information regarding the participant's job skills without the participant's written authorization.

[Statutory Authority: Chapter 74.25A RCW and RCW 74.08.090, 95-19-075 (Order 3897), § 388-300-3100, filed 9/18/95, effective 10/19/95.]

WAC 388-300-3200 Good cause for refusal or failure to participate. (1) The department shall determine whether a person has good cause:

- (a) For refusal to or failure to participate in an assigned JOBS component; or
 - (b) To accept or to retain employment.
- (2) The department may determine good cause without the participation of the participant. In such cases, the determination process includes, but is not limited to, the department independently:
- (a) Determining if the person intentionally refused to or failed to participate in JOBS;
 - (b) Documenting efforts to resolve the issues prior to conciliation as provided in WAC 388-300-3300;
 - (c) Reviewing the case record to determine:
 - (i) Potential causes for refusal or failure to meet program requirements; and
 - (ii) If the person may have had good cause for nonparticipation.
- (3) The department may determine that the participant has good cause for reasons including, but not limited to:
- (a) A person is the parent or other needy caretaker of a child five years of age or younger and the activity or employment requires such person to participate more than twenty hours per week. The department shall ensure this subsection does not apply to a person subject to the provisions for educational activities under WAC 388-300-2200;
 - (b) A person's employment results in the family of the participant experiencing a net loss of income. A net loss of income results if the family's gross income, less necessary work-related expenses, is less than the cash assistance the

person was receiving before employment. The participant's grant income includes, but is not limited to, earnings, unearned income, and cash assistance;

- (c) A person's physical, mental, or emotional inability to perform the required activity;
- (d) A person's court-ordered appearance or temporary incarceration;
- (e) Urgent personal or family circumstances which would interfere with successful participation;
- (f) Breakdown in transportation arrangements with no readily accessible alternate transportation;
- (g) Inclement weather preventing a person, and others similarly situated, from traveling to or participating in the prescribed activity;
- (h) The person is prevented from participating due to a breakdown in child care arrangements, or unavailability of child care;
- (i) The nature of the required activity is hazardous to the participant;
- (j) A person's required activity:
 - (i) Interrupts a program in process for permanent rehabilitation or self-support; or
 - (ii) Conflicts with an imminent likelihood of re-employment in the person's regular occupation.
- (k) Nonreceipt of participation requirements or a notice of appointment with program staff;
 - (l) Availability of a position because of a labor dispute;
 - (m) A person's refusal to accept major medical treatment (for example, major surgery) needed for employability;
 - (n) Supportive services enabling participation are not available;
 - (o) A person is homeless;
 - (p) Discrimination by an employer in terms of age, sex, race, color, religion, national or ethnic origin, physical or mental handicap, political affiliation, or marital status prevented the participant's employment or JOBS participation;
 - (q) Working hours or nature of employment interfere with the participant's religious observances, convictions, or beliefs as a member of a bona fide religious organization;
 - (r) Work involves conditions in violation of applicable health and safety standards;
 - (s) The employment, or offer of employment, does not provide for workers' compensation or other benefits afforded to a person similarly situated working for the same employer;
 - (t) The employment would cause a person to violate the terms of the person's existing union membership;
 - (u) As a condition of employment, the person is required to join, resign from, or refrain from joining any legitimate labor organization;
 - (v) The employment:
 - (i) Involves unreasonable demands or conditions, such as working without getting paid on schedule; or
 - (ii) Exceeds the daily or weekly hours customary to the occupation.
 - (w) The wages of the employment do not meet minimum wage standards or are not customary for such work in the community. This does not apply to work experience as participants do not receive a wage; or
 - (x) Refusal by an AFDC-E qualifying parent to accept employment of one hundred hours or more per month, the

wages for which, less mandatory payroll deductions and necessary work-related expenses, would not equal or exceed the family's AFDC cash benefits. This does not apply to work experience which does not involve wages.

(4) If the department cannot determine that good cause exists from the information independently available, the department shall notify the person in writing of the opportunity to explain the circumstances, if any, which may constitute good cause for nonparticipation in JOBS. The department shall ensure the notice:

(a) Provides ten days advance notice of an appointment to discuss potential good cause;

(b) Provides a description of the program requirement the person failed to meet;

(c) Informs the person of the person's right to provide an explanation of any failure to meet the program requirement;

(d) Informs the person that lack of good cause may result in the reduction of the person's AFDC grant;

(e) Informs the person of the right to conciliation; and

(f) Informs the person that failure to respond to appointments to determine good cause results in a good cause determination made from available information.

(5) The department shall provide written notice to a participant of any good cause determinations made regarding the participant's nonparticipation in JOBS and, when appropriate, that the person can resume participation without further action.

(6) When the department has determined a participant has refused or failed to participate without good cause in the JOBS program, the department shall notify the service provider who initiated the good cause proceeding of the good cause determination.

(7) Participants determined to lack good cause for failing to participate in JOBS components or activities shall be offered conciliation services under WAC 388-300-3300 by the service provider who initiated the good cause determination.

[Statutory Authority: Chapter 74.25A RCW and RCW 74.08.090, 95-19-075 (Order 3897), § 388-300-3200, filed 9/18/95, effective 10/19/95.]

WAC 388-300-3300 Conciliation. (1) The department shall ensure conciliation is used to attempt to resolve a misunderstanding or disagreement before either results in a grievance, fair hearing, or sanction.

(2) Either the service provider or the JOBS participant may initiate conciliation. The participant shall have the right to request that a department representative facilitate conciliation between the participant and the service provider. A participant may request conciliation of any dispute orally or in writing by:

(a) Notifying the service provider that conciliation is desired; and

(b) Specifying the matter to be addressed.

(3) The service provider who initiated the request for a good cause determination shall conduct conciliation with a participant who has been determined by the department to lack good cause for participation in the JOBS program and has so informed the service provider under WAC 388-300-3200. The service provider shall:

(a) Accomplish conciliation through a face-to-face meeting with the person; or

(b) Arrange a telephone interview with the person if a face-to-face meeting is not possible; and

(c) Continue conciliation if the participant cannot be contacted. The service provider shall continue to attempt to contact the person for thirty days from the date the first notice was mailed.

(4) The service provider shall conduct conciliation before the department imposes a sanction.

(5) The service provider shall provide the participant with written notice of the conciliation appointment. The service provider shall ensure that this notice contains:

(a) A description of the matter in dispute;

(b) An explanation of the person's right to a conciliation period not to exceed thirty calendar days from the date of notice;

(c) The date and time of the conciliation appointment;

(d) The consequences of failing to resolve the dispute through conciliation; and

(e) The person's right to a fair hearing regardless of the outcome of conciliation.

(6) The service provider shall mail such notice not less than ten working days before the conciliation appointment.

(7) The service provider shall:

(a) Remain available for conciliation for thirty days from the date of the first notice;

(b) Use the conciliation process to determine if the situation is a result of a misunderstanding or failed communication and can therefore be resolved;

(c) During the conciliation interview, explain the person's rights and responsibilities under JOBS, including consequences of continued refusal to participate; and

(d) Inform a person that if the person feels aggrieved or disadvantaged by the conciliation process or a decision resulting from the conciliation process, that the person may appeal through the department's standard grievance procedure and/or fair hearing procedure.

(8) The service provider or the participant may terminate conciliation before the expiration of the thirty-day period:

(a) Upon written request by the participant to terminate conciliation; or

(b) If the service provider documents reasons which indicate the dispute cannot be resolved by conciliation based on current efforts.

(9) The service provider shall notify the department of all conciliation results.

(10) The department shall take no adverse action relative to the matter in dispute if the matter is successfully resolved.

(11) If a dispute is not resolved through conciliation, the department shall provide the person with an opportunity for a fair hearing.

[Statutory Authority: Chapter 74.25A RCW and RCW 74.08.090, 95-19-075 (Order 3897), § 388-300-3300, filed 9/18/95, effective 10/19/95.]

WAC 388-300-3400 Sanctions for refusal or failure to participate. (1) When an AFDC recipient required to participate in the JOBS program refuses or fails to partici-

pate in JOBS without good cause, the department shall apply sanctions during the following periods:

(a) For the first failure to comply, until the failure to comply ceases;

(b) For the second such failure to comply, until the failure to comply ceases or three months, whichever is longer;

(c) For each subsequent failure to comply, until the failure to comply ceases or six months, whichever is longer.

(2) Failure to participate is a consistent pattern of noncooperation in JOBS and includes, but is not limited to:

(a) Failure to meet the requirements for assessment and employability plan development, high school or GED completion, or job search requirements;

(b) Not appearing for appointments with the service provider;

(c) Not appearing for appointments with other than the service provider when referred for employment-related activity, including social services;

(d) Not accepting or continuing required JOBS component activity; or

(e) Failure to accept a job offered when good cause is not established under WAC 388-300-3200.

(3) During the period specified under section (1) of this section, the department shall impose a sanction on the person by excluding:

(a) The person's needs in determining the family's need for assistance and the amount of the assistance payment; and

(b) If the sanctioned person is the qualifying parent in a family eligible for the AFDC due to an unemployed parent, unless the second parent is participating in the JOBS program, the needs of the second parent in determining:

(i) The family's need for assistance; and

(ii) The amount of the assistance payment.

(4) If the person is the only dependent child, the department shall exclude the person's needs in determining the family's need for assistance and the amount of the assistance payment.

(5) If a sanction is applied to the only caretaker relative in the family, the department may continue to make payments:

(a) For the remaining members of the assistance unit in the form of protective payments; or

(b) If a protective payee cannot be identified, on behalf of the remaining members of the assistance unit, to the sanctioned caretaker relative.

(6) The department shall notify, in writing, a person whose failure or refusal continues for three months of the person's option to end the sanction. The department's notice shall advise a sanctioned person that the person may terminate:

(a) The first or second sanction by participating in the JOBS program or accepting employment; and

(b) A subsequent sanction after six months have elapsed by participating in the program or accepting employment.

(7) The department shall ensure that imposition of sanction is preceded by a timely written notice of adverse action under WAC 388-33-376. The department shall ensure the notice contains:

(a) An explanation of the reasons for the proposed action;

(b) The factual reasons for the determination that the person failed to participate in JOBS without good cause;

(c) An explanation of the rights to a fair hearing and continued benefits;

(d) An explanation of how the sanction can be terminated by complying with program requirements; and

(e) In the case of a household receiving AFDC due to the unemployment of a parent, an explanation of:

(i) The sanction and benefit reduction to the second parent; and

(ii) The right of that parent to stop application of the sanction against the second parent by participating in the JOBS program.

(8) The department shall not impose a sanction until conciliation has been attempted.

[Statutory Authority: Chapter 74.25A RCW and RCW 74.08.090. 95-19-075 (Order 3897), § 388-300-3400, filed 9/18/95, effective 10/19/95.]

WAC 388-300-3500 Complaints and grievances. (1)

A person who is volunteering for or required to participate in any JOBS component has the right to file a complaint or grievance with the department regarding the person's participation in JOBS. The department shall ensure that the person is informed of this right at the time of assignment to a JOBS pathway or component.

(2) A regular employee who is aggrieved under WAC 388-300-3700 shall have the right to file a complaint or grievance.

(3) The department shall pursue complaints or grievances in accordance with standard grievance procedures provided in WAC 388-33-389.

(4) The department shall inform any person who files a complaint or grievance that filing such a complaint or grievance shall not:

(a) Interfere with the person's rights to request a fair hearing by the department on the issue; or

(b) Be required of a person before the person requests a fair hearing.

(5) A person who has been assigned to a JOBS pathway or component shall not be relieved of required JOBS activities pending the results of a filed grievance or a request for a fair hearing.

[Statutory Authority: Chapter 74.25A RCW and RCW 74.08.090. 95-19-075 (Order 3897), § 388-300-3500, filed 9/18/95, effective 10/19/95.]

WAC 388-300-3600 Fair hearings. (1) The department shall conduct fair hearings following chapter 388-08 WAC and shall ensure fair hearings are governed by that chapter and this section. If a provision of this section conflicts with a provision in chapter 388-08 WAC, the department shall ensure that the provisions in this section control.

(2) An AFDC applicant and recipient shall have the right to a fair hearing on any JOBS decision affecting participation in JOBS.

(3) A regular employee who is aggrieved under WAC 388-300-3700 shall have the right to a fair hearing.

(4) A person to whom the department has issued a notice of adverse action shall have the right to contest the department's proposed action.

(5) A person who contests the department's proposed action under subsection (4) of this section has ninety days to file a request for a fair hearing.

(6) If a person files a request for a fair hearing under subsection (4) of this section within ten days of the issuance, that person shall not have the sanction imposed until the fair hearing decision has been made.

(7) The department may impose sanctions under WAC 388-300-3400 if:

(a) The person's adverse action is not contested within ten days of issuance; or

(b) The person loses the fair hearing on the action.

(8) Any AFDC assistance received pending a fair hearing or hearing decision is considered to be an overpayment when the fair hearing decision subsequently finds against the participant.

(9) If a person requests a fair hearing, the person's AFDC assistance, child care, or support service may not be suspended, reduced, discontinued, or terminated until the fair hearing is concluded if the person requested the fair hearing:

(a) Within ten days of the notice of adverse action; or

(b) On or before the effective date of the action:

Provided, That if the department seeks to terminate supportive services or child care of a JOBS program participant pursuant to WAC 388-300-1800 as a result of the participant's failure to make satisfactory progress as defined in WAC 388-300-0200 or because the participant has ceased to participate in the component activity before completion of the activity, the department may request that an expedited preliminary hearing be held for the sole purpose of determining whether child care or other supportive services shall continue pending the hearing. In making the determination of whether child care or other supportive services shall be continued pending the hearing, the administrative law judge shall consider the likelihood that the department will prevail at the hearing, the harm that will be suffered by the participant if the child care or supportive services are terminated, and the cost to the department if child care and supportive services are continued pending the hearing.

(10) If a regular employee requests a fair hearing under this section, the decision of the administrative law judge hearing the issue shall:

(a) Provide an opportunity for the employer or other persons or entities to rectify the situation; and

(b) State the actions to be taken by the department, or the service provider, if any. The department's or the service provider's actions may include, but are not limited to:

(i) Removing the JOBS participant from the place of employment;

(ii) Establishing an overpayment for the amount of the subsidy;

(iii) Removal of the employer from involvement in the program for a specified period of time; or

(iv) Prohibition of future referrals or placements with the employer.

(c) Include the effective date of implementation and methods for extending that date. At the discretion of the administrative law judge hearing the issue, the judge may make a decision effective the date of delivery or of mailing, retroactive, or remedial in nature. The department shall ensure an appeal of the decision does not in itself delay implementation of the order.

(11) The department shall ensure a person who requests a fair hearing under this section receives an adjudicative decision in writing within ninety days of the request.

(12) The department shall ensure an adjudicative decision issued under this section includes:

(a) A notice of appeal rights to the federal level; and

(b) The requirements for filing such an appeal as specified under 45 CFR 251.4.

[Statutory Authority: Chapter 74.25A RCW and RCW 74.08.090. 95-19-075 (Order 3897), § 388-300-3600, filed 9/18/95, effective 10/19/95.]

WAC 388-300-3700 Displacement of regular employees. (1) The service provider shall ensure that WEX, OJT, and work supplementation, including employment partnership program (EPP), component activities for JOBS participants do not:

(a) Result in the displacement of any currently employed worker or position, including partial displacement, such as a reduction in hours of overtime or nonovertime work, wages, or employment benefits;

(b) Impair existing contracts for services or collective bargaining agreements;

(c) Result in the employment or assignment of a participant or the filling of a position when:

(i) Any other person is on layoff from the same or a substantially equivalent job within the same organizational unit; or

(ii) An employer has terminated any regular employee or otherwise reduced its workforce with the effect of filling the vacancy so created by hiring a participant whose wages are subsidized under this program.

(d) Infringe on promotional opportunities of any currently employed person.

(2) The department shall ensure that work supplementation component activities for JOBS participants do not result in the filling of any established unfilled position vacancy by a participant in a component activity under WAC 388-300-2700 or WAC 388-300-2900.

(3) Displaced regular employees who feel aggrieved shall have the right to:

(a) A grievance procedure under WAC 388-300-3500 or fair hearing; and

(b) Appeal rights under WAC 388-300-3800.

[Statutory Authority: Chapter 74.25A RCW and RCW 74.08.090. 95-19-075 (Order 3897), § 388-300-3700, filed 9/18/95, effective 10/19/95.]

WAC 388-300-3800 Employment protection. (1) A person participating in the JOBS program components on-the-job training, work supplementation program, or work experience has the right to a grievance procedure under WAC 388-300-2900 and a fair hearing under WAC 388-300-3600 to resolve a complaint regarding:

(a) On-the-job working conditions; or

(b) Worker's compensation coverage.

(2) A regular employee, or the employee's representative, who believe the work assignment of a JOBS participant violates any of the prohibitions in WAC 388-300-3800 has the right to:

(a) A grievance procedure under WAC 388-300-3500; and

(b) A fair hearing under WAC 388-300-3600 which the department shall concurrently attempt to resolve through the grievance procedure if not previously used to resolve the complaint.

(3) Regular employees who file grievances or fair hearings under subsection (1) or (2) of this section may appeal the final adjudicative decision or order with:

(a) The Washington courts under the provisions of part V of chapter 34.05 RCW; or

(b) The Office of Administrative Law Judges, U.S. Department of Labor, under the provisions of 45 CFR 251.5(3).

(4) A person may use both appeal routes specified in subsection (3) of this section provided that such appeals are filed concurrently and within the limits set forth in either part V of chapter 35.05 [34.05] RCW or 45 CFR 251.5(b) respectively, each measured from the date of the final adjudicative decision.

[Statutory Authority: Chapter 74.25A RCW and RCW 74.08.090. 95-19-075 (Order 3897), § 388-300-3800, filed 9/18/95, effective 10/19/95.]

WAC 388-300-3900 Tribal JOBS. (1) The department shall refer an applicant or recipient of AFDC who is an Indian to the tribal JOBS program if the person resides in the designated service area of an Indian tribe which operates a tribal JOBS program.

(2) The department shall provide JOBS services to an Indian living outside the designated service area of tribal JOBS program.

(3) The department shall remove from the AFDC grant the needs of a person whom the tribe determines:

(a) Is not exempt; and

(b) Has not participated in the tribal JOBS program; and

(c) Did not have good cause for refusal or failure to participate in the tribal JOBS program.

(4) The department shall provide a tribal JOBS participant with child care, according to chapter 388-51 WAC. Under chapter 388-51 WAC, a participant in the tribal JOBS program shall be eligible for transitional child care.

(5) A participant in the tribal JOBS program shall receive all other supportive services from the tribal JOBS program.

[Statutory Authority: Chapter 74.25A RCW and RCW 74.08.090. 95-19-075 (Order 3897), § 388-300-3900, filed 9/18/95, effective 10/19/95.]

Chapter 388-320 WAC

**PUBLIC RECORDS DISCLOSURE—
ADMINISTRATIVE PROCEDURES**

WAC

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**DISPOSITION OF SECTIONS FORMERLY
CODIFIED IN THIS CHAPTER**

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| 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. |
| 388-320-055 | Operations and procedure—Program division responsibilities. [Order 899, § 388-320-055, filed 1/25/74.] Repealed by 81-06-001 (Order 1609), filed 2/19/81. Statutory Authority: RCW 42.17.250 through 42.17.340. |
| 388-320-060 | Operations and procedure—Program division operation. [Order 899, § 388-320-060, filed 1/25/74.] Repealed by 81-06-001 (Order 1609), filed 2/19/81. Statutory Authority: RCW 42.17.250 through 42.17.340. |
| 388-320-070 | Operations and procedure—Administrative divisions. [Order 899, § 388-320-070, filed 1/25/74.] Repealed by 81-06-001 (Order 1609), filed 2/19/81. Statutory Authority: RCW 42.17.250 through 42.17.340. |
| 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.
- 388-320-093 Statements of policy—Practice manuals. [Order 899, § 388-320-093, filed 1/25/74.] Repealed by 81-06-001 (Order 1609), filed 2/19/81. Statutory Authority: RCW 42.17.250 through 42.17.340.
- 388-320-094 Statements of policy—State plans. [Order 899, § 388-320-094, filed 1/25/74.] Repealed by 81-06-001 (Order 1609), filed 2/19/81. Statutory Authority: RCW 42.17.250 through 42.17.340.
- 388-320-095 Statements of policy—Other. [Order 899, § 388-320-095, filed 1/25/74.] Repealed by 81-06-001 (Order 1609), filed 2/19/81. Statutory Authority: RCW 42.17.250 through 42.17.340.
- 388-320-120 Office hours. [Order 899, § 388-320-120, filed 1/25/74.] Repealed by 81-06-001 (Order 1609), filed 2/19/81. Statutory Authority: RCW 42.17.250 through 42.17.340.
- 388-320-150 Exemptions. [Order 899, § 388-320-150, filed 1/25/74.] Repealed by 81-06-001 (Order 1609), filed 2/19/81. Statutory Authority: RCW 42.17.250 through 42.17.340.
- 388-320-155 Denial of request. [Order 899, § 388-320-155, filed 1/25/74.] Repealed by 81-06-001 (Order 1609), filed 2/19/81. Statutory Authority: RCW 42.17.250 through 42.17.340.
- 388-320-160 Review of denial. [Order 899, § 388-320-160, filed 1/25/74.] Repealed by 81-06-001 (Order 1609), filed 2/19/81. Statutory Authority: RCW 42.17.250 through 42.17.340.
- 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.
- 388-320-190 Communications and submissions relating to public records. [Order 899, § 388-320-190, filed 1/25/74.] Repealed by 81-06-001 (Order 1609), filed 2/19/81. Statutory Authority: RCW 42.17.250 through 42.17.340.
- 388-320-200 Adoption of form. [Order 899, § 388-320-200, filed 1/25/74.] Repealed by 81-06-001 (Order 1609), filed 2/19/81. Statutory Authority: RCW 42.17.250 through 42.17.340.
- 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 388-320-030 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 388-320-100 Public records available. (1) All public records of the department are available for disclosure except as otherwise provided by law.

(2) The department shall respond promptly to requests for disclosure. Within five business days of receiving a public record request, the department shall respond by:

- (a) Providing the record;
- (b) Acknowledging that the department has received the request and providing a reasonable estimate of the time the department will require to respond to the request; or
- (c) Denying the public record request.

(3) Additional time for the department to respond to a request may be based upon the need to:

- (a) Clarify the intent of the request;
- (b) Locate and assemble the information requested;
- (c) Notify third persons or agencies affected by the request; or

(d) Determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request.

(4) In acknowledging receipt of a public record request that is unclear, the department may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request, the department need not respond to it.

(5)(a) If the department does not respond in writing within five working days of receipt of the request for disclosure, the person seeking disclosure shall be entitled to:

(i) Consider the request denied; and
 (ii) Petition the public records officer under WAC 388-320-210.

(b) If the department responds within five working days acknowledging receipt of the request and providing an estimate of the time required to respond to the request, and the requestor feels the amount of time stated is not reasonable, the person seeking disclosure shall be entitled to:

(i) Consider the request denied; and
 (ii) Petition the public records officer under WAC 388-320-210.

[Statutory Authority: RCW 74.08.090, 92-20-005 (Order 3456), § 388-320-100, filed 9/23/92, effective 10/24/92. 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 388-320-110 Public records officer. The department shall designate a public records officer, located in the state administrative office, who shall be responsible for implementing the department's rules regarding disclosure of public records, coordination of staff in this regard, and generally insuring compliance by the staff with public records disclosure requirements.

[Statutory Authority: RCW 42.17.250 through 42.17.340, 81-06-001 (Order 1609), § 388-320-110, filed 2/19/81; Order 899, § 388-320-110, filed 1/25/74.]

WAC 388-320-115 Disclosure coordinator. The head of each department administrative unit—for example, each CSO or institution—or the department designee shall be the disclosure coordinator for that unit. The coordinator shall, upon request, assist the public or department staff in disclosure matters in that unit.

[Statutory Authority: RCW 74.08.090 and 42.17.260, 94-16-047 (Order 3765), § 388-320-115, filed 7/27/94, effective 8/27/94. Statutory Authority: RCW 42.17.250 through 42.17.340, 81-06-001 (Order 1609), § 388-320-115, filed 2/19/81; Order 899, § 388-320-115, 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 any 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.

[Statutory Authority: RCW 74.08.090 and 42.17.260, 94-16-047 (Order 3765), § 388-320-130, filed 7/27/94, effective 8/27/94. 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.]

WAC 388-320-132 Preserving requested records. If a public record request is made at a time when such record exists but is scheduled for destruction in the near future, the department shall retain possession of the record, and may not destroy or erase the record until the request is resolved.

[Statutory Authority: RCW 74.08.090, 92-20-005 (Order 3456), § 388-320-132, filed 9/23/92, effective 10/24/92.]

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 388-320-135 Disclosure to client's representative. (1) When a representative who is not a legislator or attorney requests a client's record, the request must be accompanied by a written release signed by the client. A written release must include:

(a) The identity of the person(s) or organization(s) to whom disclosure is to be made;

(b) An identification of the record, or portion thereof, to be disclosed;

(c) A statement of when the authorization for disclosure expires.

(2) When a representative who is a legislator or attorney requests a client's record, no written release signed by the client is required.

(3) Disclosure of information to a representative shall be made to the same extent as to the client.

(4) The legal guardian of a client has any and all rights accorded to a client by this section.

[Statutory Authority: RCW 74.08.090 and 42.17.260, 94-16-047 (Order 3765), § 388-320-135, filed 7/27/94, effective 8/27/94. Statutory Authority: RCW 42.17.250 through 42.17.340, 81-06-001 (Order 1609), § 388-320-135, filed 2/19/81.]

WAC 388-320-140 Fees—Inspection and copying. (1) The department shall not charge a fee for:

(a) The inspection of public records; or
 (b) Locating public records and making them available for copying.

(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) Fifteen 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 74.08.090 and 42.17.300. 96-18-092, § 388-320-140, filed 9/4/96, effective 10/5/96. 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 388-320-170 Protection of public records.

Public records shall be disclosed only in the presence of a public disclosure coordinator or his/her designee, who shall withdraw the records if the person requesting disclosure acts in a manner which will damage or substantially disorganize the records or interfere excessively with other essential functions of the department. This section shall not be construed to prevent the department from accommodating a client by use of the mails in the disclosure process.

[Statutory Authority: RCW 42.17.250 through 42.17.340. 81-06-001 (Order 1609), § 388-320-170, filed 2/19/81; Order 899, § 388-320-170, filed 1/25/74.]

WAC 388-320-205 Disclosure procedure.

(1) The public disclosure coordinator shall review file materials prior to disclosure.

(2) If the file does not contain materials exempt from disclosure, the public disclosure coordinator shall ensure full disclosure.

(3) If the file does contain materials exempt from disclosure, the public disclosure coordinator shall deny disclosure of those exempt portions of the file, and shall, at the time of the denial, in writing, clearly specify the reasons for the denial of disclosure, including a statement of the specific exemptions or reasons authorizing the withholding of the record and a brief explanation of how the exemption

or reason applies. The remaining, nonexempt materials shall be fully disclosed.

[Statutory Authority: RCW 42.17.250 through 42.17.340. 81-06-001 (Order 1609), § 388-320-205, filed 2/19/81.]

WAC 388-320-210 Remedy for review of denial of disclosure.

(1) If the person requesting disclosure disagrees with the decision of a public disclosure coordinator denying disclosure of a public record, this person may at any time petition the department's public records officer for review of the decision denying disclosure. The form used by the public disclosure coordinator to deny disclosure of a public record shall clearly indicate this right of review.

(2) The public records officer shall review decisions denying disclosure in the most prompt fashion possible, and such review shall be deemed completed at the end of the second business day following receipt by the department of the petition for review. This shall constitute final agency action for the purposes of judicial review, pursuant to RCW 42.17.320.

[Statutory Authority: RCW 42.17.250 through 42.17.340. 81-06-001 (Order 1609), § 388-320-210, filed 2/19/81.]

WAC 388-320-220 Exemptions to public records disclosure.

Nondisclosable department records exempted by law include:

(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 and/or 42.17.310 (1)(a);

(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;

(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) Records of patients and inmates of state institutions to the extent required by RCW 72.01.290;

(11) Nursing home records to the extent required by RCW 18.51.190, 70.124.010, and 74.46.820;

(12) Records maintained by rape crisis centers to the extent required by RCW 70.125.065;

(13) 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;

(14) 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);

(15) 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 the individual's defense, necessitates nondisclosure of particular intelligence or investigative information. 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.

(16) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property. If at the time a complaint is filed the complainant, victim, or witness indicates a desire for disclosure or nondisclosure, such desire shall govern pursuant to RCW 42.17.310 (1)(e);

(17) 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);

(18) 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); and

(19) Information as described under RCW 42.17.320 (1)(cc) that identifies a person who, while an agency employee:

(a) Seeks advice, under an informal process established by the employing agency, in order to ascertain such person's rights in connection with a possible unfair practice under chapter 49.60 RCW against the person; and

(b) Requests such person's identity or any identifying information not be disclosed.

[Statutory Authority: RCW 74.08.090 and 42.17.260. 94-16-047 (Order 3765), § 388-320-220, filed 7/27/94, effective 8/27/94. Statutory Authority: RCW 74.08.090. 92-20-005 (Order 3456), § 388-320-220, filed 9/23/92, effective 10/24/92. 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 388-320-225 Qualifications on nondisclosure.

(1) To the extent that nondisclosable information can be deleted from the specific records sought, the remainder of the records shall be disclosable.

(2) No exemptions shall be construed to require nondisclosure of statistical information not descriptive of identifiable persons, as required by RCW 42.17.310(2).

(3) Inspection and copying of any specific records otherwise nondisclosable is permissible pursuant to an order of the superior court enforcing a subpoena in accordance with the provisions of RCW 42.17.310(3), or an order of the office of hearings enforcing a subpoena.

(4) Upon written request of a person who has been properly identified as an officer of the law with a felony arrest warrant or a properly identified United States immigration official with a warrant for an illegal alien the department shall disclose to such officer or official the current address and location of the person described in the warrant, as required by RCW 74.04.062.

(5) Any person may inquire of the department whether a named individual is a recipient of welfare assistance in accordance with RCW 74.04.060.

(6) Any records of the department may be made accessible for research purposes provided that the research complies with the guidelines published by the department in response to 45 C.F.R. 46 or other applicable state and federal law.

[Statutory Authority: RCW 42.17.250 through 42.17.340. 81-06-001 (Order 1609), § 388-320-225, filed 2/19/81.]

WAC 388-320-235 Disclosure for program purposes. (1) For purposes directly connected with the administration of department programs, information shall be disclosed between different offices of the department, unless prohibited by 45 C.F.R. 205.50 or other law.

(2) For purposes directly connected with the administration of department programs, information may be disclosed by the department to outside agencies, unless disclosure is prohibited by law.

(3) Outside agencies receiving information pursuant to (2) of this section shall be thereby subject to the same standards of disclosure as are required of the department.

[Statutory Authority: RCW 42.17.250 through 42.17.340. 81-06-001 (Order 1609), § 388-320-235, filed 2/19/81.]

WAC 388-320-240 Disclosure for other than program purposes. To the extent not otherwise prohibited or authorized by law, a request to disclose a client's record from an agency outside the department seeking disclosure for a purpose other than the administration of the department's program, will be honored only if the client's authorization is included with the request.

[Statutory Authority: RCW 74.08.090 and 42.17.260. 94-16-047 (Order 3765), § 388-320-240, filed 7/27/94, effective 8/27/94. Statutory Authority: RCW 42.17.250 through 42.17.340. 81-06-001 (Order 1609), § 388-320-240, filed 2/19/81.]

WAC 388-320-340 Delegation of authority by secretary. Under RCW 43.20A.110, certain powers and duties may be delegated by the secretary. Writings evidencing delegations of authority are on file in the secretary's office and may be inspected between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding holidays.

[Statutory Authority: RCW 34.05.220 (1)(a). 90-04-076 (Order 2999), § 388-320-340, filed 2/5/90, effective 3/1/90.]

WAC 388-320-350 Declaratory orders—Forms, content, and filing. A petition for a declaratory order shall generally adhere to the following form:

(1) At the top of the page shall appear the wording "Before the state department of social and health services." On the left side of page below the foregoing the following caption shall be set out: "In the matter of the petition of (name of petitioning party) for a declaratory order." Opposite the foregoing caption shall appear the word "petition."

(2) The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party. The second paragraph shall state all rules or statutes that may be brought into issue by the petition. Succeeding paragraphs shall set out the state of facts relied upon in form similar to that applicable to complaints in civil actions before the superior courts of this state. The concluding paragraphs shall contain the prayer of the petitioner. The petition shall be subscribed and verified in the manner prescribed for verification of complaints in the superior courts of this state.

(3) The original and two legible copies shall be filed with the Office of Vendor Services, MS 45811, Second Floor East, Office Building 2, Fourteenth and Jefferson, Olympia, WA 98504. Petitions shall be on white paper, 8 1/2" x 11" in size.

[Statutory Authority: RCW 34.05.220, 42.17.340 and chapters 17.250 and 17.260 RCW. 93-24-057 (Order 3673), § 388-320-350, filed 11/24/93, effective 12/25/93. Statutory Authority: RCW 34.05.220 (1)(a). 90-04-076 (Order 2999), § 388-320-350, filed 2/5/90, effective 3/1/90.]

WAC 388-320-360 Declaratory orders—Procedural rights of persons in relation to petition. If a petition for a declaratory order is set for specified proceedings under RCW 34.05.240 (5)(b), the department shall give not less than seven days advance written notice of the proceedings to the petitioner and all persons described under RCW 34.05.240(3). The notice shall contain the time, date, place,

and nature of the proceedings and shall describe how interested persons may participate in the proceeding.

[Statutory Authority: RCW 34.05.220 (1)(a). 90-04-076 (Order 2999), § 388-320-360, filed 2/5/90, effective 3/1/90.]

WAC 388-320-370 Declaratory orders—Disposition of petition. A declaratory order entered by the department or a decision declining to enter a declaratory order shall be in writing and shall be served upon the petitioner and all other persons described under RCW 34.05.240(3).

[Statutory Authority: RCW 34.05.220 (1)(a). 90-04-076 (Order 2999), § 388-320-370, filed 2/5/90, effective 3/1/90.]

WAC 388-320-400 Petition for rule making—Form, content, and filing. A petition for adoption, amendment, or repeal of a rule shall generally adhere to the following form:

(1) At the top of the page shall appear the wording "Before the state department of social and health services." On the left side of the page below the foregoing the following caption shall be set out: "In the matter of the petition of (name of petitioning party) for rule making." Opposite the foregoing caption shall appear the word "petition."

(2) The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party and whether petitioner seeks the adoption of new rule or rules, or amendment or repeal of existing rule or rules. The second paragraph, in case of a proposed new rule or amendment of an existing rule, shall set forth the desired rule in its entirety. Where the petition is for repeal of an existing rule, such shall be stated and the rule proposed to be repealed shall either be set forth in full or shall be referred to by agency rule number. The third paragraph shall set forth concisely the reasons for the proposal of the petitioner and shall contain a statement as to the interest of the petitioner in the subject matter of the rule. Additional numbered paragraphs may be used to give full explanation of petitioner's reason for the action sought.

(3) Petitions shall be dated and signed by the person or entity named in the first paragraph or by his attorney. The original and two legible copies of the petition shall be filed with the Office of Vendor Services, MS 45811, Second Floor East, Office Building 2, Fourteenth and Jefferson, Olympia, WA 98504. Petitions shall be on white paper 8 1/2" x 11" in size.

[Statutory Authority: RCW 34.05.220, 42.17.340 and chapters 17.250 and 17.260 RCW. 93-24-057 (Order 3673), § 388-320-400, filed 11/24/93, effective 12/25/93. Statutory Authority: RCW 34.05.220 (1)(a). 90-04-076 (Order 2999), § 388-320-400, filed 2/5/90, effective 3/1/90.]

WAC 388-320-410 Petition for rule making—Consideration and disposition. (1) Each petition for the adoption, amendment, or repeal of a rule shall be considered by the department and the department may, in its discretion, solicit comments or invite discussion concerning the matter before disposition of the petition.

(2) If the department denies the petition, the denial shall be served upon the petitioner.

[Statutory Authority: RCW 34.05.220 (1)(a). 90-04-076 (Order 2999), § 388-320-410, filed 2/5/90, effective 3/1/90.]

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 vendor services. 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 Vendor Services 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 Vendor Services, PO Box 45811, Olympia WA 98504-5811.

[Statutory Authority: RCW 34.05.220, 42.17.340 and chapters 17.250 and 17.260 RCW. 93-24-057 (Order 3673), § 388-320-450, filed 11/24/93, effective 12/25/93. 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.]

WAC 388-320-500 Updating mailing lists. (1) Periodically, the department may cause the following notice, or a notice substantially similar, to be mailed: "In order to maintain as current a mailing list as possible, and to eliminate mailing notices to those who no longer have need for such notices, the department will discontinue use of its old mailing lists, effective (date to be specified). If you wish to continue receiving copies of notices of intention to adopt, amend or repeal rules after that date, please fill out the attached form and return it to the department at the address indicated on the form. If you do not return the form indicating your desire to continue to receive notices to adopt, amend or repeal rules, your name or the names of your organization will be removed from the mailing lists."

(2) The notice regarding updating of mailing lists is to be mailed by first-class mail.

(3) The form to be filled out by those persons or organizations wishing to continue to receive department notices to adopt, amend or repeal rules shall specify interest areas covered by these notices, thereby enabling those on mailing lists to limit correspondence received.

[Statutory Authority: RCW 34.05.220 (1)(a). 90-04-076 (Order 2999), § 388-320-500, filed 2/5/90, effective 3/1/90.]

Chapter 388-330 WAC BACKGROUND INQUIRIES

WAC

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WAC 388-330-010 Purpose and authority. This chapter establishes policy within the department of social

and health services for conducting background inquiries and checks of Washington state child abuse information files on those licensed or authorized by the department to care for children or developmentally disabled persons and those employed by or associated with a licensed agency. Such inquiries are required under RCW 74.15.030.

[Statutory Authority: RCW 74.15.030, 96-10-043 (Order 3974), § 388-330-010, filed 4/26/96, effective 5/27/96; 93-15-040 (Order 3534), § 388-330-010, filed 7/13/93, effective 8/13/93; 89-07-096 (Order 2777), § 388-330-010, filed 3/22/89.]

WAC 388-330-020 Scope. (1) Background inquiries. The department's background inquiries:

(a) Shall include, but not be limited to review of:

(i) Records of criminal convictions and pending criminal charges as listed by the Washington state patrol (WSP) per chapters 10.97 and 43.43 RCW;

(ii) Washington state patrol file of a person found to be a child abuser in a civil adjudication or a disciplinary board final decision; and

(iii) Child protective service and case file information in the case and management information system and division of children and family services (DCFS) records.

(b) May include a review of law enforcement records of convictions and pending charges in other states or locations when the need for further information is indicated by:

(i) A person's prior residences;

(ii) Reports from credible community sources; or

(iii) An identification number indicating the subject has a record on file with the Federal Bureau of Investigation.

(2) Affected persons. Persons subject to background inquiries include:

(a) All persons licensed to care for children or disabled persons under:

(i) Chapter 74.15 RCW; or

(ii) Contract with the department to provide that care.

(b) All staff, employed by licensed or authorized providers, involved in the direct care or supervision of children and developmentally disabled persons;

(c) Any volunteer or other person having regular, unsupervised access to children or developmentally disabled persons in facilities, homes, or operations licensed or authorized by the department to provide care under chapter 74.15 RCW.

(3) Persons not affected. This chapter does not apply to schools, hospitals, or other facilities where the primary focus is not custodial and where the provider is not acting in place of the parent.

(4) This chapter does not apply to persons being considered for employment or volunteer activities with the department of social and health services. Background check requirements applicable to department employees and volunteers are set forth in MSR 326-26-140 and 2SSB 5063, chapter 486, Laws of 1987, respectively.

[Statutory Authority: RCW 74.15.030, 93-15-040 (Order 3534), § 388-330-020, filed 7/13/93, effective 8/13/93; 89-07-096 (Order 2777), § 388-330-020, filed 3/22/89.]

WAC 388-330-030 Application of inquiry findings.

(1) For the purposes of conducting criminal history portions of background inquiries under RCW 74.15.030, the department shall only consider a person's convictions and pending

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charges. The department shall not solicit or use as the sole basis for disqualification information about:

(a) Arrests not resulting in charges; and

(b) Dismissed charges.

(2) The department shall maintain a listing of offenses which, because of their seriousness, shall disqualify prospective care providers from being licensed or otherwise authorized to provide care to children or developmentally disabled persons. The following offenses or their equivalents in jurisdictions outside of the state of Washington shall constitute that list:

(a) Aggravated murder;

(b) Murder in the first degree;

(c) Murder in the second degree;

(d) Manslaughter in the first degree;

(e) Manslaughter in the second degree;

(f) Simple assault, if the assault involves physical harm to another person;

(g) Assault in the first degree;

(h) Assault in the second degree;

(i) Assault in the third degree;

(j) Custodial assault;

(k) Vehicular homicide;

(l) Criminal mistreatment in the first degree;

(m) Criminal mistreatment in the second degree;

(n) Reckless endangerment;

(o) Kidnapping in the first degree;

(p) Kidnapping in the second degree;

(q) Unlawful imprisonment;

(r) Rape in the first degree;

(s) Rape in the second degree;

(t) Rape in the third degree;

(u) First degree rape of a child;

(v) Second degree rape of a child;

(w) Third degree rape of a child;

(x) Child molestation in the first degree;

(y) Child molestation in the second degree;

(z) Child molestation in the third degree;

(aa) Sexual misconduct with a minor in the first degree;

(bb) Sexual misconduct with a minor in the second degree;

(cc) Indecent liberties;

(dd) Felony indecent exposure;

(ee) Arson in the first degree;

(ff) Arson in the second degree;

(gg) Burglary in the first degree;

(hh) Extortion in the first degree;

(ii) Extortion in the second degree;

(jj) Robbery in the first degree;

(kk) Robbery in the second degree;

(ll) Incest in the first degree;

(mm) Incest in the second degree;

(nn) Promoting prostitution in the first degree;

(oo) Promoting prostitution in the second degree;

(pp) Sexual exploitation of a minor;

(qq) Communication with a minor for immoral purposes;

(rr) Child selling - child buying;

(ss) Public indecency, if toward a person under fourteen years of age;

(tt) Prostitution;

- (uu) Dealing in depictions of a minor engaged in sexually explicit conduct;
- (vv) Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;
- (ww) Possession of depictions of a minor engaged in sexually explicit conduct;
- (xx) Patronizing a juvenile prostitute;
- (yy) Family abandonment;
- (zz) Child abandonment;
- (aaa) Unlawfully manufacturing, delivering, or possessing, with intent to deliver, a controlled substance;
- (bbb) Promoting a suicide attempt;
- (ccc) Malicious harassment;
- (ddd) Promoting pornography;
- (eee) Coercion;
- (fff) Child abuse or neglect as defined under RCW 26.44.020;
- (ggg) Violation of child abuse restraining order; and
- (hhh) First or second degree custodial interference.

(3) Whenever a criminal history inquiry reveals a prospective care provider has been charged with or convicted of an offense or is in the WSP file as a person found to be a child abuser in a civil adjudication or disciplinary board final decision, the department shall take action as follows:

(a) If it is confirmed the subject's name appears on the aforementioned WSP file of child abusers, that person shall not be licensed, employed by licensees or contractors, serve in a volunteer capacity for licensees or contractors, or otherwise be authorized by the department to provide care;

(b) If the inquiry reveals charges are pending against the subject for any of the offenses listed in subsection (2) of this section, or their equivalents in other jurisdictions, the department shall withhold licensure or authorization to provide care until dismissal or acquittal occurs. Pending charges for other offenses may be grounds for withholding licensure or authorization to provide care. If the inquiry reveals pending charges are more than one year old, the department shall contact the charging law enforcement agency to determine the disposition or status of the charge;

(c) If the inquiry reveals the subject has been convicted of any of the offenses listed in subsection (2) of this section or their equivalents in other jurisdictions, the department shall deny licensure or authorization to provide care. The department at its discretion may license a person or authorize a person to provide care despite a conviction under subsection (2) of this section if the person presents to the department a certificate of rehabilitation issued by a superior court under RCW 43.43.830(4). A certificate of rehabilitation shall address the fitness of the person to provide the specific type of care considering the following factors:

- (i) The seriousness and circumstances of the illegal act;
- (ii) The number of crimes for which the person was convicted;
- (iii) The amount of time passed since the illegal act was committed;
- (iv) The age of the person at the time of conviction;
- (v) Whether the person has entered and successfully completed all appropriate rehabilitative services, including those ordered by a court;
- (vi) The behavior of the person since the illegal act was committed;

- (vii) Recommendations of persons closely associated with the person;
- (viii) The duties the person would perform at the agency, and the vulnerability of the persons under care; and
- (ix) Other evidence of rehabilitation.

If the department licenses or approves a person under this subsection, it may place limitations or conditions on the person in the performance of the person's duties at the agency.

(d) If the inquiry reveals the subject has been convicted of an offense not listed in subsection (2) of this section, the department shall consider such information in determining the character, suitability, and competence of the prospective caretaker as required by chapter 74.15 RCW. However, the department shall not use conviction as the sole basis for denial of licensure or authorization to provide care unless the conviction is directly related to the employment, licensure, or authorization being sought. The department shall consider the recency, seriousness, kind, and number of previous offenses, as well as the vulnerability of the clients to be cared for.

[Statutory Authority: RCW 74.15.030. 93-15-040 (Order 3534), § 388-330-030, filed 7/13/93, effective 8/13/93. Statutory Authority: RCW 74.15.030, chapters 74.15 and 43.43 RCW. 92-08-038, § 388-330-030, filed 3/24/92, effective 4/24/92. Statutory Authority: RCW 74.15.030. 89-07-096 (Order 2777), § 388-330-030, filed 3/22/89.]

WAC 388-330-035 Appeal of disqualification. (1)

Whenever a person in good faith desires employment in an agency licensed under chapter 74.15 RCW, the person, prior to applying for employment, upon request, shall promptly receive from the department an informal meeting on whether the person is disqualified from employment for not meeting the minimum requirements pursuant to chapter 74.15 RCW or rules promulgated thereunder.

(a) Prior to receiving an informal meeting under this subsection, it shall be the responsibility of a person requesting the meeting to demonstrate a good faith desire for employment in an agency licensed under chapter 74.15 RCW. Such demonstration of good faith shall include, but not be limited to, a showing of educational qualifications, employment history information, current employment, and plans for obtaining employment in a licensed agency in the near future. The department's determination regarding whether the person requesting the meeting has demonstrated a good faith desire for employment is final and not subject to a proceeding under chapter 34.05 RCW. The department shall notify such person promptly following the meeting of its determination in writing.

(b) If the department determines, subsequent to an informal meeting under this subsection, that a person is disqualified, the department shall give written notice of the disqualification to the person. The notice shall state what the person is disqualified from doing, the reasons for the disqualification, the applicable law under which the person is disqualified, and their right to an adjudicative proceeding under chapter 34.05 RCW.

(2) If the department during employment or at the time of employment, determines that a person is disqualified from employment with a child care agency for not meeting minimum requirements under chapter 74.15 RCW or rules promulgated thereunder, the department shall give written

notice of disqualification to the person. The notice shall state what the person is disqualified from doing, reasons for the disqualification, and the applicable law under which the person is disqualified, and their right to an adjudicative proceeding under chapter 34.05 RCW.

(3) The procedures in RCW 43.20A.205 shall apply whenever the department issues a notice of disqualification to a person under this section. If the disqualified person requests an adjudicative proceeding, the department shall have the burden of proving disqualification by a preponderance of the evidence.

(4) A licensee under chapter 74.15 RCW may not allow a person disqualified under this section to be employed by or associate with the licensee's agency. Disqualification of a person may not be contested by a licensee.

(5) The provisions of this section do not preclude the department from taking any action against a licensee in accordance with chapter 74.15 RCW or rules promulgated thereunder.

(6) If a notice of disqualification is based on a prior department finding of abuse or neglect, and after a hearing under chapter 34.05 RCW it is determined that the allegations are not supported by a preponderance of the evidence, the department's records shall be supplemented to so state.

(7) The department in accordance with WAC 388-330-030 may remove a disqualification based on conviction of a crime.

The department may remove a disqualification based on a reason other than conviction of a crime if the disqualified person demonstrates by clear, cogent, and convincing evidence that the person is sufficiently rehabilitated to warrant public trust and to comply with the requirements of chapter 74.15 RCW, and the rules promulgated thereunder.

[Statutory Authority: RCW 74.15.030. 96-10-043 (Order 3974), § 388-330-035, filed 4/26/96, effective 5/27/96.]

WAC 388-330-040 Inquiry form to be submitted—Time requirements. (1) Applicants for licensure under chapter 74.15 RCW shall complete the background inquiry form at the time of application.

(2) Employees and volunteers of those licensed or otherwise authorized to provide care under chapter 74.15 RCW shall complete and submit the DSHS background inquiry form to the person licensed or authorized to provide care. This shall be done prior to or as soon as possible after being on the premises and having regular unsupervised contact with children or developmentally disabled persons. The employer, licensee, or authorized person shall submit the properly completed form to the appropriate DSHS licensor or authorizing person within seven calendar days of the time the employee or volunteer had regular unsupervised contact.

(3) The department shall not issue a license or otherwise authorize persons to provide care until they have properly completed and submitted the inquiry form and the results are known to the department; except, such care may be authorized if the inquiry form has been submitted. If a child is placed with a relative under RCW 13.34.060 or 13.34.130, and if such relative appears otherwise suitable and competent to provide care and treatment, the criminal history background check required by this section need not be completed

before placement, but shall be completed as soon as possible after placement.

[Statutory Authority: RCW 74.15.030. 89-07-096 (Order 2777), § 388-330-040, filed 3/22/89.]

WAC 388-330-050 Release of information. (1) Release of criminal history information.

(a) Unless there is a signed release of information, the department may only share with a provider:

(i) The criminal inquiry information used to disqualify an employee or volunteer of that provider; or

(ii) The fact the subject is listed on the Washington state patrol's child abuse information file if that is the basis for a disqualification.

(b) The department shall not share any other inquiry information with the provider or provider's employees unless the department withheld licensure or care authorization based on that information.

(2) Release of abuse information from department files.

(a) The department shall not share with care providers or prospective providers any abuse information in department files.

(b) Unless there is a release of information signed by the employee, the department may only tell a provider or prospective provider that the results of the department's background inquiry disqualify the employee. Even if the employee has signed a release of information, the department shall not discuss identifying information about the victim of the abuse.

(3) Release of inquiry findings to the subject of inquiry. The department shall provide disqualified care providers with inquiry findings about themselves if the providers:

(a) Make the requests in writing; and

(b) Offer proof of identity.

[Statutory Authority: RCW 74.15.030. 93-15-040 (Order 3534), § 388-330-050, filed 7/13/93, effective 8/13/93; 89-07-096 (Order 2777), § 388-330-050, filed 3/22/89.]

WAC 388-330-060 Sanctions for noncompliance. Any licensee, employer, contractor, or other care provider within the scope of this chapter may be subject to sanctions by the department pursuant to applicable licensing requirements or statutes or contractual agreements for failure to comply with the requirements of this chapter.

[Statutory Authority: RCW 74.15.030. 89-07-096 (Order 2777), § 388-330-060, filed 3/22/89.]

Chapter 388-500 WAC MEDICAL DEFINITIONS

WAC

388-500-0005 Medical definitions.

WAC 388-500-0005 Medical definitions. Unless defined in this chapter or specifically defined in other chapters of the *Washington Administrative Code*, the department shall use definitions found in the *Webster's New World Dictionary*. This section contains definitions of words and phrases the department uses in rules for medical programs.

Definitions of words used for both medical and financial programs are defined under WAC 388-22-030.

"Application" for eligibility for medical programs means a written request to the department of social and health services (DSHS) on a department form, from the applicant, an authorized representative, or if the applicant is incompetent or incapacitated, someone acting responsibly for the applicant.

"Assignment Medicare" means the method by which the provider receives payment for services under Part B of Medicare.

"Assignment of rights" means the client gives the state the right to payment and support for medical care from a third party.

"Assistance unit" means a person or members of a family unit who are eligible for medical care.

"Authorization" means official approval for department action.

"Base period" means the time period used in the limited casualty program which corresponds with the months considered for eligibility.

"Beneficiary" means an eligible person who receives:

- * A federal cash Title XVI benefit; and/or
- * State supplement under Title XVI; or
- * Benefits under Title XVIII of the Social Security Act.

"Benefit period" means the time period used in determining whether Medicare can pay for covered Part A services. A benefit period begins the first day a beneficiary is furnished inpatient hospital or extended care services by a qualified provider. The benefit period ends when the beneficiary has not been an inpatient of a hospital or other facility primarily providing skilled nursing or rehabilitation services for sixty consecutive days. There is no limit to the number of benefit periods a beneficiary may receive. Benefit period also means a "spell of illness" for Medicare payments.

"Cabulance" means a for-hire vehicle designed and used to transport a person confined to a wheelchair or persons otherwise physically restricted.

"Carrier" means an organization contracting with the federal government to process claims under Part B of Medicare.

"Categorical assistance unit (CAU)" means one or more family members whose eligibility for medical care is determined separately or together based on categorical relatedness.

"Categorically needy" means the status of a person who is eligible for medical care under Title XIX of the Social Security Act and is:

- * A client receiving or eligible to receive cash assistance under:
 - * Aid to families with dependent children (AFDC);
 - * Supplemental security income (SSI), including a grandfathered person and a person with an essential spouse:
 - * State supplement;
 - * Continuing state-funded cash assistance who is blind or disabled under SSI criteria, as described under WAC 388-511-1105; or
 - * Special categories.
 - * A financially eligible person under twenty-one years of age who would be eligible for AFDC but does not qualify as a dependent child and who is in:

- * Foster care;
- * Subsidized adoption;
- * A nursing facility or intermediate care facility for mentally retarded; or
- * An approved inpatient psychiatric facility.
- * A person who would be eligible for cash assistance except for the person's institutional status.
- * A person who is SSI categorically related and would not be eligible for cash assistance if the person was not institutionalized and whose gross income does not exceed the three hundred percent SSI benefit cap.
- * A qualified severely impaired disabled person under sixty-five years of age who works.
- * A person during a temporary period who lost AFDC because of increased earnings, increased hours, loss of earned income disregards, or by receiving child or spousal support payments.
- * A pregnant woman:
 - * Who meets AFDC financial eligibility standards;
 - * Who would qualify for AFDC if the baby was already born;
 - * Whose family income does not exceed one hundred eighty-five percent of the federal poverty level; or
 - * Who was eligible for and receiving Medicaid while pregnant continues to be eligible through a sixty-day postpartum period that extends through the month that contains the sixtieth day after birth.
 - * An infant until the infant's first birthday when the infant lives with the mother and the mother was Medicaid eligible at the time the infant was born;
 - * An infant under one year of age whose family income does not exceed one hundred eighty-five percent of the federal poverty level;
 - * A child under six years of age or until the child is no longer an inpatient if the inpatient stay began before six years of age and whose family income does not exceed one hundred thirty-three percent of the federal poverty level.
 - * A child born after September 30, 1983, who has attained six years of age or until the child is no longer an inpatient if the inpatient stay began before eighteen years of age, but not attained eighteen years of age whose family income does not exceed one hundred percent of the federal poverty level.
 - * A child up to eighteen years of age or until the child is no longer an inpatient if the inpatient stay began before eighteen years of age, born before September 30, 1983, with income allowed by AFDC.
 - * A certain widow, widower, and other qualified person who fails to meet SSI standards because of Social Security coverage or increase in Social Security coverage.
 - * A Medicare-eligible person whose income does not exceed one hundred percent of the federal poverty level and whose resources do not exceed twice the SSI resource eligibility level.
 - * A disabled working person entitled to enroll in Medicare Part A, whose income does not exceed two hundred percent of the federal poverty level and whose resources do not exceed twice the SSI resource eligibility level.
 - * An alien as defined under WAC 388-510-1020; or
 - * A person whose categorical eligibility is protected by statute.

"Children's health program" means a state-funded medical program for children under eighteen years of age:

- * Whose family income does not exceed one hundred percent of the federal poverty level; and
- * Who are not otherwise eligible under Title XIX of the Social Security Act.

"Client" means an applicant for or recipient of DSHS medical care programs.

"Coinsurance-Medicare" means the portion of reimbursable hospital and medical expenses, after subtraction of any deductible, which Medicare does not pay. Under Part A, coinsurance is a per day dollar amount. Under Part B, coinsurance is twenty percent of reasonable charges.

"Community services office (CSO)" means an office of the department which administers social and health services at the community level.

"Copayment" means a fixed dollar amount that is the responsibility of the client.

"Couple" means, for the purposes of an SSI-related client, an SSI-related client living with a person of the opposite sex and both presenting themselves to the community as husband and wife. The department shall consider the income and resources of such couple as if the couple were married.

"Deductible-Medicare" means an initial specified amount that is the responsibility of the client.

* **"Part A of Medicare-inpatient hospital deductible"** means an initial amount of the medical care cost in each benefit period which Medicare does not pay.

* **"Part B of Medicare-physician deductible"** means an initial amount of Medicare Part B covered expenses in each calendar year which Medicare does not pay.

"Delayed certification" means a department approval of a person's eligibility for medicaid made after the established application processing time limits.

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

"Early and periodic screening, diagnosis and treatment (EPSDT)" also known as the "healthy kids" program, means a program providing early and periodic screening, diagnosis and treatment to persons under twenty-one years of age who are eligible for Medicaid or the children's health program.

"Electronic fund transfers" means automatic bank deposits to a client's account.

"Emergency medical condition" means a medical condition (including labor and delivery) 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:

- * Placing the patient's health in serious jeopardy;
- * Impairment to bodily functions; or
- * Dysfunction of any bodily organ or part.

"Emergency medical expense requirement" means a specified amount of expenses for ambulance, emergency room or hospital services, including physician services in a hospital, incurred for an emergency medical condition that a client must incur prior to certification for the medically indigent program.

"Essential spouse" see "spouse."

"Extended care patient" means a recently hospitalized Medicare patient needing relatively short-term skilled nursing and rehabilitative care in a skilled nursing facility.

"Garnishment" means withholding an amount from earned or unearned income to satisfy a debt or legal obligation.

"Grandfathered client" means:

* A noninstitutionalized person who meets all current requirements for Medicaid eligibility except the criteria for blindness or disability; and

* Was eligible for Medicaid in December 1973 as blind or disabled whether or not the person was receiving cash assistance in December 1973; and

* Continues to meet the criteria for blindness or disability and other conditions of eligibility used under the Medicaid plan in December 1973; and

* An institutionalized person who was eligible for Medicaid in December 1973 or any part of that month, as an inpatient of a medical institution or resident of an intermediate care facility that was participating in the Medicaid program and for each consecutive month after December 1973 who:

* Continues to meet the requirements for Medicaid eligibility that were in effect under the state's plan in December 1973 for institutionalized persons; and

* Remains institutionalized.

"Health insuring organization (HIO)" means an entity that arranges and pays for medical services provided to an eligible enrolled client in exchange for a premium or subscription charge paid by the department on a prepaid capitation risk basis.

"Health maintenance organization (HMO)" means an entity that provides comprehensive medical services directly to an eligible enrolled client in exchange for a premium paid by the department on a prepaid capitation risk basis.

"Healthy kids," see "EPSDT."

"Home health agency" means an agency or organization certified under Medicare to provide comprehensive health care on a part-time or intermittent basis to a patient in the patient's place of residence.

"Hospital" means an institution licensed as a hospital by the official state licensing authority.

"Income" means, for an SSI-related client, the receipt by an individual of any property or service which the client can apply either directly, by sale, or conversion to meet the client's basic needs for food, clothing, and shelter.

* **"Earned income"** means gross wages for services rendered and/or net earnings from self-employment. Earned income received at predictable intervals other than monthly or in unequal amounts will be converted to a monthly basis. If income is weekly, the amount is multiplied by 4.3 to arrive at a monthly figure.

* **"Unearned income"** means all other income.

"Institution" means an establishment which furnishes food, shelter, medically-related services, and medical care to four or more persons unrelated to the proprietor. This includes medical facilities, nursing facilities, and institutions for the mentally retarded, but does not include correctional institutions.

* **"Institution-public"** means an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control.

* **"Institution for mental diseases"** means an institution primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases including medical attention, nursing care, and related services.

* **"Institution for the mentally retarded or a person with related conditions"** means an institution that:

* Is primarily for the diagnosis, treatment or rehabilitation of the mentally retarded or a person with related conditions; and

* Provides, in a protected residential setting, on-going care, twenty-four hour supervision, evaluation, and planning to help each person function at the greatest ability.

* **"Institution for tuberculosis"** means an institution for the diagnosis, treatment, and care of a person with tuberculosis.

* **"Medical institution"** means an institution:

* Organized to provide medical care, including nursing and convalescent care;

* With the necessary professional personnel, equipment and facilities to manage the health needs of the patient on a continuing basis in accordance with acceptable standards;

* Authorized under state law to provide medical care; and

* Staffed by professional personnel. Services include adequate physician and nursing care.

"Intermediary" means an organization having an agreement with the federal government to process Medicare claims under Part A.

"Legal dependent" means a person whom another person is required by law to support.

"Limited casualty program (LCP)" means a medical care program for medically needy as defined under WAC 388-503-0320 and for medically indigent as defined under WAC 388-503-0370.

"Medicaid" means the federal aid Title XIX program under which medical care is provided to:

* Categorically needy as defined in WAC 388-503-0310 and 388-503-1105; or

* Medically needy as defined in WAC 388-503-0320.

"Medical assistance" means the federal aid Title XIX program under which medical care is provided to the categorically needy as defined in WAC 388-503-0310 and 388-503-1105.

"Medical assistance administration (MAA)" means the unit within the department of social and health services authorized to administer the Title XIX Medicaid and the state-funded medical care programs.

"Medical assistance unit (MAU)" means one or more family members whose eligibility for medical care is determined separately or together based on financial responsibility.

"Medical care services" means the limited scope of care financed by state funds and provided to general assistance (GAU) and ADATSA clients.

"Medical consultant" means a physician employed by the department.

"Medical facility" see **"Institution."**

"Medically indigent (MI)" means a state-funded medical program, part of the limited casualty program, for a person with limited income and resources who has an emergency medical condition requiring hospital-based services.

"Medically necessary" is a term for describing requested service which is reasonably calculated to prevent, diagnose, correct, cure, alleviate or prevent worsening of conditions in the client that endanger life, or cause suffering or pain, or result in an illness or infirmity, or threaten to cause or aggravate a handicap, or cause physical deformity or malfunction, and there is no other equally effective, more conservative or substantially less costly course of treatment available or suitable for the client requesting the service. For the purpose of this section, "course of treatment" may include mere observation or, where appropriate, no treatment at all.

"Medically needy (MN)" is the status of a person who is eligible for a federally matched medical program under Title XIX of the Social Security Act, who, but for income and/or resources above the categorically needy level, would be eligible as categorically needy. Effective January 1, 1996, an AFDC-related adult is not eligible for MN.

"Medicare" means the federal government health insurance program for certain aged or disabled clients under Titles II and XVIII of the Social Security Act. Medicare has two parts:

* **"Part A"** covers the Medicare inpatient hospital, post-hospital skilled nursing facility care, home health services, and hospice care.

* **"Part B"** is the supplementary medical insurance benefit (SMIB) covering the Medicare doctor's services, outpatient hospital care, outpatient physical therapy and speech pathology services, home health care, and other health services and supplies not covered under Part A of Medicare.

"Month of application" means the calendar month a person files the application for medical care unless the application is for the medically needy program, then, at the person's request and if the application is filed in the last ten days of that month, the month of application may be the following month.

"Nursing facility" means any institution or facility the department of health licenses as a nursing facility, or a nursing facility unit of a licensed hospital, that the:

* Department certifies; and

* Facility and the department agree the facility may provide skilled nursing facility care.

"Outpatient" means a nonhospitalized patient receiving care in a hospital outpatient or hospital emergency department, or away from a hospital such as in a physician's office, the patient's own home, or a nursing facility.

"Patient transportation" means client transportation to and from covered medical services under the federal Medicaid and state medical care programs.

"Physician" means a doctor of medicine, osteopathy, or podiatry who is legally authorized to perform the functions of the profession by the state in which the services are performed.

"Professional activity study (PAS)" means a compilation of inpatient hospital data by diagnosis and age, conducted by the commission of professional and hospital activities, to determine the average length of hospital stay for patients. These data were published in a book entitled, *Length of Stay in PAS Hospitals, Western*. The department has adopted this book as the basis for authorizing payment for the maximum number of inpatient hospital days for clients of state-funded

programs, or where no memorandum of understanding with a professional review organization (PRO) exists.

"Professional review organization for Washington (PRO-W)" means the state level organization responsible for determining whether health care activities:

- * Are medically necessary;
- * Meet professionally acceptable standards of health care; and
- * Are appropriately provided in an outpatient or institutional setting for beneficiaries of Medicare and clients of Medicaid and maternal and child health.

"Prosthetic devices" mean replacement, corrective, or supportive devices prescribed by a physician or other licensed practitioner of the healing arts within the scope of his or her practice as defined by state law to:

- * Artificially replace a missing portion of the body;
 - * Prevent or correct physical deformity or malfunction;
- or

- * Support a weak or deformed portion of the body.

"Provider" or "provider of service" means an institution, agency, or person:

- * Having a signed agreement with the department to furnish medical care and goods and/or services to clients; and

- * Eligible to receive payment from the department.

"Resources" mean, for an SSI-related client, cash or other liquid assets or any real or personal property that an individual or spouse, if any, owns and could convert to cash to be used for support or maintenance.

* If an individual can reduce a liquid asset to cash, it is a resource.

* If an individual cannot reduce an asset to cash, it is not considered an available resource.

* Liquid - Properties that are in cash or are financial instruments which are convertible to cash such as, but not limited to, cash in hand, stocks, savings, checking accounts, mutual fund shares, mortgage, promissory notes.

* Nonliquid - All other property both real and personal shall be evaluated according to the price the item can reasonably be expected to sell for on the open market in the particular geographical area involved.

"Retroactivity" means the period of no more than three calendar months before the application month of an otherwise eligible person under the Federal aid Title XIX program.

"Spell of illness" see **"benefit period."**

"Spendedown" means the process by which a person uses incurred medical expenses to offset income and/or resources to meet the financial standards established by the department.

"Spouse" means:

* **"Community spouse"** means a person living in the community and married to an institutionalized person or to a person receiving services from a home and community-based waived program.

* **"Eligible spouse"** means an aged, blind or disabled husband or wife of an SSI-eligible person with whom such spouse lives.

* **"Essential spouse"** means, for the purposes of SSI, a spouse whose needs were taken into account in determining the need of an old age assistance (OAA), aid to the blind (AB), or disability assistance (DA) client for December

1973, who continues to live in the home and to be the spouse of such client.

* **"Ineligible spouse"** means the husband or wife of an SSI-eligible person, who lives with the SSI-eligible person and who has not applied or is not eligible to receive SSI.

* **"Institutionalized spouse"** means a married person in an institution or receiving services from a home or community-based waived program.

* **"Nonapplying spouse"** means the husband or wife, who has not applied for assistance, of an SSI-eligible person.

"SSI-related" means an aged, blind or disabled person.

"State office or SO" means the medical assistance administration of the department of social and health services.

"Supplemental security income (SSI) program, Title XVI" means the federal grant program for aged, blind, and disabled established by section 301 of the Social Security amendments of 1972, and subsequent amendments, and administered by the Social Security Administration (SSA).

"Supplementary payment (SSP)" means the state money payment to persons receiving benefits under Title XVI, or who would, but for the person's income, be eligible for such benefits, as assistance based on need in supplementation of SSI benefits. This payment includes:

* **"Mandatory state supplement"** means the state money payment to a person who, for December 1973, was a client receiving cash assistance under the department's former programs of old age assistance, aid to the blind and disability assistance; and

* **"Optional state supplement"** means the elective state money payment to a person eligible for SSI benefits or who, except for the level of the person's income, would be eligible for SSI benefits.

"Third party" means any entity that is or may be liable to pay all or part of the medical cost of care of a federal Medicaid or state medical care client.

"Title XIX" is the portion of the federal Social Security Act that authorizes grants to states for medical assistance programs. Title XIX is also called Medicaid.

"Transfer" means any act or omission to act when title to or any interest in property is assigned, set over, or otherwise vested or allowed to vest in another person; including delivery of personal property, bills of sale, deeds, mortgages, pledges, or any other instrument conveying or relinquishing an interest in property. Transfer of title to a resource occurs by:

* An intentional act or transfer; or

* Failure to act to preserve title to the resource.

"Value-fair market" means, for SSI-related medical eligibility, the current value of a resource at the going price for which the resource can reasonably be expected to sell on the open market in the particular geographic area involved.

"Value of compensation received" means, for SSI-related medical eligibility, the gross amount paid or agreed to be paid by the purchaser.

"Value-uncompensated" means, for SSI-related medical eligibility, the fair market value of a resource minus the amount of compensation received in exchange for the resource.

[Statutory Authority: RCW 74.08.090. 95-22-039 (Order 3913, #100246), § 388-500-0005, filed 10/25/95, effective 10/28/95; 94-10-065 (Order 3732),

§ 388-500-0005, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-80-005, 388-82-006, 388-92-005 and 388-93-005.]

Chapter 388-501 WAC
ADMINISTRATION OF MEDICAL PROGRAMS—
GENERAL

WAC

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|--------------|--|
| 388-501-0105 | Applicability. |
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WAC 388-501-0105 Applicability. These rules are applicable to determination of eligibility under medical care programs authorized through chapter 74.09 RCW.

[Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-501-0105, filed 5/3/94, effective 6/3/94. Formerly WAC 388-80-002.]

WAC 388-501-0110 Purpose of the medical care program. The department of social and health services through the medical assistance administration (MAA) provides medical care programs to meet the health care needs of:

- (1) Categorically needy eligible persons as defined in WAC 388-503-0310.
- (2) Medically needy eligible persons as defined in WAC 388-503-0320.
- (3) Medically indigent eligible persons as defined in WAC 388-503-0370.
- (4) General assistance-unemployable (GAU) cash assistance clients as defined in WAC 388-503-0350.
- (5) ADATSA cash assistance clients and ADATSA medical eligible persons as defined in WAC 388-503-0350.
- (6) Children's health eligible persons as defined in WAC 388-509-0920.

[Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-501-0110, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-81-005, 388-81-025, 388-99-005 and 388-100-005.]

WAC 388-501-0125 Requirements for advance directives. (1) Each hospital, nursing facility, provider of home health care or personal care services, hospice program, or health maintenance organization receiving Medicaid funds shall as providers under this section:

- (a) Maintain written policies and procedures concerning a person's right to make medical decisions including advance directives;
- (b) Provide written information to all adults as defined in RCW 26.28.010 and 26.28.015 receiving medical care by or through the provider or organization to include the person's right to:
 - (i) Make decisions concerning the person's medical care;

- (ii) Accept or refuse surgical or medical treatment; and
- (iii) Formulate advance directives.

(c) Provide written information to all adults on policies concerning implementation of these rights;

(d) Document in the person's medical record whether or not the person has executed an advance directive;

(e) Not condition the provision of care or otherwise discriminate against a person based on whether or not the person has executed an advance directive;

(f) Ensure compliance with the requirements of chapters 11.94, 68.50, and 70.122 RCW concerning advance directives.

(g) Provide for educating staff and the community on the requirements for advance directives.

(2) For the purpose of this section, the term "advance directive" means a voluntarily written instruction, such as a living will, durable power of attorney for health care, or anatomical gift recognized under state law (whether statutory or as recognized by the courts of the state) and relating to the provision of such care when the person is incapacitated.

(3) The written material distributed by the providers as defined concerning medical decision making shall summarize state law found in statute and case law and may include the actual law, copies of the statute, case law, or forms.

(4) The provider as defined shall give information concerning these rights to adults as follows:

(a) Hospitals at the time of the person's admission as an inpatient;

(b) Nursing facility at the time of the person's admission as a resident;

(c) Provider of home health care or personal care services before the person comes under the care of the provider;

(d) Hospice program at the time of the initial receipt of hospice care by the person in the program; and

(e) Health maintenance organization at the time of enrollment of the person with the organization.

(5) This section shall not be construed to require any physician to implement an advance directive, when the physician objects on the basis of conscience. When the physician refuses to implement the directive, the physician shall make a good faith effort to transfer the person to another physician who will implement the person's directive.

(6) When a person in a comatose or otherwise incapacitated state, unable to receive information or to say whether an advance directive has been executed, comes under the care of a provider, the provider shall include information concerning advance directives with materials about the provider's policies and procedures to the families or to the surrogates or other concerned persons of the incapacitated person as specified under RCW 7.70.065. The provider shall be obligated to provide this information to the person once the person is no longer incapacitated.

(7) When a person is incapacitated or otherwise unable to receive information or articulate whether such person has executed an advance directive and no one comes forward with a previously executed advance directive, the provider shall document in a person's file that the person was unable to receive information and was unable to communicate whether an advance directive exists.

(8) When the patient or a relative, surrogate, or other interested person presents the provider with a copy of the

person's advance directive, the provider shall comply, except as specified under subsection (5) of this section, with the advance directive.

[Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-501-0125, filed 5/3/94, effective 6/3/94. Formerly WAC 388-81-017.]

WAC 388-501-0130 Administrative controls. The department shall establish and enforce such administrative controls as may be necessary to prevent abuses by vendors or clients including, but not limited to, determination of need for and duration of services, assurance of justification of services, reasonableness of costs, and operation of the program within limits of the legislative appropriation.

(1) The department shall conduct audits and investigations of providers of medical and other services provided as authorized by chapter 74.09 RCW to determine compliance with the rules and regulations of the program.

(a) In the conduct of such audits or investigations, the secretary or authorized representative may examine only those records or portion thereof, including patient records, pertaining to services rendered by a health care provider and reimbursed by the department. Copies of, but not original, records shall be removed from the premises of the health care provider. The secretary shall destroy all copies of client medical records made during an audit or investigation. This destruction will take place not later than ninety days after the date when no further actions, concerning a particular audit, can be taken or are going to be taken by the department, the provider, or the courts. The department shall notify the provider in writing that such destruction has taken place.

(b) The department shall give twenty days advance notice to a provider that the patient medical records are to be audited for compliance with program rules and standards. This notice shall not:

(i) Apply to provider investigations for fraudulent or abusive practices;

(ii) Include names of patient files to be reviewed. For the purposes of this section, prescriptions or records of drugs dispensed are not to be defined as patient medical records; and

(iii) Apply to Medicaid provider business and financial records and patient financial records when reviewed as part of a third-party liability compliance audit.

(c) The department shall work with the provider to minimize inconvenience and disruption of health care delivery.

(2) In conducting a probability sample audit, the department shall select the sample on the basis of recognized and generally accepted sampling methods. The department shall examine the sample for compliance with relevant federal and state laws and regulations, department billing instructions and department numbered memoranda. The department shall use a sample that is sufficient to ensure a minimum ninety-five percent confidence level when projecting the overpayment.

(a) The department shall recover statistically calculated overpayments made to Washington state Title XIX providers when the department utilizes probability sampling and the audit findings demonstrate an overpayment has been made. The department shall ensure all overpayments and underpayments reflected in the probability sample are totaled

and extrapolated to the universe from which the sample was drawn to calculate the amount to be recovered. The department shall not consider nonbilled services or supplies in the calculation of underpayments and overpayments.

(b) When the results of a probability sample are used to extrapolate the amount to be recovered, the department shall ensure the demand for recovery is accompanied by a clear description of:

(i) The universe from which the sample was drawn;

(ii) The sample size and method used to select the sample; and

(iii) The formulas and calculation procedures used to determine the amount to be recovered.

(c) As used in this section, the department shall apply the following definitions:

(i) "Extrapolation" means the methodology whereby an unknown value can be estimated by projecting the results of a probability sample to the universe from which the sample was drawn with a calculated precision (margin of error); and

(ii) "Probability sampling" means the standard statistical methodology in which a sample is selected based on the theory of probability (a mathematical theory used to study the occurrence of random events).

(3) Based upon the findings of an audit, investigation, or other proceeding, the secretary or authorized representative may order repayment of excess benefits or payments received by the provider, plus interest on the amount of excess benefits and assess civil penalties as provided for in chapter 74.09 RCW. The department shall assess civil penalties in an amount not to exceed three times the amount of excess benefits or payments received by the provider.

(4) When the department imposes a civil penalty or suspends or terminates a provider from the program, the department shall give written notice of the action taken to the appropriate licensing agency and/or disciplinary board. The department may refer to the appropriate disciplinary board providers who have demonstrated a significant noncompliance with the provisions of the medical care program through the results of an audit, investigation, or utilization review function. The Washington state medical disciplinary board shall generally serve in an advisory capacity to the secretary in the conduct of audits or investigations of physicians.

(5) The secretary or authorized representative shall refer all cases to the appropriate prosecuting authority for possible criminal action where the department finds substantial evidence supporting a finding of fraud. Prima facie evidence does not, in itself, provide a substantial basis for criminal prosecution.

[Statutory Authority: RCW 74.08.090 and 74.09.290, 96-06-041 (Order 3949), § 388-501-0130, filed 3/1/96, effective 4/1/96. Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-501-0130, filed 5/3/94, effective 6/3/94. Formerly WAC 388-81-015.]

WAC 388-501-0135 Patient requiring regulation.

(1) The department shall operate a patient requiring regulation (PRR) program to identify a client overutilizing, unnecessarily, or inappropriately obtaining medical care under the federally funded and state-funded medical programs. The department may restrict such a client to a single primary care provider and pharmacy for medical care.

(2) The purpose of the PRR program shall be to:

- (a) Protect the client's health and safety;
- (b) Provide continuity of medical care;
- (c) Avoid duplication of services by providers;
- (d) Avoid excessive, contraindicated, or potentially harmful use of prescription medications.

(3) For the purposes of this section, "primary care provider (PCP)" means a:

(a) Physician specializing in internal or general medicine; or

(b) Physician or advanced registered nurse practitioner specializing in adult health care or family practice who agrees to provide, manage, and coordinate an eligible client's medical care.

(4) The department shall designate staff to determine the client's overuse, inappropriate, or unnecessary usage of medical care by reviewing medical assistance administration (MAA) payment records and other medical information.

(5) Nurse advisors, physicians and pharmacy consultants, and the drug utilization and education (DUE) council shall establish the medical review guidelines and reference sources that the department uses for such determinations.

(6) The department established the following levels of utilization during a three-month period as medical review guidelines for the PRR program:

- (a) Services from four different physicians;
- (b) Prescriptions from four different pharmacies;
- (c) Ten prescriptions received;
- (d) Two emergency room visits;
- (e) Four prescribers.

(7) Medical assistance administration shall notify the client in writing that the client is assigned to PRR, when the information indicates the client overuses medical services, or uses medical services inappropriately or unnecessarily as determined by the department's review of the:

(a) Records which indicate a client's use of medical services exceed the guidelines under subsection (6) of this section; and

(b) Client's diagnoses, the history of services provided or other medical information supplied by the health care provider.

(8) The department shall notify the client of the right to:

(a) A fair hearing as required under chapter 388-08 WAC; and

(b) Continue not restricted when a fair hearing is timely requested.

(9) A client shall respond to the department's notice within twenty calendar days by:

- (a) Selecting a PCP and pharmacy;
- (b) Requesting assistance in selecting a PCP and pharmacy; or
- (c) Submitting additional medical information.

(10) The department shall assign a PCP and pharmacy for any client who fails to select a PCP and pharmacy within twenty calendar days, unless the client requests a fair hearing. The selected or assigned PCP and pharmacy shall be located in the client's local geographic area or be reasonably accessible to the client.

(11) The client shall not change a selected PCP or pharmacy for six months except when the:

(a) Client moves to a new residence outside the designated geographic area of the providers;

(b) PCP or pharmacy moves from the client's geographical area;

(c) PCP or pharmacy refuses to continue as the designated provider; or

(d) Client selects a PCP or pharmacy other than the department-assigned PCP or pharmacy under subsection (9) of this section.

(12) The department shall assign a client to the program for a period of twenty-four months and shall review the client's utilization at the end of the twenty-four-month period. The client shall remain restricted if the client continues to meet the overutilization criteria in subsection (6) of this section and shall be reviewed at least twenty-four months thereafter.

(13) When the department designates a PCP and pharmacy for the client, the department shall issue a medical identification card identifying the client as a patient requiring regulation.

(14) When an emergency occurs as defined under WAC 388-500-0005, a provider other than the selected PCP may see the client.

(15) The PCP may refer the client to a specialist.

(16) The department shall only pay for MAA-covered services authorized by the PCP, referred specialist, or selected pharmacy. The department shall apply billing limitations as described under WAC 388-87-010 and 388-87-015.

(17) The client shall be responsible for payment of covered services not authorized by the PCP, referred specialists or selected pharmacist.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-501-0135, filed 5/3/94, effective 6/3/94. Formerly WAC 388-81-100.]

WAC 388-501-0140 Fraud. Any person who by means of willfully false statement or representation or by impersonation or other fraudulent device or failure to reveal resources as required obtains or attempts to obtain medical care to which the person is not entitled shall be guilty of larceny. See WAC 388-22-030 for the meaning of "intentional overpayments."

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-501-0140, filed 5/3/94, effective 6/3/94. Formerly WAC 388-81-055.]

WAC 388-501-0150 Confidential records. The department shall consider medical and administrative records pertaining to applications and services rendered to clients confidential. The department shall prohibit disclosure of information contained in such records, files, papers and communications except for purposes directly connected with the administration of the public assistance and medical care programs.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-501-0150, filed 5/3/94, effective 6/3/94. Formerly WAC 388-81-035.]

WAC 388-501-0160 Exception to policy. A client request for an exception to policy for medical care services denied by strict application of a rule or regulation shall require approval by medical assistance administration. See WAC 388-200-1150 for exception to policy procedures.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-501-0160, filed 5/3/94, effective 6/3/94. Formerly WAC 388-81-030.]

WAC 388-501-0165 Medical services request. (1)

The department shall evaluate the request for medical services as described under chapter 388-86 WAC.

(2) The department shall base a decision to approve or deny a service on obtainable evidence that establishes whether the service is "medically necessary" as defined under WAC 388-500-0005.

(a) In each case, the department shall:

(i) Make an individualized decision whether a requested service is "medically necessary"; and

(ii) Base such decision only on information contained in the client's file.

(b) The evidence must be sufficient to determine that the requested service is or is not "medically necessary," and may include:

(i) A physiological description of the disease, injury, impairment, or other ailment;

(ii) Pertinent laboratory findings;

(iii) X-ray reports;

(iv) Patient profiles; and

(v) Other objective medical information, including but not limited to medically acceptable clinical findings and diagnoses resulting from physical or mental examinations.

(3) In deciding to approve or deny a durable medical equipment or prosthetic device request, the department shall give substantial weight to objective medical information, and conclusions based thereon, from an examining physician responsible for the client's diagnosis or treatment or both when:

(a) There is an uncontradicted and adequately substantiated conclusion of an examining physician that the requested service is "medically necessary." The department shall accept the examining physician's conclusion unless the department presents specific detailed reasons for rejecting that conclusion that are consistent with sound medical practice and supported by objective medical information in the client's file.

(b) Two or more examining physicians provide conflicting medical information on conclusions about whether the requested durable medical equipment or a prosthetic device is "medically necessary," the department may conclude the durable medical equipment or a prosthetic device is not "medically necessary" only if the department enumerates specific reasons for its conclusion that are supported by objective medical information in the client's file.

(4) The department shall deny a requested service when the service is:

(a) Not medically necessary as defined under WAC 388-500-0005;

(b) Generally regarded by the medical profession as experimental in nature or as unacceptable treatment; or

(c) Unless the client demonstrates through sufficient objective clinical evidence the existence of particular circumstances rendering the requested service medically necessary; or

(d) Not a covered service.

(5) The department shall:

(a) Approve or deny all requests for medical services within fifteen days of the receipt of the request; or

(b) Return a request to the requesting provider when the information submitted is insufficient for a determination of medical necessity and the requested service is a covered

service. The department shall make a request for justifying additional information from the requesting provider within fifteen calendar days of the original receipt. If additional information is:

(i) Not received by the department within thirty days of the date requested, the department shall deny the original request within five days after the thirty-day period on the basis of insufficient justification of medical necessity;

(ii) Received by the department, the department shall make a final determination on the request within five working days of the receipt of the additional information.

(c) Send to the client a copy of the request for additional information justifying medical necessity for durable medical equipment or a prosthetic device.

(6) When the department denies a request for medical services, including all or part of a requested service, the department shall, within five working days of the decision, give the client and the provider written notice of the denial. The department shall ensure the notice states:

(a) The WAC references used as a basis for the decision;

(b) A summary statement of the specific facts the department relied upon for the decision;

(c) An explanation of the reasons for the denial, including the reasons why the specific facts relied on did not meet the requirements for approval;

(d) When required under subsection (3) of this section, a specific statement of the reasons and supporting facts for rejecting any medical information or conclusions of an examining physician;

(e) The client's right to a fair hearing if the request is made within ninety days of the receipt of the denial;

(f) The instructions on how to request the hearing;

(g) The client may be represented at the hearing by legal counsel or other representative;

(h) Upon the client's request, the name and address of the nearest legal services office; and

(i) If a fair hearing is requested, a medical assessment from other than the person involved in making the original decision may be obtained at the department's expense.

[Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-501-0165, filed 5/3/94, effective 6/3/94. Formerly WAC 388-81-038.]

WAC 388-501-0170 Third party resources. (1) A

client shall use all third party resources available to the client for the payment of medical care to the fullest possible extent before the department pays for medical care.

(2) Supplemental services:

(a) Are services beyond those covered by the medical care programs;

(b) Are not to be required, implied, or otherwise by the provider for the client to receive services covered by the medical care program.

(c) Funds for payment of the supplemental services from a source other than the client are not considered as income available to the client for the purposes of eligibility if the funds:

(i) Are paid directly to the provider; and

(ii) Do not at any time come under the control of the client.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-501-0170, filed 5/3/94, effective 6/3/94. Formerly WAC 388-83-010 (part).]

WAC 388-501-0175 Medical care provided in bordering cities. (1) The department shall provide medical care to eligible Washington state residents in a bordering city on the same basis as in-state care.

(2) The only recognized bordering cities are:

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

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

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-501-0175, filed 5/3/94, effective 6/3/94. Formerly WAC 388-82-130.]

WAC 388-501-0180 Out-of-state medical care. (1) A Washington state Medicaid client temporarily out of the state may be provided medical care within the scope of the Medicaid program.

(a) Residency requirements in WAC 388-505-0510 must be met.

(b) Medical assistance may be provided only in areas of Canada that border on the United States when no other resource is available.

(2) Persons eligible for the medically needy program may be provided medical care within the scope of that program.

(3) When an eligible person goes to another state, excluding bordering cities, expressly to obtain medical care that is available within the state of Washington, medical assistance will only be provided on an emergency basis.

(4) Medicaid will be provided to persons who enter the state and are determined to be financially eligible, provided the residency requirements in WAC 388-505-0510 are met.

(5) The department shall not provide medical care services out-of-state except in designated bordering cities under WAC 388-501-0175.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-501-0180, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-82-135 and 388-92-015.]

WAC 388-501-0190 Maternity care distressed area.

(1) "A maternity care distressed area" means a county where women eligible for medical assistance are not able 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 means 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 office;

(ii) The local public health officer;

(iii) Community health clinics;

(iv) Health care providers;

(v) Hospitals;

(vi) The business community;

(vii) Labor representatives;

(viii) Low-income advocates in the distressed area.

(b) The county authority may contact 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. 94-10-065 (Order 3732), § 388-501-0190, filed 5/3/94, effective 6/3/94. Formerly WAC 388-81-070.]

Chapter 388-502 WAC

ADMINISTRATION OF MEDICAL PROGRAMS—PROVIDERS

WAC

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| 388-502-0205 | Civil rights. |
| 388-502-0210 | Statistical data-vendor reports. |
| 388-502-0220 | Administrative appeal—Rate—Contractor/provider. |
| 388-502-0230 | Fair hearing—Providers. |
| 388-502-0250 | Interest penalties—Providers. |

WAC 388-502-0205 Civil rights. (1) The department shall ensure all participating providers will not discriminate against any client because of race, creed, color, handicap or national origin in providing approved services.

(2) A provider shall not discriminate against any employee or applicant for employment because of race, creed, color, handicap, or national origin, except to the extent permitted by a bona fide occupational qualification.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-502-0205, filed 5/3/94, effective 6/3/94. Formerly WAC 388-81-010 (part).]

WAC 388-502-0210 Statistical data-vendor reports.

(1) When requested by the department, all vendors under the program shall submit full reports of goods furnished and services rendered to the department in the manner specified. The department shall provide the vendor with standardized forms to report these data.

(2) The department shall tabulate and analyze the data collected to secure statistics on costs of and the services rendered in the various phases of the program. The department shall make available such tabulations and analyses to the department's advisory committee, state welfare medical care committee, official organizations of vendor groups participating in the program, and other appropriate persons or groups.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-502-0210, filed 5/3/94, effective 6/3/94. Formerly WAC 388-81-020.]

WAC 388-502-0220 Administrative appeal—Rate—Contractor/provider. (1) Right to an administrative appeal. Any enrolled contractor/provider of medical services, except nursing facilities governed by WAC 388-96-904, shall have a right to an administrative appeal any time the contractor/provider disagrees with the reimbursement rate.

(2) First level of appeal. A contractor/provider wishing to contest an action described in subsection (1) of this section files an appeal with the medical assistance administration (MAA).

(a) Unless a written rate notification specifies otherwise, the department shall make retroactive rate adjustments only when a contractor/provider files a rate appeal. The rate appeal requesting retroactive rate adjustment shall be made within sixty calendar days after being notified of an action or determination the contractor/provider wishes to challenge. The notification date of an action or determination shall be the date of the written rate notification letter. The department shall not consider for retroactive adjustments, a contractor/provider rate adjustment appeal filed after the sixty-day period described in this subsection.

(b) The appeal shall include a statement of the specific issue being appealed, supporting documentation, and a request for recalculation of the rate. MAA may request additional documentation to complete the review. MAA may conduct an audit of the documentation provided in order to complete the review.

(c) When a portion of a rate is appealed, MAA may review all components of the reimbursement rate.

(d) MAA shall issue a decision or request additional information within sixty calendar days of the receipt of the rate appeal request. When additional information is necessary, the contractor/provider shall have forty-five calendar days to submit the information. MAA shall issue a decision within thirty calendar days of receipt of complete information.

(e) Unless the written rate notification specifies otherwise, increases in rates resulting from an appeal shall be effective retroactively to the effective date of the rate change. The appeal shall be filed within sixty calendar days after the written rate notification letter that the contractor/provider is challenging. Increases in rates, resulting from a rate appeal filed after the sixty-day period described under (a) of this subsection, shall be effective the date the appeal is filed with MAA. Appeals resulting in rate decreases shall be effective on the date specified in the appeal decision notification. The effective date shall not be before the date of the appeal decision notification. Rate changes subject to the provisions of fraudulent practices as described under RCW 74.09.210 are exempt from these provisions.

(f) MAA may grant extensions of time at MAA's discretion if requested within the sixty-day period referenced under (a) of this subsection.

(3) Second level of appeal. When the contractor/provider disagrees with an adverse rate review decision, the contractor/provider may file a request for a dispute conference with the MAA. "Dispute conference" for this section means an informal administrative hearing for the purpose of resolving contractor/provider disagreements with any of the department actions, described under subsection (1) of this section, not resolved at the first level of appeal. The dispute conference is not governed by the Administrative Procedure Act, chapter 34.05 RCW.

(a) A contractor/provider shall file a request for a dispute conference within thirty calendar days following receipt of the adverse review decision. The department shall not consider dispute conference requests submitted after the thirty-day period of the first level decision date.

(b) MAA shall conduct the dispute conference within ninety calendar days of the receipt of request.

(c) The conference chairperson shall issue the final decision within thirty calendar days of the conference.

(d) MAA may grant extensions of time for extenuating circumstances.

(e) The effective date of dispute conference decisions regarding rate changes shall be the same as specified under subsection (2)(e) of this section.

(f) The dispute conference shall be the final level of administrative appeal within the department and precede judicial action.

(4) MAA shall construe failure on the part of the contractor/provider to attempt to resolve disputed rates as provided in this section as an abandonment of the dispute.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-502-0220, filed 5/3/94, effective 6/3/94. Formerly WAC 388-81-043.]

WAC 388-502-0230 Fair hearing—Providers. A certified provider of medical care services who is assessed a civil penalty under RCW 74.09.210 or otherwise served with notice that repayment of excess benefits is due under RCW 74.09.210, shall have the right to a fair hearing as provided by chapter 388-08 WAC.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-502-0230, filed 5/3/94, effective 6/3/94. Formerly WAC 388-81-042.]

WAC 388-502-0250 Interest penalties—Providers.

(1) The department shall assess interest on amounts of excess benefits or payments a certified provider of medical services receives:

(a) Who is found liable for receipt of excess payments under RCW 74.09.220;

(b) Otherwise served with notice that repayment of excess benefits is due under RCW 74.09.220; or

(c) Except for nursing homes which are governed by WAC 388-96-310.

(2) Under RCW 74.09.220, the department shall assess interest on excess benefits or payments at the rate of one percent each month from the date upon which payment was made to the date upon which repayment is made to the state. Interest does not apply when the excess benefits or payments were obtained as a result of errors made by the department.

(3) The department shall ensure:

(a) Interest amounts will be clearly identified in all overpayment communications; and

(b) A daily interest accrual amount will be identified and accrued until the day immediately preceding the day the full repayment check is mailed to the state.

(4) When repayment is made through the recoupment process (payments are withheld from current bills until the overpayment amount is met), the department shall ensure interest accrues to the date recoupment is finalized.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-502-0250, filed 5/3/94, effective 6/3/94. Formerly WAC 388-81-044.]

Chapter 388-503 WAC

PERSONS ELIGIBLE FOR MEDICAL ASSISTANCE

WAC

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| 388-503-0305 | Program priorities. |
| 388-503-0310 | Categorically needy eligible persons. |
| 388-503-0320 | Medically needy eligible persons. |
| 388-503-0350 | Medical care services—GAU/ADATSA. |
| 388-503-0370 | Medically indigent eligible persons. |

WAC 388-503-0305 Program priorities. The department shall consider eligibility for all federal medical programs before determining eligibility for state-funded medical programs.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-503-0305, filed 5/3/94, effective 6/3/94.]

WAC 388-503-0310 Categorically needy eligible persons. The department shall determine eligible for categorically needy medical assistance a client who is:

(1) Receiving or eligible to receive a cash assistance payment under:

(a) Aid to families with dependent children (AFDC); or
(b) Supplemental security income (SSI) including a grandfathered person and a person with an essential spouse; or

(c) State supplemental payment (SSP) to a person as assistance based on need in supplementation of SSI benefits. This payment includes mandatory state supplement or optional state supplement as defined under WAC 388-500-0005. The ineligible spouse of an SSI beneficiary receiving a state supplement payment for the ineligible spouse is not eligible for categorically needy medical assistance.

(2) A person twenty years of age or younger who meets the:

(a) One-person AFDC financial requirements and is in:
(i) Foster care; or
(ii) Subsidized adoption; or
(iii) A nursing facility or intermediate care facility for mentally retarded (ICF/MR); or

(iv) An approved inpatient psychiatric facility.
(b) Eligibility requirements under chapter 388-509 WAC.

(3) A current client of Title II, Social Security Administration (SSA) benefits who:

(a) Was a concurrent client of Title II and SSI benefits;
(b) Is ineligible for SSI benefits and/or state supplementary payments; and

(c) Would be eligible for SSI benefits if the department deducts the following from the current Title II benefit amount:

(i) All Title II cost-of-living benefit increases under P.L. 94-566, Section 503 received by the client since termination from SSI/SSP; and

(ii) All Title II cost-of-living benefit increases received during the time period in subsection (3)(c)(i) of this section by the client's spouse and/or other financially responsible family member living in the same household.

(4) An SSI client, after January 1, 1981, who continues to be eligible for medical assistance under P.L. 96-265 and 99-643;

(5) A currently disabled client receiving widow's or widower's benefits under Section 202 (e) or (f) of the Social Security Act if the disabled client:

(a) Was entitled to a monthly insurance benefit under Title II of the Social Security Act for December 1983; and

(b) Was entitled to and received a widow's or widower's benefit based on a disability under Section 202 (e) or (f) of the Social Security Act for January 1984;

(c) Became ineligible for SSI/SSP in the first month in which the increase provided under Section 134 of P.L. 98-21 was paid to the client;

(d) Has been continuously entitled to a widow's or widower's benefit under Section 202 (e) or (f) of the act;

(e) Would be eligible for SSI/SSP benefits if the amount of that increase, and any subsequent cost-of-living increases provided under Section 215(i) of the act, were disregarded;

(f) Is fifty through fifty-nine years of age; and

(g) Filed an application for Medicaid coverage before July 1, 1988.

(6) Effective January 1, 1991, any person receiving Title II disabled widow/widower benefits (DWB) under Section 202 (e) or (f) of the SSA, if the person:

(a) Is not eligible for the hospital insurance benefits under Medicare Part A of Title XVIII;

(b) Received SSI/SSP payments in the month before receiving such Title II benefits;

(c) Became ineligible for SSI/SSP due to receipt of or increase in such Title II benefits; and

(d) Would be eligible for SSI/SSP if the amount of such Title II benefits or increase in such Title II benefits under Section 202 (e) or (f) of the SSA, and any subsequent cost-of-living increases provided under Section 215(i) of the act were disregarded.

(7) A disabled or blind client receiving Title II Disabled Adult Childhood (DAC) benefits under Section 202(d) of the SSA if the client:

(a) Has attained eighteen years of age;

(b) Lost SSI/SSP on or after July 1, 1988, due to receipt of or increase in DAC benefits; and

(c) Would be eligible for SSI/SSP if the amount of the DAC benefits or increase under Section 202(d) of the SSA and any subsequent cost-of-living increases provided under Section 215(i) of the SSA Act were disregarded.

(8) A client who:

(a) In August 1972, received:

(i) Old age assistance (OAA);

(ii) Aid to blind (AB);

(iii) Aid to families with dependent children (AFDC); or

(iv) Aid to the permanently and totally disabled (APTD); and

(b) Was entitled to or received retirement, survivors, and disability insurance (RSDI) benefits; or

(c) Is ineligible for OAA, AB, AFDC, SSI or APTD solely because of the twenty percent increase in Social Security benefits under P.L. 92-336.

(9) A pregnant woman whose family income is at or below one hundred eighty-five percent of the Federal Poverty Level (FPL), or postpartum woman as described under WAC 388-508-0830;

(10) A child, born to a woman eligible for and receiving medical assistance on the date of the child's birth, from the date of birth for a period of one year when the child remains a member of the mother's household;

(11) A child eighteen years of age or younger meeting residence, citizenship, and Social Security number requirements whose countable family income is at or under two hundred percent of the FPL.

(12) In a family unit ineligible for AFDC financial assistance as a result (wholly or in part) of the collection or increased collection of child or spousal support shall be eligible for medical assistance for four months beginning with the month of ineligibility, if the family unit received AFDC financial assistance in at least three of the six months immediately preceding the month of ineligibility;

(13) In a family unit which becomes ineligible for AFDC before April 1, 1990, solely because of increased hours or increased income from employment shall remain categorically eligible for medical assistance for four calendar months beginning with the month of ineligibility, provided:

(a) The family received AFDC in at least three of the six months immediately preceding the month of ineligibility; and

(b) A member of such family continues to be employed; and

(c) The department considers earned income tax credits (EITC) as income for the purposes of this subsection.

(14) Denied AFDC cash payments solely because of a departmental recovery of an overpayment;

(15) In a medical facility and:

(a) Who would be eligible for cash assistance if the person was not institutionalized; or

(b) Is an SSI-related institutionalized person and has gross income above the cash assistance level but below three hundred percent of the Federal Benefit Rate.

(16) Sixty-five years of age or older, a patient in an institution for mental diseases (IMD), and is resource and income eligible as described under subsection (15)(a) or (b) of this section;

(17) A person eligible for and accepting hospice services as described under WAC 388-86-047 and who 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.

(18) Blind or presumptively disabled under SSI criteria, as described under WAC 388-511-1105, and the person receives continuing general assistance (GA-X) cash assistance;

(19) An alien ineligible for AFDC or SSI cash assistance because of deeming of income of the alien's sponsors;

(20) Not an inmate of a public institution;

(21) Not receiving cash assistance because of special situations as defined under WAC 388-507-0740; or

(22) A client who:

(a) Was entitled to RSDI benefits in August 1972; and

(b) Is ineligible for AFDC or SSI solely because of the twenty percent increase in Social Security benefits under PL 92-336.

(23) Suspended from receipt of SSI benefits for non-compliance with drug or alcohol treatment requirements; or

(24) Determined eligible for SSI benefits based on a finding that alcoholism/drug addiction is a contributing factor to the person's disability and such benefits have been exhausted after receipt for thirty-six months.

[Statutory Authority: RCW 74.08.090 and SPA 95-11. 96-12-001 (Order 3981), § 388-503-0310, filed 5/22/96, effective 6/22/96. Statutory Authority: RCW 74.08.090. 94-17-036 (Order 3769), § 388-503-0310, filed 8/10/94, effective 9/10/94; 94-10-065 (Order 3732), § 388-503-0310, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-82-010 and 388-82-115.]

WAC 388-503-0320 Medically needy eligible persons. (1) The department shall determine as medically needy a resident of the state of Washington who:

(a) Meets or exceeds the medically needy income level in WAC 388-507-0710;

(b) Meets resource standards in WAC 388-507-0720; and

(c) Otherwise meets the eligibility criteria under subsection (2) of this section.

(2) The department shall determine as medically needy a person who:

(a) Would be categorically needy as defined under WAC 388-503-0310 but has excess income and/or resources. Refer to subsection (3) of this section for exceptions;

(b) Is the aged, blind, or disabled ineligible spouse of an SSI beneficiary;

(c) Is a child eighteen years of age or younger as defined under WAC 388-509-0910 who has excess income; or

(d) Is a pregnant woman the department would consider categorically needy but who has excess income. For the purposes of this subsection, the department shall increase the number in the household by the number of unborn children before comparing the pregnant woman's income to the medically needy income level in WAC 388-507-0710.

(3) The department shall determine ineligible for medically needy:

(a) An inmate of a public institution; and

(b) Effective January 1, 1996, an AFDC-related adult.

[Statutory Authority: RCW 74.08.090 and 1995 2nd sp.s. c 18 §§ 2095a and 5b. 95-24-017 (Order 3921, #100267), § 388-503-0320, filed 11/22/95, effective 1/1/96. Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-503-0320, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-99-005 and 388-99-010.]

WAC 388-503-0350 Medical care services—GAU/ADATSA. (1) The department shall provide state-funded medical care services within the limitations set forth under these rules and regulations to any person who has been certified to receive:

(a) Continuing general assistance - unemployable (GA-U) and who has not been determined to be blind or presumptively disabled under SSI criteria; or

(b) Alcohol and drug addiction services provided under the Alcoholism and Drug Addiction Treatment and Support Act, chapter 74.50 RCW.

(2) The department shall provide medical care services to continuing general assistance clients in nursing facilities or intermediate care facilities for mentally retarded to the same extent as a client of medical assistance.

[Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-503-0350, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-82-126 and 388-83-006.]

WAC 388-503-0370 Medically indigent eligible persons. The department shall determine a person eligible for the medically indigent program when the person:

(1) Has an emergency medical condition requiring hospital services.

(a) "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 serious:

- (i) Jeopardy to the patient's health;
- (ii) Impairment to bodily functions; or
- (iii) Dysfunction of any bodily organ or part.

(b) For the purposes of this section, the department shall consider pregnancy and treatment under the Involuntary Treatment Act (ITA) as emergency medical conditions.

(2) Meets the financial eligibility, emergency medical expense and spenddown requirements under chapter 388-518 WAC; and

(3) Is not an inmate of a federal or state prison.

[Statutory Authority: RCW 74.08.090, 95-22-039 (Order 3913, #100246), § 388-503-0370, filed 10/25/95, effective 10/28/95; 94-10-065 (Order 3732), § 388-503-0370, filed 5/3/94, effective 6/3/94. Formerly WAC 388-100-005 (part).]

Notice of Objection (1): 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]

Notice of Objection (2): The Joint Administrative Rules Review Committee (JARRC) held on July 27, 1987, that WAC 388-100-005 did not

conform with the intent of the Legislature. This rule, adopted by the Department of Social and Health Services (DSHS), excluded inmates of federal or state prisons from eligibility for the limited casualty-medically indigent program of medical assistance.

As authority for its opinion, the committee cited RCW 70.48.130 of the City and County Jail Act of 1977 which requires DSHS to reimburse local governments for inmate medical costs provided to otherwise eligible inmates.

There has been no amendment to RCW 70.48.130 changing its meaning since 1986. Effective May 15, 1993, an amendment resulted in even further emphasis of the intent of the Legislature that all jail inmates receive cost-effective medical care. (1993 C 409 § 2)

On May 31, 1994, DSHS refiled a permanent rule, WSR 94-10-065, WAC 388-503-0370 which recodified WAC 388-100-005. The eligibility requirement that an applicant for the medically indigent program not be an inmate of a federal or state prison is retained in the new rule.

Since neither the statutory authority nor the substance of the rule has changed since the JARRC decision of July 27, 1987, the committee is of the opinion that DSHS has not modified, amended, withdrawn or repealed WAC 388-100-005 to conform with the intent of the Legislature. This being the case, pursuant to RCW 34.05.640 (5) and (6), the committee respectfully requests that the notice of objection published along with WAC 388-100-005 continue to be published along with WAC 388-503-0370.

[Joint Administrative Rules Review Committee, Memorandum February 21, 1995—Filed February 27, 1995, WSR 95-06-053.]

Chapter 388-504 WAC

FILING A MEDICAL APPLICATION

WAC

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| 388-504-0405 | Filing a medical application. |
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WAC 388-504-0405 Filing a medical application.

(1) The department shall accept and process applications for medical programs as described under chapter 388-210 WAC except as specified under this section.

(2) A Washington state resident temporarily out of the state may make application to the CSO in the resident's area of the state through a person or agency acting in the client's behalf.

(3) An aged, blind, or disabled client ineligible for SSI benefits solely because of the spouse's income level shall apply for a medical program.

(4) The department shall find clients who receive continuing cash assistance eligible for a medical program without a separate application.

(5) The department shall accept applications for medical care programs without delay.

(6) The department shall provide clients with:

- (a) A Civil Rights Act explanation;
- (b) Fair hearing information;
- (c) Early and periodic screening, diagnosis, and treatment (EPSDT) information also known as the healthy kids program, when appropriate;
- (d) Family planning information, when appropriate;

- (e) Special supplemental food program for women, infants and children (WIC) information, when appropriate;
- (f) Managed care information, when appropriate.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-504-0405, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-84-105, 388-99-050 and 388-100-020.]

WAC 388-504-0410 Authorized representative. A relative or representative may complete an application for medical programs on a client's behalf, when the client is unable to complete the application or if the client dies.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-504-0410, filed 5/3/94, effective 6/3/94. Formerly WAC 388-84-105, 388-99-050 and 388-100-020.]

WAC 388-504-0420 Interview process. (1) The department shall complete the application process by conducting a face-to-face interview in the local community services office (CSO), unless the client:

- (a) Or the client's representative requests the face-to-face interview be waived and the:
 - (i) Client is unable to come to the CSO; and
 - (ii) Client does not have a 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 and the application is for a pregnancy-related medical program.

(c) Is a child eighteen years of age or younger and the application is for a medical program for children.

(2) When the client meets the requirements of subsection (1)(a), (b), or (c) of this section, the department may complete the application process through:

- (a) A face-to-face interview in the client's home;
- (b) A telephone interview; or
- (c) The mail.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-504-0420, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-84-105, 388-99-050 and 388-100-020.]

WAC 388-504-0430 Client's rights. A person applying for or receiving medical assistance, limited casualty programs, medical care services, or children's health services shall have the same rights as for cash assistance clients.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-504-0430, filed 5/3/94, effective 6/3/94. Formerly WAC 388-99-050 and 388-100-020.]

WAC 388-504-0440 Client's responsibilities. (1) A client shall furnish the medical care provider with a medical identification card or other adequate notification of eligibility from the department.

(2) The client shall report to the department, within twenty calendar days, any change of circumstances relating to eligibility.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-504-0440, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-83-005, 388-83-006, 388-85-105, 388-99-050, 388-100-020 and 388-100-025.]

WAC 388-504-0450 Department's responsibilities. The department shall provide a client medical care within the limitations set forth under chapters 388-529 and 388-86 WAC to any client certified eligible to receive medical care.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-504-0450, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-83-005, 388-99-050 and 388-100-020.]

WAC 388-504-0460 Verification. The department shall, when determining or redetermining a client's eligibility for a medical care program, follow the same rules of verification as used for cash assistance clients as defined under chapter 388-210 WAC unless medical rules and regulations provide for an exception or exemption from cash assistance verification rules.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-504-0460, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-99-050 and 388-100-020.]

WAC 388-504-0470 Application disposition. (1) The department shall approve or deny a request for medical care within:

- (a) Sixty calendar days for a client requiring a disability decision;
- (b) Forty-five calendar days for all other categories except a pregnant woman as described under subsection (1) (c) of this section; and
- (c) Fifteen working days for a pregnant woman, including an interview within five working days if an interview is requested by the client;

(d) When applying subsection (1) (a), (b), or (c) of this section, the department shall count as day one the date following the date of application.

(2) The department shall:

- (a) Act on each application as quickly as possible; and
- (b) Not use the standards for timely processing of applications as a waiting period for determining eligibility.

(3) The department shall follow criteria under chapter 388-210 WAC for the approval, denial, or withdrawal of an application for:

- (a) Medical assistance;
- (b) Medical care services;
- (c) The limited casualty program; and
- (d) Children's health program.

[Statutory Authority: RCW 74.08.090. 95-22-040 (Order 3912, # 100241), § 388-504-0470, filed 10/25/95, effective 11/25/95; 94-10-065 (Order 3732), § 388-504-0470, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-38-110, 388-84-110, 388-99-050 and 388-100-020.]

WAC 388-504-0480 Delayed and pended application. When the department has acted promptly at all stages of the application process, the department may extend the time standard if the department cannot reach a timely eligibility decision because the:

- (1) Client or an examining physician delays or fails to provide information or fails to take a required action; or
- (2) Eligibility determination depends on out-of-state or intercity correspondence and no other verification is available to establish the eligibility factor at issue; or

(3) Eligibility determination depends on receipt of medical expense documentation as described under WAC 388-519-1930 and 388-521-2140.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-504-0480, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-84-110, 388-99-050 and 388-100-020.]

WAC 388-504-0485 Approval of previously denied application. The department shall rescind a denial and approve a client's eligibility for medical care based on a previously denied application when:

- (1) The client, within thirty days from the date of denial, provides additional information needed to establish eligibility; or
- (2) Following this thirty day period, the client:
 - (a) Timely requests a fair hearing to appeal the denial; and
 - (b) Provides the additional information needed to establish eligibility.
- (3) Following a spenddown denial, the department shall reopen and process the case when a client, more than thirty days after the denial:
 - (a) Presents bills sufficient to meet spenddown and shows reasonable cause for the delay in providing the bills; and
 - (b) Timely requests a fair hearing to appeal the denial.
- (4) The department shall not deny eligibility for a medically needy program based on failure to meet spenddown until at least thirty days after the end of the base period.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-504-0485, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-84-110, 388-99-050 and 388-100-020.]

Chapter 388-505 WAC

ELIGIBILITY FACTORS COMMON TO MEDICAL PROGRAMS

WAC

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| 388-505-0501 | Eligibility—General. |
| 388-505-0505 | Age. |
| 388-505-0510 | Residence. |
| 388-505-0520 | Citizenship and alien status. |
| 388-505-0530 | Social Security number. |
| 388-505-0540 | Assignment of medical support rights. |
| 388-505-0560 | Cooperation in securing medical support. |
| 388-505-0570 | Good cause for noncooperation—Medical care support. |
| 388-505-0580 | Resources. |
| 388-505-0590 | Income. |
| 388-505-0595 | Trusts. |

WAC 388-505-0501 Eligibility—General. Applicants for the medical care programs administered by the department of social and health services pursuant to chapter 74.09 RCW are required to meet the eligibility criteria of chapter 388-505 WAC appropriate to the program for which the client is applying.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-505-0501, filed 5/3/94, effective 6/3/94. Formerly WAC 388-99-015.]

WAC 388-505-0505 Age. The department shall consider the age of a client to determine the appropriate category of medical program or services.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-505-0505, filed 5/3/94, effective 6/3/94. Formerly WAC 388-83-020.]

WAC 388-505-0510 Residence. (1) A client receiving medical care program benefits other than medically indigent shall be a resident of the state of Washington. A client need not be a resident of the county in which medical care is obtained.

- (2) The department shall consider a client a resident if the client:
 - (a) Intends to remain permanently or for an indefinite period in the state; or
 - (b) Enters the state with a job commitment or seeks employment, whether the client is or is not currently employed.
- (3) The department shall not consider a person temporarily entering the state, for the sole purpose of obtaining medical care, as a resident.

(4) The department shall consider a client's residence the state:

- (a) Making a state supplemental security income (SSI) supplementary payment; or
- (b) Making federal payments for foster or adoption assistance under Title IV-E of the Social Security Act; or
- (c) Of residence of the parent or legal guardian, if one has been appointed, for an institutionalized minor child; or
- (d) Of residence of the parent or legal guardian, if one has been appointed, for an institutionalized client twenty-one years of age or older who became incapable of determining residential intent before twenty-one years of age; or
- (e) Where a client is residing if the person becomes incapable before twenty-one years of age; or
- (f) Making a placement in an out-of-state institution.

(5) The department shall determine the state of residence of a noninstitutionalized child, unless married or emancipated, following the rules under chapter 388-215 WAC.

(6) The department shall ensure married or emancipated minor children follow the rules of subsections (1), (2), (3) and (4) of this section.

(7) When two or more states cannot agree which state is the client's state of residence, the department shall require the state in which the client is physically located to be the state of residence.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-505-0510, filed 5/3/94, effective 6/3/94. Formerly WAC 388-83-025.]

WAC 388-505-0520 Citizenship and alien status.

(1) The department shall provide Medicaid to an otherwise eligible person who is:

- (a) A citizen of the United States; or
- (b) A North American Indian born in Canada claiming fifty percent:
 - (i) Indian blood; or
 - (ii) Or less Indian blood and who has maintained United States residency since before December 25, 1952.

(c) An alien lawfully admitted for permanent residence or otherwise permanently residing under color of law (PRUCOL) in the United States; or

(d) An alien lawfully present in the United States according to sections 203 (a)(7), 207(c), 208, and 212 (d)(5) of the Immigration and Nationality Act (INA); or

(e) An alien granted lawful temporary residence, or permanent residence according to sections 245(a), 210, 210(f), and 210A of INA and sections 202 and 302 of the Immigration Reform and Control Act (IRCA), unless five years from the date Immigration and Naturalization Service (INS) grants lawful temporary resident status has not passed; or

(f) An alien approved by the INS under the family unity program, unless five years from the date INS grants lawful temporary resident status for the petitioning relative has not passed.

(2) When an alien as described under subsection (1)(e) or (f) of this section has not passed the five-year disqualification period, the department shall provide Medicaid to an otherwise eligible person when the alien is:

(a) Aged, blind, or disabled; or

(b) Seventeen years of age or under; or

(c) Pregnant; or

(d) A Cuban/Haitian entrant as defined in sections 501 (e)(1) and (2)(A) of P.L. 96-422.

(3) When an alien as described under subsection (1)(e) or (f) of this section is still under the five-year disqualification period, and is not described under subsection (2) of this section, the department shall provide medical care and services as necessary for treatment of the alien's emergency medical condition as defined under WAC 388-500-0005.

(4) For any other alien, when such alien meets the eligibility requirements of a Medicaid program other than citizenship or alien status requirements, the department shall provide Medicaid as follows:

(a) Full scope medical services for a pregnant woman; or

(b) Medical care and services as necessary for treatment of the alien's emergency medical condition as defined under WAC 388-500-0005.

(5) Medical care services and children's health programs do not require citizenship/alien status.

[Statutory Authority: RCW 74.08.090. 96-13-002 (Order 3983), § 388-505-0520, filed 6/6/96, effective 7/7/96. Statutory Authority: RCW 74.08.090 and 1995 2nd sp.s. c 18. 95-24-016 (Order 3923), § 388-505-0520, filed 11/22/95, effective 12/23/95. Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-505-0520, filed 5/3/94, effective 6/3/94. Formerly WAC 388-83-015.]

WAC 388-505-0530 Social Security number. (1) As a condition of eligibility, each medical program client shall:

(a) Furnish the client's Social Security number; or

(b) Apply for a Social Security number if the number is unknown or has not been issued.

(2) The department shall provide Medicaid for a period of one year for a child born to a woman eligible for and receiving medical assistance on the date of the child's birth, before the department shall require an application for the child's Social Security number, if:

(a) The child remains a member of the mother's household; and

(b) The mother continues to live in Washington state.

(3) The client shall report a new Social Security number to the department within twenty days of its receipt.

(4) The department shall not deny, delay, or terminate medical care pending issuance of a Social Security number when the client meets the requirement in subsection (1)(b) of this section.

(5) When the client fails or refuses to comply with the requirement in subsection (1) of this section for each person included in the assistance unit, the department shall not determine eligibility for such person. The department shall exclude such person from the assistance unit and deny medical care for that person. See WAC 388-509-0920 for a child not eligible for a Medicaid program because the child does not have a Social Security number.

(6) The department shall assist a client in obtaining a Social Security number by:

(a) Referring the client to the nearest Social Security office; and

(b) Furnishing to the client from department records any verification requested by the Social Security Administration.

(7) A Social Security number is not a condition of eligibility for children's health program or medically indigent program.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-505-0530, filed 5/3/94, effective 6/3/94. Formerly WAC 388-83-017.]

WAC 388-505-0540 Assignment of medical support rights. (1) As a condition of eligibility for any medical program, a client shall assign to the state of Washington all right, title, and interest to any medical care support available as a result of:

(a) A court order; or

(b) An administrative agency order; or

(c) Any third-party payments for medical care.

(2) The client shall assign rights of payment to any medical care support the client may have in the client's own behalf or on the behalf of any other client for whom the client can legally assign such rights.

(3) As assignee of the eligible client's right to receive medical support payments, the department may sign coordination of benefit forms or other forms, as necessary, to ensure the efficient and proper payment of medical care support.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-505-0540, filed 5/3/94, effective 6/3/94. Formerly WAC 388-83-012.]

WAC 388-505-0560 Cooperation in securing medical support. (1) As a condition of eligibility for Medicaid, the department shall require a client, unless pregnant, or a child under one year of age and automatically eligible for medical assistance, or a client for whom there is a finding of good cause, to cooperate with the department in:

(a) Obtaining medical support, as defined under WAC 388-11-011, for the client or for any other client other than an unborn for whom the client can legally assign rights; and

(b) Identifying and providing information to assist the department in pursuing any liable third party; and

(c) Establishing paternity of the client's child.

(2) The department shall require a Medicaid 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) The client is pregnant; or

(b) Good cause is found as described under WAC 388-215-1410 through 388-215-1490.

(3) The department shall waive such client's cooperation requirements if the department finds the client has good cause for noncooperation under WAC 388-505-0570.

(4) Unless the department finds good cause for noncooperation under WAC 388-215-1410 through 388-215-1490 or WAC 388-505-0570, the department shall find the client, who refuses to cooperate under subsection (1) of this section, ineligible to receive Medicaid.

(5) The department shall provide Medicaid to an otherwise eligible client when the person having the legal authority to cooperate on behalf of the client refuses such cooperation.

(6) Effective March 1, 1991, the department shall not establish an obligation to collect a client's 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 a client's birth costs covered by available insurance or other liable third party.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-505-0560, filed 5/3/94, effective 6/3/94. Formerly WAC 388-83-013.]

WAC 388-505-0570 Good cause for noncooperation—Medical care support. (1) The department shall waive the cooperation requirement under WAC 388-505-0560(1), if the client claims and the department determines cooperation is not in the best interest of the:

(a) Medical care client for whom assignment is made; or

(b) Person responsible for cooperating.

(2) The department shall inform a client of the right to claim good cause for not cooperating.

(3) The department shall make a final determination of the existence of good cause using the time limits and exceptions described under WAC 388-504-0470.

(4) The department shall find good cause if the cooperation is not in the best interest of the client or the person responsible for cooperating. Circumstances constituting good cause for noncooperation include, but are not limited to:

(a) Anticipated or actual physical harm or an emotional impairment substantially affecting the ability to function of the:

(i) Medical care client for whom assignment is made; or

(ii) Person responsible for cooperating;

(b) Rape or incest resulting in the conception of a person for whom support is sought;

(c) Legal proceedings for adoption are pending;

(d) Active consideration of placement of the child for adoption; or

(e) A department finding of good cause for an AFDC client, for not cooperating under WAC 388-215-1440 in establishing paternity for a child or a medical care support resource.

(5) The department shall not deny, delay, or discontinue medical assistance pending a determination of good cause for a client refusing to cooperate.

(6) At each reapplication or eligibility evaluation, the department shall review all cases in which the department found good cause for refusing to cooperate. If good cause no longer exists, the department shall rescind the decision and require cooperation by the client.

(7) When the department determines good cause does not exist, the department shall:

(a) Notify the client, in writing, and provide the client the opportunity to:

(i) Cooperate;

(ii) Have the case closed; or

(iii) Request a fair hearing; and

(b) Terminate medical assistance if the client refuses to cooperate under WAC 388-505-0560.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-505-0570, filed 5/3/94, effective 6/3/94. Formerly WAC 388-83-014.]

WAC 388-505-0580 Resources. (1) To be eligible for a medical care program, a person's resources shall not exceed the specified limits of the appropriate eligibility standards for the appropriate medical care programs.

(2) The department shall consider resources available when the client or spouse:

(a) Owns the resource; and

(b) Has the authority to convert the resource to cash; and

(c) Is not legally restricted from using the resource for the person's support and maintenance.

(3) The department shall exempt noncash resources when the client:

(a) Applies for categorically needy or medically needy medical assistance; and

(b) Cannot convert the noncash resource to cash within twenty work days; and

(c) Makes an ongoing attempt to convert the noncash resources to cash.

(4) The department shall consider the availability of a sales contract under WAC 388-511-1160(2) for an SSI-related client.

(5) The department shall not consider the transfer of a resource when determining Medicaid eligibility for a person who is not institutionalized. For an institutionalized client, refer to WAC 388-513-1365.

(6) The department shall consider a client's resource as available on the first moment of the first month following receipt for an SSI-related client.

(7) The department shall consider income received in one month as a resource the first of the following month, unless specifically exempted for a longer period.

[Statutory Authority: RCW 74.08.090. 96-01-005 (Order 3932, # 100268), § 388-505-0580, filed 12/6/95, effective 1/6/96; 95-02-026 (Order 3817), § 388-505-0580, filed 12/28/94, effective 1/28/95; 94-10-065 (Order 3732), § 388-505-0580, filed 5/3/94, effective 6/3/94. Formerly WAC 388-83-026.]

WAC 388-505-0590 Income. (1) To be eligible for a medical care program, a person's countable income shall not exceed the specified limits of the eligibility standards for the appropriate medical care program unless:

(a) The program allows the spenddown of excess income;

(b) The program otherwise specifically provides for exceeding those limits; or

(c) In the case of medical assistance clients, eligibility for other programs has not yet been determined in accordance with WAC 388-522.

(2) For continuing cash assistance clients, the department shall find a person eligible for medical care programs without a separate eligibility determination.

(3) For a noncash assistance medical client, the department shall determine countable income according to AFDC or SSI methodology; except, the department shall:

(a) Consider the financial responsibility of relatives as described under WAC 388-506-0610 and 388-506-0620, and the financial responsibility of an alien sponsor under WAC 388-510-1030;

(b) Require a client to take all necessary steps to obtain any annuities, pensions, retirement, and disability benefits to which a client is entitled, unless the client can show good cause for not doing so. The client's annuities, pension, retirement, and disability benefits include, but are not limited to:

- (i) Veteran's compensation and pensions;
- (ii) OASDI benefits;
- (iii) Railroad retirement benefits; and
- (iv) Unemployment compensation.

(c) Allow child care expenses the client pays as an income deduction;

(d) Exempt earned income tax credit refunds and payments, received on or after January 1, 1991, during the month of receipt and the following month;

(e) Consider trusts as described under WAC 388-505-0595; and

(f) Consider a nonrecurring lump sum payment as:

- (i) Income in the month in which the client receives the payment; and
- (ii) A resource if the client retains the payment after the month of receipt.

(4) For an SSI-related client, the department shall determine countable income using SSI methodology except the department shall:

(a) Exclude lump sum payments as described under WAC 388-511-1160;

(b) Consider the principal and interest payment from a sales or real estate contract as described under WAC 388-511-1160 (2)(a) as unearned income; and

(c) Consider the interest payment from a sales or real estate contract as described under WAC 388-511-1160 (2)(b) as unearned income.

(5) For an AFDC-related noncash assistance medical client, the department shall determine countable income according to AFDC methodology; except, the department shall apply the exceptions in subsection (3) of this section and shall:

(a) Budget income prospectively as defined under WAC 388-218-1900;

(b) Not use mandatory monthly income reporting; and

(c) Consider the AFDC earned income exemption except as limited under WAC 388-507-0740.

[Statutory Authority: RCW 74.08.090, 95-17-031 (Order 3878), § 388-505-0590, filed 8/9/95, effective 9/9/95; 95-04-047 (Order 3827), § 388-505-

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0590, filed 1/25/95, effective 2/25/95; 94-10-065 (Order 3732), § 388-505-0590, filed 5/3/94, effective 6/3/94. Formerly WAC 388-83-041.]

WAC 388-505-0595 Trusts. (1) For the purposes of this section, the department shall ensure a trust includes any legal instrument similar to a trust.

(2) The department shall ensure this section shall not apply to any trust or initial trust decree established:

(a) On or before April 6, 1986; and

(b) Solely for the benefit of a client who lives in an intermediate care facility for the mentally retarded (ICFMR).

(3) For trusts established on or before August 10, 1993, the department shall:

(a) Determine if the trust is established by the client, client's spouse, or the legal guardian for a client under which:

(i) The client may be the beneficiary of all or part of the payments from the trust;

(ii) The distribution of such payments is determined by one or more of the trustees; and

(iii) The trustees are permitted to use discretion with respect to the distribution of payments to the client;

(b) Consider available to the client the greatest amount of payments permitted to be distributed under the terms of the trust when the conditions defined under (a) of this subsection exist;

(c) Apply (b) of this subsection whether or not:

(i) The trust:

(A) Is irrevocable; or

(B) Is established for purposes other than to establish eligibility for medical assistance;

(ii) The trustees actually use the discretion permitted by the trust.

(d) For an irrevocable trust not meeting the description under (a) of this subsection, consider:

(i) The trust as an unavailable resource when the client establishes the trust for a beneficiary other than the client or the client's spouse;

(ii) As an available resource the amount of the trust's assets:

(A) The client may access; or

(B) The trustee of the trust distributes as actual payments to the client.

(iii) Referencing WAC 388-513-1365 for regulations concerning the transfer of assets;

(e) For a revocable trust, consider:

(i) The full amount of the trust as an available resource of the client when the trust is established by:

(A) The client;

(B) The client's spouse and the client lives with the spouse;

(C) A person other than the client or the client's spouse only to the extent the client has access to the assets of the trust.

(ii) Only the amounts paid to the client from the trust as an available resource when the trust is established by:

(A) The client's spouse and the client does not live with the spouse; or

(B) A person other than the client or the client's spouse and payments are distributed by a trustee of the trust.

(f) Not consider client withdrawal of funds from a trust as described under (e) of this subsection as income;

(g) Waive the requirements of this subsection (3) if undue hardship exists. Undue hardship includes but is not limited to situations in which:

(i) The trustee refused to disburse the funds from the trust and the client has filed and is actively pursuing litigation to require the trustee to disburse said funds; or

(ii) The client would be forced to go without life sustaining services because trust funds are not made available to pay for the services.

(4) For trusts established on or after August 11, 1993, the department shall follow subsection (3) of this section to determine eligibility for medical services received on or before September 30, 1993.

(5) For trusts established on or after August 11, 1993, the department shall follow subsections (6) through (14) of this section to determine eligibility for medical services received on or after October 1, 1993.

(6) The department shall consider a trust established by the client when:

(a) All or part of the assets, as defined under WAC 388-513-1365, of the trust were from the client; and

(b) The trust was established, other than by will, by:

(i) The client or the client's spouse;

(ii) A person, including a court or administrative body, with legal authority to act in place of, or on behalf of, the client or the client's spouse; or

(iii) A person, including a court or administrative body, acting at the direction of or upon the request of the client or the client's spouse.

(7) The department shall consider available to the client only the assets contributed to the trust by the client when part of the trust assets were contributed by any other person.

(8) The department shall not consider:

(a) The purposes for which a trust is established;

(b) Whether the trustees have or exercise any discretion under the terms of the trust;

(c) Restrictions on when or whether distributions may be made from the trust; or

(d) Restrictions on the use of distributions from the trust.

(9) For a revocable trust established as described under subsection (6) of this section, the department shall consider:

(a) The full amount of a revocable trust as an available resource of the client;

(b) Payments from the trust to or for the benefit of the client as income of the client; and

(c) Any payments from the trust other than payments described under (b) of this subsection as a transfer of client assets.

(10) For an irrevocable trust established as described under subsection (6) of this section, the department shall consider:

(a) As an available resource to the client, the portions of a trust or the income from the trust from which payment can be made to or for the benefit of the client. When payment is made from such irrevocable trust, the department shall consider such payments as:

(i) Income to the client when payment is to or for the client's benefit; or

(ii) The transfer of an asset when payment is made to any person for any purpose other than the client's benefit;

(b) As a transfer of assets, a trust from which a payment cannot be made to or for the client's benefit. For such trust the department shall find:

(i) The transfer of assets is effective the date:

(A) Of the establishment of the trust; or

(B) On which payment to the client is precluded, if later;

(ii) The value of the trust includes any payments made from the trust after the effective date of the transfer.

(11) For a revocable or irrevocable trust established by persons or with funds other than as described under subsection (6) of this section, the department shall consider such trust under subsection (3)(e) of this section.

(12) The department shall not follow subsections (6) through (11) of this section for a trust containing the assets of a person:

(a) Sixty-four years of age and younger who is disabled as defined by SSI criterion and the trust:

(i) Is established for the benefit of such person by such person's parent, grandparent, legal guardian, or a court; and

(ii) Stipulates that the state will receive all amounts remaining in the trust upon the death of the client up to the amount of Medicaid expended on the client's behalf.

(b) Regardless of age, who is disabled as defined by SSI criteria and the trust:

(i) Is managed by a nonprofit association which:

(A) Maintains separate accounts for each trust beneficiary; and

(B) May pool such separate accounts only for investment and fund management purposes.

(ii) Stipulates that the state will receive all amounts remaining in the client's trust account upon the death of the client up to the amount of Medicaid expended on the client's behalf.

(13) The department shall waive the application of this section if the client establishes undue hardship exists. Undue hardship includes, but is not limited to, situations where the client would be forced to go without life sustaining services.

(14) See WAC 388-513-1365 for trusts the department determines is a transfer of assets under this section.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-505-0595, filed 5/3/94, effective 6/3/94. Formerly WAC 388-92-041.]

Chapter 388-506 WAC

MEDICAL FINANCIAL RESPONSIBILITY

WAC

388-506-0610 AFDC-related medical programs.

388-506-0620 SSI-related medical clients.

388-506-0630 SSI-related income deeming.

WAC 388-506-0610 AFDC-related medical programs. (1) When determining eligibility for medical programs, the department shall consider:

(a) The family unit living in the same household as including all family members when determining program relationship;

(b) A relative financially responsible only as follows:

(i) The natural or adoptive parent or stepparent to a child eighteen years of age or younger living in the same household; and

(ii) Spouse to spouse living in the same household.

(c) As a separate medical assistance unit (MAU) the following family member living in the same household, when a family member is not eligible for a categorically needy medical care program:

(i) A child with countable income;

(ii) A child with countable resources which render another family member ineligible for a Medicaid program;

(iii) A child in common of unmarried parents;

(iv) Each unmarried parent of a child in common with such parent's separate children, if any; or

(v) A nonresponsible caretaker relative.

(d) Categorically related family members, other than those described under subsection (1)(c) of this section, in the same MAU;

(e) A pregnant minor as not living in the same household as her parent regardless of whether she lives with her parent. See subsections (4)(b) and (5)(b) of this section; and

(f) A child, seventeen years of age and younger, in inpatient chemical dependency treatment or inpatient mental health treatment as living in the parent's or legal guardian's household, unless:

(i) An assessment by the department or its designee indicates inpatient treatment is likely to last ninety consecutive days or more;

(ii) The child is in a court-ordered out-of-home care in accordance with chapter 13.34 RCW; or

(iii) The department determines the parents are not exercising responsibility for the care and control of the child.

(2) The department shall consider income and resources jointly for spouses and spouses' children living in the same household unless the exceptions in subsection (1)(c) of this section are met. See WAC 388-506-0620 for the financial responsibility requirements for SSI-related clients.

(3) When determining eligibility for medical care, the department shall consider the countable income or resources of a child available only to the child when an exception in subsection (1)(c) of this section is met.

(4) The department shall consider the income of a parent of a child eighteen years of age or younger:

(a) Living in the same household, available to the child whether or not actually contributed. The department shall:

(i) Allow a parent one hundred percent of the Federal Poverty Level (FPL) for the parent and other members of the parent's MAU; and

(ii) Allocate income in excess of one hundred percent of the FPL on a prorated basis to all children eighteen years of age or younger in separate MAUs for whom the parent is financially responsible.

(b) Not living in the same household, only to the extent the parent's income is actually contributed to the child.

(5) The department shall consider the resources of a parent of a child eighteen years of age or younger:

(a) Living in the same household, available to the child whether or not actually contributed. The department shall ensure a parent's countable resources are:

(i) Prorated; and

(ii) Allocated in equal shares to:

(A) The parent; and

(B) Each person for whom the parent is financially responsible.

(b) Not living in the same household, only to the extent the parent's resources are actually contributed to the child.

(6) When determining medical care eligibility, the department shall not consider available, unless actually contributed to the client, the income and resources of a:

(a) Stepparent not legally liable for support of the stepchildren;

(b) Legal guardian other than the parent of the client;

(c) Caretaker other than the parent of the client;

(d) Alien sponsor;

(e) Sibling or child; or

(f) Spouse not living in the same household as the client.

(7) The department shall determine each MAU's medical care eligibility using:

(a) The MAU's countable income and resources;

(b) Household size for the number of persons in the MAU; and

(c) The income and resource standards that apply to the household size equal to the number of persons in the MAU.

(8) The department shall exempt one vehicle as described under WAC 388-216-2650, for each separate MAU that owns such vehicle.

(9) When the household contains an SSI-related family member who is ineligible for AFDC-related categorically needy Medicaid because of income or resources, that member shall be removed from the MAU and placed in a separate categorical assistance unit (CAU). The department shall determine eligibility for:

(a) The remaining members of the MAU without consideration of the income or resources of the SSI-related client; and

(b) The SSI-related member using SSI-related income and resource rules.

[Statutory Authority: RCW 74.08.090 and 1995 c 312 § 48. 95-19-007 (Order 3895), § 388-506-0610, filed 9/6/95, effective 10/7/95. Statutory Authority: RCW 74.08.090. 95-10-025 (Order 3847), § 388-506-0610, filed 4/26/95, effective 5/27/95; 94-17-034 (Order 3767), § 388-506-0610, filed 8/10/94, effective 9/10/94; 94-10-065 (Order 3732), § 388-506-0610, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-83-046 and 388-99-020.]

WAC 388-506-0620 SSI-related medical clients. (1)

When determining program eligibility for medical care, the department shall limit relative financial responsibility from:

(a) The natural or adoptive parent or stepparent to a child seventeen years of age or younger living in the same household; and

(b) Spouse to spouse living in the same household.

(2) The department shall consider income and resources jointly for spouses when both spouses are SSI-related and live in the same household.

(3) The department shall consider income and resources for an institutionalized:

(a) Child as described under WAC 388-513-1315(6); or

(b) Spouse as described under WAC 388-513-1330 and 388-513-1350.

(4) The department shall consider the income and resources of spouses as available to each other through the month in which the spouses stopped living together. See WAC 388-513-1330 and 388-513-1350 when a spouse is institutionalized.

(5) The department shall follow WAC 388-515-1505, 388-515-1510, or 388-515-1530 when one or both spouses are receiving community options program entry system (COPEs), community alternatives program (CAP), outward bound residential alternatives (OBRA), or coordinated community aids service alternatives (CASA) waived service program.

(6) The department shall allow a community spouse applying for medically needy a spousal deduction equal to the one-person medically needy income level (MNIL) less the spouse's income when:

(a) The community spouse is living in the same household as the spouse; and

(b) The spouse is receiving home-based and community-based services.

(7) The department shall consider income and resources separately as of the first day of the month following the month of separation when spouses stop living together because of placement into a congregate care facility (CCF), adult family home (AFH), adult residential rehabilitation center/adult residential treatment facility (ARRC/ARTF), or division of developmental disability-group home (DDD-GH) facility when:

(a) Only one spouse enters the facility;

(b) Both spouses enter the same facility but have separate rooms; or

(c) Both spouses enter separate facilities.

(8) The department shall consider income and resources jointly when spouses are placed in a CCF, AFH, ARRC/ARTF, or DDD-GH facility and share a room.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-506-0620, filed 5/3/94, effective 6/3/94. Formerly WAC 388-92-025.]

WAC 388-506-0630 SSI-related income deeming.

(1) At the client's option, the department shall consider an SSI-related person, living with a spouse or parent who is ineligible for SSI, as a separate MAU. The department shall deem income from a financially responsible spouse or parent to the SSI-related person as follows when determining:

(a) Categorically needy or medically needy eligibility for an SSI-related child. The department shall consider the income of the parents available to the SSI-related child except for:

(i) Income exemptions under WAC 388-511-1140, including the twenty dollar deduction and the sixty-five dollars plus one-half of the balance earned income deduction; and

(ii) A child's allowance for each SSI-ineligible child equal to one-half of the Federal Benefit Rate (FBR) minus any income of that child; and

(iii) A parent's allowance equal to:

(A) One-person FBR for a single parent; or

(B) Two-person FBR for two parents.

(b) Categorically needy Medicaid for an SSI-related spouse. The department shall:

(i) Allow the financially responsible spouse the income exemptions under WAC 388-511-1140 except the:

(A) Twenty dollars deduction; and

(B) Sixty-five dollars plus one-half earned income deduction.

(ii) Deduct from the financially responsible spouse's income, a child's allowance for each SSI ineligible child equal to one-half of the FBR minus any income of that child;

(iii) Deem from the financially responsible spouse:

(A) Zero income when the financially responsible spouse's income equals or is less than one-half of the FBR after allowing the income deductions in (b)(i) and (ii) of this subsection; or

(B) All the financially responsible spouse's income when the income exceeds one-half of the FBR after allowing the income deductions in (b)(i) and (ii) of this subsection.

(c) Medically needy Medicaid for an SSI-related spouse. The department shall:

(i) Allow the financially responsible spouse the income deductions in (b)(i) and (ii) of this subsection;

(ii) Deem from the financially responsible spouse:

(A) Zero income when the financially responsible spouse's income equals or is less than the one-person medically needy income level (MNIL) after allowing the income deductions in (b)(i) and (ii) of this subsection;

(B) The financially responsible spouse's income above the MNIL after allowing the income deductions in (b)(i) and (ii) of this subsection;

(iii) From the SSI-related spouse's income, allow an amount needed to bring the financially responsible spouse's income up to the MNIL.

(2) The department shall consider a person eligible for Medicaid when the person is ineligible for SSI cash assistance because of income or resources deemed available from an alien sponsor.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-506-0630, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-92-027 and 388-99-020.]

Chapter 388-507 WAC

AFDC-RELATED MEDICAL ELIGIBILITY

WAC

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| 388-507-0710 | AFDC-related medical income standards. |
| 388-507-0720 | Resource standards. |
| 388-507-0730 | Resource availability. |
| 388-507-0740 | Special situations. |

WAC 388-507-0710 AFDC-related medical income standards. (1) The department shall determine income standards for AFDC-related clients as described under WAC 388-505-0590 (2) and (4).

(2) Effective January 1, 1996, the department shall set the medically needy income level (MNIL) at:

| | |
|---------------------------|---------|
| (a) One person | \$ 496 |
| (b) Two persons | \$ 592 |
| (c) Three persons | \$ 667 |
| (d) Four persons | \$ 742 |
| (e) Five persons | \$ 858 |
| (f) Six persons | \$ 975 |
| (g) Seven persons | \$1,125 |
| (h) Eight persons | \$1,242 |
| (i) Nine persons | \$1,358 |
| (j) Ten persons and above | \$1,483 |

[Statutory Authority: RCW 74.08.090 and Title XIX State Agency Letter 95-44, 96-09-033 (Order 3963), § 388-507-0710, filed 4/10/96, effective 5/11/96. Statutory Authority: RCW 74.08.090 and Title XIX State Agency Letter 94-49, notice of increase in SSI level. 95-05-022 (Order 3832), § 388-507-0710, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-507-0710, filed 5/3/94, effective 6/3/94.]

WAC 388-507-0720 Resource standards. (1) The department shall ensure the total value of nonexempt resources will not exceed:

- (a) Two thousand dollars for a single person; or
 - (b) Three thousand dollars for a married couple;
 - (c) Fifty dollars for each additional family member.
- (2) For regulations on transfer of resources:

- (a) For a client who is not institutionalized, see WAC 388-507-0740; or
- (b) For an institutionalized client, see WAC 388-513-1365.

(3) The department shall deny or terminate eligibility for the categorically needy or medically needy programs when a family unit's nonexempt resources are in excess of subsection (1) of this section. See WAC 388-522-2205(1) regarding redetermination of medical program eligibility.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-507-0720, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-99-035 and 388-99-040.]

WAC 388-507-0730 Resource availability. (1) The department shall consider resources:

- (a) Available as described under WAC 388-505-0580;
- (b) For SSI-related medically needy, according to chapter 388-511 WAC;
- (c) For AFDC-related medically needy as in determining AFDC financial eligibility except for sales contracts which are considered exempt resources, unless transferred and resources under WAC 388-216-2600.

(2) For households with more than one assistance unit, the department shall consider resources for each assistance unit according to the related program.

(3) The department shall consider only resources available during the period for which income is computed.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-507-0730, filed 5/3/94, effective 6/3/94. Formerly WAC 388-99-040 (part).]

WAC 388-507-0740 Special situations. (1) The department shall not allow the AFDC thirty dollars plus one-third earned income exemption for clients applying solely for medical assistance, unless the conditions under subsection (2) of this section apply.

(2) The department shall allow the exemption in subsection (1) of this section when the family has:

- (a) Received AFDC cash assistance in one of the four preceding months; and
- (b) Not already received the exemption for a maximum of four consecutive months; or
- (c) Already received the exemption for the maximum period, but has subsequently not received AFDC cash assistance for at least twelve consecutive months.

(3) The department shall consider an AFDC client terminated from cash assistance as eligible for Medicaid when termination was solely due to an AFDC client:

- (a) Ceasing to attend school; or
- (b) Refusing to participate in the job opportunities and basic skills (JOBS) training program.

(4) The department shall not consider the transfer of a resource when determining medical program eligibility for a person who is not institutionalized. For an institutionalized client, refer to WAC 388-513-1365.

[Statutory Authority: RCW 74.08.090. 96-07-023 (Order 3954), § 388-507-0740, filed 3/13/96, effective 4/13/96; 94-10-065 (Order 3732), § 388-507-0740, filed 5/3/94, effective 6/3/94.]

Chapter 388-508 WAC

PREGNANT WOMEN MEDICAL ELIGIBILITY

WAC

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|--------------|---|
| 388-508-0805 | Pregnant woman—Income standards. |
| 388-508-0810 | Pregnant woman—Resource standards. |
| 388-508-0820 | Pregnant woman—Eligibility. |
| 388-508-0830 | Pregnant woman—Postpregnancy continuation of eligibility. |
| 388-508-0835 | Postpregnancy family planning extension. |
| 388-508-0840 | Pregnant woman—Change of circumstances. |

WAC 388-508-0805 Pregnant woman—Income standards. (1) The department shall find a pregnant woman eligible for Medicaid as categorically needy when the pregnant woman meets the income requirements of this section.

(2) The department shall ensure total family income will not exceed one hundred eighty-five percent of the Federal Poverty Level (FPL). One hundred eighty-five percent of the current FPL is:

| Family Size | Monthly Income |
|-------------|----------------|
| (a) One | \$1,194 |
| (b) Two | \$1,598 |
| (c) Three | \$2,002 |
| (d) Four | \$2,405 |
| (e) Five | \$2,809 |
| (f) Six | \$3,213 |
| (g) Seven | \$3,617 |
| (h) Eight | \$4,021 |
| (i) Nine | \$4,425 |
| (j) Ten | \$4,829 |

(k) For family units with more than ten members, add \$404 to the monthly income for each additional member.

[Statutory Authority: RCW 74.08.090. 96-15-029, § 388-508-0805, filed 7/10/96, effective 7/10/96; 95-11-045 (Order 3848), § 388-508-0805, filed 5/10/95, effective 6/10/95; 94-10-065 (Order 3732), § 388-508-0805, filed 5/3/94, effective 6/3/94. Formerly WAC 388-83-032 (part).]

WAC 388-508-0810 Pregnant woman—Resource standards. The department shall not consider resources in determining a pregnant woman's eligibility.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-508-0810, filed 5/3/94, effective 6/3/94. Formerly WAC 388-83-032 (part).]

WAC 388-508-0820 Pregnant woman—Eligibility.

(1) The department shall find a pregnant woman eligible for Medicaid as categorically needy when the pregnant woman meets:

(a) The income requirements under WAC 388-508-0805; and

(b) Social Security number and residence requirements under chapter 388-505 WAC.

(2) For the purposes of determining only medical eligibility, a pregnant woman means a woman whose pregnancy has been confirmed in writing by:

(a) A licensed medical practitioner; or

(b) An authorized employee of a:

(i) Licensed laboratory;

(ii) Community clinic;

(iii) Family planning clinic; or

(iv) Health department clinic.

(3) The department shall determine family income according to AFDC methodology; except, the department shall:

(a) Exclude the income of the unmarried father of the unborn unless the income is actually contributed; and

(b) Determine eligibility as if the unborn is born.

(4) The department shall consider the provisions of WAC 388-506-0610 (1)(e) in determining countable income for a pregnant minor.

(5) The department shall exempt a pregnant, undocumented alien woman from citizenship, alien status, and Social Security number requirements.

[Statutory Authority: RCW 74.08.090. 95-16-058 (Order 3874), § 388-508-0820, filed 7/26/95, effective 8/26/95; 94-10-065 (Order 3732), § 388-508-0820, filed 5/3/94, effective 6/3/94. Formerly WAC 388-83-032 (part).]

WAC 388-508-0830 Pregnant woman—Postpregnancy continuation of eligibility. The department shall continue Medicaid eligibility for a woman who was eligible for and received Medicaid on the last day of pregnancy through the end of the month which includes the sixtieth day from the day the pregnancy ends.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-508-0830, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-83-031 and 388-99-011.]

WAC 388-508-0835 Postpregnancy family planning extension. A woman eligible for medical care from the department during her pregnancy shall continue to be eligible for family planning services until the end of the twelfth month following the date the pregnancy ends.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-508-0835, filed 5/3/94, effective 6/3/94. Formerly WAC 388-83-03101.]

WAC 388-508-0840 Pregnant woman—Change of circumstances. The department shall require changes in family income not affect medical eligibility for the pregnant woman:

(1) Once the department determines a pregnant woman eligible for Medicaid; or

(2) If, at any time while eligible for and receiving medical assistance, a pregnant woman meets the eligibility requirements for Medicaid.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-508-0840, filed 5/3/94, effective 6/3/94. Formerly WAC 388-83-032 (part).]

Chapter 388-509 WAC

CHILDREN'S MEDICAL ELIGIBILITY

WAC

| | |
|--------------|--|
| 388-509-0905 | Medicaid for infants and newborns. |
| 388-509-0910 | Medicaid for children—Eligible to nineteen years of age. |
| 388-509-0920 | Children's health program. |
| 388-509-0940 | Children's resource standards. |
| 388-509-0960 | Children's income standards. |
| 388-509-0970 | Closing dates. |

WAC 388-509-0905 Medicaid for infants and newborns. The department shall:

(1) Determine an infant under one year of age eligible as categorically needy when the infant:

(a) Is born to a woman eligible for and receiving medical assistance on the date of the infant's birth; and

(b) Remains a member of the mother's household.

(2) Not consider citizenship, Social Security number requirements, income, or resource requirements for infants under this chapter.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-509-0905, filed 5/3/94, effective 6/3/94. Formerly WAC 388-83-033 (part).]

WAC 388-509-0910 Medicaid for children—Eligible to nineteen years of age. The department shall find a child eighteen years of age or younger eligible for Medicaid when the child meets:

(1) Citizenship, residence, and Social Security number requirements under chapter 388-505 WAC; and

(2) Income standards described under WAC 388-509-0960.

[Statutory Authority: RCW 74.08.090. 94-17-036 (Order 3769), § 388-509-0910, filed 8/10/94, effective 9/10/94; 94-10-065 (Order 3732), § 388-509-0910, filed 5/3/94, effective 6/3/94. Formerly WAC 388-83-033 (part).]

WAC 388-509-0920 Children's health program. (1) The department shall consider a child seventeen years of age or younger, eligible for state-funded medical services with the same coverage as categorically needy, when:

(a) The child is not eligible for a federally-funded Medicaid program; and

(b) The child's nonexempt family income does not exceed one hundred percent of the current federal poverty level (FPL). See income guidelines as described under subsection (4) of this section.

(2) The department shall determine nonexempt family income by:

(a) Following AFDC methodology; and

(b) Applying the medical income rules as described under WAC 388-506-0610.

(3) The department shall not require a child to meet the following eligibility factors:

(a) Citizenship;

(b) Social Security number; or

(c) Resources limits.

(4) The department shall find that one hundred percent of the current FPL equals:

| Family Size | Monthly Income |
|-------------|----------------|
| (a) One | \$645 |
| (b) Two | \$864 |
| (c) Three | \$1,082 |
| (d) Four | \$1,300 |
| (e) Five | \$1,519 |
| (f) Six | \$1,737 |
| (g) Seven | \$1,955 |
| (h) Eight | \$2,174 |
| (i) Nine | \$2,392 |
| (j) Ten | \$2,610 |

(k) For family units with more than ten members, add \$219 to the monthly income for each additional member.

(5) For a child determined eligible under this section, the department shall not consider a change in family income during the certification period.

[Statutory Authority: RCW 74.08.090. 96-15-029, § 388-509-0920, filed 7/10/96, effective 7/10/96; 95-11-056 (Order 3848A), § 388-509-0920, filed 5/11/95, effective 6/11/95; 94-17-036 (Order 3769), § 388-509-0920, filed 8/10/94, effective 9/10/94; 94-10-065 (Order 3732), § 388-509-0920, filed 5/3/94, effective 6/3/94. Formerly WAC 388-83-033 (part).]

WAC 388-509-0940 Children's resource standards.

The department shall not consider resources when determining eligibility of a child eighteen years of age or younger.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-509-0940, filed 5/3/94, effective 6/3/94. Formerly WAC 388-83-033 (part).]

WAC 388-509-0960 Children's income standards.

(1) The department shall determine a child meeting the eligibility requirements under WAC 388-509-0910 eligible as categorically needy when the total family countable income does not exceed two hundred percent of the federal poverty level (FPL). The department shall find that two hundred percent of the current FPL equals:

| Family Size | Monthly Income |
|-------------|----------------|
| (a) One | \$1,290 |
| (b) Two | \$1,727 |
| (c) Three | \$2,164 |
| (d) Four | \$2,600 |
| (e) Five | \$3,037 |
| (f) Six | \$3,474 |
| (g) Seven | \$3,910 |
| (h) Eight | \$4,347 |
| (i) Nine | \$4,784 |
| (j) Ten | \$5,220 |

(k) For family units with more than ten members, add \$437 to the monthly income for each additional member.

(2) For a child determined eligible under WAC 388-509-0910, the department shall not consider a change in family income during the certification period.

[Statutory Authority: RCW 74.08.090. 96-15-029, § 388-509-0960, filed 7/10/96, effective 7/10/96; 95-11-056 (Order 3848A), § 388-509-0960, filed 5/11/95, effective 6/11/95. Statutory Authority: RCW 74.08.090 and Letter from HCFA approving State Plan Transmittal 94-21. 95-05-023 (Order 3833), § 388-509-0960, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 74.08.090. 94-17-036 (Order 3769), § 388-509-0960, filed 8/10/94, effective 9/10/94; 94-10-065 (Order 3732), § 388-509-0960, filed 5/3/94, effective 6/3/94. Formerly WAC 388-83-033 (part).]

WAC 388-509-0970 Closing dates. (1) 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 medical care under this section.

(2) A child eligible for the children's health program under WAC 388-509-0920 if pregnant, shall remain eligible:

(a) Regardless of changes in family income; and

(b) Through the end of the month including the sixtieth day from the day the pregnancy ends.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-509-0970, filed 5/3/94, effective 6/3/94. Formerly WAC 388-83-033 (part).]

Chapter 388-510 WAC

ALIEN MEDICAL ELIGIBILITY

WAC

388-510-1020 Alien—Eligibility.
388-510-1030 Alien—Deeming.

WAC 388-510-1020 Alien—Eligibility. The department shall provide Medicaid to an otherwise eligible person who meets the criteria as described under WAC 388-505-0520.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-510-1020, filed 5/3/94, effective 6/3/94.]

WAC 388-510-1030 Alien—Deeming. The department shall not consider income and resources from an alien sponsor who is not a member of the assistance unit unless actually contributed by the alien sponsor available to the alien assistance unit.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-510-1030, filed 5/3/94, effective 6/3/94.]

Chapter 388-511 WAC

SSI-RELATED MEDICAL ELIGIBILITY

WAC

388-511-1105 SSI-related eligibility requirements.
388-511-1110 SSI-related resource standards.
388-511-1115 SSI-related income standards.
388-511-1130 SSI-related income availability.
388-511-1140 SSI-related income exemptions.
388-511-1150 SSI-related resource availability.
388-511-1160 SSI-related resource exemptions.
388-511-1170 SSI—State data exchange.

WAC 388-511-1105 SSI-related eligibility requirements. (1) For the purposes of SSI-related medical assistance, the client shall be:

(a) Sixty-five years of age or over; or

(b) Blind with:

(i) Central visual acuity of 20.200 degrees or less in the better eye with the use of a correcting lens; or

(ii) A limitation in the fields of vision so the widest diameter of the visual field subtends an angle no greater than twenty degrees; or

(c) Disabled.

(i) Decisions on SSI-related disability are the responsibility of the medical assistance administration (MAA) and shall be subject to the authority of:

(A) Federal statutes and regulations codified at 42 U.S.C. Sec 1382c and 20 C.F.R. Parts 404 and 416, as amended; or

(B) Controlling federal court decisions which define the OASDI and SSI disability standard and determination process.

(ii) For MAA's purposes, "disabled" means unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which:

(A) Can be expected to result in death; or

(B) Has lasted or can be expected to last for a continuous period of not less than twelve months.

(iii) In the case of a child seventeen years of age or younger, if the child suffers from any medically determinable physical or mental impairment of comparable severity.

(2) 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 Title XVI blindness or disability criteria, the SSA denial shall be binding on the department, unless the applicant's:

(a) SSA denial is under appeals in the reconsideration stage, the SSA's administrative hearing process, or the SSA's appeals council; or

(b) Medical condition has changed since the SSA denial was issued.

(3) The ineligible spouse of an SSI beneficiary receiving a state supplement payment for the ineligible spouse shall not be eligible for Medicaid as categorically needy. Such ineligible spouse may be eligible for medically needy.

(4) The client shall be resource eligible under WAC 388-511-1110 on the first day of the month to be eligible for any day or days of that month. The department shall make a resource determination of the first moment of the first day of the month. The department shall determine changes in the amount of a client's countable resources during a month do not affect eligibility or ineligibility for that month. Refer to WAC 388-513-1395 for an institutionalized client.

(5) The department shall consider a client under 1619(b) of the Social Security Act as eligible for SSI.

(6) The department shall provide a resident of Washington requiring medical assistance outside the United States care according to WAC 388-501-0180.

[Statutory Authority: RCW 74.08.090, P.L. 100-383, AFDC Transmittal Memo, POMS 830.100, 830.115, 830.725 and 1130.605. 95-08-070 (Order 3845), § 388-511-1105, filed 4/5/95, effective 5/6/95. Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-511-1105, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-85-115 and 388-92-015.]

WAC 388-511-1110 SSI-related resource standards.

The department shall establish the resource limit for a:

(1) Single person shall be two thousand dollars; and

(2) Couple shall be three thousand dollars.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-511-1110, filed 5/3/94, effective 6/3/94. Formerly WAC 388-92-050.]

WAC 388-511-1115 SSI-related income standards.

The department shall use:

(1) The state supplement standard for a single person as the monthly standard for an SSI-related person under WAC 388-250-1700;

(2) The state supplement standard for a couple as the monthly standard for SSI-related couples who are both applying as described under WAC 388-250-1700. See WAC 388-506-0630 when one spouse of a couple is applying;

(3) The monthly standard in WAC 388-507-0710(2) for an SSI-related client eligible for medically needy; and

(4) See WAC 388-513-1300 for an institutionalized client.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-511-1115, filed 5/3/94, effective 6/3/94. Formerly WAC 388-92-030.]

WAC 388-511-1130 SSI-related income availability.

The department shall:

(1) Consider client checks received in advance of the month the checks are normally received as income in the month of normal receipt;

(2) Consider electronically transferred client funds available as income in the month of normal receipt, regardless of whether the banking institution posted the funds to the client's bank account before or after the month the funds are payable;

(3) Include as earned income the earned income amounts withheld due to garnishment. See WAC 388-511-1140(4) for garnishment of unearned income; and

(4) As a condition of eligibility, require a client to take all necessary steps to obtain any annuities, pensions, retirement, and disability benefits to which the client is entitled, unless the client can show good cause for not doing so. Annuities, pensions, retirement, and disability benefits include, but are not limited to, veteran's compensation and pensions, OASDI benefits, railroad retirement benefits, and unemployment compensation.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-511-1130, filed 5/3/94, effective 6/3/94. Formerly WAC 388-92-034 (part).]

WAC 388-511-1140 SSI-related income exemptions.

(1) The department shall exempt:

(a) Any public agency's refund of taxes paid on real property or on food;

(b) State public assistance and supplemental security income (SSI) based on financial need;

(c) Any portion of a grant, scholarship, or fellowship used to pay tuition, fees, or other necessary educational expense at an educational institution;

(d) Income that a client does not reasonably anticipate, or receives infrequently or irregularly, when such income does not exceed twenty dollars per month if unearned, or ten dollars per month if earned;

(e) Any amount a client receives for the foster care of a child who lives in the same household, if the child is not SSI-eligible and was placed in such home by a public or nonprofit child placement or child care agency;

(f) One-third of any payment for child support a parent receives from an absent parent for a minor child who is not institutionalized;

(g) The first twenty dollars per month of earned or unearned income, not otherwise excluded in subsection (1)(a) through (f) of this section, for a client at home. The department shall consider the exemption only once for a husband and wife. The department shall not apply such exemption on income paid on the basis of an eligible person's needs, which is totally or partially funded by the federal government or a private agency;

(h) Tax exempt payments Alaska natives receive under the Alaska Native Claims Settlement Act;

(i) Tax rebates or special payments exempted under other statutes;

(j) Compensation provided to volunteers in ACTION programs established by P.L. 93-113, the Domestic Volunteer Service Act of 1973;

(k) From the income of a single SSI-related parent or a married SSI-related parent whose spouse does not have income, an amount to meet the needs of an ineligible minor child living in the household of SSI-related parent. See WAC 388-506-0630 when the SSI-related client has a spouse with income. The exemption is one-half of the one-person Federal Benefit Rate (FBR) less any income of the child;

(l) Veteran's benefits designated for the veteran's:

(i) Dependent; or

(ii) Aid and attendance/housebound allowance and unusual medical expense allowance (UME). For an institutionalized client, see WAC 388-513-1345;

(m) Title II Social Security Administration benefits. The department shall:

(i) Determine current client eligibility for categorically needy medical assistance under WAC 388-503-0310(4), including all Title II cost-of-living adjustment (COLA) benefit increases received by the:

(A) Client since termination from SSI/SSP; or

(B) Client's spouse and/or other financially responsible family member living in the same household during the time period under (m)(i) of this subsection.

(ii) Consider the total of the COLA benefit increases and the Title II Social Security Administration benefits in computing the client's participation in the cost of the institutionalized client's care.

(n) A fee a guardian or representative payee charges as reimbursement for providing services, when such services are a requirement for the client to receive payment of the income;

(o) Income an ineligible or nonapplying spouse receives from a governmental agency for services provided to an eligible client such as chore services;

(p) Certain cash payments a client receives from a governmental or nongovernmental medical or social service agency to pay for medical or social services;

(q) Restitution payment and any interest earned from such payment to a person of Japanese or Aleut ancestry under P.L. 100-383;

(r) The amount of the expenses directly related to a client's impairment that allows the permanently and totally disabled client to continue to work;

(s) The amount of the blindness-related work expenses of a blind client;

(t) Interest earned on excluded burial funds and any appreciation in the value of an excluded burial arrangement which are left to accumulate and become part of the separately identified burial funds set aside on or after November 1, 1982;

(u) Earned income tax credit (EITC);

(v) Crime victim's compensation funds;

(w) Agent Orange Settlement Fund or any other funds established to settle Agent Orange liability claims under P.L. 101-201;

(x) 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 this income is not exempt;

(y) Payments to the injured person, the surviving spouse, children, grandchildren, or grandparents under the Radiation Exposure Compensation Act; and

(z) Payments under section 500 through 506 of the Austrian General Social Insurance Act. The department shall consider the earned interest from such payments as countable income;

(aa) Payments from the Dutch government, under the Netherlands' Act on Benefits for Victims of Persecution (WUV). The department shall consider interest earned on such payments as countable income; and

(bb) Up to two thousand dollars per year derived from an individual interest in Indian trust or restricted land.

(2) Unless income is contributed to the client, the department shall exempt all earned income of an ineligible or nonapplying person twenty years of age and under who is a student regularly attending a school, college, university, or pursuing a vocational or technical training designed to prepare the student for gainful employment.

(3) For the SSI-related client, the department shall exempt the first sixty-five dollars per month of earned income not excluded according to subsection (1) of this section, plus one-half of the remainder.

(4) The department shall exempt as income the unearned income amounts withheld due to garnishment under a court, administrative, or agency order.

(5) The department shall exempt as income the unearned income amounts which represent an essential expense incurred in receiving the unearned income.

(6) Effective November 1, 1995, the department shall exempt income which causes the client to lose SSI eligibility due solely to the reduction in state supplement payment (SSP).

[Statutory Authority: RCW 74.08.090 and State Plan Amendment Sup. 8a to Article 2.6-A page 6. 96-05-010 (Order 3943, #100295), § 388-511-1140, filed 2/9/96, effective 3/11/96. Statutory Authority: RCW 74.08.090, P.L. 100-383, AFDC Transmittal Memo, POMS 830.100, 830.115, 830.725 and 1130.605. 95-08-070 (Order 3845), § 388-511-1140, filed 4/5/95, effective 5/6/95. Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-511-1140, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-92-034 and 388-92-036.]

WAC 388-511-1150 SSI-related resource availability. In establishing eligibility for medical assistance, the department shall consider resources as described under WAC 388-505-0580.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-511-1150, filed 5/3/94, effective 6/3/94. Formerly WAC 388-92-040.]

WAC 388-511-1160 SSI-related resource exemptions. (1) The department shall exempt the following resources in determining eligibility for medical care programs:

(a) Home;
 (i) "Home" means any shelter:
 (A) In which a client has ownership interest; and
 (B) The client uses as the principal place of residence.
 The department shall only consider one home as the client's principal place of residence.

(ii) The client's absence from the home shall not affect the home exemption. 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 a 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 such statement.

(iii) The department shall exempt the proceeds from the sale of the home providing the client uses the proceeds to purchase another home within three months of the receipt of the proceeds. Proceeds 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 388-513-1365;

(b) Household goods and personal effects;

(c) Vehicle; the department shall:

(i) Exempt one vehicle regardless of its value if, for the client or a member of the client's household, the vehicle is:

(A) Necessary for employment; or

(B) Necessary for the treatment of a specific or regular medical problem; or

(C) Modified for operation by, or transportation of, a handicapped person; or

(D) Necessary due to climate, terrain, distance, or similar factors to provide the client transportation to perform essential daily activities.

(ii) Exempt one of the client's vehicles to the extent its current market value does not exceed four thousand five hundred dollars;

(iii) Count any excess against the resource limit;

(iv) Exempt a vehicle under this subsection only if a vehicle is not exempt under (c)(i) of this subsection;

(v) Treat the client's ownership of other vehicles as nonexempt resources and count the equity value toward the resource limit.

(d) Property essential to self-support. The department shall exempt:

(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 six percent or more of the exempt 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 the activities described in subsection (1)(d) of this section; or

(B) Is expected to resume using the property in the activities described in subsection (1)(d) of this section within twelve months;

(e) Resources necessary to fulfill an approved plan for a blind or disabled client to achieve self-support as long as such plan remains in effect;

(f) Alaska Native Claims Settlement Act:

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

(ii) Cash received from a native corporation, including cash dividends on stock received from a native corporation to the extent the cash does not exceed two thousand dollars per person per year;

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

(iv) A partnership interest;

(v) Land or an interest in land, including land or an interest in land received from a native corporation, as a dividend or distribution on stock;

(vi) An interest in a settlement trust.

(g) Life insurance:

(i) The department shall exempt the total cash surrender value when the total face value of all policies held by each person is one thousand five hundred dollars or less;

(ii) The cash surrender value applies to the resource limit under WAC 388-511-1110 if the face value of all policies held by each person is over one thousand five hundred dollars; and

(iii) When determining total face value in subsection (1)(g)(i) of this section, the department shall not include term or burial insurance with no cash surrender value.

(h) 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 the permission of other persons, the tribe, or an agency of the federal government;

(i) Insurance settlements the client receives from an insurance company for purposes of repairing or replacing a resource providing the client uses the total amount of the cash to repair or replace the exempt 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 for the client, the client's spouse, or any member of the client's immediate family.

(i) The department shall consider burial spaces includes conventional grave sites, crypts, mausoleums, urns, and other

repositories customarily and traditionally used for the remains of deceased persons.

(ii) The department shall consider burial spaces as including a burial space purchase agreement as well as any interest accrued on and left to accumulate as part of the value of the burial space purchase agreement.

(iii) For purposes of subsection (1)(j) and (k) of this section, "immediate family" means a client's minor and adult children, including adopted children and stepchildren; a client's brothers, sisters, parents, adoptive parents, and the spouses of those persons. The department shall not consider dependency or living-in-the-same-household as factors in determining whether a person is an immediate family member;

(k) Burial funds:

(i) The department shall ensure funds specifically set aside for the burial arrangements of a client or the client's spouse not 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 388-511-1110.

(ii) The department shall require funds set aside for burial expenses to be kept separate from all other resources and separately identified and designated as set aside for burial. If the exempt burial funds are mixed with other resources, the department shall not apply this exemption to any portion of the funds unless the client intends to use the nonexempt funds for burial-related items or services. The department may exempt 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.

(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 solely for the person's or spouse's burial expenses.

(iv) The department shall reduce the one thousand five hundred dollar exemption 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 exempted as provided in subsection (1)(g) of this section; and

(B) Amounts in an irrevocable burial trust.

(v) The department shall exempt the interest earned on exempt burial funds and appreciation in the value of exempt burial arrangements if the exempt 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 as available income any exempt burial funds, interest, or appreciated values set aside for burial expenses if, at the first of the month of use, when added to other nonexempt resources, the total exceeds the resource limit;

(l) Other resources considered exempt by federal statute;

(m) Retroactive SSI payments, including benefits a client receives under the interim assistance reimbursement agreement with the Social Security Administration, or OASDI payments for six months following the month of receipt. This exemption applies to:

(i) Payments received by the client, spouse, or any other person received that the department considers available to meet the client's needs;

(ii) SSI payments made to the client for benefits due for a month before the month of payment;

(iii) OASDI payments made to the client for benefits due for a month that is two or more months before the month of payment; and

(iv) Payments that remain in the form of cash, checking accounts, or saving accounts. The department shall not apply this exemption once the retroactive payment has been converted to any other form.

(n) Payments for medical or social services, for 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 payment and any interest earned from such payment to persons of Japanese or Aleut ancestry relocated and interned during war time, 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 from the Dutch government under the Netherlands' Act on Benefits for Victims of Persecution (WUV). See WAC 388-511-1140 (1)(aa) for the treatment of interest earned on such payment.

(s) 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 exempt;

(t) Unspent assistance payments the client receives because of a presidential declaration of a major disaster, under P.L. 93-288, are exempt for nine months from the date of receipt.

(i) The department shall determine the exemption 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 exempt resource is exempt for the period the exemption applies;

(u) Earned income tax credit refunds and payments are exempt during the month of receipt and the following month;

(v) Payments from a state administered victim's compensation program for a period of nine calendar months after the month of receipt;

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

(x) Payments under section 500 through 506 of the Austrian General Social Insurance Act. The department shall:

(i) Not consider such payments as income or resources for determining eligibility or post-eligibility; and

(ii) Count the interest from such payments as unearned income for the client.

(2) The department shall consider a sales contract:

(a) An exempt resource when the current market value of the contract:

(i) Is zero or the contract is unsalable; or
 (ii) When combined with other resources, exceeds the resource limit, and the sales contract was executed:

(A) On or before November 30, 1993; or

(B) On or after December 1, 1993, and:

(I) Was received as compensation for the sale of the client's principal place of residence. For an institutionalized client, this rule shall apply only to the client's principal place of residence before institutionalization of the client; and

(II) Provides for an interest rate within prevailing rates at the time of the sale; and

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

(IV) Payment on the amount owed does not exceed thirty years.

(iii) The department shall consider payment of principal and interest on a sales contract meeting the criteria of subsection (2)(a)(i) or (ii) of this section under WAC 388-505-0590 (3)(b);

(b) An available resource when the current market value of a sales contract does not meet the requirements in subsection (2)(a)(i) or (ii) of this section. For a sales contract the department determines to be an available resource, the department shall consider the payment that represents:

(i) Principal, an available resource; and

(ii) Interest, under WAC 388-505-0590 (3)(c).

(c) An available resource when transferred by the client to a person other than the client's spouse. See WAC 388-513-1365; and

(d) An exempt resource to the extent the proceeds from the sale of a home are used to purchase another home. The department shall not consider payments received under such sales contract as income as described under subsection (1)(a)(iii) of this section.

(3) The department shall consider cash received from the sale of an exempt resource as a nonexempt resource to the extent that the cash is not:

(a) Used to replace an exempt resource; or

(b) Invested in an exempt resource within the same month, unless specified differently under this section.

[Statutory Authority: RCW 74.08.090, P.L. 100-383, AFDC Transmittal Memo, POMS 830.100, 830.115, 830.725 and 1130.605. 95-08-070 (Order 3845), § 388-511-1160, filed 4/5/95, effective 5/6/95. Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-511-1160, filed 5/3/94, effective 6/3/94. Formerly WAC 388-92-045.]

WAC 388-511-1170 SSI—State data exchange. (1) "SSI—State data exchange (SDX)" means a computer system for exchanging information between SSA and the department regarding SSI clients.

(2) The department shall authorize a medical identification card and Medicare buy-in for a person eligible for SSI using SDX information.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-511-1170, filed 5/3/94, effective 6/3/94.]

Chapter 388-512 WAC

SSI-RELATED GRANDFATHERED RECIPIENTS

WAC

| | |
|--------------|---|
| 388-512-1210 | Program description. |
| 388-512-1215 | General eligibility. |
| 388-512-1220 | Eligibility—Blindness. |
| 388-512-1225 | Permanently and totally disabled. |
| 388-512-1230 | Refusal to accept medical treatment. |
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| 388-512-1265 | Nonexempt resources. |
| 388-512-1275 | Continuing certification. |
| 388-512-1280 | Application following termination. |

WAC 388-512-1210 Program description. The department shall provide medical assistance within limitations set forth in these rules and regulations to a person who is a grandfathered client.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-512-1210, filed 5/3/94, effective 6/3/94. Formerly WAC 388-93-010.]

WAC 388-512-1215 General eligibility. (1) There is no requirement of citizenship as a condition of eligibility for benefits under the medical care program.

(2) Residence; see WAC 388-504-0470.

(3) Medical need. The grandfathered client must have a medical need to remain eligible for medical assistance under Title XIX of the Social Security Act. Disability shall not constitute a medical need; treatment of disability does.

(4) The grandfathered client shall be:

(a) Age sixty-five or older; or

(b) Disabled as defined in WAC 388-512-1225; or

(c) Blind as defined in WAC 388-512-1220 and not publicly soliciting alms by wearing, carrying or exhibiting signs denoting blindness, carrying receptacles for the reception of alms or doing the same by proxy or by begging. It shall be assumed that a person is not soliciting alms unless there is evidence to the contrary.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-512-1215, filed 5/3/94, effective 6/3/94. Formerly WAC 388-93-015.]

WAC 388-512-1220 Eligibility—Blindness. "Blindness" is defined in terms of ophthalmic measurements as:

(1) Central visual acuity of 20/200 or less in the better eye with the best possible corrective glasses; or

(2) Contraction of the peripheral field of vision to within twenty degrees of the fixation point in all quadrants as determined by standard parametric testing; or

(3) Muscle function, measured in all parts of the motor field and charted upon 20 rectangles, 4 x 5 degrees in size, equal to 18/20 binocular or monocular.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-512-1220, filed 5/3/94, effective 6/3/94. Formerly WAC 388-93-020.]

WAC 388-512-1225 Permanently and totally disabled. (1) In general, "permanently and totally disabled" means that a person has some permanent physical or mental impairment, disease or loss that substantially

precludes a person from engaging in a useful occupation within a person's competence, such as holding a substantially gainful job or homemaking. The impairment may be physical or mental, organic or functional, and of such degree as to interfere with the person's faculties, such as senses, reasoning, or mobility. It may exist from birth, be acquired during the lifetime of the person, or result from an accident. It may be obvious, such as the loss of a limb, or it may be such that it can be revealed only by medical examination. It may exist singly or in combination.

(2) The term "**permanently disabled**" refers to the existence of a physiological, anatomical, emotional and/or mental impairment verified by medical findings, which is of major importance, and is a condition not likely to improve, but will continue throughout the lifetime of the person. Any condition which is considered by the medical reviewer as not likely to respond to any known therapeutic procedure shall be deemed to be a permanent impairment. Any condition which is considered as likely to remain static or to become worse unless certain therapeutic measures are carried out shall be deemed to be permanent so long as treatment is unavailable, inadvisable, or the person refuses treatment and his decision is reasonable. See WAC 388-512-1230.

(a) A decision that an impairment is permanent can be made even though recovery from the impairment is possible. The discovery of new drugs or other advances in medical treatment is always a potential which may change a permanent situation; pending the actual physical improvement, the classification is proper. Therefore, the term "permanent" need not be everlasting or unchangeable, but is used in the sense of continuing indefinitely as distinct from temporary or transient.

(b) A physician's medical report must be used to establish the existence of an impairment and its permanency.

(3) The term "**totally disabled**" refers to a person's ability to perform those activities necessary to carry out specified responsibilities such as those necessary to employment or homemaking. Totality involves considerations in addition to those verified through the medical findings such as age, training, skills, and work experience, and the person's functioning in a person's particular situation in light of the impairment. Such social data will describe the person's education and work history, the activities required of the person at home or at work, living conditions, interests, capacity and limitations, and the extent to which the person has adjusted to the impairment.

(a) Job training may enable a permanently and totally disabled person to acquire a new skill in spite of the impairment. The person continues to be totally disabled during a reasonable period of training and until job competence is acquired.

(b) The social summary must show how the person reacts in social situations in order to illustrate that the disability substantially precludes the person from engaging in employment or homemaking in the foreseeable future. The social worker carries the major responsibility for providing the state office review team with the recorded objective social information bearing on the totality factor.

(4) The term "**substantially precludes**" relates to the extent to which a person's permanent impairment has left a person unable to engage in those activities necessary to carry on specified responsibilities such as employment and

homemaking. If a person is able to perform such activities well enough and with sufficient regularity to receive substantial payment for such effort or to carry on homemaking responsibilities on a continuing basis, the person is not considered as precluded from engaging in "useful occupations" and cannot be found to be permanently and totally disabled.

(5) The term "**useful occupations**" means productive activities which add to the economic wealth, or produce goods or services to which the public attaches a monetary value. The person whose impairment is so severe that it results in being unable to leave bed, leave home, or maintain body hygiene without the help of another person, and for whom the assumption would commonly be made that the person could not engage in any useful occupation, but in fact, through supreme effort the person does some work shall have ability to work evaluated in light of:

(a) The extent to which sympathy or compassion enters into the opportunity to engage in remunerative work. In other words, is the person able to do something because family, friends, or neighbors help more than is usual; for example, running errands, bringing materials, "engineering" the job, helping devise and create special tools, creating a market based more on sympathy than intrinsic value received, selling through church or other organization without charging the usual commission, etc.; and

(b) The extent to which the energy which must be discharged by the person is far beyond that which is ordinarily required for that activity. For example, does it take six or seven hours to do what most workers could do in an hour.

(c) If through careful consideration of such facts, in addition to the medical and social reports, it can be reasonably concluded that this person is doing more than can ordinarily be expected from persons with the impairments of similar severity, but activity is not substantially gainful, a finding of permanent and total disability may be reached.

(6) The term "**homemaking**" involves the ability to carry the home management and decision-making responsibilities and provide essential services within the home for at least one person in addition to oneself. This may be either a man or a woman. If homemaking is such that children are neglected or the other person receives practically no benefit from the homemaking efforts, these facts should be clearly shown in the social summary. If the homemaker must have the help of other persons to complete the essential household tasks, it may be shown that the person is not actually able to perform as a homemaker. The following activities are important to successful performance of the occupation of homemaking: Shopping for food and supplies; planning and preparing meals; washing dishes; cleaning house; making beds; washing and ironing clothes and, if the care of young children is within the homemaking responsibility, lifting and carrying infants; bathing and dressing young children; training and supervising children; accompanying children to community activities and to sources of medical care. A finding that a person is unable to perform the occupation of homemaking would require that the person is unable to perform a significant combination or grouping of these activities because of permanent impairment. When homemaking is the responsibility of the applicant, determination

shall be made as to whether a permanent impairment prevents the client from totally meeting such responsibility.

(7) Special emotional problems.

(a) Alcoholism. For alcoholism to be considered permanently and totally disabling, at least one of the following criteria are required for approval of permanent and total disability:

(i) Evidence that a pathological or demonstrable organic damage has resulted from chronic alcoholism, such as neuritis or cirrhosis of the liver; or

(ii) Evidence that the alcoholism has reached the addiction state as shown by marked ethical deterioration, the obsessive character of the drinking, the approaching loss of alcohol tolerance, prolonged bouts, and a breakdown of the rationalization pattern; or

(iii) A history of several years of excessive drinking to the extent that it has adversely affected interpersonal relationships and social and economic functioning—loss of employment and inability to sustain employment because of excessive drinking.

(b) Personality inadequacy. Even though the medical report does not show a physical ailment which of itself is permanently disabling, a person may be found to be permanently and totally disabled if the medical or psychiatric report together with the social report supplemented with a psychological report, if indicated, shows an extended history of a combination of personality problems, character disorders or social inadequacies including unusual behavior, which prevents the person from making the adjustment required for an employable person or homemaker.

(i) This would include the person whose responses to the environment are habitually inadequate and who seems to have limited or no voluntary control over reactions. The symptoms of this emotionally unstable personality usually are demonstrated in antisocial or unconventional behavior; for example, drug addiction or alcoholism. The person does not get along with other people and may break many of society's rules. Most of these persons have had one difficulty after another since childhood with the typical lack of awareness and lack of remorse that is associated with this kind of behavior. The repetitive nature of their problems coupled with lack of motivation for change produces a person whose pattern provides a serious permanent impairment that can be totally disabling. Examples of this kind of personality might be:

(A) A patient returning from a mental hospital who is no longer psychotic but whose behavior would be unacceptable to a prospective employer or to family;

(B) The person who has never been able to hold a job due to a pattern of emotional instability, or other unusual behavior which shows that the person is unable, for an extended period, to substantially engage in any gainful occupation or homemaking;

(C) Drug addiction over an extended period of time.

(ii) In all cases of personality inadequacy, the reports specified in (b) of this subsection are required.

[Statutory Authority: RCW 74.08.090. 95-02-025 (Order 3816), § 388-512-1225, filed 12/28/94, effective 1/28/95; 94-10-065 (Order 3732), § 388-512-1225, filed 5/3/94, effective 6/3/94. Formerly WAC 388-93-025.]

WAC 388-512-1230 Refusal to accept medical treatment. (1) A disabled client who refuses without good cause to accept available medical treatment which can reasonably be expected to render the client able to work or do homemaking shall become ineligible.

(2) "Available medical treatment" shall mean medical, surgical or psychiatric therapy, or any combination of these treatments.

(3) "Reasonably be expected to render the client able to work or do homemaking" shall mean that, in the opinion of the state review team, the recommended medical, surgical, or psychiatric therapy is of such a nature and prognosis that, in the specific instance of the person involved, medical experience indicates that the recommended treatment will restore or substantially improve the person's ability to work for pay in a regular and predictable manner or to engage in homemaking.

(4) A client has good cause to refuse recommended medical treatment when, according to the best objective judgment of the state office review team, such refusal is based upon one or more of the following conditions:

(a) The person is genuinely fearful of undergoing recommended treatment. Such fear may appear to be unrealistic, or entirely emotional in origin, or irrational; however, fear exists in such a degree that treatment would be adversely affected and the doctor may therefore be dubious about undertaking to treat the person;

(b) The person could lose a faculty, or the remaining use of faculty the client now has, and refuses to accept the risk; or

(c) The person will not accept recommended medical treatment because of definitely stated religious scruples.

(5) The controlling principle in determining whether refusal was for or without good cause rests with the state office review team which will be guided by whether a reasonable, prudent person under similar circumstances would accept the recommended treatment. The determination will be made only after considering all social and medical evidence, including that furnished by the person, who will be provided with an opportunity to set forth in writing objective reasons for declining recommended treatment. A determination that a refusal to accept treatment without good cause is a decision which the client may appeal according to chapter 388-08 WAC.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-512-1230, filed 5/3/94, effective 6/3/94. Formerly WAC 388-93-030.]

WAC 388-512-1235 Review for disability or blindness. (1) The grandfathered client's blindness or permanent and total disability shall be reviewed when a significant change has occurred.

(2) When a change in blindness occurs, an eye examination shall be secured from an ophthalmologist or optometrist and evaluated by the department's ophthalmological consultant. The ophthalmological consultant shall determine and certify whether legal blindness continues to exist.

(3) When a change in disability has occurred, a medical examination shall be secured. The medical reports shall be evaluated by the office of disability insurance to determine whether permanent and total disability continues to exist.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-512-1235, filed 5/3/94, effective 6/3/94. Formerly WAC 388-93-035.]

WAC 388-512-1240 Computation of available income. (1) Income and net income shall be as defined in WAC 388-22-030. Total income of a beneficiary of supplementary security income is not considered an available resource except for institutionalized clients.

(2) To determine available income, deduct the following items from net income:

(a) Support payments being paid by the client under court order;

(b) Special nonmedical needs, such as payment to a wage earner's plan (specified by the court in a bankruptcy proceeding), or previously contracted major household repairs if failure to make payments would result in garnishment of wages or loss of employment;

(c) Tax rebates or special payments exempted by federal regulations and publicized by numbered memoranda from the state office.

(3) The exempt earned income shall be:

(a) For a former recipient of old age assistance or of disability assistance—the first twenty dollars plus one-half of the next sixty dollars;

(b) For a former recipient of aid to the blind—the first eighty-five dollars plus one-half of the amount over eighty-five dollars.

(4) Personal and nonpersonal work expense shall be deducted from earned income as follows:

(a) Mandatory deductions as required by law or as a condition of employment;

(b) Necessary cost of public transportation or eight cents a mile for private car to and from place of employment;

(c) Expenses of employment which are necessary to that employment such as tools, materials, union dues;

(d) Additional clothing costs. For a person doing clerical work, five dollars and seventy cents; for a person doing manual work, three dollars and sixty cents; for persons enrolled in remedial education or vocational training course, the actual cost of uniforms and/or special clothing;

(e) The cost of child care necessary to employment if not provided without cost or as departmental service. The actual expense shall be deducted but not to exceed standard in WAC 388-16-215.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-512-1240, filed 5/3/94, effective 6/3/94. Formerly WAC 388-93-040.]

WAC 388-512-1245 Monthly maintenance standard—Own home. (1) The following monthly standards of available income for maintenance shall apply when determining financial eligibility:

| FAMILY SIZE | STANDARD | FAMILY SIZE | STANDARD |
|-------------|----------|-------------|----------|
| 1 | \$195 | 10 | \$591 |
| 2 | \$237 | 11 | \$635 |
| 3 | \$282 | 12 | \$679 |
| 4 | \$327 | 13 | \$723 |
| 5 | \$371 | 14 | \$768 |
| 6 | \$415 | 15 | \$812 |

| | | | |
|---|-------|----|-------|
| 7 | \$459 | 16 | \$856 |
| 8 | \$503 | 17 | \$900 |
| 9 | \$547 | 18 | \$944 |

(2) Forty-four dollars shall be added for each additional member.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-512-1245, filed 5/3/94, effective 6/3/94. Formerly WAC 388-93-045.]

WAC 388-512-1250 Monthly maintenance standard—Person in institution. (1) The monthly standard for clothing and personal maintenance for a person in a skilled nursing facility or general hospital shall be twenty-five dollars.

(2) The monthly standards for clothing and personal maintenance for a person in an intermediate care facility shall be twenty-seven dollars and thirty cents.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-512-1250, filed 5/3/94, effective 6/3/94. Formerly WAC 388-93-050.]

WAC 388-512-1255 Available income and nonexempt resources. (1) The person's available income determined according to WAC 388-512-1240 and nonexempt resources determined according to WAC 388-512-1260 and 388-512-1265 shall be allocated for the purposes and in the order specified in this section.

(2) Maintenance needs of the person living in his own home, or of legal dependents living in the family home if the individual is in an institution:

(a) Apply maintenance standards in WAC 388-512-1245; unless

(b) The legal dependents are applying for or receive public assistance, when the appropriate grant standards apply.

(3) Maintenance needs according to WAC 388-512-1250 for a person in an institution.

(4) Supplementary medical insurance premiums for an individual not in a nursing home who is eligible for medicare during the month of authorization and the month following if not withheld from the RSDI or RR benefit. See WAC 388-529-2960.

(5) Health and accident insurance premiums for policies continued in force from time of application.

(6) Costs not covered under this program for medical or remedial care as determined necessary by eligible providers according to WAC 388-87-005 (2)(a) and (h) initiated during a period of certification. See WAC 388-91-016 (1)(a).

(7) Participation in cost of care provided under this program except as provided in subsection (8) of this section; however, participation may not exceed:

(a) The excess regular income multiplied by six or the anticipated excess income that will be available within a six-month period, whichever is greater;

(b) The resources in excess of those listed in chapter 388-216 WAC. See WAC 388-512-1260;

(c) Additional cash resources that come into possession of the person during a period of certification.

(8) The twenty percent increase in Social Security benefits shall be considered exempt income when determining eligibility and participation for persons who in August 1972 received OAA, AFDC, AB or DA and also received RSDI benefits and who became ineligible for OAA, AFDC,

AB or DA solely because of the twenty percent increase in Social Security benefits under Public Law 92-366.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-512-1255, filed 5/3/94, effective 6/3/94. Formerly WAC 388-93-055.]

WAC 388-512-1260 Exempt resources. When determining the eligibility of the grandfathered client, the rules for exempt resources in chapter 388-216 WAC shall apply. When separate property is a consideration, see WAC 388-216-2100.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-512-1260, filed 5/3/94, effective 6/3/94. Formerly WAC 388-93-060.]

WAC 388-512-1265 Nonexempt resources. (1) All resources not specifically exempted in WAC 388-512-1260 shall be considered available for medical and nonmedical needs following priorities set forth in WAC 388-512-1245 through 388-512-1255. Value shall be assigned resources according to WAC 388-216-2800.

(2) The possession of a nonexempt resource affects eligibility for medical care. Except for nonexempt real property, the value assigned to such resources shall be the "fair market value." The "fair market value" of the resource is considered available toward the cost of medical care. Such amount is considered at the time of each review for as long as the resource is possessed by the client.

(3) When assigning value to nonexempt real property, follow this sequence:

(a) First consideration shall be given to the sale of nonexempt real property based on the "quick sale value."

(b) When sale is not possible, rental or lease must be considered with the income derived from such rental or lease being considered available to meet the cost of medical care.

(c) If the property cannot be sold, rented, or leased and if the client has used reasonable diligence in seeking a purchaser, renter, or lessee, then no resource value for this property shall be considered to exist for the purpose of determining eligibility. The property shall remain on the market for as long as the client is certified for medical care.

(4) An application for medical assistance from a person who refuses to dispose of his property or refuses to attempt to dispose of his property shall be denied.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-512-1265, filed 5/3/94, effective 6/3/94. Formerly WAC 388-93-065.]

WAC 388-512-1275 Continuing certification. (1) A grandfathered client who continues to meet requirements of WAC 388-512-1215, 388-512-1245, 388-512-1260, 388-512-1265 and 388-512-1270 may be recertified for medical assistance.

(2) A grandfathered client who does not continue to meet requirements in subsection (1) of this section shall be terminated. See WAC 388-512-1280.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-512-1275, filed 5/3/94, effective 6/3/94. Formerly WAC 388-93-075.]

WAC 388-512-1280 Application following termination. The eligibility of a person applying for medical care after termination of his eligibility as a grandfathered client shall be determined according to chapter 388-511 WAC.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-512-1280, filed 5/3/94, effective 6/3/94. Formerly WAC 388-93-080.]

Chapter 388-513 WAC

CLIENT NOT IN OWN HOME—INSTITUTIONAL MEDICAL

WAC

| | |
|--------------|--|
| 388-513-1300 | Applicability of alternate living and institutional rules. |
| 388-513-1305 | Maintenance standard—Alternate living. |
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| 388-513-1395 | Institutional—Medically needy. |
| 388-513-1396 | Fraternal, religious, or benevolent nursing facility. |

WAC 388-513-1300 Applicability of alternate living and institutional rules. (1) The department shall determine sections WAC 388-513-1305 and 388-513-1310 of this chapter apply to persons in alternate living situations.

(2) The department shall determine all sections other than WAC 388-513-1305 of this chapter apply to institutionalized persons as described under WAC 388-513-1365 (1)(f).

[Statutory Authority: RCW 74.08.090. 95-06-025 (Order 3834), § 388-513-1300, filed 2/22/95, effective 3/25/95.]

WAC 388-513-1305 Maintenance standard—Alternate living. (1) The department shall ensure the categorically needy monthly standard for an SSI, SSI-related, or GAU client living in an adult family home (AFH), adult residential treatment facility (ARTF), adult residential rehabilitation center (ARRC), congregate care facility (CCF), or division of developmental disabilities (DDD) group home is the department cost standard of the facility plus a specified CPI.

(2) The department shall determine the medically needy monthly standard for an SSI-related client living in an AFH, ARTF, ARRC, CCF, or DDD group home to be the private facility rate based on a thirty-one-day month plus a specified CPI.

(3) See WAC 388-15-555, 388-15-568, 388-250-1600, and 388-250-1650 for the definition of "department cost standard." The department shall ensure the monthly standard shall not exceed three hundred percent of the current SSI Federal Benefit Level.

(4) See chapter 388-511 WAC for computation of available income and resources for an SSI-related person.

(5) See chapter 388-219 WAC for computation of available income and resources for a GAU client.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-513-1305, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-83-036 and 388-99-036.]

WAC 388-513-1310 Resource standard—Institutional. The department shall ensure the total value of resources

allowed and not otherwise excluded not exceed the dollar amount in:

(1) Subsection (2)(a) of this section for a single person; or

(2) Subsection (2)(b) of this section for a couple. The resource limitation for a:

(a) Single person shall be two thousand dollars; or

(b) Couple shall be three thousand dollars.

[Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-513-1310, filed 5/3/94, effective 6/3/94. Formerly WAC 388-95-390.]

WAC 388-513-1315 Eligibility determination—Institutional. (1) The department shall find a person meeting the requirements of WAC 388-513-1320 eligible for institutional care, if the person:

(a) Is SSI-related with countable income:

(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—medically needy program as determined under WAC 388-513-1395.

(b) Is AFDC-related with countable income:

(i) Equal to or less than the one-person program standard as described under WAC 388-505-0590, 388-508-0805, or 388-509-0960. The department shall determine a person's eligibility under the categorically needy program; and

(ii) Greater than the program standards as described under subsection (1)(b)(i) of this section. The department shall determine a person's eligibility under the limited casualty—medically needy program as determined under WAC 388-513-1395.

(c) Does not have nonexcluded resources, under WAC 388-513-1360 and 388-513-1365, greater than limitations under WAC 388-513-1310 and 388-513-1395(2); and

(d) Is not subject to a period of ineligibility for transferring of resources under WAC 388-513-1365.

(2) The department shall determine nursing facility residents eligible for institutional care when the amount of the resources in excess of the amount in WAC 388-513-1310 plus countable income are less than the nursing facility private rate plus recurring medical expenses.

(3) The department shall allocate a client's income and resources as described under WAC 388-513-1380.

(4) When both spouses are institutionalized, the department shall determine the eligibility of each spouse individually.

(5) The department shall determine eligibility for a person residing or expected to reside in a Medicaid-approved medical facility less than the amount of time needed to achieve institutional status in WAC 388-513-1320 as for a noninstitutionalized person.

(6) The department shall determine eligibility for an AFDC-related child under eighteen years of age residing or expected to reside in inpatient chemical dependency treatment or inpatient mental health treatment as described under WAC 388-506-0610 (1)(f).

(7) For other institutionalized persons twenty years of age or younger, the department shall not consider the income and resources of the parents available unless the income and resources are actually contributed.

(8) The department shall determine as eligible for Medicaid a person who:

(a) Meets institutional status as a psychiatric facility resident; and

(b) Is twenty years of age or younger or is sixty-five years of age or older.

(9) The department shall not consider a person's transfer between medical institutions as a change in institutionalized status.

(10) For the effect of a social absence from an institutional living arrangement, see WAC 388-88-115.

[Statutory Authority: RCW 74.08.090, 96-11-072 (Order 3980), § 388-513-1315, filed 5/10/96, effective 6/10/96. Statutory Authority: RCW 74.08.090 and 1995 c 312 § 48, 95-19-007 (Order 3895), § 388-513-1315, filed 9/6/95, effective 10/7/95. Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-513-1315, filed 5/3/94, effective 6/3/94.]

WAC 388-513-1320 Institutional status. (1) The department shall find that a person has achieved institutional status when the person is residing or expected to reside in a Medicaid-certified medical facility for a period of at least:

(a) Ninety consecutive days for an AFDC-related child seventeen years of age or younger in residential mental health or chemical dependency/substance abuse treatment; or

(b) Thirty consecutive days for an SSI-related person and AFDC-related persons other than as described under subsection (1)(a) of this section.

(2) The department shall consider a person receiving waived program services or hospice services to have achieved institutional status.

(3) The department shall make medical assistance available to an otherwise eligible person who has achieved institutional status as described under subsection (1) or (2) of this section.

[Statutory Authority: RCW 74.08.090, 96-11-072 (Order 3980), § 388-513-1320, filed 5/10/96, effective 6/10/96; 94-10-065 (Order 3732), § 388-513-1320, filed 5/3/94, effective 6/3/94.]

WAC 388-513-1330 Institutional—Available income.

(1) Income is defined under chapter 388-511 WAC for a SSI-related client and under WAC 388-22-030 for an AFDC-related client.

(2) The methodology and standards for determining and evaluating income are defined under WAC 388-513-1315 and 388-513-1375.

(3) The department shall consider the following income available to an institutionalized person when determining income eligibility unless the criteria in subsection (4) of this section is met:

(a) Income the institutionalized spouse receives in the institutionalized spouse's name;

(b) Income paid on the behalf of the institutionalized spouse, but received in the name of the institutionalized spouse's representative;

(c) One-half of the income the community and institutionalized spouses receive in both names; and

(d) Income from a trust as provided by the trust.

(4) The department shall consider income as available to an institutionalized person when:

(a) Both spouses are institutionalized; or
 (b) An institutionalized person has a community spouse and income in excess of three hundred percent of the SSI federal benefit rate (FBR). For the determination of eligibility only:

(i) Use community property law in determining ownership of income for purposes of Medicaid eligibility;

(ii) Presume all income received after marriage by husband or wife to be community income;

(iii) Divide the total of the community income, by two assigning one-half of the total to each person; and

(iv) Consider if the community income received in the name of the nonapplying spouse exceeds the community income received in the name of the applying spouse, the applicant's interest in that excess shall be unavailable to the applicant.

(5) The department shall consider income the community spouse receives in the community spouse's name as unavailable to the institutionalized spouse.

(6) The department shall consider an agreement between spouses transferring or assigning rights to future income from one spouse to the other as invalid in determining eligibility for medical assistance or the limited casualty program for the medically needy.

(7) The department shall consider income produced by transferred or assigned resources as separate income.

(8) When an institutionalized spouse establishes the unavailability of income by a preponderance of evidence through a fair hearing, subsection (3) of this section shall not apply.

(9) See WAC 388-511-1130 for treatment of advance dated checks, electronically transferred funds, and garnished income.

[Statutory Authority: RCW 74.08.090 and Title XIX State Agency Letter #94-33, 95-02-028 (Order 3819), § 388-513-1330, filed 12/28/94, effective 1/28/95. Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-513-1330, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-95-335 and 388-95-340.]

WAC 388-513-1340 Institutional—Exempt income.

The department shall consider a client's income exemptions as unavailable income when determining initial institutional eligibility or post-eligibility. The department shall exempt sequentially from income:

(1) Any public agency's refund of taxes paid on real property or on food;

(2) Supplemental security income (SSI) and state public assistance based on financial need;

(3) Any portion of a grant, scholarship, or fellowship used to pay tuition, fees, or other necessary educational expenses at any educational institution;

(4) Child support received by a parent from an absent parent, for a minor child who is not institutionalized;

(5) Tax exempt payments received by Alaska natives under the Alaska Native Claims Act;

(6) Tax rebates or special payments excluded by other statutes;

(7) Compensation provided to volunteers in ACTION programs established by P.L. 93-113, The Domestic Volunteer Service Act of 1973;

(8) Veteran's Administration benefits designated for:

(a) The veteran's dependent;

(b) Unusual medical expense; and

(c) Aid and attendance and housebound allowance.

(9) Income received by an ineligible or nonapplying spouse from a governmental agency for services provided to an eligible client, for example, chore services;

(10) Funds received from the Agent Orange Settlement Fund or any other funds established to settle Agent Orange liability claims under P.L. 101-201;

(11) 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 exempt;

(12) Payments under the Radiation Exposure Compensation Act received by the injured person, the surviving spouse, children, grandchildren, or grandparents;

(13) Payments under sections 500 through 506 of the Austrian General Social Insurance Act. The department shall consider the earned interest from such payments as countable income;

(14) Certain cash payments a client receives from a governmental or nongovernmental medical or social service agency to pay for medical or social services;

(15) Restitution payment, and interest earned on such payment to a civilian of Japanese or Aleut ancestry under P.L. 100-383;

(16) The amount of expenses directly related to a client's impairment that allows the permanently and totally disabled client to continue to work;

(17) The amount of blindness-related work expenses of a blind client;

(18) Interest earned on excluded burial funds and any appreciation in the value of an exempt burial arrangement which are left to accumulate and become part of the separately identified burial funds set aside on or after November 1, 1982;

(19) Earned income tax credit (EITC); and

(20) Victim's compensation.

[Statutory Authority: RCW 74.08.090 and Title XIX State Agency Letter #94-33, 95-02-028 (Order 3819), § 388-513-1340, filed 12/28/94, effective 1/28/95. Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-513-1340, filed 5/3/94, effective 6/3/94. Formerly WAC 388-95-340 (part).]

WAC 388-513-1345 Institutional—Disregarded income. The department shall consider disregarded income as unavailable income when determining initial eligibility but shall consider the income available during post-eligibility. See WAC 388-513-1380 for post-eligibility treatment of income. The department shall disregard sequentially from income:

(1) Income that is not reasonably anticipated, or is received infrequently or irregularly, when such income does not exceed:

(a) Twenty dollars per month if unearned; or

(b) Ten dollars per month if earned.

(2) The first twenty dollars per month of earned or unearned income. The department may not exclude income paid to a client on the basis of need and is totally or partially funded by the federal government or by a private agency.

(3) For an SSI-related person, the first sixty-five dollars per month of earned income not exempted under WAC 388-513-1340, plus one-half of the remainder.

(4) For an AFDC-related person, the first ninety dollars of earned income.

(5) Money voluntarily withheld from SSA Title II benefits by the Social Security Administration for the recovery of an SSI overpayment; and

(6) A fee charged by a guardian as reimbursement for provided services, when such guardianship services are a requirement for the client to receive payment of the income.

[Statutory Authority: RCW 74.08.090 and Title XIX State Agency Letter #94-33, 95-02-028 (Order 3819), § 388-513-1345, filed 12/28/94, effective 1/28/95. Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-513-1345, filed 5/3/94, effective 6/3/94. Formerly WAC 388-95-340 (part).]

WAC 388-513-1350 Institutional—Available resources. (1) Resources are defined under chapter 388-511 WAC for an SSI-related client and under WAC 388-22-030 for an AFDC-related client.

(2) The methodology and standards for determining and evaluating resources are under WAC 388-513-1310, 388-513-1330, 388-513-1340, and 388-513-1360. Transfers of resources are evaluated under WAC 388-513-1365.

(3) The department shall determine ownership of resources following Washington state community property principles for a person:

(a) Whose most recent period of institutionalization began on or before September 30, 1989; and

(b) Who remains continuously institutionalized.

(4) For purposes of Medicaid eligibility, the department shall consider resources are:

(a) Community resources when jointly held in the:

(i) Names of both the institutionalized and community spouse; or

(ii) Name of the institutionalized spouse only.

(b) The separate property of the community spouse when:

(i) Held in the separate name of the community spouse; or

(ii) Transferred between spouses as described under WAC 388-513-1370(6).

(5) The department shall:

(a) Divide by two, the total value of the community resources the spouses own; and

(b) Assign one-half of the total value of the community resources to each spouse.

(6) The department shall not consider a person continuously institutionalized if, for thirty consecutive days, the person:

(a) Is absent from an institution; or

(b) Does not receive home-based or community-based waived services.

(7) For the purpose of determining Medicaid eligibility of a person, whose most recent continuous period of institutionalization starts on or after October 1, 1989, the department shall:

(a) Exclude resources as described under WAC 388-511-1160; except, the department shall exempt one vehicle without regard to use or value when the institutionalized person has a community spouse;

(b) 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) Seventy-six thousand seven hundred forty dollars effective January 1, 1996;

(ii) An amount established by a fair hearing under chapter 388-08 WAC when 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) Ensure resources available to the community spouse are in the name of the community spouse or transferred to the community spouse or to another person for the sole benefit of the community spouse:

(i) Before the first regularly scheduled eligibility review; or

(ii) As soon as practicable thereafter, taking into account such time as may be necessary to obtain a court order for the support of the community spouse.

(d) Consider resources greater than such resources described under subsection (7)(b) of this section available to the institutional spouse.

(8) The department shall consider resources of the community spouse:

(a) Unavailable to the institutionalized spouse:

(i) The month after the institutionalized spouse is determined eligible for institutional benefits; and

(ii) While the institutionalized spouse remains in a continuous period of institutionalization.

(b) Available to the institutionalized spouse when the institutionalized spouse:

(i) Acquires resources which, when added to resources held by the institutionalized spouse, exceed the one-person resource maximum, if the most recent period of institutionalization began on or after October 1, 1989; or

(ii) Has a break of thirty days or more in a period of institutionalization.

[Statutory Authority: RCW 74.08.090 and Title XIX State Agency Letter 95-44, 96-09-033 (Order 3963), § 388-513-1350, filed 4/10/96, effective 5/11/96. Statutory Authority: RCW 74.08.090 and Title XIX State Agency Letter 94-49, notice of increase in SSI level, 95-05-022 (Order 3832), § 388-513-1350, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 74.08.090, 94-23-129 (Order 3808), § 388-513-1350, filed 11/23/94, effective 12/24/94; 94-10-065 (Order 3732), § 388-513-1350, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-95-337 and 388-95-340.]

WAC 388-513-1360 Resource exemptions. (1) In determining eligibility, the department shall exempt resources specified under WAC 388-511-1160.

(2) Effective July 1, 1996, the department shall exempt resources:

(a) For an aged, blind, or disabled person who has purchased a long-term care insurance policy approved by the Washington insurance commissioner under the Washington long-term care partnership program; and

(b) In an amount equal to the extent such policy has paid for licensed nursing facility and/or home- and community-based services covered under Medicaid.

(3) The department shall consider exempt resources described under subsection (2) of this section subject to

estate recovery rules when the client has retained such resources.

(4) The department shall apply WAC 388-513-1365 for transfers of resources with the exception of resources exempted under subsection (2) of this section.

[Statutory Authority: RCW 74.08.090 and 48.85.020. 96-12-002 (Order 3982), § 388-513-1360, filed 5/22/96, effective 6/22/96. Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-513-1360, filed 5/3/94, effective 6/3/94. Formerly WAC 388-95-380.]

WAC 388-513-1365 Transfer of assets. (1) The terms in this section shall have the following definitions:

(a) "**Assets**" means all income and resources of a client and the client's spouse, including such income or resources the person is entitled to but does not receive because of action by:

- (i) The client or the client's spouse;
- (ii) A person, court or administrative body, with legal authority to act in place of or on behalf of the client or the client's spouse; or
- (iii) A person, court or administrative body, acting at the direction or upon the request of the client or the client's spouse.

(b) "**Community spouse**" means the person married to an institutionalized client.

(c) "**Fair market value (FMV)**" means the price the asset may reasonably sell for on the open market at the time of transfer or assignment.

(d) "**Institutional services**" means a level of care provided in a nursing facility, equivalent nursing facility in a medical institution, or in a home-based or community-based program under WAC 388-515-1505 or 388-515-1510.

(e) "**Institutional spouse**" means a client who meets the requirements of subsection (1)(f) of this section and is married to a spouse who is not:

- (i) In a medical institution;
- (ii) In a nursing facility; or
- (iii) Receiving home-based or community-based services under WAC 388-515-1505 or 388-515-1510.

(f) "**Institutionalized client**" 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-based or community-based services under WAC 388-515-1505 or 388-515-1510; and

(iv) Expected to be in the nursing facility, medical institution or receiving home-based or community-based services under WAC 388-515-1505 or 388-515-1510 for thirty consecutive days or more.

(g) "**Transfer**" means any act or omission to act, by a client or a nonapplying joint tenant, 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:

- (i) Delivery of personal property;
- (ii) Bills of sale, deeds, mortgages, pledges; or
- (iii) Any other instrument conveying or relinquishing an interest in property.

(h) "**Uncompensated value**" means the FMV of an asset at the time of transfer minus the value of compensation the person receives in exchange for the resource.

(i) "**Undue hardship**" means the client's inability to meet shelter, food, clothing, and health needs.

(j) "**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 client shall transfer the resource; and

(ii) The payment or assumption of a legal debt the client owes in exchange for the resource.

(2) The department shall not impose any penalty for the transfer of any exempt asset for less than FMV except as specified under subsection (9) of this section when the client transfers the client's home.

(3) The department shall determine whether the client or the client's spouse transferred an asset within a look-back period of the following duration:

(a) Thirty months when determining eligibility for services received:

- (i) On or before September 30, 1993; or
- (ii) On or after October 1, 1993, with respect to transfers of assets on or before August 10, 1993;

(b) Thirty-six months when determining eligibility for services on or after October 1, 1993, with respect to transfers of assets on or after August 11, 1993; or

(c) Sixty months when determining eligibility for services received on or after October 1, 1993, and all or part of the transferred assets are placed in a trust established on or after August 11, 1993, and all or part of the assets are deemed transferred as described under WAC 388-505-0595.

(4) The department shall consider the look-back period as the number of months described under subsection (3) of this section but not including any month before August, 1993 in the case of subsections (3)(b) and (3)(c) of this section, before the first day of the month the client:

- (a) Becomes an institutionalized person, if the client is eligible for medical assistance on that date; or
- (b) Applies for institutional care when the client is not eligible for medical assistance as of the date the client initially became institutionalized.

(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 388-515-1505 and 388-515-1510, for the institutionalized client when the client or the client's spouse transfers an asset for less than FMV during or after the look-back periods as described under subsections (3) and (4) of this section.

(6) When the client or the client's spouse has transferred assets, the department shall establish a period of ineligibility:

- (a) Under subsection (7) of this section for assets transferred on or before August 10, 1993; and
- (b) Under subsection (8) of this section for assets transferred on or after August 11, 1993.

(7) With respect to transfers of assets on or before August 10, 1993, and in any month within the applicable look-back period, such period of ineligibility shall:

(a) Begin the first day of the month in which the assets were transferred;

(b) Be the lessor of:

(i) Thirty months; or

(ii) The number of whole months found by dividing the total uncompensated value of the assets transferred in the month by the state-wide average monthly cost of nursing facility services to a private patient at the time of the application; and

(c) Run concurrently when transfers of assets have been made in multiple months during the look-back period.

(8) With respect to transfers of assets on or after August 11, 1993, and in any month within the applicable look-back period occurring on or after August 11, 1993, such period of ineligibility shall:

(a) For such transfers during the look-back period, except for a transfer made during a period of ineligibility established under this section:

(i) Begin on the first day of the month in the look-back period in which such assets were transferred; and

(ii) Equal the number of whole months found by dividing the total, cumulative uncompensated value of all such assets transferred during the look-back period by the state-wide average monthly cost of nursing facility services to a private patient at the time of application.

(b) For such transfers of assets made while receiving medical assistance as an institutionalized client, or for such transfers made during a period of ineligibility established under this section:

(i) Begin on the first day of the month in which such assets were transferred, or after the expiration of all other periods of ineligibility established under this section, whichever is later; and

(ii) Equal the number of whole months found by dividing the total, uncompensated value of such transferred assets by the state-wide average monthly cost of nursing facility services to a private patient at the time of application.

(9) The department shall not find the institutionalized client ineligible for institutionalized services when the transferred asset was a home and the home was transferred to the client's:

(a) Spouse; or

(b) Child who is:

(i) Aged, 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 at least one year immediately before the client became institutionalized.

(d) Child, other than described under (b) of this subsection, who:

(i) Lived in the home for two years or more immediately before the client became institutionalized; and

(ii) Provided care to the client to permit the client to remain at home.

(10) The department shall not find the institutionalized client ineligible for institutionalized services if the asset other than the home was transferred:

(a) To the client's spouse or to another person for the sole benefit of the client's spouse;

(b) From the client's spouse to another person for the sole benefit of the client's spouse;

(c) To the client's blind or permanently and totally disabled child, or to a trust established solely for the benefit of such child; or

(d) To a trust established solely for the benefit of a person sixty-four years of age or younger who is disabled according to SSI criteria.

(11) The department shall not find a person ineligible under this section when the client can satisfactorily show the department that:

(a) The client intended to transfer the asset at FMV or other valuable consideration; or

(b) The client transferred the asset exclusively for a purpose other than to qualify for medical assistance;

(c) All assets transferred by the client for less than FMV have been returned to the client; or

(d) The denial of eligibility would cause an undue hardship.

(12) A client or the spouse of such a client, the department determines ineligible under this section, may request a hearing to appeal the determination of ineligibility. The procedure for the hearing is under chapter 388-08 WAC.

(13) The department shall:

(a) Exempt cash received from the sale, transfer, or exchange of an asset to the extent that the cash is used for an exempt asset within the same month, except as specified under WAC 388-511-1160; and

(b) Consider any cash remaining as an available asset.

(14) When the transfer of an asset has resulted in a period of ineligibility for one spouse, the department shall not impose a period of ineligibility for the other spouse for the transfer of the same asset.

[Statutory Authority: RCW 74.08.090, 95-02-027 (Order 3818), § 388-513-1365, filed 12/28/94, effective 1/28/95; 94-10-065 (Order 3732), § 388-513-1365, filed 5/3/94, effective 6/3/94. Formerly WAC 388-95-395.]

WAC 388-513-1380 Institutional—Participation.

(1) In reducing payment to the institution, the department shall consider the institutionalized client's:

(a) Income under WAC 388-513-1330 (3)(a), (b), (c), and (d); and

(b) Resources under WAC 388-513-1350, 388-513-1360, and 388-513-1365.

(2) In reducing payment to the institution, the department shall consider the eligible institutionalized client's excess resources available to meet the cost of care after the following allocations:

(a) Health insurance and Medicare premiums, deductions, and co-insurance not paid by a third party; and

(b) Noncovered medical bills which are the liability of the client and not paid by a third party.

(3) The department shall not use allocations used to reduce excess resources under subsection (2) of this section to reduce income under subsection (4) of this section.

(4) The department shall deduct the following amounts, in the following order, from the institutionalized client's total income, including amounts disregarded in determining eligibility:

(a) Specified personal needs allowance as follows:

(i) One hundred sixty dollars for a veteran living in a Medicaid-certified state veteran's home nursing facility;

(ii) Ninety dollars for a single veteran receiving an improved veteran's pension; or

(iii) Forty-one dollars and sixty-two cents for all other clients in medical institutions.

(b) Federal, state, or local income taxes:

(i) Mandatorily withheld from earned or unearned income for income tax purposes before receipt by the client;

(ii) Not covered by withholding, but are owed or have been paid by the client; and

(iii) Does not exceed the one-person medically needy income level less the client's personal needs allowance.

(c) Wages not to exceed the one-person medically needy income level (MNIL) less the client's personal needs allowance for a client who:

(i) Is SSI-related; and

(ii) Receives the wages as part of a department-approved training or rehabilitative program designed to prepare the client for a less restrictive placement. When determining this deduction, the department shall:

(A) Not allow a deduction for employment expenses; and

(B) Apply the client's wages not deducted under this subsection to the client's cost of care.

(d) The total amounts deducted under subsection (4)(a), (b), and (c) of this section shall not exceed the one-person MNIL.

(e) A monthly needs allowance for the community spouse not to exceed, effective January 1, 1996, one thousand nine hundred nineteen dollars, unless specified in subsection (6) of this section. The department shall ensure the monthly needs allowance is:

(i) An amount added to the community spouse's gross income to provide a total community spouse's income of one thousand two hundred ninety-five dollars;

(ii) Excess shelter expenses as specified under subsection (5) of this section; and

(iii) Allowed only to the extent income of the institutionalized spouse is made available to the community spouse.

(f) An amount for the maintenance needs of each dependent family member residing with the community spouse:

(i) Equal to one-third of the amount one thousand two hundred ninety-five dollars exceeds the family member's income. Child support received from an absent parent is the child's income.

(ii) "Family member" means a:

(A) Dependent or minor child;

(B) Dependent parent; or

(C) Dependent sibling of the institutionalized or community spouse.

(g) When an institutional client does not have a community spouse, an amount for the maintenance needs of family members residing in the client's home equal to the medically needy income level for the number of legal dependents in the home less the income of the dependents.

(h) Amounts for incurred medical expenses not subject to third-party payment which are the current liability of the client including, but not limited to:

(i) Health insurance premiums, coinsurance, or deductible charges; and

(ii) Necessary medical care recognized under state law, but not covered under Medicaid.

(i) Maintenance of the home of a single person or couple:

(i) Up to one hundred percent of the one-person federal poverty level per month;

(ii) Limited to a six-month period; and

(iii) When a physician has certified that the client is likely to return to the home within the six-month period; and

(iv) When social service staff documents initial need for the income exemption and reviews the person's circumstances after ninety days.

(5) For the purposes of this section, the department shall:

(a) Determine shelter expenses to be the actual required maintenance expenses for the community spouse's principal residence for:

(i) Rent;

(ii) Mortgage;

(iii) Taxes and insurance;

(iv) Any maintenance care for a condominium or cooperative; and

(v) The food stamp standard allowance for utilities, provided the utilities are not included in the maintenance charges for a condominium or cooperative.

(b) Consider the standard shelter allocation to be three hundred eighty-nine dollars, effective April 1, 1996.

(c) Consider as "excess shelter expenses" an amount equal to the actual expenses under subsection (5)(a) of this section less the standard shelter allocation under subsection (5)(b) of this section.

(6) The department shall determine the amount the institutional spouse allocates to the community spouse may only be greater than the amount in subsection (4)(e)(i) of this section when:

(a) A court enters an order against the institutionalized client for the community spouse support; or

(b) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(7) The client shall use the income remaining after allocations specified in subsection (4) of this section toward payment of the client's cost of care at the department rate.

(8) SSI-related clients.

(a) SSI-related clients shall continue to receive total payment under 1611 (b)(1) of the Social Security Act for the first three full calendar months of institutionalization in a public or Medicaid-approved medical institution or facility when the:

(i) Stay in the institution or facility is not expected to exceed three months; and

(ii) SSI-related clients plan to return to former living arrangements.

(b) The department shall not consider the SSI payment when computing the client's participation amount.

(9) The department shall not consider income from reparation payments made by the Federal Republic of Germany when computing the client's participation amount.

[Statutory Authority: RCW 74.08.090 and Title XIX State Agency Letter 95-44, 96-09-033 (Order 3963), § 388-513-1380, filed 4/10/96, effective 5/11/96. Statutory Authority: RCW 74.08.090, 95-11-045 (Order 3848), § 388-513-1380, filed 5/10/95, effective 6/10/95. Statutory Authority:

RCW 74.08.090 and Title XIX State Agency Letter 94-49, notice of increase in SSI level. 95-05-022 (Order 3832), § 388-513-1380, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-513-1380, filed 5/3/94, effective 6/3/94. Formerly WAC 388-95-360.]

WAC 388-513-1395 Institutional—Medically needy.

(1) The department shall consider a person institutionalized when the person resides in or is expected to reside in a medical facility for thirty consecutive days or more.

(a) The department shall determine:

(i) An SSI/SSP-related person in a medical facility as medically needy when the person's gross income exceeds three hundred percent of the SSI benefit amount;

(ii) An AFDC-related child in a medical facility as medically needy if countable income exceeds the one-person AFDC grant standard; and

(iii) An AFDC-related adult as ineligible.

(b) The department shall determine a client ineligible for the medically needy program when the countable income is more than the private nursing facility rate plus verifiable recurring medical expenses.

(c) The department shall determine countable income of a medically needy client residing in a nursing facility by deducting the following amounts from gross income:

(i) Amounts that would be deducted in determining eligibility for AFDC or SSI/SSP; and

(ii) Previously incurred medical expenses not subject to third-party payment and which are the current liability of the client.

(d) The department shall determine a client eligible for nursing facility care when the client's countable income and the amount of resources in excess of the amount in WAC 388-513-1310 are less than the department's contracted rate plus verifiable recurring medical expenses. These clients shall:

(i) Participate in the cost of nursing facility care per WAC 388-513-1380 for post-eligibility allocation of income and post-eligibility allocation of resources; and

(ii) Be certified for a three-, six-, or twelve-month period as described under WAC 388-519-1905.

(e) The department shall determine a client eligible for nursing facility care when the client's countable income and the amount of resources in excess of the amount in WAC 388-513-1310 are:

(i) Less than the private nursing facility rate plus recurring medical expenses; but

(ii) More than the department's contracted rate.

(f) The client shall:

(i) Participate in the cost of nursing facility care. See WAC 388-513-1380 for post-eligibility allocation of income;

(ii) Spenddown all income remaining after allocating income to the department's contracted rate to be eligible for nonnursing facility medical care. The department shall only certify medical assistance for noninstitutional eligibility after spenddown has been met; and

(iii) Choose a certification period of three or six months for nursing facility care. The department shall determine spenddown of a person's nonnursing facility medical expenses be on a three-month or six-month basis.

(g) For the effect of a social absence from an institutional living arrangement, see WAC 388-88-115.

(h) The department shall not change a client's institutional status when the client is transferred between institutions.

(2) The department shall use other SSI financial criteria for consideration of resources as defined in WAC 388-513-1310 and 388-513-1360.

[Statutory Authority: RCW 74.08.090 and Budget Note 17. 96-16-092, § 388-513-1395, filed 8/7/96, effective 8/29/96. Statutory Authority: RCW 74.08.090 and 1995 2nd sp.s. c 18 §§ 2095a and 5b. 95-24-017 (Order 3921, #100267), § 388-513-1395, filed 11/22/95, effective 1/1/96. Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-513-1395, filed 5/3/94, effective 6/3/94. Formerly WAC 388-95-400.]

WAC 388-513-1396 Fraternal, religious, or benevolent nursing facility. (1) The department shall find an otherwise eligible client, residing in a nursing facility operated by a fraternal, religious, or benevolent organization:

(a) Eligible for medical care when the:

(i) Facility is licensed as a nursing facility; and

(ii) Contract between the client and the nursing facility excludes free or prepaid institutional and/or medical care for life; or

(iii) Nursing facility is unable to fulfill the terms of the contract and has:

(A) Voided the contract; and

(B) Refunded to the client any existing assets of the client;

(b) Ineligible for institutional and/or medical care when a contract between the client and the facility includes free or prepaid institutional and/or medical care for life.

(2) The department shall consider available to the client all assets of a fraternal, religious, or benevolent organization when the client:

(a) Signs a contract with the organization that includes free or prepaid institutional and/or medical care for the life of the client; and

(b) Surrenders income and/or resources to the organization in exchange for such care.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-513-1396, filed 5/3/94, effective 6/3/94. Formerly WAC 388-95-310.]

Chapter 388-515 WAC

ALTERNATE LIVING—INSTITUTIONAL MEDICAL

WAC

| | |
|--------------|---|
| 388-515-1505 | Community options program entry system (COPES). |
| 388-515-1510 | Community alternatives program (CAP) and outward bound residential alternatives (OBRA). |
| 388-515-1530 | Coordinated community AIDS services alternatives (CASA) program. |

WAC 388-515-1505 Community options program entry system (COPES). (1) The department shall determine a person eligible for COPES when a person is eighteen years of age or over and:

(a) Meets the 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 that meets the eligibility requirements for COPEs personal care as described under WAC 388-15-610; and

(d) Is able and chooses to reside at home with community support services, in a:

- (i) Congregate care facility (CCF);
- (ii) Licensed adult family home (AFH); or
- (iii) Licensed boarding home (LBH).

(e) Is institutionalized, or the department determines is likely to be institutionalized within the next thirty days in the absence of waived services under WAC 388-15-615.

(2) The department shall exempt SSI income from participation in the cost of COPEs care.

(3) The department shall allocate available income of the SSI-related COPEs client as described under WAC 388-513-1380 (1), (2), (3), (4), (d), (e), (f), (g), and (h), (5), and (6). The client shall retain for maintenance needs an amount equal to:

(a) For a single person or a married person not living with a community spouse, one hundred percent of the one-person Federal Poverty Level (FPL);

(b) For a married couple who are both receiving COPEs, one hundred percent of the one-person FPL for each person; or

(c) For a married person living with a community spouse, the one-person MNIL.

(4) The SSI-related client residing in a CCF, AFH, or LBH shall:

(a) Retain from a maintenance needs amount, a personal needs allowance of fifty dollars; and

(b) Pay the remaining maintenance needs amount to the facility for the cost of board and room.

(5) The department shall include the remaining income after allocations as the participation amount for COPEs services as described under WAC 388-15-620.

[Statutory Authority: RCW 74.08.090. 96-14-058 (Order 100346), § 388-515-1505, filed 6/27/96, effective 7/28/96; 95-20-030 (Order 3899), § 388-515-1505, filed 9/27/95, effective 10/28/95; 94-10-065 (Order 3732), § 388-515-1505, filed 5/3/94, effective 6/3/94. Formerly WAC 388-83-200.]

WAC 388-515-1510 Community alternatives program (CAP) and outward bound residential alternatives (OBRA). (1) The department shall determine an eligible person for CAP is a person:

(a) Meeting the requirements and eligible for division of developmental disabilities (DDD) services and disabled according to SSI rules;

(b) Meeting the categorically needy eligibility requirements for an SSI-related institutionalized person. For the purposes of CAP and OBRA, a person is considered institutionalized as of the date all eligibility criteria, except institutionalized status is met;

(c) The department assesses as requiring the level of care provided in an intermediate care facility for the mentally retarded (IMR);

(d) For whom the department approves an individual plan of care describing the provided community support services; and

(e) Able and choosing to reside in the community with community support services according to the plan of care.

(2) The department shall determine an eligible person for the OBRA home-based and community-based services program is a person:

(a) Meeting the CAP eligibility standards in WAC 388-515-1510(1); and

(b) Residing in a Medicaid nursing facility at the time of application for OBRA services.

(3) The department shall not require participation in the cost of CAP or OBRA services by a person:

(a) Receiving SSI; or

(b) Remaining eligible for SSI under 1619(b) of the Social Security Act, but not receiving a cash grant.

(4) The department shall allocate available total income, including amounts disregarded in determining eligibility, of a SSI-related CAP or OBRA client as follows:

(a) For a client living in the client's residence, including a client receiving intensive tenant support services, the department shall use an amount equal to a maximum of three hundred percent of the SSI Federal Benefit Rate for one person for the client's maintenance needs;

(b) For a client residing in a state-contracted or state-operated group home, adult family home, or congregate care facility, the department shall use the following amounts for the client's maintenance needs:

(i) A specified personal needs allowance, as described under WAC 388-250-1600 and 388-250-1650;

(ii) An amount equal to the monthly room and board cost for the facility where the client resides;

(iii) The first twenty dollars per month of earned or unearned income; and

(iv) The first sixty-five dollars plus one-half of the remaining earned income not previously excluded.

(c) For a client described in (b) of this subsection, the maximum amount allowed for any client's individual maintenance needs shall not exceed three hundred percent of the SSI Federal Benefit Rate. The department shall not allow a client an individual maintenance needs deduction of less than the SSI payment standard;

(d) For a client with a spouse at home who is not receiving CAP or OBRA services, the department shall allocate an amount for the spouse's maintenance needs as computed under WAC 388-513-1380 (4)(e);

(e) For a client with a dependent relative living with the spouse not receiving CAP or OBRA services, the department shall designate an amount for the relative's maintenance needs as computed in WAC 388-513-1380 (4)(f);

(f) The department shall use amounts for incurred medical expenses not subject to third-party payment, including:

(i) Medicare and other health insurance premiums, deductibles, or coinsurance charges; and

(ii) Necessary medical care recognized under state law but not covered under Medicaid.

(g) The department shall ensure income remaining after deductions in (a), (b), (c), (d), (e), and (f) of this subsection will be the participation amount for CAP or OBRA services.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-515-1510, filed 5/3/94, effective 6/3/94. Formerly WAC 388-83-210.]

WAC 388-515-1530 Coordinated community AIDS services alternatives (CASA) program. (1) The depart-

ment shall determine that a person is eligible for CASA if the person:

(a) Meets the categorically needy eligibility requirements for an SSI-related institutionalized person. For the purposes of CASA, the department shall consider a person institutionalized the date the person meets eligibility criteria, except institutionalized status;

(b) Has a diagnosis of:

(i) Acquired immune deficiency syndrome or disabling Class IV human immunodeficiency virus disease; or

(ii) P2 HIV/AIDS diagnosis, if fourteen years of age or under.

(c) Is determined medically at risk of need for the level of hospital-provided care;

(d) Is certified by the person's physician or nurse practitioner as in the terminal state of life;

(e) Agrees to receive services in the person's own home, a licensed congregate care facility, or adult family home;

(f) Has a plan of care approved by the department and the department of health; and

(g) Does not have private insurance, including COBRA extensions, that covers inpatient hospital care.

(2) The department shall not require participation in the cost of CASA services by a person:

(a) Receiving SSI; or

(b) Remaining eligible for SSI under 1619(b) of the Social Security Act, but not receiving a cash grant.

(3) The department shall allocate available total income, including amounts disregarded in determining eligibility of a SSI-related CASA client residing at home, as follows:

(a) The client retains as maintenance needs an amount equal to the special income level (SIL) for one person; and

(b) As described under WAC 388-513-1380 (1), (2), (3), (4)(b), (c), (d), (e), (f), (g), and (h), (5), and (6).

(4) The department shall allocate available total income, including amounts disregarded in determining eligibility of a CASA client residing in an adult family home or congregate care facility, as follows:

(a) The client shall retain a specified personal needs allowance as described under WAC 388-250-1600 or 388-250-1650;

(b) As described under WAC 388-513-1380 (1), (2), (3), (4)(c), (d), (e), (f), and (g), (5), and (6); and

(c) Pay remaining income up to the SIL to the facility for the cost of board and room.

(5) The SSI-related CASA client's income remaining after deductions in subsection (3) or (4) of this section shall be the participation amount for CASA services.

(6) When the department has determined that the client has financial participation under subsection (5) of this section, the department shall require the client to meet the participation obligation to remain eligible.

[Statutory Authority: RCW 74.08.090, 95-18-001 (Order 3882), § 388-515-1530, filed 8/23/95, effective 9/23/95; 94-10-065 (Order 3732), § 388-515-1530, filed 5/3/94, effective 6/3/94. Formerly WAC 388-83-220.]

Chapter 388-517 WAC

MEDICARE-RELATED MEDICAL ELIGIBILITY

WAC

| | |
|--------------|--|
| 388-517-1710 | Medicare "buy-in" program. |
| 388-517-1715 | Qualified Medicare beneficiary (QMB) eligible for Medicare cost sharing. |
| 388-517-1720 | Qualified Medicare beneficiaries—Income and resources. |
| 388-517-1730 | Special low-income Medicare beneficiaries (SLMB) eligible for Medicare cost sharing. |
| 388-517-1740 | Special low-income Medicare beneficiaries (SLMB)—Income and resources. |
| 388-517-1750 | Hospital premium insurance enrollment for the qualified disabled working individuals (QDWI). |
| 388-517-1760 | Qualified disabled working individuals (QDWI) income and resources. |

WAC 388-517-1710 Medicare "buy-in" program.

(1) The department shall pay Medicare "buy-in" for a person entitled to Medicare Part A and who receives:

(a) AFDC cash grant;

(b) SSI cash assistance;

(c) Categorically needy medical assistance; or

(d) Medically needy medical assistance.

(2) For a person eligible under subsection (1) of this section and subject to limitations under chapter 388-87 WAC, the department shall pay for:

(a) Supplementary medical insurance Part B premium, under Title XVIII of the Social Security Act;

(b) Coinsurance; and

(c) Deductibles.

(3) In addition to the benefits under subsection (2) (a), (b), and (c) of this section, the department shall pay Part A premiums, coinsurance, and deductibles, under Title XVIII of the Social Security Act, for a person eligible under WAC 388-517-1715 and 388-517-1720.

(4) The department shall only pay the Part B premium, under Title XVIII of the Social Security Act, for a person eligible under WAC 388-517-1730 and 388-517-1740.

(5) The department shall only pay Part A premium, under Title XVIII of the Social Security Act, for a person eligible under WAC 388-517-1750 and 388-517-1760.

[Statutory Authority: RCW 74.08.090, 95-14-046 (Order 3863), § 388-517-1710, filed 6/28/95, effective 7/29/95; 94-10-065 (Order 3732), § 388-517-1710, filed 5/3/94, effective 6/3/94. Formerly WAC 388-81-060.]

WAC 388-517-1715 Qualified Medicare beneficiary (QMB) eligible for Medicare cost sharing. The department shall provide Medicare cost sharing under WAC 388-517-1710(3) for a person:

(1) Meeting the general nonfinancial requirements for an SSI-related person under chapter 388-511 WAC; and

(2) Entitled to Medicare hospital insurance benefits, Part A, under Title XVIII of the Social Security Act.

[Statutory Authority: RCW 74.08.090, 95-14-046 (Order 3863), § 388-517-1715, filed 6/28/95, effective 7/29/95; 94-10-065 (Order 3732), § 388-517-1715, filed 5/3/94, effective 6/3/94. Formerly WAC 388-82-140 (part).]

WAC 388-517-1720 Qualified Medicare beneficiaries—Income and resources. (1) The department shall provide Medicare cost sharing for a qualified medical beneficiary (QMB) client having:

(a) A total countable income, as determined under chapter 388-511 WAC, except as specified in subsection (2) of this section, not exceeding one hundred percent of the current federal poverty level (FPL). One hundred percent of the current FPL is:

| Family Size | Monthly |
|-------------|---------|
| (i) One | \$645 |
| (ii) Two | \$864 |

(b) Resources, as determined under WAC 388-511-1110, not exceeding twice the maximum supplemental security income (SSI) resource limits.

(2) The department shall not consider a person's Social Security cost-of-living increase until April 1 of each year.

[Statutory Authority: RCW 74.08.090. 96-15-029, § 388-517-1720, filed 7/10/96, effective 7/10/96; 95-11-056 (Order 3848A), § 388-517-1720, filed 5/11/95, effective 6/11/95; 94-10-065 (Order 3732), § 388-517-1720, filed 5/3/94, effective 6/3/94. Formerly WAC 388-82-140 (part).]

WAC 388-517-1730 Special low-income Medicare beneficiaries (SLMB) eligible for Medicare cost sharing. The department shall provide Medicare cost sharing under WAC 388-517-1710(4) for a person:

(1) Meeting the general nonfinancial requirements for an SSI-related person under chapter 388-511 WAC; and

(2) Entitled to Medicare hospital insurance benefits, Part A, under Title XVIII of the Social Security Act.

[Statutory Authority: RCW 74.08.090. 95-14-046 (Order 3863), § 388-517-1730, filed 6/28/95, effective 7/29/95; 94-10-065 (Order 3732), § 388-517-1730, filed 5/3/94, effective 6/3/94. Formerly WAC 388-82-150 (part).]

WAC 388-517-1740 Special low-income Medicare beneficiaries (SLMB)—Income and resources. (1) The department shall provide Medicare cost sharing for a SLMB client having:

(a) A total countable income, as determined under chapter 388-511 WAC, over one hundred percent of the current federal poverty level (FPL), but not exceeding one hundred twenty percent of the FPL. One hundred twenty percent of the current FPL is:

| Family Size | Monthly |
|-------------|---------|
| (i) One | \$ 774 |
| (ii) Two | \$1,036 |

(b) Resources, as determined under WAC 388-511-1110, not exceeding twice the maximum supplemental security income (SSI) resource limits.

(2) The department shall not consider a person's Social Security cost-of-living increase until April 1 of each year.

[Statutory Authority: RCW 74.08.090. 96-15-029, § 388-517-1740, filed 7/10/96, effective 7/10/96; 95-23-030 (Order 3917, #100251), § 388-517-1740, filed 11/8/95, effective 12/9/95; 95-11-056 (Order 3848A), § 388-517-1740, filed 5/11/95, effective 6/11/95; 94-10-065 (Order 3732), § 388-517-1740, filed 5/3/94, effective 6/3/94. Formerly WAC 388-82-150 (part).]

WAC 388-517-1750 Hospital premium insurance enrollment for the qualified disabled working individuals (QDWI). The department shall pay premiums for Medicare Part A under WAC 388-517-1710(4) for an SSI-related person:

- (1) Who is not otherwise entitled to medical assistance; and
- (2) Entitled to enroll for Medicare hospital insurance benefits, Part A, under section 1818A of the Social Security Act.

[Statutory Authority: RCW 74.08.090. 95-14-046 (Order 3863), § 388-517-1750, filed 6/28/95, effective 7/29/95; 94-10-065 (Order 3732), § 388-517-1750, filed 5/3/94, effective 6/3/94. Formerly WAC 388-82-160 (part).]

WAC 388-517-1760 Qualified disabled working individuals (QDWI) income and resources. The department shall pay premiums for Medicare Part A for a person having:

(1) A total countable family income, as determined under chapter 388-511 WAC, not exceeding two hundred percent of the current FPL. Two hundred percent of the current FPL is:

| Family Size | Monthly |
|-------------|---------|
| (a) One | \$1,290 |
| (b) Two | \$1,727 |

(2) Resources, as determined under WAC 388-511-1110, not exceeding twice the maximum supplemental security income (SSI) resource limits.

[Statutory Authority: RCW 74.08.090. 96-15-029, § 388-517-1760, filed 7/10/96, effective 7/10/96; 95-11-056 (Order 3848A), § 388-517-1760, filed 5/11/95, effective 6/11/95; 94-10-065 (Order 3732), § 388-517-1760, filed 5/3/94, effective 6/3/94. Formerly WAC 388-82-160 (part).]

Chapter 388-518 WAC

LIMITED CASUALTY PROGRAM—MEDICALLY INDIGENT (LCP-MI)

WAC

- 388-518-1805 LCP-MI eligibility.
- 388-518-1810 LCP-MI emergency medical expense requirement (EMER).
- 388-518-1820 LCP-MI resource availability.
- 388-518-1830 LCP-MI income availability.
- 388-518-1840 LCP-MI spenddown.
- 388-518-1850 LCP-MI standard.

WAC 388-518-1805 LCP-MI eligibility. (1) The department shall not require as a condition of eligibility:

- (a) A person's citizenship;
- (b) Social Security number; and
- (c) Residency.

(2) 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.

(3) A person receiving LCP-MI shall meet the following eligibility criteria:

- (a) The person is not:
 - (i) Receiving continuing cash assistance; or
 - (ii) Eligible for any other medical program.
- (b) The person must have an emergency medical condition:

- (i) As defined in WAC 388-500-0005; and
- (ii) Within a period not exceeding three months prior to the first of the month of application.

(c) For a pregnant woman, the department shall increase the number in the household by the number of unborn before comparing the pregnant woman's income to the:

- (i) Income requirements of WAC 388-518-1850(1); and
- (ii) Resource requirements of WAC 388-518-1850(2).

(4) For a client applying for LCP-MI, the department shall:

(a) Limit the client to one period of LCP-MI eligibility not to exceed three months per twelve-month emergency medical expense requirement (EMER) period; and

(b) Not consider the months of a certification period beginning prior to July 1, 1995 as counting toward the program limitations described under subsection (4)(a) of this section.

(5) The department shall calculate the twelve calendar month period described under subsection (4)(a) of this section as follows:

(a) Begin the first day of the month of certification for a client determined eligible for MI;

(b) Continue through the last day of the following twelve calendar months; and

(c) Equal the same time period established for the EMER.

[Statutory Authority: RCW 74.08.090 and Budget Note 17. 96-16-092, § 388-518-1805, filed 8/7/96, effective 8/29/96. Statutory Authority: RCW 74.08.090. 95-22-039 (Order 3913, #100246), § 388-518-1805, filed 10/25/95, effective 10/28/95; 95-04-049 (Order 3828), § 388-518-1805, filed 1/25/95, effective 2/25/95; 94-10-065 (Order 3732), § 388-518-1805, filed 5/3/94, effective 6/3/94. Formerly WAC 388-100-010 (part).]

WAC 388-518-1810 LCP-MI emergency medical expense requirement (EMER). (1) The client shall satisfy the EMER as described in this section.

(2) The department shall require documentation of emergency medical expenses of two thousand dollars per family over a twelve-month period.

(3) Only family members meeting the eligibility requirements in WAC 388-518-1805, 388-518-1820, 388-518-1830 and 388-518-1850 can accumulate expenses against the EMER.

(4) The department shall consider only the following emergency medical services toward the EMER:

(a) Emergency ground or aid ambulance; and

(b) Emergency hospital services and related physician services in a hospital.

(5) Other than expenses qualifying as hospital charity care under RCW 70.170.060, the department shall ensure the emergency medical expense requirement and spenddown are the liability of the client.

(6) If the client does not satisfy the EMER during the three-month base period, the department shall apply the incurred amount to any subsequent applications within twelve months of the initial application.

[Statutory Authority: RCW 74.08.090 and Budget Note 17. 96-16-092, § 388-518-1810, filed 8/7/96, effective 8/29/96. Statutory Authority: RCW 74.08.090. 95-22-039 (Order 3913, #100246), § 388-518-1810, filed 10/25/95, effective 10/28/95; 94-10-065 (Order 3732), § 388-518-1810, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-100-010 and 388-100-030.]

WAC 388-518-1820 LCP-MI resource availability.

(1) The department shall use AFDC resource guidelines in

chapter 388-216 WAC to determine availability of resources, except for provisions under WAC 388-216-2600.

(2) For the transfer of a resource, refer to WAC 388-507-0740(4).

[Statutory Authority: RCW 74.08.090. 96-07-023 (Order 3954), § 388-518-1820, filed 3/13/96, effective 4/13/96; 94-10-065 (Order 3732), § 388-518-1820, filed 5/3/94, effective 6/3/94. Formerly WAC 388-100-010 (part).]

WAC 388-518-1830 LCP-MI income availability. The department shall use aid to families with dependent children (AFDC) income guidelines in chapter 388-218 WAC to determine treatment of income, except:

(1) The AFDC earned income exemption of thirty dollars plus one-third of the remainder does not apply to applicants for LCP-MI; and

(2) Deduct health insurance premiums expected to be paid during the base period.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-518-1830, filed 5/3/94, effective 6/3/94. Formerly WAC 388-100-010 (part).]

WAC 388-518-1840 LCP-MI spenddown. (1) The department shall ensure all countable income above the MNIL described under WAC 388-507-0710 and nonexempt resources above the resource levels described under 388-507-0720 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 388-519-1930. These expenses cannot have been used toward a previous spenddown, deductible, or emergency medical expense requirement.

[Statutory Authority: RCW 74.08.090. 95-22-039 (Order 3913, #100246), § 388-518-1840, filed 10/25/95, effective 10/28/95; 94-10-065 (Order 3732), § 388-518-1840, filed 5/3/94, effective 6/3/94. Formerly WAC 388-100-015.]

WAC 388-518-1850 LCP-MI standard. The department shall ensure a person eligible for LCP-MI meets the following income and resource standards:

(1) Nonexempt income shall:

(a) Not exceed the medically needy income level (MNIL) in WAC 388-507-0710; or

(b) Be spent down to that level according to WAC 388-519-1930.

(2) Nonexempt resources shall:

(a) Not exceed the resource standard for supplemental security income (SSI); or

(b) Be spent down to that level according to WAC 388-518-1840.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-518-1850, filed 5/3/94, effective 6/3/94.]

Chapter 388-519 WAC SPENDDOWN

WAC

| | |
|--------------|--|
| 388-519-1905 | Base period. |
| 388-519-1910 | Allowable income deductions and exemptions. |
| 388-519-1930 | Computing spenddown; allowable spenddown expenses. |
| 388-519-1950 | Institutional spenddown. |

WAC 388-519-1905 Base period. (1) A medically needy client in one's own home shall have a choice of a three-month or a six-month base period. The department shall ensure the base period begins with the month of application. The department shall use a complete base period unless:

- (a) A previous certification period overlaps;
- (b) The client is not resource eligible for the medically needy program for the full base period;
- (c) The client is not categorically related for the full base period;
- (d) The client becomes eligible for categorically needy Medicaid; or
- (e) The base period would extend beyond December 31, 1995, for an AFDC-related caretaker adult medically needy client.

(2) When a client meets spenddown, the department shall certify for a period of up to six months.

(3) When a medically needy client has income at or below the MNIL, the department shall certify the client for up to twelve months.

(4) The department shall consider the base period for a LCP-MI client:

(a) To be the three months beginning with the first month of emergency ambulance or emergency inpatient hospital or emergency room services; and

(b) May begin up to three calendar months before the date of application.

(5) The department shall not certify a client for more than three months for a medically indigent client. See WAC 388-518-1805 for LCP-MI program limitations.

(6) The department shall certify a client who is required to spenddown from the day the client meets the spenddown requirement through the last day of the chosen base period when the client has not incurred hospital expenses equal to the spenddown liability.

(7) The department shall certify a client who is required to spenddown from the first day of the base period when the client has incurred hospital expenses equal to the spenddown liability.

(8) When the client requests retroactive medical coverage at the time of application, the department shall begin the retroactive period three months before the application month unless exceptions in subsection (1)(a), (b), (c), or (d) of this section exist. The department shall certify a client with spenddown in retroactive period effective:

(a) The day the spenddown requirement was met through the last day of the retroactive period when the client has not incurred hospital expenses equal to the spenddown liability; or

(b) The first day of the retroactive period when the client has incurred hospital expenses equal to the spenddown liability.

(9) The department shall require an application for any subsequent period of eligibility for the medically needy program.

[Statutory Authority: RCW 74.08.090 and Budget Note 17. 96-16-092, § 388-519-1905, filed 8/7/96, effective 8/29/96. Statutory Authority: RCW 74.08.090. 95-22-039 (Order 3913, #100246), § 388-519-1905, filed 10/25/95, effective 10/28/95; 94-10-065 (Order 3732), § 388-519-1905, filed 5/3/94, effective 6/3/94. Formerly WAC 388-99-055.]

WAC 388-519-1910 Allowable income deductions and exemptions. (1) The department shall compute countable income by deducting, from gross income, amounts that would be deducted in determining eligibility for:

(a) AFDC, for families and children. 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 except as described under WAC 388-507-0740(1); or

(b) SSI/SSP for aged, blind or disabled clients.

(2) When more than one assistance unit exists, the department shall determine income for the:

(a) AFDC-related assistance unit according to subsections (1)(a) and (3) of this section; and

(b) SSI-related assistance unit according to subsections (1)(b) and (3) of this section.

(3) The department shall allow the following income exemptions:

(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 of an SSI-related client not to exceed the one-person medically needy income level (MNIL);

(c) A child's allowance up to one-half of the Federal Benefit Rate (FBR) minus the child's income for each SSI-ineligible child of an SSI-related client;

(d) Child care payment amounts allowed as if the person was an AFDC client; and

(e) When the spouse of a client applying for medically needy receives a home-based and community-based waived service program, the department shall allow the medically needy client an income exemption equal to the one-person MNIL minus the income of the institutionalized spouse.

[Statutory Authority: RCW 74.08.090. 96-14-057 (Order 3986), § 388-519-1910, filed 6/27/96, effective 7/28/96; 94-10-065 (Order 3732), § 388-519-1910, filed 5/3/94, effective 6/3/94. Formerly WAC 388-99-020 (part).]

WAC 388-519-1930 Computing spenddown; allowable spenddown expenses. (1) The department shall certify the client as eligible for the medically needy program when:

(a) A person meets the criteria described under WAC 388-503-0320; and

(b) Countable income is equal to or less than the appropriate medically needy income level (MNIL).

(2) When countable income for any month of the base period is less than the appropriate MNIL but above the categorically needy income level (CNIL), the department shall deduct the difference between the countable income and the MNIL from the total excess countable income for the base period.

(3) When countable income is greater than the appropriate MNIL, the department shall require the client to spenddown the excess countable income for the base period.

(4) On initial or subsequent applications, the department shall deduct previously incurred medical expenses from the client's excess countable income subject to the following restrictions:

(a) At the time of application, the medical expense shall be a liability at the beginning of the base period for which application is made:

(i) Of the client or other family member who is legally or blood-related and living in the same household; or

(ii) Subject to payment during or before the base period, by a public program as defined under subsection (5) of this section.

(b) The medical expense shall not have been used at any other time to reduce excess countable income on a medical application which resulted in eligibility;

(c) The department shall consider toward spenddown a medical expense incurred and paid during the base period:

(i) By the client; or

(ii) Subject to payment by a public program as defined under subsection (5) of this section.

(d) The department shall not consider the portion of the medical expense paid or covered by a third-party resource toward spenddown.

(i) The department shall disregard the possible payment by a third party as a resource and allow the entire expense for spenddown when a third party fails to send either payment or notice of the portion of a medical services bill covered within forty-five calendar days of the date of service or thirty calendar days from the last day of the base period, whichever is sooner.

(ii) When Medicare is the only insurance available, the department shall allow the Medicare deductible toward the spenddown when the client:

(A) Still owes the bill; and

(B) Is hospitalized for the first time in a sixty-day period.

(e) The department shall consider only medical services provided by practitioners recognized by state law.

(5) For the purposes of this section, a public program is one administered by a state, county, city, or territory. The department shall ensure the public program has funding:

(a) From a source other than federally matched or funded; and

(b) Appropriated by a state, county, city, or territory; or

(c) Transferred from state, county, city, or territory to the administering agency.

(6) When the incurred medical bills equal or exceed the excess countable income at the time of application, the department shall certify the client's eligibility.

(7) When the incurred medical bills are less than the excess countable income, the department shall not approve the application and shall require the client to spenddown the remaining excess countable income. The department shall only certify the client eligible when excess countable income has been completely spent down. The department shall deduct medical expenses incurred during the spenddown period in the following order:

(a) Medicare and other health insurance deductibles, coinsurance charges, enrollment fees, or copayments;

(b) Expenses for necessary medical and remedial care not covered by the medically needy program and provided by a practitioner recognized under state law;

(c) Inpatient or outpatient hospital expenses for necessary medical and remedial care covered by the medically needy program, but remaining a client's liability;

(d) Expenses incurred for necessary medical and remedial care covered by the medically needy program under a public program as defined under subsection (5) of this section; and

(e) Expenses for necessary medical or remedial care other than inpatient or outpatient hospital expenses covered by the medically needy program.

(8) The client shall provide the department with documentation of incurred medical expenses no later than thirty calendar days from the end of the base period. Once the client's medical eligibility is approved, the department shall not consider expenses the client omits or does not list. The client may use such expenses to reduce excess countable income on a subsequent application provided:

(a) The expenses incurred before the certification date meet the conditions in subsection (4) of this section; and

(b) Medical care or supplies received and paid for, on or after the certification date and before receiving medical coupons, meet the conditions in subsection (4)(b), (c), (d), and (e) of this section.

(9) The client shall be liable for any expenses incurred before the first day of eligibility.

[Statutory Authority: RCW 74.08.090, 96-14-057 (Order 3986), § 388-519-1930, filed 6/27/96, effective 7/28/96; 94-10-065 (Order 3732), § 388-519-1930, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-99-020 and 388-99-030.]

WAC 388-519-1950 Institutional spenddown. Refer to WAC 388-513-1395.

[Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-519-1950, filed 5/3/94, effective 6/3/94.]

Chapter 388-521 WAC MEDICAL EFFECTIVE DATES

WAC

| | |
|--------------|--|
| 388-521-2105 | Effective eligibility date for Medicaid. |
| 388-521-2106 | Eligibility for children's health program. |
| 388-521-2110 | Effective date for SSI medical. |
| 388-521-2120 | Effective date for medical care services. |
| 388-521-2130 | Effective date for the medically needy program. |
| 388-521-2140 | Effective date for the medically indigent program. |
| 388-521-2150 | Effective date for the qualified Medicare beneficiary (QMB) program. |
| 388-521-2155 | Effective date for the qualified disabled working individual (QDWI) program. |
| 388-521-2160 | Effective date for the special low-income Medicare beneficiary (SLMB) program. |
| 388-521-2170 | Effective date—Reapplication. |

WAC 388-521-2105 Effective eligibility date for Medicaid. The department shall ensure the effective date of eligibility for:

(1) Categorically needy medical assistance shall be the first day of the month when the client is eligible at any time during that month.

(2) Categorically needy or medically needy medical care is not earlier than the third month before the month of application provided the:

(a) Medical services the client received were covered;

(b) Client would have been eligible had the client applied; and

(c) Client meets all categorical eligibility factors.

[Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-521-2105, filed 5/3/94, effective 6/3/94. Formerly WAC 388-84-115 (part).]

WAC 388-521-2106 Eligibility for children's health program. The department shall ensure the effective date of eligibility for the children's health program for undocumented alien children:

(1) Shall be the first day of the month when the child is eligible at any time during that month;

(2) May be the first day of the third calendar month before the month of application provided the:

(a) Medical services the child received during the prior three months were covered; and

(b) Child would have been eligible during the prior three months if the child had applied.

[Statutory Authority: RCW 74.08.090 and 74.09.415. 96-18-091, § 388-521-2106, filed 9/4/96, effective 10/5/96.]

WAC 388-521-2110 Effective date for SSI medical. The department shall determine the effective date of eligibility for medical assistance for an SSI beneficiary shall be the first day of the month in which SSI eligibility was effective. For eligibility before the SSI effective date, reference WAC 388-521-2105.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-521-2110, filed 5/3/94, effective 6/3/94. Formerly WAC 388-84-115 (part).]

WAC 388-521-2120 Effective date for medical care services. (1) The department shall ensure eligibility for medical care services begins with the date of certification for:

(a) General assistance; or

(b) Alcohol and drug addiction services provided under sections 1 through 8 of the Alcoholism and Drug Addiction Treatment and Support Act of 1987 (chapter 406, Laws of 1987).

(2) The department shall not retroactively certify for medical care received before the initial date of eligibility under subsection (1) of this section.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-521-2120, filed 5/3/94, effective 6/3/94. Formerly WAC 388-84-120.]

WAC 388-521-2130 Effective date for the medically needy program. (1) The department shall ensure the effective date for the limited casualty program—medically needy for a client in the client's own home is the date the client meets spenddown, if any.

(2) The department shall not deny eligibility based on failure to meet spenddown until at least thirty days after the end of the base period.

(3) See WAC 388-521-2105 for a client requesting retroactive medical coverage.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-521-2130, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-84-115 and 388-99-050.]

WAC 388-521-2140 Effective date for the medically indigent program. (1) The department shall ensure the effective date of eligibility is the date the client meets spenddown, if any, and the emergency medical expense requirement.

(2) The department shall pay for emergency medical care as described under WAC 388-529-2950 when:

(a) The condition was an emergency medical condition requiring hospital services; and

(b) The person was otherwise eligible.

(3) The department shall determine the certification period does not exceed three calendar months.

[Statutory Authority: RCW 74.08.090. 95-22-039 (Order 3913, #100246), § 388-521-2140, filed 10/25/95, effective 10/28/95; 94-10-065 (Order 3732), § 388-521-2140, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-84-115, 388-100-020 and 388-100-025.]

WAC 388-521-2150 Effective date for the qualified Medicare beneficiary (QMB) program. The department shall ensure the effective date of eligibility for the QMB program shall be the first day of the month after the department determines the client is eligible for the QMB client.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-521-2150, filed 5/3/94, effective 6/3/94. Formerly WAC 388-84-115 (part).]

WAC 388-521-2155 Effective date for the qualified disabled working individual (QDWI) program. The department shall ensure the effective date of eligibility for the QDWI program shall be the later of the:

(1) First day of the month in which the client is enrolled in Part A; or

(2) Retroactive period described under WAC 388-521-2105(2).

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-521-2155, filed 5/3/94, effective 6/3/94. Formerly WAC 388-84-115 (part).]

WAC 388-521-2160 Effective date for the special low-income Medicare beneficiary (SLMB) program. The department shall ensure the effective date of eligibility for the SLMB program shall be the later of the:

(1) First day of the month in which the client is enrolled in Part B; or

(2) Retroactive period described under WAC 388-521-2105(2).

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-521-2160, filed 5/3/94, effective 6/3/94. Formerly WAC 388-84-115 (part).]

WAC 388-521-2170 Effective date—Reapplication. Refer to WAC 388-504-0485(3).

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-521-2170, filed 5/3/94, effective 6/3/94.]

Chapter 388-522 WAC

MEDICAL ELIGIBILITY CHANGES

WAC

- 388-522-2205 Redetermination of medical assistance.
- 388-522-2210 Effect of grant termination.
- 388-522-2230 Eligibility reviews.

WAC 388-522-2205 Redetermination of medical assistance. (1) Before termination of a client's medical assistance, the department shall redetermine the client's eligibility for other medical assistance programs or the medically indigent program.

(a) When additional information is necessary to redetermine eligibility, the department shall give the client ten days notice and an opportunity to provide such information.

(b) The department shall give the client advance and adequate notice of the redetermination decision before termination of medical assistance as described under WAC 388-245-1700.

(c) Until the department redetermines a client's eligibility in conformity with the requirements of this section, the client shall remain eligible for categorically needy medical benefits.

(2) The department shall redetermine the client's eligibility for other financial and medical programs within thirty calendar days when SSA terminates the client's SSI/SSP financial benefits.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-522-2205, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-85-105 and 388-85-110.]

WAC 388-522-2210 Effect of grant termination. (1) The department shall continue eligibility for medical assistance until the client is determined ineligible for cash assistance.

(2) When eligibility for AFDC cash assistance is terminated:

(a) Due to increased income from or increased hours of employment, the department shall continue medical assistance for the extension periods as described under WAC 388-523-2305;

(b) Due to a child becoming eighteen years of age, the department shall redetermine eligibility for medical assistance under another program;

(c) For lack of cooperation with JOBS, work registration, or lack of school attendance, which are not eligibility factors for medical assistance, the department shall ensure eligibility for medical assistance will continue;

(d) Due solely to the loss of the thirty dollars plus one-third or the thirty-dollar income exemption, the department shall continue medical assistance for the appropriate extension periods as described under WAC 388-523-2305.

(e) Due to the termination of pregnancy, the department shall continue medical assistance to the end of the month containing the sixtieth day from the day the pregnancy ends.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-522-2210, filed 5/3/94, effective 6/3/94. Formerly WAC 388-85-105 (part).]

WAC 388-522-2230 Eligibility reviews. (1) When a client is receiving cash assistance, the department shall not require a separate eligibility review for the related medical assistance program.

(2) When a client is in a medical institution or receiving medical assistance, the department shall redetermine eligibility:

(a) Every twelve months for a person receiving:

(i) Categorically needy medical assistance; or

(ii) Medically needy program and whose income is at or below the MNIL.

(b) Each three or six months, at the client's option, for a person receiving the medically needy program with spenddown.

(3) The department shall terminate eligibility for a medical program when a person:

(a) Does not complete and return to the department a department-designated eligibility review form before the last day of the certification period; or

(b) Is determined ineligible for a medical program.

[Statutory Authority: RCW 74.08.090 and Budget Note 17. 96-16-092, § 388-522-2230, filed 8/7/96, effective 8/29/96. Statutory Authority: RCW 74.08.090. 95-15-039 (Order 3870), § 388-522-2230, filed 7/12/95, effective 8/12/95; 94-10-065 (Order 3732), § 388-522-2230, filed 5/3/94, effective 6/3/94. Formerly WAC 388-85-105 (part).]

Chapter 388-523 WAC MEDICAL EXTENSIONS

WAC

388-523-2305 Medical extensions.

388-523-2320 Medicaid quarterly reporting.

WAC 388-523-2305 Medical extensions. (1) Refer to:

(a) WAC 388-508-0830 for extensions for a pregnant woman; and

(b) WAC 388-508-0835 for the family planning extension.

(2) A family unit ineligible for AFDC cash assistance because of the collection or increased collection of child or spousal support shall be eligible for medical assistance for four months beginning with the month of ineligibility provided the family unit:

(a) Is eligible for and received AFDC cash assistance in three or more of the six months immediately preceding the month of ineligibility; and

(b) Continues to meet all AFDC eligibility criteria except income.

(3) The department shall find eligible for medical assistance, an AFDC family unit which becomes ineligible for cash assistance because of:

(a) Income from, or hours of, employment of the caretaker relative; or

(b) The loss of the thirty dollars plus one-third earned income deduction; or

(c) The loss of the thirty-dollar earned income deduction. Such AFDC family unit as described under (a), (b), or (c) of this subsection shall remain eligible for medical assistance for six calendar months when the family unit:

(i) Received AFDC in three or more of the six months immediately preceding the month of ineligibility; and

(ii) Includes a child.

(4) The AFDC family unit, under subsection (3) of this section, shall be:

(a) Eligible for six additional calendar months of medical assistance provided the family unit:

(i) Continues to include a child; and

(ii) Received medical assistance for the entire six-month extension under subsection (3) of this section; and

(iii) Reports any family earnings and child care costs related to the employment of the caretaker relative for the preceding three-month period. The client shall report by the twenty-first day of the fourth month of the initial extension, unless good cause is established.

(b) Terminated from the six additional calendar months of medical assistance when the:

(i) Family's average gross monthly earned income, less the cost of child care related to employment of the caretaker relative, exceeds one hundred eighty-five percent of the Federal Poverty Level when averaged over the immediately preceding three-month period; or

(ii) Caretaker relative has no earnings in one or more of the three previous months, unless lack of earnings is due to good cause.

(5) An AFDC family member shall not be eligible for the extensions in subsections (3) and (4) of this section when the department finds the person ineligible for AFDC in any of the last six months before the extension because of fraud.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-523-2305, filed 5/3/94, effective 6/3/94. Formerly WAC 388-83-029.]

WAC 388-523-2320 Medicaid quarterly reporting.

(1) The department shall determine the AFDC family unit under WAC 388-523-2305(4) eligible for six additional calendar months of medical assistance provided the family unit reports:

(a) Family earnings; and

(b) Child care costs related to the employment of the caretaker relative;

(c) For the immediately preceding three-month period by the twenty-first day of the fourth month of the initial extension.

(2) The department shall determine the AFDC family unit under WAC 388-523-2305(4) as terminated, unless good cause is established, from the six additional calendar months of medical assistance when the family fails to report:

(a) Family earned income; and

(b) Child care costs related to the employment of the caretaker relative;

(c) For the immediately preceding three-month period by the twenty-first day of the first and fourth months of the additional extension period.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-523-2320, filed 5/3/94, effective 6/3/94.]

**Chapter 388-524 WAC
MEDICAL TERMINATIONS**

WAC

388-524-2405 SSI/state supplement termination.
388-524-2420 Medical care services termination.

WAC 388-524-2405 SSI/state supplement termination. When SSA terminates an SSI/state supplemental client because of failure to meet blindness and disability criteria under Title XVI, the department shall terminate medical assistance at the end of the second month following the month in which eligibility based on disability or blindness criteria ceases.

(1) If the client has filed a timely request for a hearing under SSA jurisdiction and SSA continues benefits, the department shall continue medical assistance concurrently.

(2) The department shall not authorize the CSO to resubmit a request for a redetermination of blindness or

disability for consideration of the categorically needy or medically needy program.

(3) If the client presents new medical evidence to the CSO or the client's condition worsens, the department shall require a referral to SSA.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-524-2405, filed 5/3/94, effective 6/3/94. Formerly WAC 388-85-110 (part).]

WAC 388-524-2420 Medical care services termination. Eligibility for medical care services shall cease when the department terminates:

(1) The general assistance grant; or

(2) Alcohol and drug addiction services provided under sections 1 through 8 of the Alcoholism and Drug Addiction Treatment and Support Act of 1987 (chapter 406, Laws of 1987).

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-524-2420, filed 5/3/94, effective 6/3/94. Formerly WAC 388-84-120.]

**Chapter 388-525 WAC
MEDICAL NOTICES**

WAC

388-525-2505 Notification of medical approval.
388-525-2520 Notification of medical termination.
388-525-2570 Notification of medical changes.

WAC 388-525-2505 Notification of medical approval. The department shall provide the client written notification when eligibility for medical care has been determined.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-525-2505, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-84-110 and 388-100-025.]

WAC 388-525-2520 Notification of medical termination. The department shall provide the client advance and adequate written notification when eligibility for medical care is terminated.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-525-2520, filed 5/3/94, effective 6/3/94.]

WAC 388-525-2570 Notification of medical changes. For any change of medical eligibility, the department shall use the same notification procedures as for cash assistance.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-525-2570, filed 5/3/94, effective 6/3/94. Formerly WAC 388-85-105 (part).]

**Chapter 388-526 WAC
MEDICAL FAIR HEARINGS**

WAC

388-526-2610 Fair hearings.

WAC 388-526-2610 Fair hearings. (1) A client aggrieved by a department decision shall have a right to a fair hearing as provided under chapter 388-08 WAC.

(2) Medical assistance administration shall be responsible for a prehearing review when the fair hearing request questions a decision:

(a) Of a medical consultant; or
 (b) Concerning an eligibility determination in the Medicaid category or state-funded medical program.

(3) Medical assistance administration shall review all fair hearing requests referred by the fair hearing coordinator to determine whether or not the:

(a) Appellant's request for service was filed according to the applicable rules and regulations;

(b) Decision has been made upon complete and accurate evaluation of the facts, existing standards, regulations, and policies.

(4) All records and information necessary to determine the validity of the appellant's fair hearing request on request to the reviewing authority and forwarded not later than ten days from such request.

(5) The examiner or the appellant may obtain a medical assessment by a professionally qualified person not a party to the action being appealed, at the request of the examiner or the appellant.

(6) On receipt of the necessary material, evidence, or reports, the designated reviewing authority shall evaluate the appellant's request in accord with existing rules, regulations, and policies of the department. The reviewing authority may:

(a) Reverse the decision when such adverse decision has been made contrary to the rules, regulations and policies of medical assistance administration;

(b) Resolve a situation resulting in the fair hearing request by adjustment.

(7) In providing a system for fair hearings for medical care clients, the department shall follow the rules in chapter 388-08 WAC and, where appropriate, other portions of the rules which are applicable to the particular circumstances of the appellant.

[Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-526-2610, filed 5/3/94, effective 6/3/94. Formerly WAC 388-81-040.]

Chapter 388-527 WAC

MEDICAL OVERPAYMENT/REPAYMENT

WAC

| | |
|--------------|---|
| 388-527-2730 | Estate recovery definitions. |
| 388-527-2735 | Liability for medical care. |
| 388-527-2740 | Age when recovery applies. |
| 388-527-2742 | Services subject to recovery. |
| 388-527-2750 | Waiver of recovery if undue hardship. |
| 388-527-2752 | Deferring recovery. |
| 388-527-2753 | No liability for medical care. |
| 388-527-2754 | Assets not subject to recovery. |
| 388-527-2790 | Filing of a lien against real property. |

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

| | |
|--------------|---|
| 388-527-2710 | Recovery from estates. [Statutory Authority: RCW 74.08.090 and OBRA 1993, HB 2492, 94-17-035 (Order 3768), § 388-527-2710, filed 8/10/94, effective 9/10/94. Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-527-2710, filed 5/3/94, effective 6/3/94. Formerly WAC 388-81-047.] Repealed by 95-19-001 (Order 3893), filed 9/6/95, effective 10/7/95. Statutory Authority: RCW 74.08.090 and 1995 1st sp.s. c 18. |
| 388-527-2720 | Restitution. [Statutory Authority: RCW 74.08.090, 94-10-065 (Order 3732), § 388-527-2720, filed 5/3/94, effective 6/3/94. Formerly WAC 388-81-050] Repealed |

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by 95-19-001 (Order 3893), filed 9/6/95, effective 10/7/95.
 Statutory Authority: RCW 74.08.090 and 1995 1st sp.s. c 18.

WAC 388-527-2730 Estate recovery definitions.

(1)(a) For estate recovery purposes, "estate" includes:

(i) For a client who dies before July 1, 1995 all real and personal property and any other assets that pass upon the client's death:

(A) Under the client's will;

(B) By intestate succession pursuant to chapter 11.04 RCW; or

(C) Under chapter 11.62 RCW; or

(ii) For a client who dies after June 30, 1995 all real and personal property and any other assets that pass upon the client's death:

(A) Under the client's will;

(B) By intestate succession pursuant to chapter 11.04 RCW; or

(C) Under chapter 11.62 RCW; and

(D) Nonprobate assets as defined by RCW 11.02.005, except property passing through a community property agreement.

(b) The value of the estate shall be reduced by any valid liability against the deceased client's property at the time of death.

(2) "Long-term care services" means the services administered directly or through contract by the aging and adult services administration of the department, including but not limited to nursing facility care and home and community services. "State-funded long-term care" means the long-term care services that are paid with state funds and do not include federal funds.

(3) "Medical assistance" means the federal aid medical care program provided to categorically needy persons as defined under Title XIX of the Federal Social Security Act.

[Statutory Authority: 1995 1st sp.s. c 18 and RCW 74.08.090, 95-19-001 and 95-24-037 (Orders 3893 and 3893A), § 388-527-2730, filed 9/6/95 and 11/29/95, effective 10/7/95 and 12/30/95.]

WAC 388-527-2735 Liability for medical care. (1)

A client's estate may be liable for the cost of medical care the department correctly paid on the client's behalf.

(2) The rules in this chapter state when the client's estate is liable for medical care the department paid and when the department shall seek recovery.

[Statutory Authority: RCW 74.08.090 and 1995 1st sp.s. c 18, 95-19-001 (Order 3893), § 388-527-2735, filed 9/6/95, effective 10/7/95.]

WAC 388-527-2740 Age when recovery applies.

Whether the client's estate is liable for the cost of medical care provided depends, in part, upon the client's age and when the services were received. Subsection (1) of this section covers liability for medical assistance and subsection (2) covers liability for state-funded long-term care services. An estate may be liable under both subsections.

(1)(a) If a client was age sixty-five or older on July 1, 1994, the estate is liable for medical assistance subject to recovery provided on and after the date the client became age sixty-five.

(b) If the client was age fifty-five through sixty-four years of age on July 1, 1994, the estate is liable for medical

assistance subject to recovery provided on and after July 1, 1994.

(c) If a client was under age fifty-five on July 1, 1994, the estate is liable for medical assistance subject to recovery provided on and after the date the client became age fifty-five.

(2) The estate is liable for state-funded long-term care services provided on and after July 1, 1995 regardless of the client's age when the services were provided.

[Statutory Authority: 1995 1st sp.s. c 18 and RCW 74.08.090, 95-19-001 and 95-24-037 (Orders 3893 and 3893A), § 388-527-2740, filed 9/6/95 and 11/29/95, effective 10/7/95 and 12/30/95.]

WAC 388-527-2742 Services subject to recovery. Whether the client's estate is liable for medical care provided depends, in part, upon what medical services the client received and the dates when services were provided. Subsection (1) of this section covers liability for medical assistance and subsection (2) covers liability for state-funded long-term care services. An estate can be liable under both subsections.

(1)(a) The estate is liable for all medical assistance services provided before July 1, 1994;

(b) The estate is liable for the following medical assistance services provided after June 30, 1994 and before July 1, 1995:

- (i) Nursing facility services;
- (ii) Home and community-based services; and
- (iii) Related hospital services and prescription drug services.

(c) The estate is liable for the following medical assistance services provided after June 30, 1995:

- (i) Nursing facility services;
- (ii) Home and community-based services;
- (iii) Adult day health;
- (iv) Medicaid personal care;
- (v) Private duty nursing administered by the aging and adult services administration of the department; and
- (vi) Related hospital and prescription drugs services.

(2) The estate is liable for all state-funded long-term care services and related hospital and prescription drug services provided after June 30, 1995.

[Statutory Authority: RCW 74.08.090 and 1995 1st sp.s. c 18, 95-19-001 (Order 3893), § 388-527-2742, filed 9/6/95, effective 10/7/95.]

WAC 388-527-2750 Waiver of recovery if undue hardship. The department shall waive recovery under this section when recovery would work an undue hardship except as provided in subsection (3) of this section. This waiver is limited to the period during which undue hardship exists.

(1) Undue hardship exists when:

(a) The estate subject to adjustment or recovery is the sole income-producing asset of one or more of the heirs and income is limited; or

(b) Recovery would result in the impoverishment of one or more of the heirs; or

(c) Recovery would deprive an heir of shelter and the heir lacks the financial means to obtain and maintain alternative shelter.

(2) Undue hardship does not exist when:

(a) The adjustment or recovery of the client's cost of assistance would merely cause the client's family members inconvenience or restrict the family's lifestyle.

(b) The heir divests assets to qualify under the undue hardship provision.

(3) The department shall not waive recovery based on undue hardship when a deceased client's assets were disregarded in connection with a long-term care insurance policy or contract under chapter 48.85 RCW.

(4) A person who requests the department to waive recovery in whole or in part, and who suffers a loss because the request is not granted, may contest the department's decision in an adjudicative proceeding. The department's decision shall state the requirements for an application for an adjudicative proceeding and state where assistance might be obtained to make an application. The proceeding shall be governed by chapters 34.05 RCW and 388-08 WAC and this section. If a provision in this section conflicts with a provision in chapter 388-08 WAC, the provision in this section governs. An application for an adjudicative proceeding must:

(a) Be in writing;

(b) State the basis for contesting the department's denial of the request to waive recovery;

(c) Include a copy of the department's denial of the request to waive recovery;

(d) Be signed by the applicant and the state and include the applicant's address and telephone number;

(e) Be served within twenty-eight days of the date the applicant received the department's decision denying the request for a waiver. An application filed up to thirty days late may be treated as if timely filed if the applicant shows good cause for filing late; and

(f) Be served on the office of financial recovery in a manner which shows proof of receipt, such as personal service or certified mail, return receipt requested. The mailing address of the Office of Financial Recovery is: P.O. Box 9501, Olympia WA 98507-9501. The physical location of the Office of Financial Recovery is Capitol View Building, Second Floor, 712 Pear Street Southeast, Olympia, Washington.

[Statutory Authority: 1995 1st sp.s. c 18 and RCW 74.08.090, 95-19-001 and 95-24-037 (Orders 3893 and 3893A), § 388-527-2750, filed 9/6/95 and 11/29/95, effective 10/7/95 and 12/30/95.]

WAC 388-527-2752 Deferring recovery. If the client died after June 30, 1994 the department shall defer recovery from the estate until:

(1) The death of the surviving spouse, if any, and

(2) There is no surviving child who is:

(a) Under twenty-one years of age, or

(b) Blind or disabled as defined under chapter 388-511

WAC.

[Statutory Authority: 1995 1st sp.s. c 18 and RCW 74.08.090, 95-19-001 and 95-24-037 (Orders 3893 and 3893A), § 388-527-2752, filed 9/6/95 and 11/29/95, effective 10/7/95 and 12/30/95.]

WAC 388-527-2753 No liability for medical care. The client's estate is not liable when the client died before July 1, 1994 and on the date of death there was:

(1) A surviving spouse; or

- (2) A surviving child who was either:
- (a) Under twenty-one years of age; or
 - (b) Blind or disabled as defined under chapter 388-511 WAC.

[Statutory Authority: RCW 74.08.090 and 1995 1st sp.s. c 18. 95-19-001 (Order 3893), § 388-527-2753, filed 9/6/95, effective 10/7/95.]

WAC 388-527-2754 Assets not subject to recovery.

(1) If a client died before July 25, 1993 with no surviving spouse or blind or disabled child, but with a surviving child, recovery does not apply to the first fifty thousand dollars of the estate value at the time of death and recovery is limited to thirty-five percent of the remaining value of the estate.

(2) If a client died after July 24, 1993 and before July 1, 1994, the department shall not seek recovery against the following property, up to a fair market value of two thousand dollars, from the estate of the client:

- (a) Family heirlooms,
- (b) Collectibles,
- (c) Antiques,
- (d) Papers,
- (e) Jewelry,
- (f) Photos, and

(g) Other personal effects of the deceased client and to which a surviving child is entitled.

[Statutory Authority: 1995 1st sp.s. c 18 and RCW 74.08.090. 95-19-001 and 95-24-037 (Orders 3893 and 3893A), § 388-527-2754, filed 9/6/95 and 11/29/95, effective 10/7/95 and 12/30/95.]

WAC 388-527-2790 Filing a lien against real property. (1) The department shall file liens, seek adjustment, or otherwise effect recovery for medical assistance or state-funded long-term care, or both, correctly paid on behalf of a client as required by 42 U.S.C. 1396p and chapters 43.20B RCW and 388-527 WAC.

(2) When the department seeks to recover from a client's estate the cost of medical assistance or state-funded long-term care, or both, provided to the client, prior to filing a lien against the deceased client's real property, the department shall provide notice to:

- (a) The probate estate's personal representative, if any;
- (b) The decedent's surviving spouse, if any; or
- (c) Any other person having title to the affected property.

(3) Prior to filing a lien against any of the deceased client's real property, the department shall provide ascertained persons having title to the property notice and an opportunity for an adjudicative proceeding. The department shall:

(a) Serve upon ascertained persons having title to the property a notice of intent to file lien, which shall state:

(i) The deceased client's name, social security number, if known, date of birth, and date of death;

(ii) The amount of medical assistance, or state-funded long-term care, or both, correctly paid on behalf of the deceased client the department seeks to recover;

(iii) The department's intent to file a lien against the deceased client's real property to recover the medical assistance or state-funded long-term care, or both, correctly paid on behalf of the deceased client;

(iv) The county in which the real property is located; and

(v) The right of the ascertained person having title to the property to contest the department's decision to file a lien by filing an application for an adjudicative proceeding with the office of financial recovery; and

(b) Provide an adjudicative proceeding to determine whether:

(i) The amount of medical assistance or state-funded long-term care, or both, correctly paid on behalf of the deceased client alleged by the department's notice of intent to file lien is correct; and

(ii) The deceased client had any legal title to the real property at the time of the client's death.

(4) An application for an adjudicative proceeding must:

(a) Be in writing;

(b) State the basis for contesting the department's notice of intent to file lien;

(c) Be signed by the applicant and state the applicant's address and telephone number;

(d) Be served on the office of financial recovery within twenty-eight days of the date the applicant received the department's notice of intent to file lien. An application filed up to thirty days late may be treated as timely filed if the applicant shows good cause for filing late; and

(e) Be served on the office of financial recovery in a manner in which shows proof of receipt, such as personal service or certified mail, return receipt requested. The mailing address of the Office of Financial Recovery is P.O. Box 9501, Olympia WA 98507-9501. The physical location of the Office of Financial Recovery is Capitol View Building, Second Floor, 712 Pear Street Southeast, Olympia, Washington.

(5) Upon receipt of an application for an adjudicative proceeding, the department shall provide notice of the proceeding to all other ascertained persons having title to the property.

(6) An adjudicative proceeding under this section shall be governed by chapters 34.05 RCW and 388-08 WAC and this section. If a provision in this section conflicts with a provision in chapter 388-08 WAC, the provision in this section governs.

(7) If no ascertained person having title to the property files an application for an adjudicative proceeding within twenty-eight days of the date the department served a notice of intent to file lien, the department shall file a lien. The department shall file a lien against the deceased client's real property for the amount of medical assistance or state-funded long-term care, or both, correctly paid on behalf of the deceased client alleged in the notice of intent to file lien.

[Statutory Authority: 1995 1st sp.s. c 18 and RCW 74.08.090. 95-19-001 and 95-24-037 (Orders 3893 and 3893A), § 388-527-2790, filed 9/6/95 and 11/29/95, effective 10/7/95 and 12/30/95.]

Chapter 388-528 WAC

RECEIPT OF RESOURCES WITHOUT GIVING ADEQUATE CONSIDERATION

WAC

388-528-2810 Receipt of resources—Penalties.

WAC 388-528-2810 Receipt of resources—Penalties.

(1) The department shall find any person liable for a civil penalty and subject to referral for criminal prosecution for commission of a gross misdemeanor if the:

(a) Person knowingly and willingly receives nonexempt resources for less than fair market value;

(b) Nonexempt resources were transferred or assigned after December 1, 1981, and before July 1, 1989; and

(c) Transfer enables a client to qualify or continue to qualify for Title XVI related medical assistance or the limited casualty program for the medically needy.

(2) The department shall find no liability for resources transferred for less than fair market value after June 30, 1989.

(3) WAC 388-217-3100 and 388-217-3150 are incorporated by reference and apply to this section, with the exception to the reference therein to WAC 388-216-3050.

(4) The voluntary transfer or assignment of resources between spouses is permitted without affecting eligibility or continued eligibility of the spouse transferring or assigning the resources.

(5) The amount of the civil penalty shall be equal to the uncompensated value of the cash or resources transferred or assigned at less than fair market value.

(6) The civil penalty shall not exceed the cost of assistance rendered by the department to the client.

(7) Written notice of imposition of the civil penalty shall be provided by personal service or certified mail to the person or entity subject to the civil penalty.

(8) The person or entity alleged to be subject to the civil penalty under this section has the right to request a hearing to appeal the determination, and said hearing shall be in accordance with the administrative procedures in chapter 388-08 WAC except as modified by this section.

(a) There is a rebuttable presumption that a person who received cash or other nonexempt resources from a client for less than fair market value within two years preceding the date of application for medical care, did so willingly and knowingly for the purpose of enabling the client to qualify or continue to qualify for assistance.

(b) The person has the right to offer evidence to rebut the presumption that the transfer or assignment was made for purposes of enabling the client to qualify or continue to qualify for assistance and that the person knowingly and willfully received the resource for such purpose.

(c) The prevailing party in such an action shall be awarded reasonable attorney fees.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-528-2810, filed 5/3/94, effective 6/3/94. Formerly WAC 388-81-052.]

**Chapter 388-529 WAC
SCOPE OF MEDICAL SERVICES**

WAC

- 388-529-2910 Scope of care—Categorically needy.
- 388-529-2920 Scope of care—Medically needy.
- 388-529-2930 Scope of care—GAU/ADATSA—Medical care services.
- 388-529-2940 Scope of care—Children's health.
- 388-529-2950 Scope of care—Medically indigent.

388-529-2960 Scope of care—Qualified Medicare beneficiary (QMB), special low-income Medicare beneficiary and qualified disabled working individual (QDWI).

WAC 388-529-2910 Scope of care—Categorically needy. The department shall provide medical services to categorically needy clients according to chapter 388-86 WAC.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-529-2910, filed 5/3/94, effective 6/3/94.]

WAC 388-529-2920 Scope of care—Medically needy. (1) The department shall provide the following medical services to the limited casualty-medically needy program clients:

- (a) Blood administration and processing;
- (b) Case management services;
- (c) Dental services;
- (d) Dentures;
- (e) Early and periodic screening, diagnosis and treatment (EPSDT) services;
- (f) Enteral/parenteral nutrition;
- (g) Eyeglasses;
- (h) Family planning clinic services;
- (i) Home health services;
- (j) Hospice services;
- (k) Inpatient hospital services;
- (l) Intermediate care facility services for the mentally retarded;
- (m) Laboratory and x-ray services;
- (n) Nursing facility services;
- (o) Outpatient hospital;
- (p) Oxygen and respiratory therapy;
- (q) Physical medicine and rehabilitation services;
- (r) Physician, ARNP, and clinic services;
- (s) Podiatric services;
- (t) Prescribed drugs;
- (u) Prosthetic devices;
- (v) Rural health services;
- (w) School medical services for special education students; and
- (x) Medically necessary transportation.

(2) The department shall apply conditions and limitations in chapter 388-86 WAC to the limited casualty-medically needy program.

(3) A request for an exception to policy shall require a review by the medical assistance administration.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-529-2920, filed 5/3/94, effective 6/3/94. Formerly WAC 388-99-060.]

WAC 388-529-2930 Scope of care—GAU/ADATSA—Medical care services. The department shall provide medical care services as described under chapter 388-86 WAC.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-529-2930, filed 5/3/94, effective 6/3/94.]

WAC 388-529-2940 Scope of care—Children's health. The department shall provide a child eligible for the children's health program categorically needy medical services. Refer to WAC 388-529-2910 for scope of care.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-529-2940, filed 5/3/94, effective 6/3/94.]

WAC 388-529-2950 Scope of care—Medically indigent. (1) The department shall provide coverage under the limited casualty program-medically indigent to an eligible person for treatment of emergency medical conditions requiring hospital-based care only. Services available are limited to:

(a) Medically necessary emergency air or ground ambulance; and

(b) Physician services related to hospital services.

(2) The department shall not pay for covered services until the client has medical expenses equal to the total of the emergency medical expense requirement of two thousand dollars and the spenddown, if any.

(3) The emergency medical expense requirement in WAC 388-518-1850 does not apply for treatment under the Involuntary Treatment Act (ITA). When any other medical need is identified for clients undergoing treatment under the ITA, the department shall apply the emergency medical expense requirement to the services other than ITA.

(4) For other conditions and limitations under which the department may provide these services, refer to appropriate service in chapter 388-86 WAC.

(5) The department shall not provide a client out-of-state care except in the designated bordering cities.

[Statutory Authority: RCW 74.08.090. 95-22-039 (Order 3913, #100246), § 388-529-2950, filed 10/25/95, effective 10/28/95; 94-10-065 (Order 3732), § 388-529-2950, filed 5/3/94, effective 6/3/94. Formerly WAC 388-100-035.]

WAC 388-529-2960 Scope of care—Qualified Medicare beneficiary (QMB), special low-income Medicare beneficiary and qualified disabled working individual (QDWI). Refer to WAC 388-517-1700 for scope of care concerning QMB, SLMB, and QDWI clients.

[Statutory Authority: RCW 74.08.090. 94-10-065 (Order 3732), § 388-529-2960, filed 5/3/94, effective 6/3/94.]

Chapter 388-530 WAC PHARMACY SERVICES

WAC

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| 388-530-2050 | Out-of-state prescriptions. |

WAC 388-530-1000 The medical assistance administration (MAA) drug program. (1) The department shall reimburse providers for prescription drugs medically necessary to the health care of clients eligible for medical care programs in accordance with the department's rules.

(2) The pharmacy shall be an MAA provider as agreed under WAC 388-87-007.

(3) Acceptance and filling of a prescription drug for a client eligible for a medical care program constitutes acceptance of the department's rules and fees.

(4) The pharmacy shall bill the department and its clients according to WAC 388-87-010 and 388-87-015.

[Statutory Authority: RCW 74.08.090. 96-21-031, § 388-530-1000, filed 10/9/96, effective 11/9/96.]

WAC 388-530-1050 Definitions. (1) "Actual acquisition cost (AAC)" means the actual price a provider paid for a drug marketed, in the package size of drug purchased, or sold by a particular manufacturer or labeler. Actual acquisition cost shall be calculated based on factors such as, but not limited to:

(a) Invoice price, including other invoice-based considerations;

(b) Order quantity and periodic purchase volume discount policies of suppliers (wholesalers and/or manufacturers);

(c) Membership/participation in purchasing cooperatives;

(d) Advertising and other promotion/display allowances, free merchandise deals; and

(e) Transportation or freight allowances.

(2) "Administer" means the direct application of a legend drug whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by a practitioner, or to the patient or research subject at the direction of the practitioner.

(3) "Authorized prescriber" means a physician, osteopath, osteopathic physician/surgeon, dentist, nurse, physician assistant, optometrist, pharmacist, or other person duly authorized by law or rule in the state of Washington to prescribe drugs. See WAC 246-863-100 for pharmacists.

(4) "Automated maximum allowable cost (AMAC)" means the cost established for all multiple-source drugs designated by three or more products under federal contract and which are not on the maximum allowable cost (MAC) list.

(5) "Average wholesale price (AWP)" means the average price of a drug product from wholesalers nationwide at a point in time. MAA determines AWP as reported by a drug pricing file contractor.

(6) "Brand name" means the proprietary or trade name selected by the manufacturer and placed upon a drug, its container, label or wrapping at the time of packaging.

(7) "Bulk drug delivery system" means the method in which the prescribed amount of a drug product is packaged and dispensed to the patient in one bulk container.

(8) "Compounding" is the professional practice of combining two or more drugs, as defined in subsection

(20)(a) and (b) of this section, in the preparation of a prescription.

(9) "**Contract drugs**" are drugs manufactured or distributed by manufacturers/labelers who signed a drug rebate agreement with the federal Department of Health and Human Services (DHHS).

(10) "**Controlled substance**" means a drug or substance, or an immediate precursor of such drug or substance, as designated by chapter 69.50 RCW.

(11) "**Covered outpatient drug**" means a drug approved for safety and effectiveness as a prescription drug under the federal Food, Drug, and Cosmetic Act, which is used for a medically accepted indication, and is not subject to the exceptions under WAC 388-530-1150, Noncovered drugs and pharmaceutical supplies.

(12) "**Deliver or delivery**" means the actual, constructive, or attempted transfer from one person to another of a drug or device whether or not there is an agency relationship.

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

(14) "**DESI**" or "**less than effective drugs**" are drugs for which:

(a) Effective approval of the drug application has been withdrawn by the Food and Drug Administration (FDA) for safety or efficacy reasons as a result of the drug efficacy study implementation (DESI) review; or

(b) The secretary of the department of health and human services (DHHS) has issued a notice of an opportunity for a hearing under section 505(e) of the federal Food, Drug, and Cosmetic Act on a proposed order of the secretary to withdraw approval of an application for such drug under such section because the secretary has determined the drug is less than effective for some or all conditions of use prescribed, recommended, or suggested in its labeling.

(15) "**Device**" means instruments, apparatus, and contrivances, including their components, parts and accessories, intended:

(a) For use in the diagnosis, cure, mitigation, treatment, or prevention of human disease; or

(b) To affect the human structure or any human function.

(16) "**Dispense**" means the interpretation of a prescription or order for a legend drug and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(17) "**Dispense as written (DAW)**" means an instruction to the pharmacist forbidding substitution of a generic drug or a therapeutically equivalent product for the specific drug product prescribed.

(18) "**Dispensing fee**" means the fee the department sets to reimburse providers for provider administrative costs estimated by the department and, including but not limited to, compounding time and overhead expenses incurred in filling medical assistance prescriptions.

(19) "**Distribute**" means to deliver other than by administering or dispensing a legend drug.

(20) "**Double-blind drug study**" is a randomized trial in which a single patient undergoes a series of pairs of treatments, consisting of one active and one placebo per pair, with the order determined by random allocation. Appropri-

ate treatment targets (signs, symptoms, or laboratory tests) are used as the measure of efficacy, and the trial is continued until efficacy is established or disproved.

(21) "**Drug**" means a substance:

(a) Recognized as a drug in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of the above publications;

(b) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of human disease;

(c) (Other than food, minerals, or vitamins) intended to affect the structure or any function of the human body; and

(d) Intended for use as a component of any article specified in clause (a), (b) or (c) of this subsection, excluding devices or their components, parts or accessories.

(22) "**Drug formulary**" means a list of outpatient drugs not requiring prior authorization except as listed in 388-530-1250(2), as developed by an appropriate committee or the drug use review (DUR) board.

(23) "**Drug pricing file contractor**" means the entity which has contracted to provide the department, at specified intervals, the latest information and/or database on drugs and related supplies produced, prepared, processed, packaged, labeled, distributed, marketed, or sold in the marketplace. Contractor-provided information includes, but is not limited to, identifying characteristics of the drug (national drug code, drug name, manufacturer/labeler, dosage form, and strength) for the purpose of identifying and facilitating payment for the drugs billed to MAA.

(24) "**Drug rebates**" means payments provided by pharmaceutical manufacturers to state Medicaid programs under the terms of the manufacturers' agreements with the Department of Health and Human Services.

(25) "**Drug-related supplies**" means nonpharmaceutical items necessary for administration or delivery of a drug.

(26) "**Drug use review (DUR) program**" means a quality assurance program for covered outpatient drugs which assures that prescriptions are appropriate, are medically necessary, and are not likely to result in adverse medical outcomes.

(27) "**Emergency kit**" means a set of pharmaceuticals furnished to a nursing facility by the primary pharmacy which provides prescription dispensing services to that facility. Each kit is specifically set up to meet the individual needs of each nursing facility.

(28) "**Estimated acquisition cost (EAC)**" means the department's best estimate of the price providers generally and currently pay for a drug marketed or sold by a particular manufacturer or labeler in the package size most frequently purchased by providers.

(29) "**Expedited prior authorization**" means the process for authorizing selected drugs in which providers use a set of numeric codes to indicate to the department which acceptable indications/conditions/diagnoses/criteria are applicable to a particular request for drug authorization.

(30) "**Experimental drugs**" means drugs the FDA has not approved, or approved drugs when used for medical indications other than those listed by the FDA.

(31) "**Federal upper limit (FUL)**" means the maximum allowable payment set by the Health Care Financing Administration (HCFA) for a multiple source drug.

(32) "**Formulary**" means a drug formulary. See subsection (22) of this section for a definition of drug formulary.

(33) "**Generic code number**" means a number MAA uses regardless of manufacturer or package size to identify the generic formulation of a drug.

(34) "**Generic name**" means the official title of a drug or drug ingredients published in the latest edition of a nationally recognized pharmacopoeia or formulary.

(35) "**Ingredient cost**" means the portion of a prescription's cost attributable to the drug ingredients, chemical components, or substances.

(36) "**Label**" means a display of written, printed or graphic matter upon the immediate container of any article.

(37) "**Labeling**" means all labels and other written, printed, or graphic matter:

(a) Upon any article or any of its containers or wrappers; or

(b) Accompanying such article.

(38) "**Legend or prescription drugs**" means any drugs required by any applicable federal or state law or regulation to be dispensed by prescription only or which are restricted to use by practitioners only.

(39) "**Long-term therapy**" means treatment a client receives or will receive continuously through and beyond ninety days.

(40) "**Manufacture**" means:

(a) The production, preparation, propagation, compounding, or processing of a drug or other substance or device; or

(b) The packaging or repackaging of such substance or device; or

(c) The labeling or relabeling of the commercial container of such substance or device.

"Manufacture" does not include the activities of a practitioner who, as an incident to the practitioner's administration or dispensing such substance or device in the course of professional practice, prepares, compounds, packages, or labels such substance or device.

(41) "**Manufacturer**" means a person, corporation, or other entity engaged in the manufacture of drugs or devices.

(42) "**Maximum allowable cost (MAC)**" means the maximum amount that MAA will pay for a specific dosage form and strength of a multiple source drug product.

(43) "**Medically accepted indication**" means any use for a covered outpatient drug approved under the federal Food, Drug, and Cosmetic Act, which appears in peer-reviewed medical literature or which is accepted by one or more of:

(a) The American Hospital Formulary Service Drug Information;

(b) The American Medical Association Drug Evaluations; or

(c) The United States Pharmacopoeia Drug Information.

(44) "**Medicine cart system**" is a patient-specific set of pharmaceuticals prearranged in a medicine cart, for administration over a specified time period.

(45) "**Modified unit dose delivery system**" (also known as **blister packs**, "**bingo/punch cards**") means a method in which each patient's medication is delivered:

(a) In individually sealed, single dose packages or "blisters;"

(b) Usually on one card; and

(c) In quantities for one month's supply, unless the prescriber specifies short-term therapy.

(46) "**Multiple-source drug**" means a drug marketed or sold by:

(a) Two or more manufacturers or labelers; or

(b) The same manufacturer or labeler:

(i) Under two or more different proprietary names; or

(ii) Both under a proprietary name and without such a name.

(47) "**National drug code (NDC)**" means the eleven-digit number the manufacturer or labeler assigns to a pharmaceutical product and attaches to the product container at the time of packaging which identifies the product's manufacturer, dose form and strength, and package size.

(48) "**Noncontract drugs**" are drugs manufactured or distributed by manufacturers/labelers who have not signed a drug rebate agreement with the federal Department of Health and Human Services.

(49) "**Nonlegend or nonprescription drugs**" means any drugs which may be lawfully sold without a prescription.

(50) "**Nursing home pharmacy**" means a pharmacy serving primarily clients residing in nursing facilities.

(51) "**Obsolete NDC**" means a national drug code replaced or discontinued by the manufacturer or labeler.

(52) "**On-line receipt of claims**" means claims information received from a switching vender in a National Council for Prescription Data Processing-approved format.

(53) "**Outpatient pharmacy**" means a pharmacy serving primarily outpatient clients.

(54) "**Over-the-counter (OTC) drugs**" mean drugs that do not require a prescription before they can be dispensed.

(55) "**Pharmacist**" means a person duly licensed by the Washington State Board of Pharmacy to engage in the practice of pharmacy.

(56) "**Pharmacist consultant**" means a registered pharmacist employed by MAA.

(57) "**Pharmacy**" means every site, properly licensed by the Washington State Board of Pharmacy, in which the practice of pharmacy is conducted.

(58) "**Point-of-sale (POS)**" means a pharmacy claims processing system capable of receiving and adjudicating claims on-line.

(59) "**Practice of pharmacy**" means the practice of and responsibility for:

(a) Interpreting prescription orders;

(b) Compounding, dispensing, labeling, administering, and distributing of drugs and devices;

(c) Monitoring of drug therapy and use;

(d) Initiating or modifying of drug therapy in accordance with written guidelines or protocols previously established and approved for a pharmacist's practice by a practitioner authorized to prescribe drugs;

(e) Participating in drug utilization reviews and drug product selection;

(f) Proper and safe storing and distribution of drugs and devices and maintenance of proper records thereof; and

(g) Providing legend drug information which includes, but is not limited to, the advising of therapeutic values, hazards, and the uses of drugs and devices.

(60) "**Practitioner**" means one who has met the professional and legal requirements necessary to provide a

health care service, such as a physician, nurse, dentist, physical therapist, pharmacist or other person duly authorized by Washington state law as a practitioner.

(61) "**Prescription**" means an order for drugs or devices issued by a practitioner duly authorized by Washington state law or rule to prescribe drugs or devices in the course of the practitioner's professional practice for a legitimate medical purpose.

(62) "**Prospective drug use review (Pro-DUR)**" means a process in which a request for a drug product for a particular patient is screened, before the product is dispensed, for potential drug therapy problems.

(63) "**Reconstitution**" means the process of returning a substance, previously altered for preservation and storage, to its approximate original state.

(64) "**Retrospective drug use review (Retro-DUR)**" is the process in which patient drug use is reviewed on a periodic basis to identify patterns of fraud, abuse, gross overuse, or inappropriate or unnecessary care.

(65) "**Single source drug**" means a drug produced or distributed under an original new drug application approved by the FDA, including a drug product marketed by any cross-licensed producers or distributors operating under the new drug application.

(66) "**Standard package size**" means MAA's designated standard package or container size for a drug dosage form and/or strength for reimbursement purposes.

(67) "**Substitute**" means to dispense:

(a) With the practitioner's authorization, a therapeutically equivalent generic drug product of the identical base or salt as the specific drug product prescribed; or

(b) With the practitioner's prior consent, therapeutically equivalent drugs other than the identical base or salt.

(68) "**Terminated drug product**" is a product whose shelf life expiration date has been met, per manufacturer notification.

(69) "**Therapeutically equivalent**" means of essentially the same efficacy and toxicity when administered to an individual in the same dosage regimen.

(70) "**Tiered dispensing fee system**" means a method of paying pharmacies different dispensing fee rates.

(71) "**True unit dose delivery**" means a drug delivery system in which each patient's medication is delivered to the nursing facility in quantities sufficient only for the day's required dosage. If a medication cart system is used, the pharmacy may deliver the medication cart to the nursing facility every other day, and provide for daily service as needed.

(72) "**Unit dose drug delivery systems**" mean true unit and modified unit dose or blister packs, also known as "bingo" or punch cards.

(73) "**Usual and customary charge**" means the amount the provider typically charges the general public for the product or service. For any given product, the amount charged by the pharmacy to fifty percent or more of its non-Medicaid clients shall be deemed its usual and customary charge.

(74) "**Wholesaler**" means a corporation, individual, or other entity which buys drugs or devices for resale and distributes the drugs or devices to corporations, individuals, or entities other than consumers.

[Statutory Authority: RCW 74.08.090. 96-21-031, § 388-530-1050, filed 10/9/96, effective 11/9/96.]

WAC 388-530-1100 Covered drugs and pharmaceutical supplies. The department shall reimburse for:

(1) Outpatient legend drugs, generic or brand name, when the manufacturer has a signed rebate agreement with the federal Department of Health and Human Services, except as excluded under WAC 388-530-1150;

(2) Over-the-counter (OTC) drugs when the drug is:

(a) Prescribed;

(b) A less costly therapeutic alternative; and

(c) Formulary.

(3) Compounded prescriptions when billed by each formulary ingredient used in the compound;

(4) Nonformulary drugs when prior authorized by the department;

(5) Drug-related supplies;

(6) Family planning supplies used in conjunction with family planning under WAC 388-86-035, including OTC supplies. Covered family planning OTC supplies include, but are not limited to, hormonal contraceptives, spermicidal contraceptives and barrier contraceptives;

(7) Oral, topical and/or injectable drugs, vaccines for immunizations, and biologicals, prepared or packaged for individual use and dispensed or administered to a client by an authorized provider;

(8) Obsolete national drug codes (NDCs) for up to two years from their date of obsolescence, as long as the drug is not a terminated drug product as defined in WAC 388-530-1050; and

(9) Drugs and supplies administered or provided under unusual and extenuating circumstances to clients by authorized providers who request and receive department approval. The secretary or secretary's designee shall review such requests on a case-by-case basis.

[Statutory Authority: RCW 74.08.090. 96-21-031, § 388-530-1100, filed 10/9/96, effective 11/9/96.]

WAC 388-530-1150 Noncovered drugs and pharmaceutical supplies. The department shall not pay for:

(1) Noncontract drugs, brand or generic, when the manufacturer has not signed a rebate agreement with the federal Department of Health and Human Services, except as provided under WAC 388-530-1100(4) of this chapter;

(2) Covered outpatient drugs, biological products, insulin, supplies, appliances, and equipment included in other reimbursement methods, including, but not limited to:

(a) Diagnosis-related group (DRG);

(b) Ratio of cost to charges (RCC);

(c) Nursing facility per diem;

(d) Managed care capitation rates; and

(e) Block grants.

(3) Any drug regularly supplied as an integral part of program activity by other public agencies;

(4) A drug when the drug is prescribed:

(a) For weight loss or gain;

(b) To promote fertility;

(c) For cosmetic purposes or hair growth;

- (d) To promote smoking cessation; or
- (e) For an indication which is not medically accepted as determined by MAA in consultation with federal guidelines, the Drug Utilization Education Council (DUEC), and MAA medical and pharmacy consultants.
- (5) OTC drugs/supplies, unless approved for formulary use or family planning as described under WAC 388-86-035;
- (6) Drugs listed in the federal register as "less-than-effective" ("DESI" drugs) or which are identical, similar, or related to such drugs;
- (7) 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 manufacturer's designee;
- (8) 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. Prenatal vitamins are covered only when prescribed and dispensed to pregnant women. Fluoride preparations are covered only for children, under the early and periodic screening, diagnosis, and treatment (EPSDT or "healthy kids") services;
- (9) Drugs that are experimental, investigational, or of unproven efficacy or safety;
- (10) Drugs requiring prior authorization for which department authorization has been denied;
- (11) Preservatives, flavoring, and/or coloring agents used in the process of compounding;
- (12) Less than a one-month supply of drugs for long-term therapy, except as provided under WAC 388-530-1250, Prior authorization. For a definition of long-term therapy, see WAC 388-530-1050(39);
- (13) Prescriptions written on pre-signed prescription blanks filled out by nursing facility operators or pharmacists. The department shall terminate the core provider agreement of pharmacies involved in this practice;
- (14) Drugs used to replace those taken from nursing facility emergency kits;
- (15) Drugs used to replace a physician's stock supply;
- (16) Free pharmaceutical samples;
- (17) Obsolete NDCs, except that the department may allow reimbursement to a pharmacy for a drug product with an obsolete NDC when the product is dispensed to an eligible client not later than two years from the date the NDC is designated obsolete, if the drug is not a terminated drug product; and
- (18) Terminated drug products.

[Statutory Authority: RCW 74.08.090. 96-21-031, § 388-530-1150, filed 10/9/96, effective 11/9/96.]

WAC 388-530-1200 Drug formulary. (1) The medical assistance administration (MAA) shall not require prior approval for drug preparations listed in the MAA drug formulary for the initial prescription.

- (a) MAA shall apply certain setting restrictions, such as nursing home or home use only as well as limits on quantity.
- (b) MAA shall update the formulary list as necessary and shall publish the list periodically.

(2) To request inclusion of a drug product in MAA's drug formulary, a drug manufacturer shall send to the

pharmacist consultant a written request and the following supporting documentation:

- (a) Background data about the drug as requested by MAA;
 - (b) Product package information as requested by MAA;
 - (c) Any pertinent clinical studies; and
 - (d) Any additional information the manufacturer feels appropriate.
- (3) MAA's pharmacist consultants and an advisory board shall evaluate drugs for formulary inclusion. The consultants and board may include MAA's medical consultants, the drug utilization and education council (DUEC), and/or participating MAA pharmacy providers.
- (4) The criteria for evaluating whether to include or exclude a drug from MAA's formulary include, but are not limited to the following:
- (a) The manufacturer has signed a federal drug rebate contract agreement;
 - (b) Like drugs are already on the formulary;
 - (c) The drug is a less-than-effective drug, or is identical, similar, or related to a less-than-effective drug;
 - (d) The drug falls into one of the categories authorized by federal law to be excluded from coverage;
 - (e) There are already less costly therapeutic alternatives in the formulary; and
 - (f) The drug has a potential for abuse.

(5) The MAA shall determine whether a drug should be covered with or without restrictions in a manner similar to how formulary status is determined.

(6) The department shall ensure decisions made in subsections (3) and (5) of this section are subject to review by the MAA assistant secretary or his/her designee. Manufacturers may seek review of adverse decisions by writing to the medical director.

(7) The department may require double blind drug studies to be performed when there is a question of medical necessity or efficacy and the medical literature on the issue is inconclusive. MAA may use the double blind study when:

- (a) Considering addition or deletion of a drug to the formulary;
- (b) Evaluating the relative merits of two drugs for general use or for a specific individual;
- (c) Evaluating requests for prior authorization; or
- (d) For whatever purpose the department deems necessary.

[Statutory Authority: RCW 74.08.090. 96-21-031, § 388-530-1200, filed 10/9/96, effective 11/9/96.]

WAC 388-530-1250 Prior authorization. (1) Nonformulary drugs shall require prior authorization.

(2) MAA shall not require pharmacies to obtain prior authorization for formulary drugs, except for:

(a) Subsequent refills of certain drugs, as identified in the Prescription Drug Program Billing Instructions per client, per month;

(b) Those drugs which have specific per-month dose or unit limits as identified in the prescription drug program billing instructions;

(c) Drugs identified in the billing instructions as limited to nursing facility clients when prescribed to clients residing outside a nursing facility; and

- (d) Brand name and generic drugs:
 - (i) Which have an established maximum allowable cost (MAC); and
 - (ii) For which the prescriber requests reimbursement at estimated acquisition cost (EAC).

(3) The pharmacy shall make a request to the department for drugs requiring prior authorization before dispensing the drug, except as provided for in subsection (6) of this section. The pharmacy shall:

(a) Ensure the request states the medical diagnosis and includes medical justification for the drug; and

(b) Keep on file the medical justification communicated to the pharmacy by the prescriber.

(4) MAA shall evaluate a request for prior authorization based on, but not limited to, the following criteria:

(a) As required under WAC 388-530-1000(1), 388-530-1150, and 388-501-0165;

(b) The drug is of moderate cost as determined by the department. MAA shall select the least costly of two or more preparations of equal effectiveness; and

(c) The drug is not experimental, investigational, or of unproven efficacy or safety.

(5) The department may authorize certain prescribed drugs through a process called "expedited prior authorization." (See WAC 388-530-1050(28), Definitions.) MAA shall determine drugs authorized through expedited prior authorization are those for which the department has established specific utilization criteria to address its concerns over the drugs':

(a) High cost;

(b) Potential for clinical misuse;

(c) Narrow therapeutic indication; or

(d) Safety.

(6) The department may authorize reimbursement at the brand name estimated acquisition cost (EAC) for a brand name multiple-source drug that would have been reimbursed at the established upper limit for that multiple-source drug, if:

(a) The pharmacist calls for prior authorization; and

(b) The prescriber writes "dispense as written" on the prescription form, or certifies in the prescriber's own handwriting that a specific brand is "medically necessary" for a particular client; or

(c) The availability of generics in the marketplace is severely curtailed and the price disparity between the brand name EAC and the generic maximum allowable cost (MAC) is such that clients would be effectively denied the medication.

(7) The department may pay for drugs requiring prior authorization which are dispensed without prior authorization only when:

(a) Given in an acute emergency;

(b) The department receives justification within seventy-two hours excluding weekends and Washington state holidays; and

(c) The department agrees with the justification and approves the request.

(8) The pharmacy shall obtain prior authorization from the department for any and all prescription fills in excess of the limits specified under WAC 388-530-1800, Requirements for pharmacy claim payment.

(9) The department shall ensure prior authorization:

(a) Is limited to a decision of medical appropriateness for a drug; and

(b) Shall not guarantee payment.

[Statutory Authority: RCW 74.08.090. 96-21-031, § 388-530-1250, filed 10/9/96, effective 11/9/96.]

WAC 388-530-1300 General reimbursement methodology. (1) Where the department has not contracted for pharmacy services through competitive procurement, the department shall ensure total reimbursement for a prescription drug does not exceed the lowest of:

(a) Estimated acquisition cost (EAC) plus a dispensing fee;

(b) Maximum allowable cost (MAC) plus a dispensing fee; or

(c) The provider's usual and customary charge to the non-Medicaid population.

(2) If the provider offers a discount, rebate, promotion or other incentive which directly relates to the reduction of the price of a prescription to the individual non-Medicaid customer, the provider shall similarly reduce its charge to the department for the prescription.

(3) The department shall choose the in-state pharmaceutical wholesalers used to set EAC and MAC.

(4) The department may solicit assistance from representative pharmacy providers in establishing MAC and/or EAC.

(5) If the product is given free to the public, the pharmacy shall not submit a claim to the department if the product is given to a medical assistance client. If the product is sold at a discount to the general public, the pharmacy shall ensure any claim to the department for that product shall reflect the discounted charge.

[Statutory Authority: RCW 74.08.090. 96-21-031, § 388-530-1300, filed 10/9/96, effective 11/9/96.]

WAC 388-530-1350 Estimated acquisition cost methodology. The department shall determine estimated acquisition cost (EAC) as follows:

(1) Periodically, the department shall:

(a) Take a sample of, at minimum, two hundred fifty of the top national drug codes paid for by the MAA excluding drugs under the MAC program; and

(b) Determine pharmacies' average acquisition costs for these products.

(2) The department shall decide the sampling frequency of the top drug products by dollar volume under medical assistance to determine EAC, but the frequency shall not be:

(a) More than once every three years; and

(b) Less than once every ten years.

(3) The pharmacies' average acquisition cost for the products in the sample shall be based on in-state wholesalers' published prices to pharmacy subscribers, plus an average subscriber upcharge, if applicable.

(4) MAA shall express the average acquisition cost for each product on the sample list during the period under study as a percentage of the average wholesale price (AWP) determined for that product by the department's drug pricing file contractor.

(5) MAA shall average the percentages obtained for the sample, and the resulting percentage shall represent the estimated acquisition cost (EAC).

(6) MAA may base EAC on standard package size or the price of the actual package size dispensed.

(7) MAA may set EAC for specified drugs or drug categories at AWP percentages other than those determined in subsection (5) of this section when MAA deems it necessary. The department shall cease such exemption when the necessity no longer exists.

(8) The department shall pay at EAC the brand name and generic drugs with an MAC established if the EAC is lower than the MAC price.

[Statutory Authority: RCW 74.08.090. 96-21-031, § 388-530-1350, filed 10/9/96, effective 11/9/96.]

WAC 388-530-1400 Maximum allowable cost methodology. (1) When the department determines there is a likelihood that a cost savings will result the department may establish a maximum allowable cost (MAC) for a multiple-source drug which is available from at least three manufacturers/labelers.

(2) The department may exclude from MAC selected multiple-source drugs when clinical response significantly differs between brand and generic equivalents.

(3) The department shall determine the MAC for a multiple-source drug by:

(a) Generating a manufacturers/labelers list for a multiple-source drug from data provided by the drug pricing file contractor;

(b) Ensure the list is arranged by cost, showing wholesalers' national actual acquisition cost (NAAC) for the drug from each manufacturer/labeler;

(c) If there is a Federal Upper Limit (FUL) for the multiple-source drug, the FUL shall be adopted, except, if the FUL is lower than the pharmacies' actual acquisition cost (AAC) for an available product based on information provided by representative pharmacy providers, a MAC shall be chosen in cooperation with the representative pharmacy providers. The chosen fee shall be the lowest amount sufficient to cover in-state pharmacies' AAC based on information provided by the representative pharmacy providers;

(d) Establish estimated acquisition cost (EAC) of the third lowest priced product as the recommend MAC, except:

(i) If the MAC established is lower than pharmacies' AAC for the three lowest priced products, based on information provided by the representative pharmacy providers, a MAC shall be chosen in cooperation with the representative pharmacy providers. The chosen fee shall be the lowest amount sufficient to cover in-state pharmacies' average acquisition cost based on information provided by the representative pharmacy providers; or

(ii) A MAC may be established for a drug using the maximum allowable cost set by another third party for that drug.

(4) The MAC established for a multiple-source drug shall not apply if the prescriber certifies that a specific brand is "medically necessary" for a particular client. In such cases EAC shall apply, provided prior authorization is obtained from MAA as specified under WAC 388-530-1250 (6)(a), Prior authorization.

(5) The department shall pay the EAC for a multiple-source product if the EAC for a multiple-source product is less than the MAC established for that product.

(6) Automated maximum allowable cost (AMAC) pricing shall apply to multiple-source drugs:

(a) Not identified under subsection (2) of this section;

(b) Produced by three or more manufacturers/labelers under federal drug rebate agreement; and

(c) Which are not on the MAC list.

(7) AMAC reimbursement for all products within a generic code number (GCN) sequence shall be at the EAC of the third lowest priced product in that sequence, or the EAC of the lowest priced drug under a federal rebate agreement in that sequence, whichever is higher.

(8) If the established AMAC price exceeds the FUL, the department shall set the price at the FUL.

(9) The department shall pay the estimated acquisition cost (EAC) for a multiple-source product if the EAC for a multiple-source product is less than the AMAC established for that product.

(10) MAA shall recalculate AMAC each time there are pricing updates provided by the drug file contractor to any product in GCN sequences covered under the AMAC program.

(11) The department shall ensure the maximum payment for multiple-source drugs for which HCFA has set a FUL does not exceed, in the aggregate, the prescribed upper limits plus the dispensing fees set by the department.

[Statutory Authority: RCW 74.08.090. 96-21-031, § 388-530-1400, filed 10/9/96, effective 11/9/96.]

WAC 388-530-1450 Dispensing fee determination.

Subject to the provisions of WAC 388-530-1300, MAA shall pay a dispensing fee for each covered prescription.

(1) The department shall adjust the dispensing fee by weighing factors including, but not limited to:

(a) Legislative appropriations for vendor rates;

(b) Input from provider and/or advocacy groups;

(c) Input from state-employed or contracted actuaries; and

(d) Dispensing fees paid by other third-party payers, including but not limited to health care plans and other states' Medicaid agencies.

(2) The MAA shall use a tiered dispensing fee system which reimburses large volume pharmacies at a lower fee and small volume pharmacies at a larger fee. In MAA's judgment such a system best preserves or enhances clients' access to services by promoting equitable payment to pharmacy providers.

(3) In a tiered dispensing fee system, the MAA shall use total annual prescription volume (both Medicaid and non-Medicaid) reported to the department to determine each pharmacy's dispensing fee category.

(a) A pharmacy which fills thirty-five thousand and one or more prescriptions annually shall be a high-volume pharmacy.

(b) A pharmacy which fills between fifteen thousand and one and thirty-five thousand prescriptions annually shall be a mid-volume pharmacy.

(c) A pharmacy which fills fifteen thousand or fewer prescriptions annually shall be a low-volume pharmacy.

(4) The department shall determine a pharmacy's annual total prescription volume as follows:

(a) The department shall send out a prescription volume survey form to pharmacy providers during the first quarter of the calendar year;

(b) Pharmacies shall return completed prescription volume surveys to the department by the date specified by the department each year. The department shall assign providers not responding to the survey by the specified date to the high volume category;

(c) Pharmacies shall:

(i) Include all prescriptions dispensed from the same physical location in the pharmacy's total prescription count; and

(ii) Report totals from the same location to the department on the same form. Hospital-based pharmacies which serve both inpatient and outpatient clients shall not include hospital inpatient doses/prescriptions in the total volume reported to the department. The department shall deem prescriptions dispensed to nursing facility clients outpatient prescriptions;

(d) If a pharmacy uses more than one provider number to bill MAA for pharmacy claims dispensed from the same physical location, the pharmacy shall list on one form all of the provider numbers contributing to the total volume being reported;

(e) Reassignment to current or assignment to new dispensing fee categories shall be effective on the first of the month following the date specified by the department for receipt of completed prescription volume survey forms.

(5) In a tiered dispensing fee system, a pharmacy may request a change to a lower volume category during the interval between the annual prescription volume surveys. The pharmacy shall support such a request with documentation showing that the pharmacy's most recent six-month dispensing data, annualized, would qualify the pharmacy for a lower volume category.

(6) MAA may adopt a uniform dispensing fee if in its judgment such a system would best preserve or enhance clients' access to services by promoting equitable payment to pharmacy providers.

(7) The department shall grant general dispensing fee rate increases only when authorized by the legislature. Amounts authorized for dispensing fee increases may be distributed nonuniformly (e.g., tiered dispensing fee based upon volume), if necessary, to ensure client access.

[Statutory Authority: RCW 74.08.090, 96-21-031, § 388-530-1450, filed 10/9/96, effective 11/9/96.]

WAC 388-530-1500 Reimbursement for compounded prescriptions. (1) Notwithstanding the definition in WAC 388-530-1050(7), the department shall not consider reconstitution to be compounding.

(a) The department may consider the adjustment of therapeutic strengths and/or forms by a pharmacist in the preparation of a prescription to be compounding if the client's drug therapy needs are unable to be met by commercially available dosage strengths and/or forms of the medically necessary drug.

(b) The pharmacist shall ensure the need for the adjustment of the drug's therapeutic strength and/or form is well documented in the client's file.

(2) Compounded prescriptions shall be reimbursed as follows:

(a) The department shall allow only the lowest cost for each formulary ingredient. EAC, MAC, or amount billed shall apply.

(b) The department shall apply current prior authorization requirements to drugs used as ingredients in compounded prescriptions, except as provided under subsection (2)(c) of this section. MAA shall deny payment for a drug requiring prior authorization used:

(i) As an ingredient in a compounded prescription; but

(ii) For which prior authorization was not obtained.

(c) The department may designate selected drugs as not requiring prior authorization when used for compounded prescriptions, but requiring prior authorization for other uses. The department shall publish such lists periodically.

(d) The department shall give:

(i) Each formulary or prior authorized drug ingredient billed separately a dispensing fee set by the department as described under WAC 388-530-1450; and

(ii) Drugs used in compounding under subsection (2)(c) of this section a dispensing fee set by the department as described under WAC 388-530-1450.

(e) MAA shall not pay a separate fee for compounding time. MAA shall replace the fee for compounding time with a dispensing fee for each ingredient, as described under WAC 388-530-1450.

(3) In addition to reimbursement for ingredient and dispensing fees, MAA shall set maximum allowable fees for special procedures, equipment, or supplies used in compounding prescriptions. MAA shall call these fees compounded prescription preparation fees.

(a) The pharmacy shall note in its records any necessary special procedures, equipment or supplies, or containers used in preparing the compounded prescription.

(b) MAA shall adjust compounded prescription preparation fees by taking into account factors including, but not limited to:

(i) Legislative appropriations for vendor rates;

(ii) Input from provider and/or advocacy groups;

(iii) Audit findings regarding costs of compounding equipment and supplies, as specified in subsection (5) of this section; and

(iv) Compounded prescription preparation fees paid by other third-party payers, including but not limited to health care plans and other states' Medicaid agencies.

(c) MAA shall not reimburse compounded prescription preparation fees for infusion productions; MAA reimbursement for home infusion and other intravenous admixtures shall be for ingredient costs and dispensing fees only.

(d) MAA shall reimburse pharmacies for only one preparation fee for each compounded prescription.

(e) Pharmacies shall bill MAA for compounded prescription preparation fees using state-assigned drug codes, which MAA shall publish periodically.

(f) MAA shall ensure a separate dispensing fee does not apply to preparation fee codes.

(4) MAA shall periodically sample ten percent of pharmacy claims for compounded drugs. The MAA pharma-

cist consultant shall review these claims to determine if the drugs were appropriately dispensed in compounded form, or if less costly equivalent alternative preparations were already available commercially. If MAA finds that a pharmacy provider is inappropriately compounding or billing for compounded drugs, MAA shall take whatever corrective action it deems necessary, including but not limited to:

(a) Education of the provider regarding the problem practice(s);

(b) Recoupment of payment for the compounded drug, or the differential between the compounded form and its commercially available, less costly alternative form; and/or

(c) Termination of the provider's core provider agreement in extreme cases.

(5) MAA may audit selected pharmacies dispensing compounded prescriptions to determine acquisition or estimated costs of equipment and/or supplies used in compounding.

[Statutory Authority: RCW 74.08.090. 96-21-031, § 388-530-1500, filed 10/9/96, effective 11/9/96.]

WAC 388-530-1550 Unit dose drug delivery systems. (1) The department shall pay for unit dose drug delivery systems only for clients residing in nursing facilities, except as provided in subsections (6) and (7) of this section.

(2) The department shall pay pharmacies that provide true unit dose delivery service the department's highest allowable dispensing fee for each prescription dispensed to clients in nursing facilities. The department shall reimburse ingredient costs for drugs under true unit dose systems at the appropriate MAC or EAC. The department shall pay true unit dose providers for drugs dispensed in manufacturers' unit dose packaging at the EAC for the specific unit dose NDCs.

(3) The department shall pay modified unit dose pharmacies the department's highest allowable dispensing fee for repackaged bulk drugs dispensed in unit dose form to clients in nursing facilities. The department shall reimburse ingredient costs for bulk drugs repackaged into unit dose form at the lesser of MAC or EAC. The department shall deem creams, ointments, ophthalmic/otic preparations, and other liquids as not deliverable in this packaging system.

(4) MAA shall pay a pharmacy that dispenses drugs in bulk containers or multi-dose form to clients in nursing facilities the regular dispensing fee applicable to the pharmacy's total annual prescription volume category. Drugs not deliverable in unit dose form include, but are not limited to, oral liquids, creams, ointments, ophthalmic and otic solutions. The department shall reimburse ingredient costs for such drugs at the lesser of MAC or EAC.

(5) MAA shall pay a pharmacy that dispenses drugs prepackaged by the manufacturer in unit dose form to clients in nursing facilities the regular dispensing fee applicable to that pharmacy's total annual prescription volume category. The department shall pay ingredient costs at the EAC applicable to the unit dose national drug code (NDC).

(6) MAA shall pay for manufacturer-designated unit dose drugs dispensed to clients not residing in nursing facilities when such drugs:

(a) Are available in the marketplace only in manufacturer-designated unit dose packaging; and

(b) Would otherwise have been covered outpatient drugs. The unit dose dispensing fee shall not apply in such cases. The pharmacy shall be paid the dispensing fee applicable to the pharmacy's total annual prescription volume category.

(7) MAA may pay for modified unit dose delivery systems for developmentally disabled (DD) clients residing in approved community living arrangements.

[Statutory Authority: RCW 74.08.090. 96-21-031, § 388-530-1550, filed 10/9/96, effective 11/9/96.]

WAC 388-530-1600 Unit dose pharmacy billing requirements. (1) To be eligible for a unit dose dispensing fee, a pharmacy shall:

(a) Notify MAA in writing of its intent to provide unit dose service;

(b) Ask for a unit dose provider number;

(c) Specify the type of unit dose service to be provided;

(d) Identify the nursing facility to be served; and

(e) Indicate the approximate date unit dose service to the facility will commence.

(2) The pharmacy shall sign an agreement to abide by specific requirements for unit dose reimbursement.

(3) Under a true unit dose delivery system, a pharmacy shall bill MAA only for the actual number of drug units used by a client during the billing period.

(4) Under a modified unit dose delivery system, a pharmacy:

(a) May bill MAA for the number of drug units dispensed to a client during the billing period;

(b) Shall deduct the cost of unused drugs returned to the pharmacy on or before the last day of the billing period from charge to MAA, except as provided in subsection (6) of this section.

(5) The pharmacy shall deduct from the charge to MAA the cost of unused drugs returned to the pharmacy on or before the last day of the billing period immediately following the period in which the drug was dispensed, except as provided in subsection (6) of this section.

(6) Controlled substances returned to the pharmacy do not have to be credited to MAA. According to federal regulations, pharmacists shall destroy controlled substances returned to the pharmacy.

(7) Pharmacies shall bill MAA only once per month for all clients residing in a nursing facility served under a unit dose system. The monthly billing period shall be the same for all clients in the nursing facility.

(8) The billing period for:

(a) A true unit dose pharmacy shall be the calendar month;

(b) A modified unit dose pharmacy may be the calendar month or a monthly period starting on a specified date which shall be carried over to succeeding months. Once the modified unit dose pharmacy establishes the billing period for a nursing facility, the pharmacy shall not change the billing period without the department's approval.

(9) The pharmacy shall wait at least thirty days from the commencement of unit dose service to a nursing facility before submitting the first claims for drugs dispensed under

unit dose to clients residing in that facility. This billing lag shall apply to both true and modified unit dose providers.

(10) Pharmacies may not charge the clients or MAA a fee for repackaging in unit dose form a client's bulk medications supplied by another pharmacy, when the repackaging is done to conform with a nursing facility's delivery system and for the facility's convenience. The costs of repackaging in such instances shall be the responsibility of the nursing facility.

(11) The pharmacy shall maintain detailed records of medications dispensed under unit dose delivery systems. The pharmacy shall keep a monthly log for each nursing facility served, including but not limited to the following information:

- (a) Facility name and address;
- (b) Client's name and patient identification code (PIC);
- (c) Drug name/strength;
- (d) NDC or labeler information;
- (e) Quantity and date dispensed;
- (f) Quantity and date returned;
- (g) Value of returned drugs or amount credited;
- (h) Explanation for no credit given or nonreusable returns; and
- (i) Prescription number.

(12) Upon request, the pharmacy shall submit to MAA copies of the monthly logs referred to in subsection (11) of this section. MAA shall decide whether a unit dose pharmacy should maintain monthly, quarterly, or annual reports.

(13) The pharmacy shall submit annually to MAA an updated list of nursing facilities served under unit dose systems and the facilities' respective billing period start dates. The pharmacy shall submit this update with the pharmacy's completed prescription volume survey.

[Statutory Authority: RCW 74.08.090. 96-21-031, § 388-530-1600, filed 10/9/96, effective 11/9/96.]

WAC 388-530-1650 Reimbursement for pharmaceutical supplies. (1) The medical assistance administration (MAA) shall pay for covered pharmaceutical supplies not already included in other payment systems.

(2) MAA shall base reimbursement of pharmaceutical supplies on MAA-published fee schedules.

(3) MAA shall use any or all of the following methodologies to set the maximum allowable for a pharmaceutical device/supply:

- (a) Provider's acquisition cost. Upon review of the claim, MAA may require an invoice;
- (b) Medicare's reimbursement for the item; or
- (c) A specified discount off the item's list price or manufacturer's suggested retail price (MSRP).

[Statutory Authority: RCW 74.08.090. 96-21-031, § 388-530-1650, filed 10/9/96, effective 11/9/96.]

WAC 388-530-1700 Drugs and pharmaceutical supplies from nonpharmacy providers. (1) The medical assistance administration (MAA) shall pay for covered drugs and supplies dispensed or administered by nonpharmacy providers under specified conditions.

(2) MAA may pay actual acquisition cost (AAC) to a physician or ARNP for a covered drug (oral, topical or injectable) prepared or packaged for individual use and

dispensed or administered to a client during an office visit. When the cost of the drug dispensed or administered to the patient exceeds the established fee, the physician may submit to MAA a photocopy of the invoice for the actual drug cost. The invoice shall show the name of the drug manufacturer, drug strength, and dosage.

(3) MAA shall not reimburse providers for the cost of vaccines obtained by the provider through the state department of health. However, MAA shall pay the provider a set fee established at twenty to thirty-five percent of the fee for a brief office visit for administering the vaccine.

(4) MAA may pay AAC to family planning clinics for birth control pills and contraceptive supplies the clinics distribute to clients. MAA may request an invoice for the actual cost of the drug. If an invoice is requested, the clinic shall ensure the invoice shows the name of the drug manufacturer, drug strength, and dosage.

(5) MAA shall determine drugs and supplies provided to clients by local health departments are reimbursed according to MAA's established fee schedules.

[Statutory Authority: RCW 74.08.090. 96-21-031, § 388-530-1700, filed 10/9/96, effective 11/9/96.]

WAC 388-530-1750 Drugs and pharmaceutical supplies for clients with any third-party coverage. (1)

Except as specified under contract, MAA shall not reimburse providers for any drugs/supplies provided to clients who have pharmacy benefits under managed care plans. The managed care plan shall be responsible for payment.

(2) For the purposes of the section, the following definitions apply:

(a) "Closed pharmacy network" means an arrangement made by an insurer which restricts prescription coverage to an exclusive list of pharmacies. This arrangement prohibits the coverage and/or payment of prescriptions provided by a pharmacy not included on the exclusive list.

(b) "Private point-of-sale (POS) authorization system" means an insurer's system, other than the MAA POS system, which requires that coverage be verified or submitted for authorization by the insurer's agent at the time of service and at the time the prescription is filled.

(3) MAA clients who have a third-party resource which is a managed care entity or other insurance requiring the use of "closed pharmacy networks" or "private point-of-sale authorization systems" shall not have prescription provider claims paid until the prescription provider submits an explanation of benefits from the private insurance which demonstrates that the prescription provider has complied with the terms of coverage. If the private insurer has paid:

(a) A fee based on the incident of care, the prescription provider shall file a claim with the department consistent with the department's billing requirements; or

(b) The prescription provider a monthly capitation fee for all prescription costs related to the client, the prescription provider may submit a claim to the department for the amount of the client co-payment, co-insurance, and/or deductible. The department shall pay the provider:

- (i) The lesser of the billed amount; or
- (ii) The department's maximum allowable fee for the prescription.

(4) For clients eligible for both Medicare and Medicaid, providers shall:

- (a) Be reimbursed for drugs not covered by Medicare, but covered by MAA;
- (b) Not be reimbursed for drugs covered by Medicare.

[Statutory Authority: RCW 74.08.090. 96-21-031, § 388-530-1750, filed 10/9/96, effective 11/9/96.]

WAC 388-530-1800 Requirements for pharmacy claim payment. (1) Pharmacies shall:

(a) Use the appropriate department claim form or electronic billing specifications when billing for pharmacy services; and

(b) Complete such forms or billings before submitting claims to MAA. Complete forms shall include the actual eleven-digit NDC number of products dispensed.

(2) To bill drugs requiring authorization, providers shall insert the authorization number in the appropriate data field of the drug claim.

(3) To bill drugs under the expedited authorization process, providers shall insert the authorization number and criteria codes in the appropriate data field of the drug claim.

(4) Pharmacy services for clients on restriction under WAC 388-501-0135 shall be prescribed by the client's primary provider and payable only to the client's primary pharmacy, except in cases of emergency, family planning, or properly referred services.

[Statutory Authority: RCW 74.08.090. 96-21-031, § 388-530-1800, filed 10/9/96, effective 11/9/96.]

WAC 388-530-1850 Drug utilization and education council. MAA shall establish a DUR board, called the drug utilization and education council. The DUR board shall:

(1) Have a minimum of eight and a maximum of ten members, representing the state professional associations of medicine, pharmacy, and nursing. The board shall:

(a) Be made up of at least one-third but not more than fifty-one percent physicians, and at least one-third but not more than fifty-one percent pharmacists; and

(b) Include an advanced registered nurse practitioner and a physicians assistant. The department shall determine membership rotation.

(2) Meet periodically to:

(a) Advise the department on DUR activities;

(b) Review provider and patient profiles;

(c) Recommend adoption of standards and treatment guidelines for drug therapy;

(d) Provide interventions targeted toward therapy problems; and

(e) Produce an annual report.

[Statutory Authority: RCW 74.08.090. 96-21-031, § 388-530-1850, filed 10/9/96, effective 11/9/96.]

WAC 388-530-1900 Drug use review. The department shall provide for a drug use review (DUR) program consisting of:

(1) Prospective drug use review (Pro-DUR), wherein all prescription drug providers shall:

(a) Obtain a patient history;

(b) Screen for potential drug therapy problems; and

(c) Counsel the patient in accordance with existing state pharmacy laws and federal regulations.

(2) Retrospective drug use review (Retro-DUR), wherein the department shall provide for the ongoing periodic examination of claims data and other records in order to identify patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care among physicians, pharmacists, and individuals receiving benefits.

[Statutory Authority: RCW 74.08.090. 96-21-031, § 388-530-1900, filed 10/9/96, effective 11/9/96.]

WAC 388-530-1950 Point-of-sale (POS) system/prospective drug utilization review (Pro-DUR). (1)

Pharmacy claims processed through the medical assistance administration (MAA) payment system shall be adjudicated by the MAA point-of-sale (POS) system. This includes claims received on-line, via paper or by modem, disk, or tape.

(2) MAA shall ensure claims processed through the POS system undergo a system-facilitated prospective drug utilization review (Pro-DUR) screening. The system-facilitated Pro-DUR screening shall be performed by the MAA POS computer system at the time a drug claim is received and shall be intended as a complement to the Pro-DUR screening required of pharmacists.

(3) For the purposes of this section, the following definition applies: "MAA-approved national council for prescription data processing (NCPDP) codes" means those NCPDP codes appearing in the MAA prescription drug program billing instructions which MAA has approved for use in overriding MAA POS system alert messages.

(4) If the MAA POS/Pro-DUR system identifies a potential drug therapy problem during system-facilitated Pro-DUR screening, MAA may deny the claim with an alert message indicating the type of potential problem, including but not limited to:

(a) Therapeutic duplication;

(b) Duration of therapy exceeds maximum;

(c) Serious drug-to-drug interaction;

(d) Overdosage;

(e) Ingredient duplication;

(f) Drug age conflict; or

(g) Refill too soon.

(5) MAA may deny claims:

(a) Which trigger an alert message in the POS system;

or

(b) For drugs for which the department has established specific utilization criteria to address MAA concerns over the drug's high cost, potential for clinical misuse, narrow therapeutic indication or safety;

(i) For which prior authorization has not been received;

or

(ii) Which do not include an appropriate MAA-approved expedited prior authorization code or MAA-approved NCPDP code.

(6) If the MAA POS/Pro-DUR system identifies a potential drug therapy problem as described in subsection (4) of this section and the claim is denied for this reason, the dispensing pharmacist shall attempt to resolve the issue through professional utilization review. If upon further

investigation a therapy problem is found not to exist, the pharmacist may dispense the drug product and:

(a) Request MAA authorization for payment as specified in WAC 388-530-1250, prior authorization; or

(b) Resubmit the claim using an applicable MAA-approved NCPDP override code as listed in the prescription drug program billing instructions.

(7) The department shall determine POS/Pro-DUR screening is not applicable to pharmacy claims included in the managed care capitated rate.

[Statutory Authority: RCW 74.08.090. 96-08-018 (Order 3960), § 388-530-1950, filed 3/26/96, effective 4/26/96.]

WAC 388-530-2050 Out-of-state prescriptions.

(1) The department shall reimburse out-of-state pharmacies for drugs provided to Washington state residents who are temporarily located outside the state subject to the provisions of WAC 388-501-0180.

(2) Border situations as described under WAC 388-501-0175 are not subject to out-of-state rules, and the department shall consider pharmacies in border areas to be providers in the state of Washington.

(3) Out-of-state pharmacies shall meet the same criteria for payment as in-state pharmacies.

[Statutory Authority: RCW 74.08.090. 96-21-031, § 388-530-2050, filed 10/9/96, effective 11/9/96.]

Chapter 388-535 WAC DENTAL-RELATED SERVICES

WAC

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WAC 388-535-1000 Dental-related services—Scope of coverage. (1) The medical assistance administration (MAA) shall pay only for covered medical and dental services, equipment, and supplies listed in MAA published issuances, including billing instructions, numbered memoranda, and bulletins.

(2) MAA shall pay for covered dental services, equipment and supplies when they are:

(a) Within the scope of an eligible client's medical care program;

(b) Medically necessary;

(c) Within accepted medical or dental practice standards and are:

(i) Consistent with a diagnosis; and

(ii) Reasonable in amount and duration of care, treatment, or service.

(d) Not noncovered services as described under WAC 388-535-1100, Noncovered dental services; and

(e) Billed according to the conditions of payment under WAC 388-87-010 and 388-87-015.

(3) MAA shall cover the following dental-related services:

(a) Oral health evaluations/assessments, including oral health screening by providers of early and periodic screening, diagnoses and treatment (EPSDT) screening services authorized by MAA to provide screening.

(i) Oral health evaluation or assessment services shall be covered every six months, and an oral health evaluation of a child shall include an indicator of the child's oral health status.

(ii) The screening services shall, at a minimum, include:

(A) A comprehensive oral health and developmental history;

(B) An assessment of physical and oral health development and nutritional status;

(C) Health education, including anticipatory guidance; and

(D) Oral health status.

(b) Dental services necessary for the identification of dental problems or the prevention of dental disease subject to limitations of this chapter;

(c) Coronal polishing and scaling, provided that coronal polishing shall not be covered for children seven years old or younger, unless prior authorized, see WAC 388-535-1200 (1)(e);

(d) Dental services or treatment necessary for the relief of pain and infections, including removal of wisdom teeth, except that routine removal of wisdom teeth without justifiable medical indications shall not be covered;

(e) Dental services or treatment necessary for the restoration of teeth and maintenance of dental health subject to limitations of this chapter;

(f) Orthodontic treatment, which is defined as the use of any appliance, intraoral or extraoral, removable or fixed, or any surgical procedure designed to move teeth. The following limitations apply:

(i) Orthodontic coverage is limited to clients who are eligible for the EPSDT/healthy kids services;

(ii) Prior approval is required; and

(iii) Treatment is limited to conditions specified in WAC 388-535-1250.

(g) Complete and partial dentures, and necessary modifications, repairs, rebasing, relining and adjustments of dentures. Cast base partial dentures are covered with prior authorization.

(4) For children identified as high risk through oral health evaluation/assessment or clients identified by the department as developmentally disabled, the following preventive services may be allowed more frequently than the limits listed in (3) of this section:

(a) Fluoride application;

(b) Root planing, if a developmentally disabled client; and

(c) Prophylaxis scaling and coronal polishing, if eight years of age and over, or developmentally disabled.

(5) Panoramic radiographs are allowed only for oral surgical or orthodontic purposes.

(6) The department shall cover medically necessary services provided in a hospital for the care or treatment of teeth, jaws, or structures directly supporting the teeth if the

procedure requires hospitalization. Services covered under this subsection shall be furnished under the direction of a physician or dentist.

(7) For clients residing in nursing facilities or group homes, the following additional requirements shall apply:

(a) Dental services shall be requested by the client or a referral for services made by the attending physician, facility nursing supervisor, or the client's legal guardian;

(b) Mass screening for dental services of clients residing in a facility is not permitted, except for the EPSDT/healthy kids services as described under WAC 388-86-027;

(c) Nursing facilities shall provide medically necessary dental services in accordance with WAC 388-97-225.

(8) If eligibility for dental services ends before the conclusion of the dental treatment, payment for any remaining treatment shall be the client's responsibility. The client shall be responsible for payment of any dental treatment or service received during any period of ineligibility for medical care, even if the treatment was started when the client was eligible.

[Statutory Authority: Initiative 607, 1995 c 18 2nd sp.s. and 74.08.090. 96-01-006 (Order 3931), § 388-535-1000, filed 12/6/95, effective 1/6/96.]

WAC 388-535-1050 Definitions. This section contains definitions of words and phrases the department uses in rules for the medical assistance administration dental program.

(1) "**Access to baby and child dentistry (ABCD)**" is a Spokane County pilot initiative to increase access to dental services for Medicaid eligible infants, toddlers, and preschoolers.

(2) "**Arch**" means the curving structure formed by the crowns of the teeth in their normal position, or by the residual ridge after loss of the teeth.

(3) "**Banding**" means the application of orthodontic brackets to the teeth and/or face for the purpose of correcting dentofacial abnormalities.

(4) "**Behavior management**" means managing the behavior of a client during treatment using the assistance of additional professional staff, and restraints such as a papoose board or sedative agent, to protect the client from self-injury.

(5) "**Buccal**" means pertaining to or directed toward the cheek.

(6) "**By report**" - a method of payment for a covered service, supply, or equipment for which the medical assistance administration has not established a maximum allowable, either because the service or supply is new and its use is not yet considered standard, or it is a variation on a standard practice, or is rarely provided. Payment for a "by report" service or item is made on a case-by-case basis.

(7) "**Caries**" means a disease of the calcified tissues of the teeth resulting from the action of microorganisms on carbohydrates, characterized by a decalcification of the inorganic portion of the tooth and accompanied or followed by disintegration of the organic portion.

(8) "**Child**" - for purposes of the dental program, a child is defined as a person zero through eighteen years of age.

(9) "**Cleft**" means a longitudinal opening or fissure, especially one occurring in the embryo. Also see "facial cleft."

(10) "**Comprehensive oral evaluation**" means a thorough evaluation and recording of the extraoral and intraoral hard and soft tissues. Includes the evaluation and recording of the patient's dental and medical history and a general health assessment.

(11) "**Corona**" is the portion of a tooth that is covered by enamel, and is separated from the root or roots by a slightly constricted region, known as the neck.

(12) "**Craniofacial anomalies**" means abnormalities of the head and face, either congenital or acquired.

(13) "**Current dental terminology (CDT), second edition (CDT-2)**," a systematic listing of descriptive terms and identifying codes for reporting dental services and procedures performed by dental practitioners. CDT is published by the Council on Dental Benefit Programs of the American Dental Association (ADA).

(14) "**Dental analgesia**" means the use of agents to induce insensibility to or relief from dental pain without loss of consciousness.

(15) "**Dental anesthesia**" means the use of agents to induce loss of feeling or sensation in order to allow dental services to be rendered to the client. The term is applied especially to the loss of sensation of pain through general anesthesia.

(16) "**Dentin**" is the chief substance or tissue of the teeth, which surrounds the tooth pulp and is covered by enamel on the crown and by cementum on the roots of the teeth.

(17) "**Dental prosthesis**" means a replacement for one or more of the teeth or other oral structure, ranging from a single tooth to a complete denture.

(18) "**Dentures**" are a set of natural or artificial teeth; ordinarily used to designate an artificial replacement for the natural teeth.

(19) "**Dysplasia**" means an abnormality of development of the teeth.

(20) "**Enamel**" is the white, compact, and very hard substance that covers and protects the dentin of the crown of a tooth.

(21) "**Facial clefts**" are the clefts between the embryonic processes which normally unite to form the face. Failure of such union, depending on its site, causes such developmental defects as cleft lip (harelip), cleft mandible, oblique facial cleft, and transverse facial cleft (macrostomia).

(22) "**High risk**" child means any child who has been identified through an oral evaluation or assessment as having a high risk for dental disease because of caries in the child's dentin; or a child identified by the department as developmentally disabled.

(23) "**Hypoplasia**" means the incomplete or defective development of the enamel of the teeth.

(24) "**Limited oral evaluation**" means an evaluation or reevaluation limited to a specific oral health situation or problem.

(25) "**Limited visual oral assessment**" - A service performed by dentists which involves assessing the need for sealants to be placed by dental hygienists; screening children in Head Start or ECEAP programs; providing triage services; or in circumstances referring a child to another dentist for treatment. These assessments are also used by dental hygienists performing intraoral screening of soft and hard

tissues to assess the need for prophylaxis, sealants, fluoride varnish, or refers to a dentist for other dental treatment.

(26) "**Low risk**" child means any child who has been identified through an oral evaluation or assessment as having a low risk for dental disease because of the absence of white spots or caries in the enamel or dentin. This category includes children with restorations who are otherwise without disease.

(27) "**Macrostomia**" means a greatly exaggerated width of the mouth, resulting from failure of union of the maxillary and mandibular processes, with extension of the oral orifice to the ear. The defect may be unilateral or bilateral.

(28) "**Malocclusion**" means the contact between the maxillary and mandibular teeth as will interfere with the highest efficiency during the excursive movements of the jaw that are essential to mastication. The abnormality is categorized into four classes, graded by angle.

(29) "**Moderate risk**" child means a child who has been identified through an oral evaluation or assessment as having a moderate risk for dental disease, based on presence of white spots, enamel caries or hypoplasia.

(30) "**Occlusion**" means the relation of the maxillary and mandibular teeth when in functional contact during activity of the mandible.

(31) "**Oral evaluation**" is an evaluation performed on a client, new or established, to determine the patient's dental and/or medical health status, or changes to that status.

(32) "**Oral health assessment or screening**" is a comprehensive oral health and developmental history; an assessment of physical and oral health development and nutritional status; and health education, including anticipatory guidance.

(33) "**Oral health status**" refers to the client's risk or susceptibility to dental disease at the time an oral evaluation is done by a dental practitioner. This risk is designated as low, moderate or high based on the presence or absence of certain indicators.

(34) "**Oral sedation**" means the use of oral agents to produce a sedative or calming effect.

(35) "**Orthodontia**" is a treatment involving the use of any appliance, intraoral or extraoral, removable or fixed, or any surgical procedure designed to move teeth.

(35) "**Partial dentures**" means a prosthetic appliance replacing one or more missing teeth in one jaw, and receiving its support and retention from both the underlying tissues and some or all of the remaining teeth.

(36) "**Prophylaxis**" is a preventive intervention which includes the scaling and polishing of teeth to remove coronal plaque, calculus, and stains.

(37) "**Rebase**" means to replace the base material of a denture without changing the occlusal relations of the teeth.

(38) "**Reline**" means to resurface the tissue side of a denture with new base material in order to achieve a more accurate fit.

(39) "**Restorative services**" means services or treatments to restore a tooth to its original condition by the filling of a cavity and replacement of lost parts, or the material used in such a procedure.

(40) "**Root planing**" is a procedure designed to remove microbial flora, bacterial toxins, calculus, and diseased cementum or dentin from the teeth's root surfaces and pockets.

(41) "**Scaling**" means the removal of calculous material from the exposed tooth surfaces and that part of the teeth covered by the marginal gingiva.

(42) "**Sealant**" is a material applied to teeth to prevent dental caries.

(43) "**Space management therapy**" is a treatment to hold space for missing first and/or second primary molars and maintain position for permanent teeth.

(44) "**Usual and customary charge**" means the fee that the provider usually charges his or her non-Medicaid customers for a service or item. This is the maximum amount that the provider may bill MAA for the same service or item.

[Statutory Authority: Initiative 607, 1995 c 18 2nd sp.s. and 74.08.090, 96-01-006 (Order 3931), § 388-535-1050, filed 12/6/95, effective 1/6/96.]

WAC 388-535-1100 Noncovered dental services. (1) Unless required as a result of a EPSDT/Healthy Kids screen, included as part of a managed care plan service package; included in a waived program; or part of one of the Medicare programs for the qualified Medicare beneficiaries; the MAA may exclude from the scope of covered dental-related services:

(a) Services, procedures, treatment, devices, drugs, or application of associated services which MAA or the Health Care Financing Administration (HCFA) consider investigative or experimental on the date the services are provided;

(b) Cosmetic treatment or surgery, except for medically necessary reconstructive surgery to correct defects attributable to an accident, birth defect, or illness;

(c) Orthodontia for adults, except that Medicaid eligible clients nineteen and twenty years of age who meet the criteria in WAC 388-535-1250 shall be covered;

(d) Orthodontia for children who do not meet the criteria in WAC 388-535-1250, or who request orthodontia for cosmetic reasons;

(e) Any service specifically excluded by statute;

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

(g) Nonmedical equipment, supplies, personal or comfort items and/or services;

(h) Prophylaxis, for children seven years of age or younger, unless developmentally disabled;

(i) Root planing for children eighteen years of age or younger;

(j) Molar endodontics for clients nineteen years of age or older;

(k) Endodontic services for anterior primary teeth, except that new therapeutic pulpotomy shall be covered; and

(l) For a persons nineteen years of age and older, unless developmentally disabled:

(i) Routine fluoride treatments;

(ii) Molar endodontics; or

(iii) Orthognathic surgery.

(2) MAA does not pay for the following services/supplies:

(a) Missed or canceled appointments;

(b) Provider mileage or travel costs;

(c) Take-home drugs;

- (d) Dental supplies such as toothbrushes, manual or automatic, electric, toothpaste, floss, or whiteners;
- (e) Educational supplies;
- (f) Reports, client charts, insurance forms, copying expenses;
- (g) Service charges/delinquent payment fees;
- (h) Dentists writing prescriptions or calling in prescriptions or prescription refills to a pharmacy; and
- (i) Medical supplies used in conjunction with an office visit.

[Statutory Authority: Initiative 607, 1995 c 18 2nd sp.s. and 74.08.090. 96-01-006 (Order 3931), § 388-535-1100, filed 12/6/95, effective 1/6/96.]

WAC 388-535-1150 Eligible dental providers defined. (1) The following providers shall be eligible for enrollment to provide and be reimbursed for dental-related medical services to eligible clients:

- (a) Persons currently licensed by the state of Washington to practice medicine and osteopathy, for oral surgery procedures;
 - (b) Persons currently licensed by the state of Washington to practice dentistry;
 - (c) Persons currently licensed by the state of Washington to practice as dental hygienists;
 - (d) Persons currently licensed by the state of Washington to provide denture services (denturists);
 - (e) Hospitals currently licensed by the department of health;
 - (f) Federally-qualified health centers;
 - (g) Participating health departments;
 - (h) Medicare-certified ambulatory surgical centers;
 - (i) Medicare-certified rural health clinics;
 - (j) Public health providers of dental screening services who have a signed agreement with the department to provide such services to persons eligible for EPSDT/healthy kids services; and
 - (k) Border area or out-of-state providers of dental-related services qualified in their states to provide these services.
- (2) A licensed provider participating in the MAA dental program may be reimbursed only for those services that are within his or her scope of practice.

(3) The provider shall bill the department and its clients according to WAC 388-87-010 and 388-87-015.

[Statutory Authority: Initiative 607, 1995 c 18 2nd sp.s. and 74.08.090. 96-01-006 (Order 3931), § 388-535-1150, filed 12/6/95, effective 1/6/96.]

WAC 388-535-1200 Prior authorization. (1) The following services require prior approval:

- (a) Nonemergent surgical procedures as described under WAC 388-86-095;
- (b) Nonemergent hospital admissions as described under WAC 388-86-050 and 388-87-070;
- (c) Orthodontic treatment as described under WAC 388-535-1000 (3)(f);
- (d) Cast base partial dentures;
- (e) Coronal polishing and scaling for children seven years of age and under; or
- (f) Selected procedures determined by the department.

(2) When requesting prior approval, the department shall require the dental provider to submit, in writing, sufficient

objective clinical information to establish medical necessity including, but not limited to:

- (a) A physiological description of the disease, injury, impairment, or other ailment;
- (b) Pertinent laboratory findings;
- (c) X-ray reports; and
- (d) Patient profiles.

(3) The department shall approve a request when the requested service meets the criteria in WAC 388-535-1000(2), Scope of coverage.

(4) The department shall deny a request for dental services when the requested service is:

- (a) Not medically necessary as defined under WAC 388-500-0005; or
- (b) A service, procedure, treatment, device, drug, or application of associated service which MAA or the Health Care Financing Administration (HCFA) consider investigative or experimental on the date the service is provided.

(5) The department may require a second opinion and/or consultation before the approval of any elective oral surgical procedure.

[Statutory Authority: Initiative 607, 1995 c 18 2nd sp.s. and 74.08.090. 96-01-006 (Order 3931), § 388-535-1200, filed 12/6/95, effective 1/6/96.]

WAC 388-535-1250 Orthodontic coverage for DSHS clients. The department shall cover orthodontia care when:

- (1) Prior authorized;
- (2) A client is eligible for EPSDT/healthy kids services; and
- (3) A client meets one of the following categories:
 - (a) A child with clefts and congenital or acquired craniofacial anomalies:
 - (i) Cleft lip and palate, cleft palate, and cleft lip with alveolar process involvement;
 - (ii) Craniofacial anomalies, including but not limited to:
 - (A) Hemifacial microsomia;
 - (B) Craniosynostosis syndromes;
 - (C) Cleidocranial dysplasia;
 - (D) Arthrogryposis;
 - (E) Marfans syndrome; or
 - (F) Other syndromes by review;
 - (iii) Other diseases/dysplasia with significant facial growth impact, e.g., juvenile rheumatoid arthritis (JRA); or
 - (iv) Post traumatic, post radiation, or post burn jaw deformity.
 - (b) A child with severe malocclusions which include one or more of the following:
 - (i) A severe skeletal disharmony;
 - (ii) A severe overjet resulting in functional impairment;
 - (iii) A severe vertical overbite resulting in palatal impingement; and/or damage to the mandibular labial tissues.
- (c) A child with other malformations resulting in severe functional impairment shall be reviewed for medical necessity.

(b) A child with severe malocclusions which include one or more of the following:

- (i) A severe skeletal disharmony;
- (ii) A severe overjet resulting in functional impairment;
- (iii) A severe vertical overbite resulting in palatal impingement; and/or damage to the mandibular labial tissues.

(c) A child with other malformations resulting in severe functional impairment shall be reviewed for medical necessity.

[Statutory Authority: Initiative 607, 1995 c 18 2nd sp.s. and 74.08.090. 96-01-006 (Order 3931), § 388-535-1250, filed 12/6/95, effective 1/6/96.]

WAC 388-535-1300 Access to baby and child dentistry (ABCD) program. (1) The access to baby and child dentistry (ABCD) program is a demonstration project in Spokane County, established to increase access to dental

services for Medicaid eligible infants, toddlers, and pre-schoolers.

(2) Children eligible for the ABCD program shall be four years of age and under and residing in Spokane County.

(3) Dental providers certified by the University of Washington continuing education program shall provide ABCD services.

(4) In addition to services provided under the medical assistance administration (MAA) dental care program, the following services are provided:

- (a) Family oral health education; and
- (b) Case management services.

(5) Clients who do not comply with program requirements may be disqualified from the ABCD program. The client remains eligible for regular MAA dental coverage.

(6) MAA pays enhanced fees to ABCD-certified participating providers for the targeted services.

[Statutory Authority: Initiative 607, 1995 c 18 2nd sp.s. and 74.08.090. 96-01-006 (Order 3931), § 388-535-1300, filed 12/6/95, effective 1/6/96.]

WAC 388-535-1350 Payment methodology—Dental services. (1) For covered services provided to eligible clients, MAA shall reimburse dentists and related providers on a fee-for-service or contract basis, subject to the exceptions and restrictions listed under WAC 388-535-1100, Noncovered dental services and WAC 388-535-1400 Dental payment limits.

(2) In general maximum allowable fees (MAFs) for dental services provided to adult clients are based on the department's historical reimbursement rates, updated for legislatively authorized vendor rate increases.

(3) MAA may pay providers a higher reimbursement rate for selected dental services provided to children eighteen years and younger in order to increase children's access to dental services.

(4) Maximum allowable fees (MAFs) for dental services provided to children are set as follows:

(a) The department's historical reimbursement rates for various procedures are compared to usual and customary charges.

(b) The department consults with and seeks input from representatives of the provider community to identify program areas/concerns that need to be addressed.

(c) The department consults with dental experts and public health professionals to identify and prioritize dental services/ procedures in terms of their effectiveness in improving and/or promoting children's dental health.

(d) Legislatively authorized vendor rate increases and/or earmarked appropriations for children's dental services are allocated to specific procedures based on this priority list and considerations of access to services.

(e) Larger percentage increases are given to those procedures which have been identified as most effective in improving and/or promoting children's dental health.

(f) Budget-neutral rate adjustments are made as appropriate based on the department's evaluation of utilization trends, effectiveness of interventions, and access issues.

(5) Dental anesthesia services for all eligible clients are reimbursed on the basis of base anesthesia units (BAU) plus time. Payment for dental anesthesia is calculated as follows:

(a) Dental procedures are assigned five base anesthesia units;

(b) Twelve minutes constitute one unit of time. When a dental procedure requiring anesthesia results in multiple time units and a remainder (less than twelve minutes), the remainder or fraction shall be considered as one time unit;

(c) Time units are added to the five base anesthesia units and multiplied by the anesthesia conversion factor;

(d) The formula for determining reimbursement for dental anesthesia is: (5.0 base anesthesia units + time units) x conversion factor = payment.

(6) Dental hygienists shall be paid at the same rate as dentists for services allowed under The Dental Hygienist Practice Act.

(7) Licensed denturists or dental laboratories billing independently shall be paid at MAA's allowance for prosthodontics.

(8) Fee schedule changes are made whenever vendor rate increases or decreases are authorized by the legislature.

(9) The department uses the American Dental Association's Current Dental Terminology, Second Edition (CDT-2) as the basis for identification of dental services. The department supplements this list with state-assigned procedure codes to identify services which do not fit exactly into the CDT-2 descriptions.

(10) The department may adjust maximum allowable fees to reflect changes in the services or procedure code descriptions.

[Statutory Authority: Initiative 607, 1995 c 18 2nd sp.s. and 74.08.090. 96-01-006 (Order 3931), § 388-535-1350, filed 12/6/95, effective 1/6/96.]

WAC 388-535-1400 Dental payment limits. (1) Provision of covered services to a client eligible for a medical care program constitutes acceptance by the provider of the department's rules and fees.

(2) Participating providers shall bill the department their usual and customary fees.

(3) Payment for dental services is based on the department's schedule of maximum allowances. Fees listed in the MAA fee schedule are the maximum allowable fees.

(4) Payment to the provider will be the lesser of the billed charge (usual and customary fee) or the department's maximum allowable fee.

(5) If a covered service is performed for which no fee is listed, the service shall be paid "By Report."

(6) Clients shall be responsible for payment as described under WAC 388-087-010 for services not covered under the client's medical care program.

[Statutory Authority: Initiative 607, 1995 c 18 2nd sp.s. and 74.08.090. 96-01-006 (Order 3931), § 388-535-1400, filed 12/6/95, effective 1/6/96.]

WAC 388-535-1450 Payment—Denture laboratory services. (1) A dentist using the services of an independent denture laboratory shall request services for an MAA client in the same manner he or she requests services for his or her private patient.

(2) An independently practicing denturist may bill the department directly. No reimbursement shall be made to a dentist for services performed and billed by an independent denturist.

[Statutory Authority: Initiative 607, 1995 c 18 2nd sp.s. and 74.08.090. 96-01-006 (Order 3931), § 388-535-1450, filed 12/6/95, effective 1/6/96.]

WAC 388-535-1500 Payment—Dental-related hospital services. The department shall pay for medically necessary dental-related hospital inpatient and outpatient services according to WAC 388-87-070 and 388-87-072.

[Statutory Authority: Initiative 607, 1995 c 18 2nd sp.s. and 74.08.090. 96-01-006 (Order 3931), § 388-535-1500, filed 12/6/95, effective 1/6/96.]

WAC 388-535-1550 Dental care provided out-of-state. (1) The department shall authorize and provide comparable dental care services to clients who are temporarily outside of the state to the same extent that such dental care services are furnished to clients in the state, subject to the same exceptions and limitations as in-state clients.

(2) The department shall not provide out-of-state dental care to clients receiving medical care services as defined under WAC 388-500-0005. The department shall cover dental services in designated bordering cities for eligible clients.

(3) Out-of-state dental providers shall meet the same criteria for payment as in-state providers.

[Statutory Authority: Initiative 607, 1995 c 18 2nd sp.s. and 74.08.090. 96-01-006 (Order 3931), § 388-535-1550, filed 12/6/95, effective 1/6/96.]

Chapter 388-538 WAC MANAGED CARE

WAC

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WAC 388-538-001 Purpose. For contracts effective on or after July 1, 1993, the department may contract with health care plans or primary care case managers to provide medical services directly to a client or arrange for a client to receive medical care according to the contract between the department and a plan or primary care case managers.

[Statutory Authority: RCW 74.08.090. 93-17-039 (Order 3621), § 388-538-001, filed 8/11/93, effective 9/11/93. Formerly WAC 388-83-010 (part).]

WAC 388-538-050 Definitions. For the purpose of this chapter:

(1) "Emergency services" shall mean medical or other health services which are rendered for a medical condition (including emergency labor and delivery) 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.

(2) "Enrolled client" means a client eligible for Medicaid and receiving services from a health care plan or primary care case management provider who has a contract with the department.

(3) "Health care plan" or "plan" means an organization contracting with the department to provide managed care to the client by providing and/or paying for medical services covered by the department to an eligible enrolled client in exchange for a contracted rate or management fee.

(4) "Managed care" means a comprehensive system of medical and health care delivery including preventive, primary, specialty, and ancillary services. Managed care involves having clients enrolled:

(a) With or assigned to a primary care provider;

(b) With or assigned to a plan; or

(c) With an independent provider, who is responsible for arranging or delivering all contracted medical care.

(5) "Persons with special health care needs" means persons having ongoing health conditions that:

(a) Have a biologic, psychologic, or cognitive basis;

(b) Have lasted or are virtually certain to last for at least one year; and

(c) Produce one or more of the following sequelae:

(i) Significant limitation in areas of physical, cognitive, or emotional function;

(ii) Dependency on medical or assistive devices to minimize limitation of function or activities;

(iii) In addition for children:

(A) Significant limitation in social growth or developmental function;

(B) Need for psychologic, educational, medical or related services over and above the usual for the child's age; or

(C) Special ongoing treatments such as medications, special diets, interventions or accommodations at home or at school.

(6) "Primary care provider (PCP)" means a provider who has responsibility for supervising, coordinating, and providing initial and primary care to clients, initiating referrals for specialist care, and maintaining the continuity of patient care. A primary care provider shall be either:

(a) A physician, who meets the criteria under WAC 388-87-007;

(b) An advanced registered nurse practitioner (ARNP), who meets the criteria under WAC 388-87-007; or

(c) A licensed physician assistant.

(7) "Primary care case management (PCCM)" means a model of health care where a physician, ARNP, physician assistant, community/migrant health center, health department, or clinic agrees to provide primary health care services and to arrange and coordinate other preventative, specialty, and ancillary health care in exchange for a contracted payment for each client managed.

(8) "Timely provision of services" means a client has the right to receive medically necessary health care without unreasonable delay.

[Statutory Authority: RCW 74.08.090 and 1995 2nd sp.s. c 18. 95-18-046 (Order 3886), § 388-538-050, filed 8/29/95, effective 9/1/95. Statutory Authority: RCW 74.08.090. 93-17-039 (Order 3621), § 388-538-050, filed 8/11/93, effective 9/11/93.]

WAC 388-538-060 Eligible client. (1) The department shall require a client, eligible for certain designated medical program categories, to enroll in managed care when the client resides in the contracted managed care service area, except as provided in WAC 388-538-080.

(2) The department shall assign a client to a plan or a PCCM provider when the client does not choose a plan or PCCM.

(3) The department shall enroll an Indian, as defined under 25 U.S.C. 1603 (c)-(d), in a plan when such plan includes an Indian health service direct care clinic, a tribally-operated clinic, or urban Indian health center and the Indian resides in the plan service area. If an Indian selects another plan or requests an exemption, this subsection shall not apply.

(4) The department shall not enroll Medicare beneficiaries in managed care.

[Statutory Authority: RCW 74.08.090 and 1995 2nd sp.s. c 18. 95-18-046 (Order 3886), § 388-538-060, filed 8/29/95, effective 9/1/95. Statutory Authority: RCW 74.08.090. 93-17-039 (Order 3621), § 388-538-060, filed 8/11/93, effective 9/11/93.]

WAC 388-538-070 Managed care payment. The department shall pay for managed care as follows:

(1) Under a capitated system:

(a) A set rate to a plan for contracted health care provided to the client; and

(b) The plan has one year from the date services are provided to an SSI client to submit claims:

(i) To the department to be considered towards meeting the stop-loss deductible; and

(ii) For the department to make payments to the plan once the deductible is satisfied.

(2) Under a PCCM model in which the contract is between the department and the health care provider, a monthly management fee in addition to a fee for covered services provided to the client;

(3) Under a PCCM model in which the contract is between the department and a plan, a monthly management fee to the plan to be divided between the plan and the primary care provider, in addition to a fee to the health care provider for covered services provided to the client.

[Statutory Authority: RCW 74.08.090. 96-24-073, § 388-538-070, filed 12/2/96, effective 1/2/97. Statutory Authority: RCW 74.08.090 and 1995 2nd sp.s. c 18. 95-18-046 (Order 3886), § 388-538-070, filed 8/29/95 effective 9/1/95. Statutory Authority: RCW 74.08.090. 93-17-039 (Order 3621), § 388-538-070, filed 8/11/93, effective 9/11/93.]

WAC 388-538-080 Managed care exemptions. (1) The department shall not require a client to enroll in managed care when:

(a) (i) According to objective medical evidence, a client has multiple, complex medical diagnoses or a severe, complex manifestation of a single medical diagnosis; and

(A) The client is currently receiving care under a written treatment plan;

(B) The treatment plan requires frequent modification or monitoring due to the nature of the client's health condition;

(C) The client's health care provider is not affiliated with an available managed care plan; and

(D) Disruption of care currently being received would adversely affect the client's health condition; or

(ii) Prior to enrollment, the client has a surgical procedure scheduled to occur in the next thirty calendar days with a health care provider who is not affiliated with an available managed care plan;

(b) The client is an Indian, as defined under 25 U.S.C. 1603 (c)-(d); or

(c) Medically necessary care is not reasonably available and accessible under managed care offered to the client.

(2) The department shall consider, on a case-by-case basis, medically necessary care not reasonably available and accessible when:

(a) The limited English-speaking or hearing-impaired client can communicate in the client's primary language with a health care provider not participating in a plan or under PCCM;

(b)(i) The distance is over twenty-five miles one-way or travel time is greater than forty-five minutes one-way to the nearest primary care provider who is in managed care and accepting clients and the client's current primary health care provider is located closer to the client; or

(ii) Other transportation difficulties make it unreasonably difficult for a client to obtain primary medical care under managed care;

(c) The client is homeless or is expected to reside in temporary housing or a shelter for less than one hundred and twenty days from date the client requests an exemption;

(d)(i) Before enrollment, a pregnant woman has started prenatal care with an obstetrical provider who is not available under managed care; or

(ii) In order for a pregnant woman to continue her established course of prenatal care with an obstetrical provider who is no longer affiliated with any available managed care plan;

(e) The client's circumstances, as evaluated by the department with available information, support the client's claim that medically necessary care is not reasonably available and accessible under managed care as offered to the client.

(3) A client or a representative, as authorized under RCW 7.70.065, or other provision of law, shall make a request in writing or by telephone to the department to be exempted from enrolling in managed care. The department shall timely notify the client by telephone or in writing of an adverse exemption decision and the reasons therefor before enrolling the client in managed care. If the department denies the request for exemption, the department shall provide notice containing the following information before enrolling the client in managed care:

(a) Action the department intends to take;

(b) Reasons for the intended action;

(c) The specific rule or regulation supporting the action;

(d) Client's right to request a fair hearing, including the circumstances under which the fee-for-service status is continuing, if a hearing is requested; and

(e) Full translation into the primary language of the limited English proficient recipient.

(4) The client shall remain exempted until a decision is made on the exemption request by the department. A client who is dissatisfied with the exemption decision has the right to an adjudicative hearing (fair hearing) as described under WAC 388-526-2610.

(5) If an exemption is authorized as a result of a time-limited circumstance, the department may limit the time period for which the exemption is granted to the period of time that the circumstance is expected to continue.

(6) The department may offer a client who qualifies for an exemption the option to participate in PCCM with a contracted PCCM provider of the client's choice.

[Statutory Authority: RCW 74.08.090, 96-24-074, § 388-538-080, filed 12/2/96, effective 1/1/97. Statutory Authority: RCW 74.08.090 and 1995 2nd sp.s. c 18, 95-18-046 (Order 3886), § 388-538-080, filed 8/29/95 effective 9/1/95. Statutory Authority: RCW 74.08.090, 93-17-039 (Order 3621), § 388-538-080, filed 8/11/93, effective 9/11/93.]

WAC 388-538-090 Client's choice of primary care provider. (1) Each client enrolled in managed care shall have a primary care provider (PCP).

(2) A client shall have an opportunity to choose a PCP from available providers.

(3) A plan shall assign a client to a PCP when the client enrolls in a plan and does not choose PCP in the plan.

(4) A client in managed care shall have the right to change a PCP:

(a) One time during a twelve-month period for any reason; and

(b) For subsequent changes during the twelve-month period, only for documented good cause. If the client is enrolled in managed care with a plan, the client shall notify the plan of the desired change including the name of the new PCP, and the reason for the desired change. If the client is enrolled in a PCCM which does not involve a plan, then the client shall notify the department of the desired change, including the name of the new PCP, and the reason for the desired change.

(5) A client whose request to change PCP is denied may submit a grievance with the plan under WAC 388-538-110 or, if the decision was made by the department, may request a fair hearing under WAC 388-526-2610.

[Statutory Authority: RCW 74.08.090 and 1995 2nd sp.s. c 18, 95-18-046 (Order 3886), § 388-538-090, filed 8/29/95, effective 9/1/95. Statutory Authority: RCW 74.08.090, 93-17-039 (Order 3621), § 388-538-090, filed 8/11/93, effective 9/11/93.]

WAC 388-538-095 Medical services. The department shall pay separately, on a fee-for-service basis, only for medical services covered under the department's medical care programs that a managed care contract does not cover.

[Statutory Authority: RCW 74.08.090 and 1995 2nd sp.s. c 18, 95-18-046 (Order 3886), § 388-538-095, filed 8/29/95, effective 9/1/95. Statutory Authority: RCW 74.08.090, 93-17-039 (Order 3621), § 388-538-095, filed 8/11/93, effective 9/11/93.]

WAC 388-538-100 Managed care emergency services. (1) The department shall exempt emergencies and emergency transportation services from routine medical care authorization procedures of managed care.

(2) A client shall not be responsible for determining if an emergency exists or for the cost of such determination. For nonemergency conditions, hospital reimbursement for PCCM under WAC 388-87-072(4) shall be limited to a medical evaluation fee as established by the department.

(3) In a medical emergency, the client shall not be financially responsible for covered managed care services provided.

(4) When an emergency does not exist, and the client's PCP does not authorize services, the client shall be financially responsible for further services received only when the client is informed and agrees, in writing, to the responsibility before receiving the services as described under WAC 388-87-010.

[Statutory Authority: RCW 74.08.090 and 1995 2nd sp.s. c 18, 95-18-046 (Order 3886), § 388-538-100, filed 8/29/95, effective 9/1/95. Statutory Authority: RCW 74.08.090, 95-04-033 (Order 3826), § 388-538-100, filed 1/24/95, effective 2/1/95; 93-17-039 (Order 3621), § 388-538-100, filed 8/11/93, effective 9/11/93.]

WAC 388-538-110 Client grievances. (1) A client aggrieved by a decision of a managed care contractor or the department shall have the right to a fair hearing as required under WAC 388-81-040.

(2) A client enrolled in a plan:

(a) Shall exhaust a plan's grievance procedure before requesting a fair hearing, except as provided in subsection (2)(c) of this section;

(b) Shall receive a written decision containing the following information:

(i) Action the plan intends to take;

(ii) Reasons for the intended action;

(iii) The specific information supporting the action;

(iv) Client's right to request a fair hearing;

(v) Full translation into the primary language of the limited English proficient recipient.

(c) May request a fair hearing when a:

(i) Grievance decision is adverse;

(ii) Plan does not respond in writing within thirty days from the date the client requests the grievance.

(3) The client may request a fair hearing at the same time a grievance is filed when:

(a) The plan denies medical care that a client indicates is urgently needed and the client requests a grievance in writing; or

(b) The subject matter of the grievance is one for which a client has a fair hearing right under chapters 34.05 RCW, 388-08 WAC, or this chapter.

(4) The managed care contractor shall advise a client of the client's right to request a fair hearing at the time the contractor notifies the client of the grievance decision.

[Statutory Authority: RCW 74.08.090 and 1995 2nd sp.s. c 18, 95-18-046 (Order 3886), § 388-538-110, filed 8/29/95, effective 9/1/95. Statutory Authority: RCW 74.08.090, 94-04-038 (Order 3701), § 388-538-110, filed 1/26/94, effective 2/26/94; 93-17-039 (Order 3621), § 388-538-110, filed 8/11/93, effective 9/11/93.]

WAC 388-538-120 Client request for a second medical opinion. (1) The client enrolled in managed care shall have the right to a second opinion by another physician or specialist:

(a) When the client needs more information as to the medical necessity of medical treatment recommended by the PCP; or

(b) If the client believes the PCP is not authorizing medically necessary care.

(2) If the client is enrolled in a plan, the second opinion physician or specialist shall be a participating provider in the plan. If the client is enrolled with a PCCM, which does not involve a plan, the client shall have the right to a second opinion by another provider or specialist, who is a medical assistance provider.

(3) When medically necessary, the client shall be promptly referred to:

(a) Another participating physician or specialist of a plan, when enrolled in a plan; or

(b) Another provider or specialist when enrolled under PCCM, which does not involve a plan.

[Statutory Authority: RCW 74.08.090 and 1995 2nd sp.s. c 18. 95-18-046 (Order 3886), § 388-538-120, filed 8/29/95, effective 9/1/95. Statutory Authority: RCW 74.08.090. 93-17-039 (Order 3621), § 388-538-120, filed 8/11/93, effective 9/11/93.]

WAC 388-538-130 Enrollment termination and disenrollments. (1) The department may terminate enrollment of a client in managed care when a:

(a) Client loses eligibility for a medical eligibility category which requires enrollment;

(b) Client requests and the department approves disenrollment under the conditions for granting exemptions under WAC 388-538-080;

(c) Client requests disenrollment and is an Indian, as defined under 25 U.S.C. 1603 (c)-(d); or

(d) Client is a Medicare beneficiary.

(2) When a client requests disenrollment under subsection (1)(b) of this section, the client shall remain enrolled in managed care until the decision is made on the disenrollment request unless continuing in managed care pending the decision would adversely affect the client's health status.

(3) Managed care contractors may request a client be disenrolled if the managed care contractor establishes, in writing, to the department's satisfaction that:

(a) The client's behavior is inconsistent with the managed care contractor's rules and regulations, such as intentional misconduct;

(b) The behavior is such that it has become medically infeasible to safely or prudently provide medical care; and

(c) The managed care contractor has offered to the client, in writing, the opportunity to utilize the grievance procedure described in WAC 388-538-110, unless the client's conduct presents the threat of imminent harm to others.

(4) When a managed care contractor makes a request to disenroll a client as described in subsection (3) of this section, the client shall not be disenrolled until the department approves the contractor's request. The department shall make a decision on the request within thirty days from the day of receipt of the request after contacting the client, if possible, to learn the client's perspective. The department shall notify the client ten days in advance of the effective date of disenrollment.

(5) Managed care contractors shall not request disenrollment of a client solely due to an adverse change in the client's health or the cost of meeting the client's health care needs.

[Statutory Authority: RCW 74.08.090 and 1995 2nd sp.s. c 18. 95-18-046 (Order 3886), § 388-538-130, filed 8/29/95, effective 9/1/95. Statutory

Authority: RCW 74.08.090. 93-17-039 (Order 3621), § 388-538-130, filed 8/11/93, effective 9/11/93.]

WAC 388-538-140 Quality of care. The department shall require:

(1) A plan to appoint a medical director or designee who:

(a) Shall be responsible for the plan's quality assurance program and shall review all plan grievances; and

(b) Furnishes MAA with a copy of all grievances and a plan's response to such grievances.

(2) A PCCM not involving a plan to provide adequate documentation for quality assurance review.

(3) A plan or PCCM to have in place a method to assure consideration of the unique needs of persons with special health care needs as defined in WAC 388-538-050 and to assist with:

(a) Early identification of persons with special health care needs;

(b) Timely access to health care; and

(c) Coordination of health service delivery and community linkages.

(4) The department shall conduct outreach of various types to accommodate the unique communication needs of some members of the populations served.

(5) The department shall ensure that clients are given the most important relevant information and a variety of ways to enroll or request exemptions and disenrollments.

(6) The plan or PCCM shall make reasonable and appropriate accommodations as required under the Americans with Disabilities Act (ADA) for clients who have a mental, physical, or sensory impairment or another limitation which affects the clients' abilities to understand written notices and/or other types of communications.

[Statutory Authority: RCW 74.08.090 and 1995 2nd sp.s. c 18. 95-18-046 (Order 3886), § 388-538-140, filed 8/29/95, effective 9/1/95. Statutory Authority: RCW 74.08.090. 93-17-039 (Order 3621), § 388-538-140, filed 8/11/93, effective 9/11/93.]

WAC 388-538-150 Managed care medical audit.

(1) At least once a year, the department shall conduct a medical audit of managed care contractors to ensure the quality and accessibility of health care services provided or arranged by the contractors for enrolled clients.

(2) Managed care contractors shall permit such medical audit.

(3) The department may conduct or contract independently for such medical audit.

[Statutory Authority: RCW 74.08.090 and 1995 2nd sp.s. c 18. 95-18-046 (Order 3886), § 388-538-150, filed 8/29/95, effective 9/1/95. Statutory Authority: RCW 74.08.090. 93-17-039 (Order 3621), § 388-538-150, filed 8/11/93, effective 9/11/93.]

Chapter 388-539 WAC

ACQUIRED HUMAN IMMUNODEFICIENCY SYNDROME INSURANCE PROGRAM

WAC

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WAC 388-539-001 Purpose. The department shall administer state funds appropriated to ensure health insurance coverage for a person:

- (1) Incapacitated by acquired human immunodeficiency syndrome (AIDS), as defined under WAC 388-539-050; and
- (2) Who meets the department's eligibility requirements described under WAC 388-539-100.

[Statutory Authority: RCW 74.08.090. 93-17-037 (Order 3619), § 388-539-001, filed 8/11/93, effective 9/11/93.]

WAC 388-539-050 Definitions. For the purpose of this chapter, "acquired human immunodeficiency syndrome" means the illness characterized by the diseases and conditions defined and described by the state board of health under WAC 246-100-011(1).

[Statutory Authority: RCW 74.08.090. 93-17-037 (Order 3619), § 388-539-050, filed 8/11/93, effective 9/11/93.]

WAC 388-539-100 Eligibility. (1) The department shall pay health insurance premiums for a client with AIDS and who is liable for the health insurance premium, when the client meets the following conditions:

- (a) Is ineligible for Medicaid or state-funded medical programs operated by the department;
 - (b) Is eligible for continuation coverage insurance benefits as provided for by the federal Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985, group health insurance, or individual health insurance coverage if cost effective; and
 - (c) Has personal assets equal to or less than fifteen thousand dollars, excluding a home used as a primary residence, and a car.
- (2) A client's eligibility under the program shall cease when the person:
- (a) Dies;
 - (b) Is no longer eligible for insurance under subsection (1) of this section; or
 - (c) Moves out of state.

[Statutory Authority: RCW 74.08.090. 93-17-037 (Order 3619), § 388-539-100, filed 8/11/93, effective 9/11/93.]

WAC 388-539-150 Premium payment. The department shall pay a maximum premium payment not to exceed fifty percent of the estimated average monthly expenditure for covered services for a comparable Medicaid client during the same fiscal year.

[Statutory Authority: RCW 74.08.090. 93-17-037 (Order 3619), § 388-539-150, filed 8/11/93, effective 9/11/93.]

Chapter 388-540 WAC KIDNEY CENTERS

WAC

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WAC 388-540-001 Purpose. The department shall administer state funds appropriated to assist people with end stage renal disease to meet the costs of their medical care.

[Statutory Authority: RCW 74.08.090. 93-16-039 (Order 3600), § 388-540-001, filed 7/28/93, effective 8/28/93.]

WAC 388-540-005 Definitions. For the purpose of administering the state kidney disease program, the following shall apply:

(1) "End stage renal disease (ESRD)" means that stage of renal impairment which is irreversible and permanent, and requires dialysis or kidney transplantation to ameliorate uremic symptoms and maintain life;

(2) "ESRD Client" means resident of the state with a diagnosis of ESRD;

(3) "Kidney center" means those facilities as defined and certified by the federal government to provide ESRD services and which provide the services specified in this chapter and which promote and encourage home dialysis for a client when medically indicated;

(4) "Affiliate" means a facility, hospital, unit, business, or person having an agreement with a kidney center to provide specified services to ESRD patients;

(5) "State kidney disease program" means state general funds appropriated to the department to assist clients with ESRD in meeting the cost of medical care;

(6) "Application for ESRD eligibility" means the form provided by the department which the client completes and submits to determine ESRD eligibility;

(7) "Certification" or "certified" means the department has approved a client for the state kidney disease program under this chapter;

(8) "ESRD application period" means the time between the date of application and certification;

(9) "Resources" means income or assets or any real or personal property that a person or the person's spouse owns and could convert to cash to be used for support or maintenance;

(10) "Fair market value" means the current worth of a resource at the time of transfer or, if earlier contract for sale, or date of application;

(11) "Adequate consideration" means that the reasonable value of goods or services received in exchange for transferred property approximates the reasonable value of the property transferred;

(12) "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;

(13) "Reasonable value" means the amount that the property is worth on the open market;

(14) A "substantial reduction" means:

(a) The elimination of a client's required annual deductible amount; or

(b) The reduction of resources to below fifteen hundred dollars.

[Statutory Authority: RCW 74.08.090. 93-16-039 (Order 3600), § 388-540-005, filed 7/28/93, effective 8/28/93.]

WAC 388-540-010 Services. Generally, the kidney center shall provide, directly or through an affiliate, all

physical facilities, professional consultation, personal instructions, medical treatment and care, drugs, dialysis equipment, and supplies necessary for carrying out a medically-sound ESRD treatment program. The kidney center shall provide:

- (1) Dialysis for clients with ESRD when medically indicated;
- (2) Kidney transplantation treatment for clients with ESRD either directly or by referral, when medically indicated;
- (3) Treatment for conditions directly related to ESRD;
- (4) Training and supervision of medical, supporting personnel and of clients who are eligible for home dialysis; and
- (5) Supplies and equipment for home dialysis.

[Statutory Authority: RCW 74.08.090, 93-16-039 (Order 3600), § 388-540-010, filed 7/28/93, effective 8/28/93.]

WAC 388-540-020 Reimbursement. The department shall reimburse kidney centers for services described in this chapter to the extent the legislature has appropriated funds and when the center submits documented evidence, satisfactory to the department, showing:

- (1) Services for which reimbursement is requested;
- (2) Client's financial eligibility for the state kidney disease program under this chapter except reimbursement for services:

(a) Provided to a client location outside the state shall be limited to a period of two weeks per calendar year per client; and

(b) Described under this chapter shall be determined on a case-by-case basis by the department.

[Statutory Authority: RCW 74.08.090, 93-16-039 (Order 3600), § 388-540-020, filed 7/28/93, effective 8/28/93.]

WAC 388-540-030 ESRD eligibility. The kidney center shall review at least annually the client's ESRD eligibility for the state kidney disease program according to procedures outlined in this chapter. A client shall be considered eligible when the client exhausts or is ineligible for all other resources providing similar benefits to meet the costs of ESRD-related medical care. Resources shall include:

- (1) Income in excess of a level necessary to maintain a moderate standard of living, as defined by the department, using accepted national standards;
- (2) Savings, property, and other assets;
- (3) Government and private medical insurance programs;
- (4) Government or private disability programs;
- (5) Local funds raised for the purpose of providing financial support for a specified ESRD client: *Provided*, That in determining eligibility the following resources shall be exempt:

(a) A home, defined as real property owned by a client as a principal place of residence, together with the property surrounding and contiguous thereto, not to exceed five acres. Commercial property or property used for the purpose of producing income shall be considered excess property and shall be subject to the limitations of subsection (5)(d) of this section;

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- (b) Household furnishings;
- (c) An automobile; and
- (d) Savings, property or other assets, the value not to exceed the sum of five thousand dollars.

[Statutory Authority: RCW 74.08.090, 93-16-039 (Order 3600), § 388-540-030, filed 7/28/93, effective 8/28/93.]

WAC 388-540-040 Transfer of resources without adequate consideration. A person may be ineligible for the program if the person knowingly and willfully assigns or transfers nonexempt resources at less than fair market value for the purpose of qualifying or continuing to qualify for the program within two years preceding the date of application.

[Statutory Authority: RCW 74.08.090, 93-16-039 (Order 3600), § 388-540-040, filed 7/28/93, effective 8/28/93.]

WAC 388-540-050 Fiscal information. The kidney center shall provide fiscal information on the department's request. The information shall include:

- (1) Accounting information and documentation sufficient to establish the basis for fees for services and/or charges;
- (2) Sources and amounts of resources allowing an individual client to verify financial eligibility;
- (3) Evidence that all other available resources have been depleted before requests for reimbursement from the state kidney disease program are submitted to the department; and
- (4) Other information as the department may require.

[Statutory Authority: RCW 74.08.090, 93-16-039 (Order 3600), § 388-540-050, filed 7/28/93, effective 8/28/93.]

WAC 388-540-060 Procedures for ESRD eligibility determination. The department, kidney center and client shall comply with the following procedures to determine ESRD eligibility:

- (1) The department shall provide the kidney center with the necessary forms and instructions;
- (2) The kidney center shall inform the client of the requirements for ESRD eligibility as defined in this chapter;
- (3) The kidney center shall provide the client with necessary forms and instructions in a timely manner;
- (4) The client shall complete and submit the ESRD application for eligibility and any necessary documentation to the kidney center in the manner and form the department prescribes;
- (5) A new client shall apply for Medicaid, obtain and send to the kidney center written documentation of Medicaid eligibility or denial;
- (6) The kidney center shall review the ESRD application and documentation for completeness and accuracy according to instructions provided by the department;
- (7) The kidney center shall forward to the medical assistance administration (MAA) the ESRD application and any documentation needed to approve or deny eligibility. The MAA shall review the ESRD application and documentation and notify the kidney center that the client has been certified, or request additional information as needed;
- (8) The ESRD application period shall be limited to one hundred and twenty days. The kidney center may request an extension when extenuating circumstances prohibit the client from completing the application process within the allowed

time. The department, at its discretion, may grant and specify the limits of the extension;

(9) The ESRD client shall be eligible for a period of one year from the first day of the month of application unless the client's resources or income increase or decrease substantially, in which case the client must complete a new application for ESRD eligibility;

(10) ESRD eligibility effective date is the first day of the month of ESRD application if the person was eligible at any time during that month. The effective date of ESRD eligibility shall be no earlier than four months before the month of ESRD application provided the:

(a) Medical services received were covered; and

(b) Person would have been eligible had the person applied.

(11) A client currently eligible shall be recertified before the end of the respective eligibility periods.

(12) A client who seeks continued program services does not need to reapply for Medicaid unless the client has a substantial reduction in resources during the year.

[Statutory Authority: RCW 74.08.090. 93-16-039 (Order 3600), § 388-540-060, filed 7/28/93, effective 8/28/93.]